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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/2020

SPONSOR Herrera/Armstrong, G. LAST UPDATED 2/7/2020 HB 248/aHAWC

SHORT TITLE Water Association Infrastructure Act SB \_\_\_\_\_

ANALYST Iglesias

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22	FY23	FY24		
-	(\$20,200.0)	(\$19,600.0)	(\$18,800.0)	(\$18,500.0)	Recurring	Senior Severance Tax Bond Capacity
-	Not specified (see <i>Fiscal Implications</i> and <i>Technical Issues</i> )				Recurring	Water Association Infrastructure Trust Fund (NEW)
-	\$20,200.0*	\$19,600.0*	\$18,800.0*	\$18,500.0*	Recurring	Water Association Infrastructure Project Fund (NEW)

Parenthesis ( ) indicate revenue decreases

\* Includes estimated revenue to the project fund from severance tax bonding capacity. The bill also contemplates annual distributions from the trust fund to the project fund, but does not provide a mechanism for the trust fund to receive funding. See *Fiscal Implications* and *Technical Issues*.

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

FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
-	\$400.0	\$400.0	\$800.0	Recurring	NMFA

Parenthesis ( ) indicate expenditure decreases

Duplicates SB234, Relates to SB19 and SB148

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Finance Authority (NMFA)

Department of Environment (NMED)

State Treasurer's Office (STO)

Department of Finance (DFA)

## SUMMARY

### Synopsis of HAWC Amendment

The House Agriculture and Water Resources Committee amendment changes the names of the two funds created within this bill to the “water association infrastructure trust fund” and the “water association infrastructure project fund.”

### Synopsis of Original Bill

House Bill 248 creates the Water Association Infrastructure Act (the “Act”), which provides for financial assistance in the form of grants or loans to mutual domestic water consumers associations or other associations organized pursuant to the Sanitary Projects Act for qualified water and wastewater projects as defined by the Act.

The Act creates a seven-member water infrastructure board (the “Board”) to be staffed by the New Mexico Finance Authority (NMFA), the Department of Finance and Administration (DFA), the Department of Environment (NMED), and one member appointed by each of the following: the senate president pro tempore, the senate minority floor leader, the speaker of the house, and the house minority floor leader. The Board will promulgate rules establishing the acceptance, evaluation and prioritization of applications submitted by water associations for financial assistance.

The Act creates in the state treasury the water association infrastructure trust fund (the “Trust Fund”). Money in the Trust Fund will be invested by the State Investment Council (SIC), with interest earnings credited to the fund, and cannot be expended for any purpose other than to make the annual distribution described below.

The Act creates in NMFA the water association infrastructure project fund (“Project Fund”) from which the NMFA may make grants and loans for qualified projects recommended by the Board. At the beginning of each fiscal year, a distribution of either \$10 million or 4.7 percent of the five-year average ending balance of the Trust Fund, whichever is greater, will be made from the Trust Fund to the Project Fund.

The Act also dedicates four and one-half percent of the annual severance tax bonding (STB) capacity for qualified projects, and authorizes the issuance of severance tax bonds to provide financial assistance to water associations to fund the projects. The Act appropriates proceeds of the bond sales to the Project Fund.

The effective date of the Act is July 1, 2020.

## FISCAL IMPLICATIONS

The bill provides two mechanisms for the new Project Fund to receive funding:

1. Bond proceeds from 4.5 percent of senior severance tax bonding capacity, and
2. An annual distribution from the new Trust Fund.

To estimate the amount available through STB proceeds, LFC staff used the STB capacity estimate from the Board of Finance presented in December 2019. The amount available

beginning in FY21 through this mechanism would be \$20.2 million – the same amount available for colonias projects and tribal projects. The bill appropriates the proceeds of the bond sales directly to the bill’s new Project Fund.

The bill also provides for an annual distribution of at least \$10 million from the bill’s new Trust Fund to the bill’s new Project Fund. The bill states the new Trust Fund will consist of money that is “appropriated, donated or otherwise allocated to it”, but the bill does not make an appropriation to this fund or establish a means of the fund to receive revenue. Therefore, the fiscal estimate assumes no distributions from the Trust Fund to the Project Fund.

## **SIGNIFICANT ISSUES**

NMED provided the following discussion:

“The project fund proposed by HB248 could supplement funding that water associations receive from a number of sources, including capital outlay, the Drinking Water State Revolving Loan Fund, the Clean Water State Revolving Loan Fund and the Rural Infrastructure Fund as well as the Water Trust Fund, the Colonias Infrastructure Fund, and the Public Project Revolving Fund. HB248 limits availability of the project fund to water associations formed under the Sanitary Projects Act. All other funding sources listed are available to a broader group of water and wastewater systems, including, but not limited to, water associations.

