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FISCAL IMPACT REPORT

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| SPONSOR <u>Cadena</u> | LAST UPDATED <u>3/4/2025</u> |
| | ORIGINAL DATE <u>2/24/2025</u> |
| | BILL <u>House Bill</u> |
| SHORT TITLE <u>Real-Time Water Quality Monitoring</u> | NUMBER <u>427/aHAAWC</u> |
| | ANALYST <u>Davidson</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| Agency/Program | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|------------------|---------|---------|-------------------|---------------------------|---------------------------------|
| NMFA | No fiscal impact | \$200.0 | \$200.0 | \$400.0 | Recurring | Other state funds |
| NMED | No fiscal impact | \$140.0 | \$140.0 | \$280.0 | Recurring | Recurring |
| Total | No fiscal impact | \$340.0 | \$340.0 | \$680.0 | Recurring | Other state funds and recurring |

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

Sources of Information

LFC Files

Agency Analysis Received From
 Environment Department (NMED)
 Office of the State Engineer (OSE)
 New Mexico Attorney General (NMAG)
 New Mexico Finance Authority (NMFA)
 Department of Finance Administration (DFA)

SUMMARY

Synopsis of HAAWC Amendment for House Bill 427

The House Agriculture, Acequias and Water Committee amendment for House Bill 427 (HB427) amends language regarding how the funding would be given to qualified entities, changing it from grants to loans. The amendment also provides an exception in Section 3, C, stating real-time water quality monitoring projects applying for federal or other funding sources would not have to incorporate available technologies and operational design for water use efficiency.

The amendment also changed the date for when the Water Trust Board would report to New Mexico Finance Authority oversight committee from June 30, 2027, to 2029.

Synopsis of House Bill 427

House Bill 427 amends the Water Project Finance Act to add new criteria for grant projects and loans for real-time water quality monitoring projects. The bill also allows for funds administered by the Water Trust Board to be used for real-time water quality monitoring projects.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The water project fund receives a 9 percent annual earmark on senior severance tax bond (STB) capacity and an annual distribution from the water trust fund of the greater of \$4 million or 4.7 percent of the average year-end value of the trust fund over the previous five years. According to the Board of Finance, the water project fund's 9 percent STB capacity earmark will yield a \$124.6 million distribution in FY24, with a net \$115.7 million available for award by the Water Trust Board including the water trust fund distribution.

The Office of the State Engineer receives 10 percent of the annual distributions from severance tax bond proceeds and the trust fund for water rights adjudication. Additionally, 10 percent is allocated to the Administrative Office of the Courts (AOC). Legislation passed in 2024 temporarily reduced the distribution to OSE to the lesser of \$4 million or 8 percent of water project funds, with 2 percent of water project funds continuing to the flow to AOC.

Severance tax bond earmark distributions to the water project fund have grown dramatically over the last several years with rising oil and gas revenues, with the average award in FY24 being 82 percent grant and 18 percent loan. Loan terms are up to 20 years at 0 percent interest. Demand for these funds has also increased.

For the FY26 funding cycle, eighty-four projects sought by 62 public entities are authorized for funding in the bill. Which projects are ultimately awarded funding, and at what amounts, will be determined by the Water Trust Board after legislative authorization. The 84 projects authorized for FY26 requested funds totaling \$256.4 million, leaving a roughly \$99 million funding gap for the other projects which could be authorized

The New Mexico Finance Authority (NMFA) administers the Water Trust Fund and Water Trust Board. Currently, it does not have staff with expertise in water quality monitoring projects and if HB427 is implemented, NMFA analysis notes the agency will need to hire contractors to ensure funds are expended appropriately and projects are vetted properly. LFC analysis estimates the board could need up to \$200 thousand from the water projects fund to accommodate for the expanded portfolio of projects it would need to analyze.

The Environment Department (NMED) estimates to analyze the additional data HB427 would direct to the agency, NMED would need 1 additional FTE at \$140 thousand.

SIGNIFICANT ISSUES

Analysis from the New Mexico Attorney General (NMAG) notes current statute regarding what water projects can qualify for funding from the Water Trust Board include water storage, conveyance, restoration, and flood prevention, but not data-storage or technology acquisition that House Bill 427 discusses.

NMAG analyses further notes the current Water Project Finance Act requires qualifying water projects to be authorized by the Legislature. HB427 does not apply this requirement to water

quality monitoring projects.

Analysis from NMFA notes the projects discussed in HB427 relate more to operations and maintenance, which would be out of the scope of projects the proceeds from the severance tax bonds that make up the majority of the funding the Water Trust Board awards. Due to this, NMFA notes that, regardless of water quality monitoring projects being included in the act, restrictions on the use of severance tax bond proceeds could still exclude water quality monitoring projects from receiving Water Trust Board funds.

NMFA commonly recoups its administrative costs for new projects through annual loan repayments because severance tax bond proceeds cannot be used for administrative costs. The HAAWC amendment clarifies the funding would be disbursed as loans, allowing NMFA to recoup its costs.

Any projects funded by the Water Trust Board must be recommended to it and specifically authorized by law. For projects to be vetted and then recommended to the Legislature by the board, the board uses an annual application cycle which begins in July of each year. NMFA analysis notes the new type of projects authorized by HB427 would not be reviewable for the FY26 review cycle due to time constraints and would have to wait until FY27.

Analysis from the New Mexico Environment Department (NMED) notes the bill does not contain specific language relating to reporting of the water quality monitoring data:

The bill requires real-time monitoring data be reported to NMED, but it does not specify how this data should be used. One of the main limitations of real-time monitoring is that data collected from these systems generally cannot be used for regulatory compliance. State and federal regulations require that compliance sampling be conducted using EPA-approved methods and that samples be analyzed at certified laboratories to ensure accuracy and legal validity. While real-time monitors can serve as an important operational tool for water and wastewater systems, they do not replace compliance sampling requirements.

NMED analysis further notes the U.S. Geological Survey (USGS) already monitors and reports real-time water quality data from a number of stations throughout the county and in the state. NMED notes the data to be collected by the projects created from HB427 should be shared with the state's Bureau of Geology and the USGS, as part of the Water Data Act and its initiatives. Further, NMED notes due to the agency's inability to use real-time data for its regulatory duties, HB427 should be amended to direct project fund recipients to report their data to the state's Bureau of Geology, since they will be able to utilize the data more effectively.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB427 relates to House Bill 206, which authorizes Water Trust Board projects.

TECHNICAL ISSUES

Analysis from the Office of the State Engineer notes some technical issues exist in the bills discussion in the bill relating to which types of water quality monitoring the bill is discussing:

The title of the bill states, "...to monitor the quality of New Mexico's drinking water," but

in the text of the bill, it states the funding can be used for wastewater monitoring. If the intent of the bill is to allow for wastewater monitoring, then the word wastewater should be used throughout the bill whenever “water quality” appears (i.e., and for real-time water and wastewater quality monitoring projects as provided in Section 72-4A-7 NMSA 1978).

Analysis from NMED notes, while the amendment addresses issues in the original bill, it recommends additional rules and technical requirements for real-time water quality projects. NMED analysis recommends the creation of an ad-hoc committee consisting of technical staff and experts from NMED, Bureau of Geology and Mineral Resources, Water Trust Board, and representatives of one or more irrigation or conservancy district within the state:

The rules, regulations and standards developed by this ad-hoc committee would allow a foundation for projects developed under this act to produce standardized and scientifically acceptable/valid data. These rules, requirements and standards could be codified in the New Mexico Administrative Code (NMAC).

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