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FISCAL IMPACT REPORT

SPONSOR Robinson DATE TYPED 2/21/05 HB _____

SHORT TITLE Water Efficient Technology Act SB 444

ANALYST Kehoe

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
NFI					(See Fiscal Impact Narrative)

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	See Narrative			Water Efficient Technology Project Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to Senate Bill 54, Senate Bill 123, Senate Bill 132, Senate Bill 139, Senate Bill 140, Senate Bill 152, Senate Bill 186, Senate Bill 239, House Bill 14, House Bill 95, House Bill 123, House Bill 195, House Bill 271, House Bill 294, House Bill 304, House Bill 403 and House Bill 462.

SOURCES OF INFORMATION

Responses Received From

- Office of the State Engineer (OSE)
- New Mexico Environment Department (NMED)
- Energy, Minerals & Natural Resources Department (EMNRD)
- New Mexico Department of Agriculture (NMDA)
- New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 444, introduced for the New Mexico Finance Authority Oversight Committee, enacts the Water Efficient Technology Act, amends the New Mexico Finance Authority Act, amends the Tax Administration Act, authorizes NMFA to issue bonds, imposes a water efficiency fee for certain public waters, and creates a fund.

Significant Issues

Senate Bill 444 enacts the Water Efficiency Technology Act for the purpose of imposing a water efficiency fee on those persons wishing to exercise the right to divert or withdraw the public waters of the state. The bill contains a provision making it clear that payment of the proposed fee does not confirm or provide evidence of any right to appropriate the public waters of the state. The proposed efficiency fee would be imposed on the following persons:

- 1) persons operating a public water supply system, \$25.00 per acre-foot per year paid annually;
- 2) persons supplying water for a commercial, industrial, mining or power production concern and for which the fees imposed by this subsection have not otherwise been imposed or paid, \$25.00 per acre-foot per year paid annually; and
- 3) persons owning a domestic well, a fix annual fee of \$12.50 per well paid annually.

Senate Bill 444 requires that owners of domestic wells be assessed a fixed annual fee. In all other cases, water efficiency fees would be based on the actual diversion or withdrawal of water if measured by a metering system approved by the State Engineer; otherwise, fees would be based on the amount of the permitted, licensed, declared or adjudicated water rights.

The bill requires the Taxation and Revenue Department (TRD) to provide by regulation for reporting requirements and the manner and form of collecting the water efficiency fees and to provide the State Engineer and the New Mexico Finance Authority with an annual report indicating the amount of fees collected by river basin for each type of fee specified within the Act. The State Engineer, Interstate Stream Commission, Department of Environment and Public Regulation Commission are required to provide TRD with the necessary information and records needed to assess the fees imposed by the Act that will be collected by TRD. The bill further provides that persons who are required to pay the fees and who measures the diversion or withdrawal of public waters with a metering system approved by the state engineer must submit a record of the amount of diversion to the State Engineer annually.

Senate Bill 444 creates the water efficient technology project fund within the New Mexico Finance Authority to consist of the net receipts attributable to the fees imposed by the Act, payments of principal of and interest on loans for approved water projects and net proceeds from the sale of bonds, and other money appropriated, donated, or allocated for the purpose of supporting water projects pursuant to the Act. The proceeds of the fund are appropriated to NMFA for the purpose of making grants or loans to qualified entities for water projects that benefit persons that have paid water efficiency fees and to pay the administrative costs of the water efficiency technology program. Qualifying water projects include:

- restoration and management of watersheds;
- state acquisition or lease of water rights from willing sellers or lessors; or
- water conservation projects.

The bill requires NMFA to administer the program and fund and to develop the application procedures for loans and grants, adopt rules and procedures for administering the fund and to evaluate and prioritize qualifying water projects and make funding recommendations to the legislature. NMFA is authorized to issue revenue bonds payable from the proceeds of loan repayments made into the water efficient technology fund when NMFA determines issuance is necessary to replenish the principal balance of the fund.