The board created by HB248 creates some overlap in membership and roles between the water association infrastructure board and the Water Trust Board, the Colonias Infrastructure Board and the New Mexico Finance Authority Board. However, the water association infrastructure board’s mandate is limited to the project fund regulations as applied to water associations applying for project funds, subject to relevant existing laws and regulations.

State and federal environmental protection statutes and regulations would not be affected by HB248.”

## **ADMINISTRATIVE IMPLICATIONS**

Similar to the Colonias Infrastructure Board and the Water Trust Board, HB 248 directs the NMFA to serve as staff to the Board and to administer projects, grants and loans. The initial start-up of the program entails establishing bylaws for the Board, developing and promulgating rules, establishing funding criteria and policies, and developing application materials, legal documentation and outreach materials. The activities will likely require the NMFA to contract with outside counsel for many of these activities. In addition, NMFA will be required to reimburse certain Board members for travel costs and pay per diem pursuant to the Per Diem and Mileage Act. Because of the time involved in establishing a new program, NMFA anticipates that in the first two years of the program the operating budget will total approximately \$800 thousand. After the program is developed, although speculative, the costs of administration would likely decrease, depending on the amount of available severance tax bond funds and the size of the awards recommended by the Board to the NMFA for financing assistance.

The bill provides that NMFA may recover from the Project Fund the costs of administering the fund and originating the grants and loans, although there may be some restrictions for cost

recovery pertaining to indirect costs as it relates to recovery from severance tax bond proceeds. According to NMFA, loan repayments will eventually provide enough funding to reimburse the fund, however until that time occurs, NMFA may have to cover the costs of operations from its other funds.

The New Mexico Department of Environment's (NMED), Construction Programs Bureau (CPB) and Drinking Water Bureau (DWB) are involved in the current Water Trust Fund process. Staff from these Bureaus review the compliance status of water systems for project eligibility, rank projects according to the water trust board criteria, review engineering documents and pay applications, and perform project inspections. According to NMED, this bill's fiscal implications for the agency may be negligible. However, if implementation of this bill would require CPB and DWB to provide assistance for the projects recommended by the water infrastructure board and funded by the project fund, then the department may require increased budget for additional staff in these Bureaus. The number of Water Association Infrastructure Act projects and precise role for NMED would determine the number of additional staff needed.

## **RELATIONSHIP**

Senate Bill 148, endorsed by the New Mexico Finance Authority Oversight Committee, appropriates \$41 million from the general fund to the existing Water Trust Fund for the purpose of carrying out the fund.

NMFA provided the following discussion regarding the relationship between this bill and Senate Bill 19:

“[This bill] relates to SB 19, which authorizes 36 projects to be eligible for funding from the Water Project Fund pursuant to the Water Project Finance Act. The NMFA establishes the terms and conditions of the loans and grants awarded from the Water Project Fund as recommended by the Water Trust Board and authorized by the legislature. [This bill] defines “water association” as a mutual domestic water consumers association or other association organized pursuant to the Sanitary Projects Act. Of the 36 projects authorized in SB19, 11 projects totaling approximately \$7 million are for applicants that meet the definition of “water association” pursuant to [this bill].”

## **TECHNICAL ISSUES**

The bill provides for an annual distribution of at least \$10 million from the bill's new Trust Fund to the bill's new Project Fund. However, the bill does not make an appropriation to the new Trust Fund or identify how the new Trust Fund would receive revenue. Without money in the new Trust Fund, no distribution to the new Project Fund could be made.

According to NMFA,

“HB248 largely duplicates provisions of the Water Project Finance Act (Section 72-4A-1 et seq., NMSA 1978, as amended), in that qualified entities in the Act are also qualified for funding from the Water Project Fund. There are three differences between the Act and the Water Project Finance Act that should be noted. First, the Act provides for a seven-member Board, nine fewer members than the Water Trust Board that is created under the Water Project Finance Act. Second, the Act provides that water and wastewater projects are

eligible to receive funding from the Project Fund, whereas the Water Trust Board is not able to fund wastewater projects. Lastly, the projects recommended by the Board do not have to be authorized first by the Legislature, as is the case under the Water Project Finance Act.”

## **ALTERNATIVES**

According to NMED,

“Water infrastructure funding in New Mexico is complex, with many funding programs available to communities and mutual domestic water consumer associations. This bill provides additional funding for the needs of water associations, which have small user bases and extensive infrastructure needs. One alternative to HB248 is an evaluation of other ways to address the funding needs of water associations that would build on existing water infrastructure funding programs. For example, as an alternative, additional funds could be allocated to the Water Trust Board, the Colonias Infrastructure Board and capital outlay for these systems to address their extensive needs within the frameworks that already exist.”

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