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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino ORIGINAL DATE 03/09/21
LAST UPDATED _____ HB _____
SHORT TITLE Vibrant Communities Act SB 393
ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DFA Staffing		\$250.0	\$250.0	\$500.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SJR24, Nonprofit Exemption to Anti-Donation, CA; Senate Bill 174, Fiscal Agent for Capital Outlay Projects.

Relates to Appropriation in the General Appropriation Act of 2021.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Human Services Department (HSD)

University of New Mexico Health Sciences Center (UNMHSC)

SUMMARY

Synopsis of Bill

Senate Bill 393 (SB393) would create the “Vibrant Communities Act” and amends sections of NMSA 1978, in particular the “Disposition of Property” statute.

Section 2 defines a “community well-being and capital development project” as a qualifying government body assisting, either directly or indirectly, a qualifying entity that serves New Mexico’s sick and indigent residents, promotes health, self-sufficiency, community, and economic development. This project should strengthen the resources of that community. The project can include the purchase, lease or acquisition of land or buildings, the construction or improvement of buildings or infrastructure, public works improvements, and payments for professional service contracts to implement the planning of a project.

Section 3 would place restrictions on the public expenditures or pledges of credit indicating expenditures or credit cannot exceed 5 percent of the annual general fund expenditures of the governing body in that fiscal year, not including the value of land or building contributions. It also does not include service contracts.

Section 4 creates a list of public purposes. The qualifying entity will submit a project proposal to the Department of Finance and Administration (DFA), which will include a description of the community need, a description of the project, state agency that may have authority over the project, the amount of funding requested, and a list of other funding sources for the project.

Section 5 states that a form application will be created and gives a deadline of April 30 each year to submit the form.

Section 6 creates the evaluation guidelines. This section allows DFA to designate the appropriate state agency to oversee the project. That agency will review the proposal and confirm their review. The agency will communicate with the qualifying local entity as to the items in the proposal. The agency will need to submit in writing the reason for denying a proposal.

Section 7 creates the duties and requirements of the participation agreement with the state agency assigning a local entity to the project which would then review the proposal and hold a public hearing. The local entity will then be required to provide a contribution of value for in-kind services, jobs, property or other items of value for expansion of the community well-being. It states what will happen to the assets if the qualifying entity ceases to exist or no longer serves the public purpose.

The agreement shall list the contributions to be made to each party, security performance measures, a schedule of goals, who will manage the funds, performance review provisions, and terms of ownership.

Section 8 states the project will be managed by the local governing body stated in the agreement and will be overseen by the appropriate state agency.

Section 9 outlines the termination clause and states the agency designated to oversee the project can cancel the agreement at any time by providing 30 days written notice. It also states the unexpended and unencumbered balances will be transferred to the general fund.

Section 10 indicates this act should not be construed to affect any other requirements of the New Mexico Constitution or other laws.

Section 11 amends the Disposition Statute for municipal property to add the Vibrant Communities Act to the disposition language.

Section 12 states the severability of the Vibrant Communities Act if it is held to be invalid for any reasons.

Section 13 creates the effective date as the date the Secretary of State certifies the amendments to the constitution that will be created through the joint resolution (SJR24). SJR24 will require voter approval for changes to the state constitution as listed below.

“A joint resolution proposing to amend Article 9, Section 14 of the Constitution of New Mexico to permit, under certain conditions, the state or any county or municipality to provide real estate, equipment or money to be used by nonprofit organizations and cooperatives that provide goods or services to the public on behalf of the state or a county or municipality.”

FISCAL IMPLICATIONS

DFA reports by allowing nonprofits to receive capital funding from the state, it reduces the amount of funding available for statewide projects, higher education institution projects, local government capital projects, and other special district capital projects. However, by providing much needed services to the communities, these other governmental entities may welcome the services provided by these nonprofits and may be open to allowing these entities to help with those community needs, especially if they are not offered by the local body.

SB393 would require DFA to review community well-being and capital development project requests and designate an oversight agency. Without knowing how many community well-being and capital development project requests will be received, DFA cannot estimate the staffing levels or other resources that would be needed. DFA expect requests could be numerous creating significant additional work for DFA staff during the capital outlay process. This would likely result in hiring additional staff to assist with such requests. An estimate of additional staffing for 3 FTE is approximately \$250 thousand.

ADMINISTRATIVE IMPLICATIONS

SB393 would require designated state agencies to review each project proposal, negotiate with the nonprofit or tribal entity, monitor the project, and oversee the funding of the project. Such oversight may require additional resources at state agencies, depending on each agency. The fiscal and administrative impact is unknown on state agencies staff and resources.

RELATIONSHIP

SB393 enacts the “Vibrant Communities Act” and amends sections of NMSA 1978, in particular the “Disposition of Property” statute. SJR24 would also amend the “anti-donation” clause of the New Mexico Constitution to allow for implementation of this act.

SB 174, Fiscal Agent for Capital Outlay Projects, would assist the Legislative Council Service (LCS) in verifying if a state agency, county or municipality has accepted the role as fiscal agent for a capital outlay request that is being submitted by a nongovernmental entity.

TECHNICAL ISSUES

DFA notes under Section 9 (B), any unexpended and unencumbered balances remaining in any project fund upon termination of a project shall be transferred to the general fund of the state. As capital projects are funded by many different sources, including severance tax bonds and notes, this language is insufficient to direct unexpended and unencumbered balances to the appropriate fund.

DFA suggests amending Sections 4 or 5 to authorize the department to create the project proposal form and then amend Section 9 to include language authorizing the reversion of unexpended and

unencumbered balances back to the authorizing fund.

DFA writes SB393 would create a threshold of 5 percent of local entity general fund budgets in that fiscal year. Instead of creating a threshold by using general fund budgets, the Legislature may consider another threshold like a percentage of available bonding capacity since most capital projects are funded through severance tax bonds. For example, tribal infrastructure fund, colonias, and water trust projects are earmarked each year, and perhaps a percentage could be earmarked for these local nonprofit projects as well so the threshold can be controlled based on funding capacity and not local government budgets.

DFA notes without proper controls in place, nonprofits could bypass the process outlined in this bill. More language may be needed to add controls so nonprofits cannot seek funding outside the defined process. One option would be to add language authorizing Legislative Council Services to remove any funding request by a nonprofit that has not been approved through the Vibrant Communities Act process.

SB393 would require a designated state agency to review each project proposal, negotiate with the nonprofit or tribal entity, monitor the project, and oversee the funding of the project. It would be important that agencies have a framework or template for reviewing project proposals and making determinations on which projects should be supported and funded as to ensure uniformity of consideration and funding across the state for community well-being and capital development projects. Such a framework and template should be developed with input from state agencies, local public bodies, and entities that would seek capital funding under the act.

The bill does not state which agency will create the form application or project proposal. DFA is the department that is assigned to receive the proposals so one can assume they would also create the proposal form. This could be clarified in Section 4 or 5.

OTHER SUBSTANTIVE ISSUES

The state provides capital outlay funding to hundreds of projects each year. Such funding goes to public projects as requested by state agencies and local public bodies. Were SB393 to be enacted, the state would see an increase in capital outlay funding requests that legislators and local public bodies would need to consider, thus increasing demand while funding availability remains the same. This would require additional evaluation and consideration to prioritizing project funding.

ALTERNATIVES

Higher education-related capital projects already go to HED and then the State Board of Finance for approval.

RAE/sb