FISCAL IMPLICATIONS

The fees imposed by this bill are considered a tax for purposes of the Tax Administration Act.

According to EMNRD, the bill creates a significant source of revenue for water projects in New Mexico. It is estimated that approximately 500,000 domestic wells of New Mexico homeowners would be affected; therefore, the fee would generate substantial revenues in the amount of \$9.3 million from the residential sector. In addition, the use-based fee of \$25/acre-foot would be imposed on commercial, industrial, mining and power companies. This fee structure will impact extensive water use operations such as the Intel computer chip facility in Rio Rancho. For companies with sizable water consumption, the fee would increase operating costs substantially. This could have an adverse effect on economic development efforts but would have to be evaluated against the positive environmental consequences of water conservation. It is estimated that New Mexico has \$2 billion in water project needs and water is the number one resource and public policy issue in the state.

The following two tables from the Water Efficiency Technology Act Report by W.J. Miller Engineers, Inc. provide revenue projections by Water Sector and by Water Basin. As indicated in the first table, it is estimated that the Water Efficiency Technology Act will generate approximately \$14.5 million annually with 57.0% of the revenue (\$8,297,550) paid by Public Water Supply providers.

TABLE I

Water Efficient Technology Act

Projected Estimates of Revenue by Water Sector and by Basin:

Preliminary research indicates that the Water Efficient Technology Act would raise approximately \$14.5 million dollars annually assuming 100% collection. Revenue estimates are based on estimates of water rights and measured diversions based on data from the year 2000. (2004, W. J. Miller Engineers, Inc., Water Efficiency Technology Act Technical Report, WWF Chihuahuan Desert Program, Las Cruces, NM)

Revenue Summary by Water Sector

Use	Withdrawal (acre-feet)	% of Total Withdrawal	Estimated revenue	% of Total Revenue	Rate per ac-ft	Flat Fee per well
Public Water Supply	331,902	57.8%	\$8,297,550	57.0%	\$25.00	
Commercial	25,166	4.4%	\$629,150	4.3%	\$25.00	
Industrial	11,707	2.0%	\$292,675	2.0%	\$25.00	
Power	63,157	11.0%	\$1,578,925	10.9%	\$25.00	
Mining	67,869	11.8%	\$1,696,725	11.7%	\$25.00	
Domestic Wells (164,400 wells @ 0.45 af per well)	73,980	12.9%	\$2,055,000	14.1%	\$25.00	\$12.50
Total =	573,781		\$14,550,025			

The second table indicates that the Rio Grande Basin will provide approximately \$7,171,000 or 57% of the estimated annual revenue.

TABLE II

Revenue Summary by Basin
(Does not include domestic wells)

River Basin	Public Water Supply	Commercial	Industrial	Power	Mining	Total	% of Total
Rio Grande	\$5,697,650	\$433,750	\$108,375	\$189,950	\$741,275	\$7,171,000	57%
Upper Colorado	\$496,100	\$5,400	\$47,850	\$1,261,250	\$1,975	\$1,812,575	15%
Lower Colorado	\$161,050	\$21,025	\$25,500	\$0	\$71,925	\$279,500	2%
Pecos	\$1,145,725	\$113,275	\$91,075	\$0	\$452,300	\$1,802,375	14%
Arkansas	\$164,925	\$10,800	\$0	\$0	\$14,250	\$189,975	2%
Texas-Gulf	\$632,100	\$44,900	\$19,875	\$127,725	\$415,000	\$1,239,600	10%
Totals:	\$8,297,550	\$629,150	\$292,675	\$1,578,925	\$1,696,725	\$12,495,025	100%

ADMINISTRATIVE IMPLICATIONS

The cost of implementation of Senate Bill 444 would be paid through administrative fees and charges authorized by the bill. The bill amends the Tax Administration Act to allow TRD to withhold an administrative fee equal to the cost of collection or of five percent of the receipts

collected from the water efficiency technology fees.

