

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) and email to billanalysis@dfa.nm.gov****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 1/21/2026*Check all that apply:***Bill Number:** HB 109Original ☒ Correction ☐Amendment ☐ Substitute ☐**Agency Name
and Code****Sponsor:** Rep. Joy Garratt**Number:** NMFA (385)**Short****Person Writing** Michael Vonderheide**Title:** Water Project Fund Changes**Phone:** 505-992-9653 **Email** mvonderheide@nmfa.net**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None	None	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	None	None	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Relates to: House Bill 63 NMFA Water Project Fund Projects, which authorizes 113 projects to be eligible for funding from the Water Project Fund pursuant to the Water Project Finance Act. HB 63 is endorsed by the New Mexico Finance Authority Oversight Committee and contains an emergency clause.

LFC budget recommendation which transfers \$100 million from the general fund to the water project fund in fiscal year 2027, contingent on enactment of legislation of the second session of the fifty seventh legislature suspending legislative authorization of water trust board projects.

LFC endorsed legislation that provides limitations and requirements for certain capital outlay projects, reauthorizations and appropriations.

SECTION III: NARRATIVE

BILL SUMMARY

HB 109 amends the Water Project Finance Act (“Act”) by revising criteria for prioritizing water projects pursuant to the Act and allows the New Mexico Finance Authority (“NMFA”) to fund water projects from the water project fund without receiving the approval of the legislature until December 31, 2028. The bill also requires a two-thirds majority of both houses of the legislature to extend the date upon which legislative authorization shall be required.

Pursuant to the current Water Project Finance Act, §72-4A-1 to §72-4A-11, NMSA 1978 the NMFA establishes terms and conditions of loans and grants awarded from the Water Project Fund as recommended by the Water Trust Board (“WTB”) and authorized by the Legislature.

PERFORMANCE IMPLICATIONS

For the past 20 years, the WTB has relied on Board-established policies for recommending applications to the Legislature. Approximately ten years ago the WTB expanded its policies to include project type-specific evaluation criteria, minimum planning document requirements and other readiness to proceed requirements. Though the WTB has made a number of policy changes over the past ten years to increase access to the fund for small water systems, the rigorous application process may still prove too rigorous for small systems. As a result, the application process is often too rigorous for smaller systems, providing a barrier to critical funding.

Currently NMFA adheres to rigorous annual application cycle timelines that are tied to the NMFA interim oversight committee’s endorsement of a vetted project list. This application timeline cannot change, regardless of the volume of applications received in any given year. The suspension of the legislative authorization contained in HB 109 will provide NMFA with flexibility to open applications that are better suited to the variety of applicants that apply during the annual cycle, which is expected to benefit small systems.

ADMINISTRATIVE IMPLICATIONS

Prior to the establishment of the project type-specific criteria in 2015, fewer than 20 projects had been added during the legislative authorization process with approximately 20% of those projects amended onto the WTB-recommended lists ultimately receiving WTB awards. Since the establishment of the project type-specific criteria in 2015, no projects have been amended or

deleted from the WTB's recommended project lists. The prioritization direction contained in HB 109 is consistent with the evaluation criteria the WTB established in 2015 and modified in 2025 to include wastewater projects

The rigid timelines needed to adhere to the interim committee endorsements are time intensive for both NMFA, its partner reviewing agencies and applicants. After projects are prioritized and recommended to the legislature, a second application is opened where regulatory compliance, readiness and financial condition are reviewed. Suspension of the legislative authorization would eliminate the two-step application process since awards can be made closer to the application date.

From inception to date, the WTB has awarded more than \$1.05 billion to more than 650 water projects undertaken by approximately 200 applicants. More than half of that funding, \$562 million, has been awarded since 2022. Funding for the FY2026 award cycle is expected to total \$334.7 million. The increased project management from the high volume of awards over the past three cycles coupled with unprecedented levels of WTB funding is not sustainable with the existing process. Suspension of legislative authorization will allow NMFA to smooth out the application process by offering separate applications for small and large projects and hiring technical assistance contractors to help the small systems through the application process.

SIGNIFICANT ISSUES

Currently, the Act directs the WTB to give priority to projects that have been identified by the board as being urgent to 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 initiate the project. HB 109 strikes the above language from the Act and provides that the WTB shall prioritize projects based on the following criteria as outlined in Section 1 of the bill:

- (1) urgency of need, as identified in a regional water planning area with a completed regional water plan accepted by the interstate stream commission;
- (2) availability of federal or local matching contributions;
- (3) project readiness, including the acquisition of required state and federal permits and authorizations;
- (4) regional impacts;
- (5) efforts to mitigate or alleviate a project's potential human health and safety concerns;
- (6) level of planning and design;
- (7) improvement of water quality or quantity; and
- (8) other goals established for each project type pursuant to the Water Project Finance Act and rules adopted under that act.

HB 109 includes under prioritization criteria that urgency of project need is identified in a regional water planning area with a completed regional water plan accepted by the Interstate Stream Commission ("ISC"). The regional water plan criteria were removed from the Water Project Finance Act with the passage of House Bill 211 in the 2024 Regular Legislative Session. HB 109 further directs the WTB to include additional prioritization criteria related to regional impacts, level of planning and design, and improvement of water quality or quantity, previously not identified in the Act.

