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## FISCAL IMPACT REPORT

|                    |  |                      |          |           |          |
|--------------------|--|----------------------|----------|-----------|----------|
| <b>SPONSOR</b>     | Cisneros                                   | <b>ORIGINAL DATE</b> | 02/24/11 | <b>HB</b> |          |
|                    |  | <b>LAST UPDATED</b>  | 03/08/11 | <b>SB</b> |          |
| <b>SHORT TITLE</b> | Small Water & Wastewater System Assistance |                      |          |           | 426/aSFC |
|                    |  | <b>ANALYST</b>       | Aledo    |           |          |

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY11 | FY12                        | FY13 | 3 Year<br>Total Cost | Recurring<br>or Non-Rec | Fund<br>Affected |
|--------------|------|-----------------------------|------|----------------------|-------------------------|------------------|
| <b>Total</b> |      | *See Fiscal<br>Implications |      |                      |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

Indian Affairs Department (IAD)

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee amendment indicates that funds from the tribal infrastructure project fund and the colonias infrastructure project are for projects approved by the tribal infrastructure board and the colonias infrastructure board, respectively.

#### Synopsis of Original Bill

Senate Bill 426 proposes to create the Small Water and Wastewater System Management Assistance Fund to provide assistance to small water and wastewater systems. The bill defines “small water or wastewater system” as public or tribal water supply or wastewater system that serves no more than five hundred (500) people.

The Fund is to be administered by the Environment Department and be composed of “appropriations, gifts, grants and transfers of money that may be made from NMED’s rural infrastructure program, the tribal infrastructure trust fund or the colonias infrastructure trust fund or money earned from investment of the fund and otherwise accruing to the fund. Remaining fund balances at the end of a fiscal year shall remain in the fund.

The bill calls for money in the fund to be appropriated to the department to contract for services to assist small water and wastewater systems to pay for:

- a certified water or wastewater operator;
- the administrative management; or
- a certified water or wastewater operator or administrator to train personnel or otherwise improve and develop the capabilities of the small water or wastewater system.

SB 426 does require there to be a competitive bid process for contract awards.

## **FISCAL IMPLICATIONS**

NMED states that they would need an additional 0.5 FTE to administer this program at an annual cost to NMED of \$22,835 and an additional 0.5 FTE engineer to review contracts at an annual cost of \$38,883. The bill provides that up to 10 percent of the fund annually can be used for department costs associated with management and implementation of the fund activities.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

## **SIGNIFICANT ISSUES**

The New Mexico Environment Department has the following three concerns:

1. NMED administers the rural infrastructure revolving loan program pursuant to the Rural Infrastructure Act. SB 426 proposes to create a fund from an array of monies, including the rural infrastructure program fund. However, by statute, the rural infrastructure program fund may not be used to fund operation, maintenance and administrative costs of Small Systems, only to fund costs for “planning, design and construction or modification water supply, wastewater and solid waste facilities.” Therefore, without amending the Rural Infrastructure Act, the rural infrastructure program fund may not be used for the Fund proposed in this bill.
2. The tribal infrastructure trust fund and the colonias infrastructure trust fund are administered by the Secretary of Indian Affairs and the New Mexico Finance authority, respectively.

The Indian Affairs Department provided the following information:

Pursuant to the Tribal Infrastructure Act, the Tribal Infrastructure Trust Fund is not permitted to be expended for any purpose other than an annual distribution that is made to the Tribal Infrastructure Project Fund. The Department of Finance and Administration (DFA) administers the Tribal Infrastructure Project Fund, in which the DFA originates grants and loans for qualified projects approved by the Tribal Infrastructure Board.

The Tribal Infrastructure Board authorizes funding for qualified projects relating to the planning, designing, constructing, improving, expanding, or equipping water and wastewater facilities and major water systems. Hence, the monies in the Tribal

Infrastructure Project Fund are not available to fund the operation, maintenance, and administration costs associated with small water and wastewater systems. The Tribal Infrastructure Act would have to be amended in order to permit such activities to be funded using monies from the Tribal Infrastructure Project Fund. In addition, the Tribal Infrastructure Act does not provide a mechanism for funds to be transferred from the Tribal Infrastructure Project Fund to a differing fund.

3. SB 426 would authorize NMED “to contract for services to assist small water and wastewater systems,” and provides that such contracts would “be subject to competitive bid pursuant to guidelines” provided by NMED. By requiring NMED to be the contractor for services, the bill would place NMED in the position of *operating* Small Systems. Small Systems, however, are operated by their boards of directors. NMED does not have the legal authority to operate Small Systems, and could not do so in place of or alongside a Small System’s board. NMED provides loans and grants to water and wastewater systems; it does not directly contract for services.
4. The bill authorizes NMED to contract for operation, maintenance and administrative costs for Small Systems, but does not place appropriate restrictions, limitations and conditions on the authority to contract. Specifically, the bill does not set forth any requirements for the Small System to demonstrate that, after such assistance is provided, it would be self-sustaining and able to operate without such assistance.

#### **TECHNICAL ISSUES**

The title of the bill states that it makes an appropriation; however, the bill does not do so.

Also, the bill defines “small water or wastewater system” as public or tribal water supply or wastewater system that serves no more than five hundred (500) people. Using the term “people” in the definition might be problematic because it is not the most accurate threshold. Perhaps a term such as “household” or “customer” would provide more clarity.

#### **ALTERNATIVE**

The ability of small water and wastewater systems to maintain themselves is a problem in New Mexico. NMED suggests establishing a study committee to study and evaluate this problem in order to develop more appropriate and accountable mechanism to help maintain the viability of these systems.

MCA/bym:svb