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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11
 SPONSOR Martinez, R. LAST UPDATED 02/18/11 HB 301/aHAGC
 SHORT TITLE Create New Mexico Unit Fund SB _____
 ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	\$6,600.0	Recurring	New Mexico Unit Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$6,600.0	\$6,600.0	Recurring for 10 years	New Mexico Unit Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

New Mexico Interstate Stream Commission (NMISC)

SUMMARY

Synopsis HAGC Amendment

The House Agriculture and Water Resources Committee amendment to House Bill 301 changes the purpose of money in the New Mexico Unit Fund from “costs of construction” to “costs of” [the New Mexico Unit...]. This would appear to broaden the scope of eligible costs.

Synopsis of Original Bill

House Bill 301 proposes to establish the “New Mexico Unit Fund (“NM Unit Fund”),” an account in the state treasury and that is subject to state laws governing investments. The NM Unit Fund will receive and account for federal payments that the State will receive under the

federal Arizona Water Settlements Act of 2004 (“AWSA”). Under the AWSA, the State will receive at least \$66 million for the purposes developing water in the Gila River Basin made available under the AWSA. An additional \$62 million is available if the State constructs a New Mexico Unit of the Central Arizona Project. By law, these payments will be indexed to construction costs for building a New Mexico Unit or water development projects.

The bill restates the federal purpose for which funds in the NM Unit Fund may be used, which is to construct the “New Mexico Unit of the Central Arizona Project or a water utilization alternative to meet water supply demands in the southwest New Mexico planning region..., including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.” The “southwest New Mexico planning region” consists of Catron, Grant, Hidalgo, and Luna Counties.

House Bill 301 also restates the federal requirement that the New Mexico Unit Fund “be administered by” the NMISC. For additional transparency and public accountability, the bill requires the NMISC to provide the Legislature with an annual report on the status of the NM Unit Fund, proposed projects, and expenditures. It also requires that the Department of Finance and Administration approves expenditures from the NM Unit Fund.

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.

FISCAL IMPLICATIONS

House Bill 301 provides a legislated mechanism for the State to receive annual federal payments of \$6.6 million between calendar years 2012 to 2022 (total of \$66 million, plus an indexed amount) and additional federal payments of between \$34 million and \$62 million, plus an indexed amount, if the state constructs a New Mexico Unit of the Central Arizona Project.

Further, House Bill 301 provides that the NM Unit Fund will retain earned income to further the state’s implementation of the federal law: to construct a New Mexico Unit or water utilization alternatives, including planning, related environmental mitigation, or restoration efforts that may be required. Monies in the fund cannot be used for other purposes and must be expended in the Southwest New Mexico Water Planning Region, consisting of Catron, Grant, Hidalgo, and Luna Counties. The interest earned from the revenue deposited into the NM Unit fund will accrue to the fund.

The NM Unit Fund will be a nonreverting fund and will be appropriated to NMISC.

SIGNIFICANT ISSUES

House Bill 301 allows the state to implement the federal AWSA by creating “a New Mexico Unit Fund, a State of New Mexico Fund to be established and administered by the New Mexico Interstate Stream Commission.” Since enactment of the AWSA, the NMISC has led planning efforts in the southwest New Mexico planning region to implement the legislation and determine the use of AWSA funds. Importantly, House Bill 301 does not address, predict, or anticipate how the funds will be used (for example, whether a “New Mexico Unit” or specific “water utilization alternative” is constructed).

ADMINISTRATIVE IMPLICATIONS

House Bill 301 and the federal legislation requires the NMISC to administer the New Mexico Unit Fund. Whether or not House Bill 301 is enacted, the NMISC will have an additional administrative burden by providing oversight to manage the contractual services needed comply with and implement the federal legislation, which may require NMISC to hire a term FTE from the funding to provide this oversight in planning.

OTHER SUBSTANTIVE ISSUES

The Arizona Water Settlements Act, Public Law 108-451, was enacted in December 2004. Generally, the Act provided for the settlement of water right claims in the Gila River Basin in Arizona. Specific to New Mexico and House Bill 301, the Act:

(1) authorizes the State to develop 140,000 acre-feet of additional consumptive use in the basin in New Mexico during any period of ten consecutive years (up to 14,000 ac-ft/yr, on average), provided that specific flow requirements on the Gila and San Francisco Rivers and other terms are met. These depletions are in addition to the consumptive uses in New Mexico allowed by the 1964 U.S. Supreme Court decree in *Arizona v. California*.

(2) provides the State with \$66 million and an additional \$34-62 million in non-reimbursable, federal funding that can be used to develop the authorized additional consumptive use in the basin by a New Mexico Unit of the U.S. Bureau of Reclamation's Central Arizona Project or for other water utilization alternatives, including planning, environmental mitigation, and restoration efforts.

Beginning in 2005, the NMISC implemented a comprehensive planning process designed to use the best available science to address, among other things, endangered species and ecological issues that might arise from development of the additional consumptive use in the basin in New Mexico as authorized by the Act. The Southwest New Mexico Stakeholders Group, the most recent regional planning group convened by the NMISC, is conducting a collaborative water planning process that includes technical studies funded by the State and public participation. The Gila-San Francisco Water Commission, the Gila Basin Irrigation Commission, and others are engaged in similar planning efforts. The U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, and local governments participate in this process. Late in 2010, members of the public briefed the NMISC on proposed AWSA projects and funding uses. The NMISC will evaluate proposals in 2011.

Creating the New Mexico Unit Fund, as proposed in House Bill 301, is one important, technical obligation among many of the NMISC's other responsibilities in implementing the AWSA.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Should House Bill 301 not be enacted, the NMISC will be required to identify an alternative means to establish a NM Unit Fund and comply with federal law. For example, an account code may be established at NMISC to account for the corpus of the AWSA funds, however, the account code designated as the NM Unit Fund would not accrue earned income on funds in such an account.