The bill provides that the WTB shall give higher priority to projects that:

- (1) have completed planning and design;
- (2) provide regional impacts;
- (3) mitigate or alleviate human health and safety concerns; and
- (4) improve water quality or quantity and advance project-type specific goals established pursuant to the Water Project Finance Act.

The bill directs the WTB to develop and use a weighted scoring system that incorporates the criteria provided pursuant to the bill. A ten-point score increase shall be granted in the event of an emergency situation, (which we assume is based on a 100-point scoring system), and recommendations for expenditure of money from the water project fund shall be based on the scoring and ranking of applications in accordance with the relevant sections of the bill.

Historically the Water Project Finance Act has provided a broader outline of project prioritization criteria while allowing the Water Trust Board to further develop the criteria through the promulgation of rules and policies. HB 109 mostly dictates to the WTB how it shall prioritize water projects going forward should the bill be enacted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to: House Bill 63 NMFA Water Project Fund Projects, which authorizes 113 projects to be eligible for funding from the Water Project Fund pursuant to the Water Project Finance Act. HB 63 is endorsed by the New Mexico Finance Authority Oversight Committee and contains an emergency clause.

The LFC budget recommendation transfers \$100 million from the general fund to the water project fund in fiscal year 2027, contingent on enactment of legislation of the second session of the fifty seventh legislature suspending legislative authorization of water trust board projects.

LFC endorsed legislation that provides limitations and requirements for certain capital outlay projects, reauthorizations and appropriations.

OTHER SUBSTANTIVE ISSUES

The NMFA administers an annual application cycle on behalf of the WTB. On October 29, 2025, the WTB approved for recommendation to the legislature 113 applications totaling approximately \$522.2 million of requests. The 113 projects are included in HB 63 NMFA Water Project Fund Projects. The projects listed in HB 63 were submitted by qualified entities for qualified projects that were fully evaluated by a technical team from seven agencies. The WTB prioritized the projects based upon recommendations from the technical team and established rules and policies.

Currently there is an approximate \$187.5 million funding gap between the \$522.2 million in WTB applications received and the \$334.7 million available to water project fund projects in fiscal year 2026. The LFC budget recommendation transfers \$100 million from the general fund to the water project fund in fiscal year 2027 to bridge the funding gap, contingent on enactment of legislation of the second session of the fifty seventh legislature suspending legislative authorization of water trust board projects.

The 2026 WTB application cycle began on July 14, 2025, and concludes with NMFA approval of the projects on May 28, 2026. The WTB application to award timeline is significantly longer than other programs administered by NMFA due to the legislative authorization requirement. The

authorization process typically begins 2-3 months after the WTB makes its recommendation of projects to the legislature, and lasts 30 or 60 days. Applicants recommended for legislative authorization are also required to submit a second application, or readiness application, which updates project information that may have changed since the project application was submitted in the fall. It is estimated that eliminating legislative authorization and the need for a readiness application could shorten the WTB application to award process by 180 days.

HB 109 allows NMFA to fund water projects from the water project fund without receiving the approval of the legislature until December 31, 2028. Removing legislative authorization from the WTB process pursuant to HB 109 amounts to a two-year suspension of the requirement and only the upcoming FY27 and FY28 annual WTB application cycles would be administered without legislative authorization. HB 109 provides that any amendment to extend the date upon which legislative authorization shall be required, requires two-thirds majority of both houses of the legislature.

The LFC endorsed legislation that provides limitations and requirements for certain capital outlay projects, reauthorizations and appropriations, specifically places limitations on water projects being funded through capital outlay. The LFC endorsed bill stipulates that capital outlay authorizations and appropriations for a drinking water, wastewater, storm water or dam project, excluding equipment, shall not be requested by or made to an entity other than a state agency. The provisions of the bill apply to capital outlay appropriations made on or after January 1, 2027. The limitation to exclude water and wastewater projects from the capital outlay process as outlined in the LFC endorsed bill appears to represent a permanent change with no sunset date which does not align with the two-year suspension of WTB legislative authorization contained in HB 109.

Finally, NMFA notes that the provision of Section 3, requiring a two-thirds vote to extend the date upon which legislative authorization shall be required, is likely unconstitutional. Article IV, Section 17 of the New Mexico Constitution states in pertinent part that “No bill shall be passed except by a vote of a majority of the members present in each house ...” It is black-letter law that a current legislature may not limit the power of a future legislature to amend or repeal a statute by requiring a supermajority vote for amendment or repeal when the state constitution only requires a majority vote to pass legislation. *See, e.g., LeRoux v. Sec’y of State*, 640 N.W.2d 849, 861 (Mich. 2002); *Pinckney v. Peeler*, 862 S.E.2d 906, 914 (S.C. 2021); *Alaskans for Efficient Gov’t Inc. v. State*, 163 P.3d 296, 300-302 (Alaska, 2007); and, *League of Education Voters v. State*, 295 P.3d 743 (Wash. 2013) (*en banc*) (where the state constitution only required a majority vote for passage of legislation, a supermajority requirement in legislation “unconstitutionally amends the constitution by imposing a two-thirds vote requirement” and “enabl[es] a tyranny of the minority...”) Because N.M. Const. Art IV, Sec. 17 only requires a majority vote to pass legislation, any provision of a statute exceeding that requirement is an improper attempt to amend the Constitution, and is very likely to be held unconstitutional by our Courts.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Water Trust Board will continue to prioritize water projects based upon established rules and policies and recommend qualifying water projects to the legislature for authorization pursuant to the Water Project Finance Act.