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FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/11
 LAST UPDATED 02/04/11 HB 16/aHJC

SPONSOR Gonzales

SHORT TITLE Water Project Financing Eligibility SB _____

ANALYST Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI	N/A	Water Project Fund (See Fiscal Implications)

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Finance Authority (NMFA)
 New Mexico Environment Department (NMED)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment expands the definition of a “political subdivision” to include land grant-merced controlled and governed entities pursuant to Sections 49-1-1 through 49-1-18 and 49-4-1 through 49-4-21 NMSA 1978. As used in Chapter 49 NMSA 1978, “land grant-merced” means a grant of land made by the government of Spain or by the government of Mexico to a community, town, colony or pueblo or to a person for the purpose of founding or establishing a community, town, colony or pueblo.

Synopsis of Original Bill

House Bill 16 amends the Water Project Finance Act to change the definition of a political subdivision and expands the eligibility of qualifying entities to seek financial assistance from the water project fund.

FISCAL IMPLICATIONS

The bill does not create an immediate impact to the water project fund. However, if the proposed new entities apply for financial assistance and are approved from the water project

fund, competition for the limited funds becomes greater.

Laws 2003 (Chapter 134) requires the Board of Finance to authorize and issue bonds for 10 percent of the severance tax bond capacity each year for deposit in the water project fund. The 10 percent set-aside of severance tax bond capacity for FY11 will provide approximately \$27.4 million to the water project fund for eligible water projects. The Water Trust Board, staffed by the New Mexico Finance Authority will request legislative authorization to the Legislature in 2011 for 49 projects for “potential funding” from the Water Project Fund. The 49 application requests total approximately \$88.2 million compared to available funding.

SIGNIFICANT ISSUES

The water project fund (WPF) and water trust board were created by the Water Finance Act. According to the Act, once authorized by the Legislature, the water trust board reviews all projects and determines qualifying entities and projects for consideration of loans or grants from the water project fund. Soon after the 2010 Legislative Session adjourns, the board will review all projects authorized by the Legislature for funding from the 2011 distribution to the WPF. Eligible water projects pursuant to the Water Finance Act are defined as those involving: 1) the storage, conveyance or delivery of water to end-users; 2) the implementation of federal Endangered Species Act collaborative programs; 3) the restoration of watersheds; 4) flood prevention; 5) conservation; or 6) for recycling, treatment or reuse of water.

ADMINISTRATIVE IMPLICATIONS

The NMFA is responsible for administering the projects recommended by the water trust board from the water project fund and is responsible for monitoring and ensuring proper reversions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 81 prohibits the common lands of a land grant-merced that is a political subdivision of the state from being considered to be designated or treated as state land.

OTHER SUBSTANTIVE ISSUES

According to the United States Government Accountability Office (GAO), “Until the mid-nineteenth century Spain made land grants to towns and individuals to promote development in the frontier lands that now constitute the American Southwest. Under the Treaty of Guadalupe Hidalgo, which ended the Mexican-American War, the United States agreed to recognize ownership of property of every kind in the ceded areas. Many people including grantee heirs, scholars, and legal experts, still claim that the United States did not protect the property of Mexican-Americans and their descendants, particularly the common lands of community grants. Land grant documents contain no direct reference to “community land grants,” nor do Spanish and Mexican laws define or use this term. GAO did find, however, that some grants refer to lands set aside for general communal use or for specific purposes, including hunting, pasture, wood-gathering, or watering. Scholars, the land grant literature, and popular terminology commonly use the phrase “community land grants” to denote land grants that set aside common lands for the use of the entire community. GAO adopted this broad definition in determining

which Spanish and Mexican land grants can be identified as community land grants. GAO identified 154 community land grants out of the total of 295 land grants in New Mexico. Seventy-eight was grants in which the shared lands formed part of the grant according to the original grant documentation; 53 were grants that scholars, grantee heirs, or others believed to contain common lands; and 23 were grants extended to the indigenous Pueblo cultures in New Mexico.”

LMK/bym