

LFC Requester:**Cally Carswell**

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/24/2024

Bill No: HB 211

Sponsor: Susan K. Herrera, Kristina Ortez,
Kathleen Cates, Ambrose
Castellano, Raymundo Lara
Short Title: Water Project Prioritization

**Agency Name
and Code**

Number: NMFA (385)

Person Writing Michael Vonderheide

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|------------------|
| FY24 | FY25 | | |
| None | None | N/A | N/A |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY24 | FY25 | FY26 | | |
| None | None | None | N/A | N/A |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | NFI | NFI | NFI | NFI | N/A | N/A |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 148 Water Project Fund Projects, HB 201/SB 185 Water Project Fund, SB 1 Water Trust Fund

SECTION III: NARRATIVE

BILL SUMMARY

HB 211 amends various sections of the Water Project Finance Act (the “Act”) to add wastewater conveyance and treatment as qualifying water projects, allows water project funds to be used to hire technical assistance contractors, temporarily suspends the requirement that projects receive legislative authorization prior to NMFA making grants or loans, and temporarily reduces the distributions from the water project fund to the state engineer for water rights adjudications. HB 211 also makes other amendments to remove outdated provisions, to eliminate conflicts with other statutes and practices.

FISCAL IMPLICATIONS

The water project fund was created by the Act and is administered by the New Mexico Finance Authority (“NMFA”). The NMFA makes grants and loans for qualifying water projects recommended by the Water Trust Board (“WTB”) and authorized by the Legislature. The water project fund receives an annual distribution of nine percent of the severance tax bonds issued by the State Board of Finance (“SBOF”). This sum is estimated to be \$124.6 million for FY 2024 based on January 2024 SBOF estimates. Also in FY 2024, the water project fund is expected to receive a \$4 million distribution from the water trust fund.

The Office of the State Engineer (“OSE”) receives 10% of the distributions made to the water project fund, including the annual Severance Tax Bond proceeds, the annual water trust fund distributions and any other special appropriation directed to the water project fund. Twenty percent (20%) of the OSE distribution is then sent to the Administrative Offices of the Courts (“AOC”) for adjudication. OSE/AOC are currently estimated to receive a total of \$12.86 million from the FY 2024 Severance Tax Bonds and FY 2024 water trust fund distribution. HB 211 temporarily reduces the amount of water project funds distributed to OSE by providing that the lesser of four million dollars (\$4,000,000) or ten percent of all water project funds shall be dedicated to the state engineer for water rights adjudications from July 1, 2024 through June 30, 2029.

HB 211 also provides that money in the water project fund may be used to hire contractors to provide technical assistance. These dollars would otherwise be used to fund loans and grants.

SIGNIFICANT ISSUES

HB 211 proposes to amend the list of qualifying water projects in the Act by replacing the implementation of federal Endangered Species Act of 1973 collaborative programs with wastewater conveyance and treatment. There is significant demand for grants to fund wastewater

treatment facilities, particularly from smaller systems. There is limited demand for Endangered Species Act project applications.

HB 211 also provides that the water project fund may be used to hire contractors to provide technical assistance to applicants and borrowers. Small volunteer water systems in particular often need technical assistance to access the WTB. Frequently these systems depend on consulting engineers to develop and submit their applications. NMFA projects that a larger number of small water systems will be able to apply to the WTB as a result. This is important because the current levels of state and federal funding are not expected to continue and providing assistance to small systems now results in a greater chance of these small systems getting funded.

HB 211 amendments temporarily suspend, for a period of five years, the requirement that projects must receive legislative authorization to be awarded funding from the water project fund, but does provide that beginning on July 1, 2029, projects shall require legislative approval. This will allow applicants an additional four months to complete their applications to the WTB. The current process begins in August so that recommendations can be made to the NMFA Oversight Committee by November. Temporary relief from the authorization means the applications can begin in January before the May approval, rather than August of the preceding year. NMFA does not anticipate a change in the current evaluation and prioritization criteria, however the process will be streamlined such that applicants would only be required to submit one application and reviewers would only need to review one application per project.

Lastly, HB 211 clarifies that grants and loans shall be made only to qualifying entities that meet the requirements of financial capability set by NMFA, rather than the WTB, and NMFA ensures there are sufficient revenues to operate and maintain a water project for its useful life and to repay the loan. Pursuant to HB 211 grants and loans would be made to qualifying entities that agree to properly maintain financial records in accordance with all applicable laws, including the State Audit Act, but entities would no longer be required to conduct an audit of a project's records.

PERFORMANCE IMPLICATIONS

Pursuant to the Water Project Finance Act, NMFA provides staff support for the WTB and develops application procedures and forms for qualifying entities to apply for grants and loans to the WTB process, NMFA staff would coordinate with members of the project management team to develop and recommend wastewater project eligibility standards, prioritization criteria, and application requirements to the WTB. Revisions to the WTB Project Management Policies and application processes would be necessary to accommodate the amendments to the Act proposed in HB 211.

ADMINISTRATIVE IMPLICATIONS

NMFA is reimbursed for costs of administration, including paying contractors for engineering and construction oversight, from annual loan repayments. The addition of wastewater conveyance and delivery projects could potentially increase the costs of administration and technical oversight through a higher volume of activity in the future. However, the number of awards recommended by the WTB to NMFA for grants and loans from the water project fund has historically been subject to available funding through severance tax bonds and the water trust fund distribution. In 2017, the entirety of the nine percent of the severance tax bonds was redirected for solvency purposes, and no awards were made from the water project fund.

HB 211 proposes amending the Act to allow money in the water project fund to be used by NMFA

to hire contractors that provide financial and administrative capacity development and direct technical assistance to water projects. Contracting for direct technical assistance to water projects would be separate and apart from contracting for engineering and construction oversight services.

HB 211 also removes the provision that NMFA shall approve plans and specifications for a water project, only “after review and upon the recommendation of the state engineer and department of environment” before grant or loan disbursements to pay for construction costs are made to a qualifying entity. This language has been problematic because the requirement is for NMFA to approve plans and specs after review and upon recommendation by NMED and OSE, however, there is not requirement for NMED or OSE to review these plans, particularly for projects such as Endangered Species Act Implementation projects and Watershed Restoration and Management Projects. The proposed language allows NMFA to meet both the spirit and letter of the law because NMFA can contract appropriately for technical oversight services for water project fund projects.

OTHER SUBSTANTIVE ISSUES

The addition of wastewater conveyance and treatment to the list of qualifying water projects in the Act presents an opportunity to leverage the water project fund with other state and federal funding sources for wastewater projects, such as the federal Clean Water State Revolving Loan Fund administered by NMED.