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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Herrera/Romero,A/ Castellano/Lente/Chandler</u>	<b>LAST UPDATED</b> _____ <b>ORIGINAL DATE</b> <u>02/21/2023</u>
<b>SHORT TITLE</b> <u>Emergency Drinking Water Fund</u>	<b>BILL NUMBER</b> <u>House Bill 453</u>
	<b>ANALYST</b> <u>Sanchez</u>

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$5,000.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$375.0	\$375.0	\$750.0	Recurring	NMED Operating Budget

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Responses Received From  
 Department of Environment (NMED)

## SUMMARY

### Synopsis of House Bill 453

House Bill 453 (HB453) proposes to create an Emergency Drinking Water Fund to provide potable water to communities in emergencies when a water system fails to function, provided that the failure results from an act of nature or an unpredictable event not within human control.

House Bill 453 appropriates \$5 million from the general fund to the Department of Environment for the purpose of administering the newly created Emergency Drinking Water Fund.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

The appropriation of \$5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall not revert to the fund. Although this bill does not specify future appropriations, multiyear appropriations, particularly if used to fund services, create an expectation the program will continue in future fiscal years; therefore, this cost could become recurring after the funding period.

Analysis from the Department of Environment (NMED) estimates approximately \$375 thousand would be needed to add three to four full-time employees (FTE) to oversee and manage the newly created fund. The agency would also need to develop an online process for accepting applications, vetting projects, and engaging with affected communities.

Additionally, because fund management would require engagement with contractors to provide potable water or complete emergency repairs, NMED's Construction Programs and Drinking Water Bureaus would likely assume responsibility for managing these projects. The Construction Programs Bureau does not currently receive any general fund appropriations for its operations.

## SIGNIFICANT ISSUES

Analysis from NMED expressed concerns about what the agency believes is a lack of clarity related to Section B. of House Bill 453. The Department of Homeland Security and Emergency Management is the state agency charged with aiding communities during and after natural disasters. While the bill specifies "the fund shall be used ... in an emergency," it does not explicitly list the qualifying types of emergencies.

NMED contends that many emergency system failures it works with communities to repair result from "years of failure to maintain or properly operate their systems." NMED expressed a desire for a robust, legislatively approved vetting system to help guide the agency as it works to administer the fund. Additionally, NMED expressed concerns about the addition of another restricted fund to its already extensive portfolio of funding sources, stating:

NMED manages approximately 125 restricted funding sources, including approximately 24 special revenue funds. Adding a new fund to NMED's portfolio further restricts our program implementation and the siloed nature of the Department. NMED prefers to use an existing special revenue fund for this purpose and to reduce restrictions to allow the Department to pay for reasonable program implementation expenses. Currently, the fund is not expressly allowed to be used for such purposes.

## PERFORMANCE IMPLICATIONS

Section 74-6-1 NMSA 1978, also known as the Water Quality Act, assigns responsibility for providing technical services and issuing certifications and permits to the Department of Environment. As the statutorily empowered regulator for all public drinking water systems, the agency has many responsibilities extending beyond assisting with construction projects for water and wastewater systems. The agency has consistently high vacancy rates and often relies on outside contractors to provide technical assistance to other subdivisions of the state. Without a recurring appropriation to increase staffing at NMED, the agency's already limited resources may be unable to adequately meet the requirements outlined in HB453, increasing the likelihood that funding will be unable to reach the communities the bill intends to assist.

## TECHNICAL ISSUES

Analysis from NMED cited the following concerns:

HB453 does not specify exactly what type of assistance should be provided beyond potable water. This could be interpreted as just providing bottled water during an emergency and would not address the underlying issue such as a failed well pump or loss of power due to a natural disaster. The bill should expand the type of assistance that could be provided to address more permanent solutions to the loss of water as the result of a disaster or unforeseen event.

## ALTERNATIVES

NMED proposes the following amendment in its analysis:

On page 2, line 7, after “provide potable water, “add, “including through infrastructure and system repairs or improvements.

SS/al/ne