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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/13

SPONSOR Larrañaga **LAST UPDATED** _____ **HB** 364

SHORT TITLE Water Project Financing Approval **SB** _____

ANALYST Canney

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 228 – NMFA Water Fund and Acequia Projects

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer/Interstate Stream Commission (OSE/ISC)
 New Mexico Environment Department (NMED)
 Energy, Minerals and Natural Resources Department (EMNRD)
 New Mexico Department of Agriculture (NMDA)
 Department of Game and Fish (DGF)
 New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Section 1 removes the legislative authorization needed to issue severance tax bonds as required in the Severance Tax Bonding Act.

Section 1 eliminates the requirement for unused STB funds to be reverted to the STB fund for water projects.

Section 2(D) changes the definition of ‘qualifying water project’. This change in definition allows the Water Trust Board to approve and fund projects without legislative authorization.

The proposed language in section 2(D) requires that a project must fall within one of five authorized categories to qualify for funding and excludes expenditures for general operation and maintenance. These categories are:

1. Storage, conveyance, or delivery of water to end users;

2. Implementation of federal Endangered Species Act of 1973 collaborative programs;
3. Restoration and management of watersheds;
4. Flood prevention; or
5. Conservation, recycling, treatment or reuse of water.

Section 3 eliminates the drought strike team to coordinate responses to emergency water shortages caused by drought conditions.

Section 4(B) amends the Water Project Finance Act to clarify the duties of the New Mexico Finance Authority (NMFA). At the direction of the Board, the Authority shall administer the water project fund and adopt such rules as necessary to prevent fraud, waste, and abuse.

Section 4(E) amends the Water Project Finance Act to clarify the duties of the NMFA. At the direction of the Board, administer, manage, and oversee qualifying water projects that receive financial assistance. (see administrative implications below)

Section 4(F) authorizes the NMFA to enter into memoranda of understanding, contracts, and other agreements to carry out the provisions of the Water Project Finance Act.

Section 5(B) amends the Water Project Finance Act to eliminate the required review of plans and specifications by the State Engineer and the New Mexico Environment Department (NMED) for recommended disbursement of funds.

Section 5(C) increases eligible expenses to include asset management plans and water rights acquisitions.

Section 6(A) amends the Water Project Finance Act to allocate between 0.5 percent and three percent of all STB distributions, to fund oversight of qualified water construction projects as a direct project cost by the NMED, or other agencies and consultants to prevent fraud, waste, and abuse. (See technical issues below)

Section 6(A) also allows the NMFA increased ability to recover costs of administering, managing, and overseeing qualifying water projects. (see administrative implications below)

Section 7 of House Bill 364 (HB 364) amends the Water Project Finance Act to allow the Water Trust Board to make grants to acequias for qualifying water projects without legislative approval.

FISCAL IMPLICATIONS

The NMED reported that the administrative costs identified in the HB 364 would decrease the amount of funds available to pay for project costs. The NMED stated that previous NMFA estimates for third party review of engineering plans and specifications, technical oversight costs and internal administration for the Water Trust Fund would be \$750 thousand per year. This would be a recurring cost. The NMFA report this as a range between \$156.5 thousand to \$918 thousand, per year.

SIGNIFICANT ISSUES

The NMFA points out that this proposed legislation would usurp the Legislature's power of

authorizing recommended projects for funding and would grant that same power to the Water Trust Board, which is a policy making board.

ADMINISTRATIVE IMPLICATIONS

The Department of Game and Fish (DGF) raised the following concerns:

HB 364 requires the NMFA to manage water projects when requested by the Board (see page 9, lines 8 through 10), but it does not qualify what type of water project management can or should be required by the NMFA. Managing water projects falls outside the purview of the NMFA.

The NMFA identified similar implications:

Proposed changes in both § 72-4A-6(E) and § 72-4A-9(A) regarding the additional responsibilities of “administering, managing and overseeing qualifying water projects” are outside the scope of the NMFA’s expertise. Requiring the NMFA to go outside the area of its expertise would mean the NMFA would have to either (i) employ experts in the field of construction oversight, which is outside the scope of the NMFA’s statutory duties, or (ii) enter into contracts with professional service providers to perform such services, which as a financial institution, is also outside the scope of the NMFA’s statutory duties.

