

HOUSE AGRICULTURE, ACEQUIAS AND WATER RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 211

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO FINANCE; PRIORITIZING WATER PROJECT FUND PROJECTS THAT ARE URGENT TO ADDRESS PUBLIC HEALTH AND SAFETY; ALLOWING THE WATER TRUST BOARD TO AUTHORIZE WATER PROJECTS FOR WASTEWATER CONVEYANCE AND TREATMENT; PROVIDING THAT THE NEW MEXICO FINANCE AUTHORITY SET REQUIREMENTS OF FINANCIAL CAPABILITY OF QUALIFYING ENTITIES AND DETERMINE COSTS OF ORIGINATING GRANTS AND LOANS; REMOVING THE REQUIREMENT THAT

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ELIGIBLE ENTITIES CONDUCT AN AUDIT; REMOVING FISCAL AGENT FEES FROM ITEMS THAT ARE ELIGIBLE FOR GRANTS AND LOANS; REDUCING THE AMOUNT OF WATER PROJECT FUNDS DISTRIBUTED TO THE STATE ENGINEER FOR THE NEXT FIVE YEARS; ~~Sf11~~→~~ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO FUND WATER PROJECTS WITHOUT RECEIVING THE APPROVAL OF THE LEGISLATURE FOR THE NEXT~~ ~~Sf11~~→~~HAFc~~→~~FIVE~~←~~HAFc~~ ~~HAFc~~→~~TWO~~←~~HAFc~~←~~Sf11~~ ~~Sf11~~→~~FIVE~~←~~Sf11~~ YEARS; ←Sf11 PROVIDING THAT MONEY IN THE WATER PROJECT FUND MAY BE USED TO HIRE CONTRACTORS TO PROVIDE TECHNICAL ASSISTANCE; CHANGING THE DATE THAT THE WATER TRUST BOARD IS REQUIRED TO REPORT TO THE LEGISLATURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 72-4A-5 NMSA 1978 (being Laws 2001, Chapter 164, Section 5, as amended) is amended to read:

"72-4A-5. BOARD--DUTIES.--The board shall:

A. adopt rules governing terms and conditions of grants or loans recommended by the board for appropriation by the legislature from the water project fund, giving priority to projects that have been identified by the board as being urgent to ~~[meet the needs of a regional water planning area that has a completed regional water plan that has been accepted by the interstate stream commission]~~ address public health and safety issues; that have matching contributions from federal or local funding sources available; and that have obtained all requisite state and federal permits and authorizations necessary to

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initiate the project;

B. authorize qualifying water projects to the authority that are for:

(1) storage, conveyance or delivery of water to end users;

(2) HAFc → ~~implementation of federal Endangered Species Act of 1973 collaborative programs~~ ← HAFc
HAFc → implementation of federal Endangered Species Act of 1973 collaborative programs ← HAFc HAFc →;

(3) ← HAFc wastewater conveyance and treatment;

HAFc → (3) ← HAFc HAFc → (4) ← HAFc restoration and management of watersheds;

HAFc → (4) ← HAFc HAFc → (5) ← HAFc flood prevention; or

HAFc → (5) ← HAFc HAFc → (6) ← HAFc water conservation or recycling, treatment or reuse of water as provided by law; and

~~[G. create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions; and~~

~~D.]~~ C. evaluate projects, including their environmental impacts, and recommend projects to the interstate stream commission pursuant to the provisions of Section 72-14-45 NMSA 1978."

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SECTION 2. Section 72-4A-7 NMSA 1978 (being Laws 2001, Chapter 164, Section 7, as amended) is amended to read:

"72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

A. Grants and loans shall be made only to qualifying entities that:

(1) agree to operate and maintain a water project so that it will function properly over the structural and material design life [~~which shall not be less than twenty years~~];

(2) require the contractor of a construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the qualifying entity has proper title, easements and rights of way to the property upon or through which a water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the [~~board~~] authority to ensure sufficient revenues to operate and maintain a water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records [~~and to conduct an audit of a project's financial records~~] in accordance with all applicable laws; and

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(6) agree to pay costs of originating grants and loans as determined by rules adopted by the [board; and

~~(7) except in the case of an emergency, submit a water conservation plan with its application if required to do so and one is not on file with the state engineer, pursuant to Section 72-14-3.2 NMSA 1978]~~ authority.

B. Plans and specifications for a water project shall be approved by the authority after review and upon the recommendation of the state engineer and the department of environment before grant or loan disbursements to pay for construction costs are made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and operational design for water use efficiency.

C. Grants and loans shall be made only for eligible items, which include:

- (1) to match federal and local cost shares;
- (2) engineering feasibility reports;
- (3) contracted engineering design;
- (4) inspection of construction;
- (5) special engineering services;
- (6) environmental or archaeological surveys;
- (7) construction;
- (8) land acquisition;
- (9) easements and rights of way; and

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(10) legal costs [~~and fiscal agent fees~~]."

SECTION 3. Section 72-4A-9 NMSA 1978 (being Laws 2001, Chapter 164, Section 9, as amended) is amended to read:

"72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE.--

A. The "water project fund" is created in the [~~New Mexico finance~~] authority and shall consist of distributions made to the fund from the water trust fund and payments of principal of and interest on loans for approved water projects. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of supporting water projects pursuant to provisions of the Water Project Finance Act. The fund shall be administered by the authority. Income from investment of the water project fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The water project fund may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund and originating grants and loans. Ten percent of all water project funds shall be dedicated to the state engineer for water rights adjudications, and twenty percent of the money dedicated for water rights adjudications shall be allocated to the administrative office

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of the courts for the courts' costs associated with ~~[those]~~
water rights adjudications; provided that from July 1, 2024
through June 30, 2029, the lesser of four million dollars
(\$4,000,000) or eight percent of all water project funds shall
be dedicated to the state engineer for water rights
adjudications and two percent of all water project funds shall
be dedicated to the administrative office of the courts for the
courts' costs associated with water rights adjudications.

B. Money in the water project fund may be used by
the authority to:

(1) make loans or grants to qualified entities
for [any project approved by the legislature and for] projects
and water rights adjudications; provided that Sf11~~→~~beginning on
~~July 1, Sf11~~~~→~~~~HAFc~~~~→~~~~2029~~~~←~~~~HAFc~~ ~~HAFc~~~~→~~~~2026~~~~←~~~~HAFc~~~~←~~~~Sf11~~
~~Sf11~~~~→~~~~2029~~~~←~~~~Sf11~~~~→~~~~1~~~~←~~Sf11 projects shall require legislative
approval; and

(2) hire contractors to provide financial and
administrative capacity development and direct technical
assistance on water projects.

C. The authority is authorized to issue revenue
bonds payable from the proceeds of loan repayments made into
the water project fund upon a determination by the authority
that issuance of the bonds is necessary to replenish the
principal balance of the fund. The net proceeds from the sale

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of the bonds shall be deposited in the water project fund. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act."

SECTION 4. Section 72-4A-10 NMSA 1978 (being Laws 2001, Chapter 164, Section 10) is amended to read:

"72-4A-10. REPORT TO LEGISLATURE.--The board shall report to the legislature no later than [~~October~~] December 1 of each [~~calendar~~] calendar year the total expenditures from the water project fund, their purposes, an analysis of the accomplishments of the expenditures and recommendations for legislative action."

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