TECHNICAL ISSUES

To maintain the Legislative Authority to appropriate, the LFC staff recommends on page 2, lines 5 through 8 remove the deletion and leave the those lines as currently found in statute.

The Energy, Minerals and Natural Resources (EMNRD) suggested that on page 9, line 2, HB 364 adds language that the NMFA will “renew and evaluate applications for financial assistance”. The intent may be to have the NMFA “review and evaluate” applications.

Page 12, line 18, “at least one-half percent and up to three percent of all STB distributions shall be allocated to fund oversight of qualified water construction projects as a direct project cost.....” The intent may be to include only those STB distributions allocated to the water project fund, not all STB distributions.

The NMFA reported that:

Historically, the Water Trust Board has provided a list to the legislature recommending projects for appropriation by the legislature. Removing that requirement from the legislature is a significant deviation from current practice.

ALTERNATIVES

The NMFA point out one alternative is for the staff of the Construction Programs Bureau (CPB) to assume the task of project oversight. They stated:

The CPB of the NMED could be tasked with the project oversight of water projects

instead of the NMFA as the CPB has the expertise on staff for these activities and currently provides these services to other severance tax bond-funded projects. The NMFA would continue to administer the grants and loans. This would assign the responsibilities that are aligned with the respective agency's strengths and personnel.

OTHER SUBSTANTIVE ISSUES

The NMED is concerned that HB 364 removes the NMED review and recommendation authority, but allows the NMFA the ability to contract with a third party of its choosing which may or may not be the NMED. The NMED reports that this may be costly to the entities that receive this funding because:

- 1) The New Mexico Drinking Water Rules require that plans and specifications for certain drinking water construction projects be submitted to the NMED Drinking Water Bureau and receive its prior written approval before construction is initiated. Language in HB 364 could cause confusion because a non-NMED third-party contractor review would not satisfy the NMED's rules.
- 2) Failure to obtain the NMED's prior written approval could also subject entities to additional costs that could have been reduced or avoided if the NMED had been consulted as required because potential regulatory and sanitary violations could have been caught prior to construction.
- 3) There is no requirement in HB 364 that the NMFA choose the NMED or a third-party contractor based on the most cost-effective provider.
- 4) There is no requirement in HB 364 that third-party contractors be free of conflicts of interest or that they be barred from reviewing their own or a closely related entity's work.
- 5) On page 10, line 20, HB 364 provides that "plans and specifications for a water project shall be approved by the Authority..." The NMFA does not have licensed professional engineers on its staff and reviewing plans and specifications requires an engineering license.

The NMED would prefer that the Water Project Finance Act require the NMFA to contract with the NMED to review plans and specifications and provide oversight of projects within the NMED's regulatory jurisdiction and that the NMED be permitted to charge its cost of performing this work to the fund.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Office of the State Engineer (OSE) points out that,

If HB 364 does not pass, there will continue to be an absence of accountability for oversight and management of Water Trust Board projects by NMFA and the status quo will remain unaffected.

AMENDMENTS

- 1) The NMED suggests that Page 10, Lines 19-20 be changed to "Plans, specifications and oversight for each project, as appropriate, shall be reviewed and approved on behalf of the Authority by a practicing professional engineer licensed under the Engineering and

Surveying Practice Act. For projects within the regulatory jurisdiction of the NMED, the NMFA shall contract with the Department for this work and the Department shall be authorized to invoice the fund to pay for its costs of providing review and approval of plans and specifications and oversight of construction on behalf of the NMFA.

- 2) The NMED suggests that more specific language be provided to the Board and to the NMFA regarding rules to prevent waste, fraud and abuse by adding at the end of Page 8, Line 23, “provided that the authority shall adopt rules prohibiting conflicts of interest for third-party contractors, including provisions that prohibit a NMFA third-party contractor from reviewing plans and specifications or overseeing construction for itself or a closely related entity.”

JPC/svb