According to the OSE, Senate Bill 444 is likely to result in significant benefits to the water using public, but its effectiveness requires that it be implemented as smoothly as achievable. To this end, the sponsor might consider that an effective date that coincides with the OSE's 5-year water use report as well as consider whether doing so might provide the ancillary benefit of allowing TRD, OSE, and the Public Regulation Commission the opportunity to produce the necessary data, processes, and regulations necessary to promote this Act's effectiveness upon implementation. The realities of imposing a new "fee" are such that the state engineer believes that moving forward on this act might mean making it effective in 2011. The year 2011 is suggested as an effective date based on the date of promulgation of the state engineer's 5-year water use report. In preparing the report, the state engineer can assure that the data generated will be as complete and responsive as required to effectively implement this act, as well as allow him and his counterparts at TRD and PRC to develop the processes to implement this act. Such an amendment is suggested below.

Unless the effective date is timed to coincide with the state engineer's five year water use report, this bill will negatively impact upon the OSE's ability to meet its performance measures because the state engineer would be required to commit significant OSE staff to generate the data that is required by this bill at this time. This bill does not provide any recurring monies to the OSE, so these efforts would be performed by existing staff.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The statutory provisions and requirements for administration of the fund proposed by Senate Bill 444 are duplicative of the eligible projects of the public project revolving fund and the water project fund. The projects authorized for funding in this bill include two of the five categories of projects already authorized for funding within the Water Project Finance Act currently administered by NMFA—restoration and management of watersheds and water conservation. Other categories eligible for funding from the Public Project Revolving fund include storage, conveyance or delivery of water to end-users; flood control and implementation of the federal Endangered Species Act.

SB444 originally duplicated HB462, however, the House Energy and Natural Resources Committee has since amended HB462.

SB444 relates to SB54 and HB294 which appropriate \$25 million and authorizes the NMFA to make grants from the Water & Wastewater Grant Fund to qualified entities for 156 eligible projects.

SB444 relates to SB123 and HB195 establishing a Strategic Water Reserve and authorizes the Interstate Stream Commission to purchase or lease water, water rights and water storage rights.

SB444 relates to SB132 which amends the duties and approval process of the Water Trust Board.

SB444 relates to SB139 and HB403 which appropriate \$100 million to the Water Trust Fund for expenditures in FY05 and FY06 for projects funded under the Water Project Finance Act.

SB444 relates to SB140 and HB123 which appropriate \$4 million from the General Fund to the

Drinking Water State Revolving Loan Fund administered by the NMFA to provide a state match for federal capitalization grants which fund low cost loans to qualified entities for water quality projects.

SB444 relates to SB152 and HB95 which authorize NMFA to provide loans from the Public Project Revolving Fund to state and local qualified entities for 108 eligible projects.

SB444 relates to SB186 and HB271 which authorize NMFA to make loans and grants from the Water Project Fund to 16 qualified entities for eligible water projects.

SB444 relates to SB239 which makes technical changes to the membership of the WTB and provides that: "Twenty-five percent of all water project funds shall be dedicated to forest and watershed restoration projects."

SB444 relates to HB14 appropriates \$8.4 million from the general fund to the Interstate Stream Commission for FY06 to initiate the Gallup-Navajo Pipeline Project.

SB444 relates to HB304 which makes changes to the Water and Wastewater Planning Fund which is administered by the NMFA.

OTHER SUBSTANTIVE ISSUES

EMNRD indicates Senate Bill 444 will likely impact the energy industries that EMNRD regulates. The larger coal and hard rock mines in New Mexico utilize anywhere from 400 to over 5,000 acre-feet of water per year for mining purposes. That would represent a \$1.0 to \$125.0 impact per operation annually.

The Department of Agriculture questions whether enactment of this bill, in the absence of metering and measuring devices in place, further discourage water conservation as do the "use it or lose it" aspects to state water law? If a water user is charged based upon adjudicated water rights or declared water rights rather than on-site metering devices, they would have to pay the fee regardless of whether they actually diverted or withdrew the water or not.

If agricultural producers are not exempted from this act, they do not have the ability to raise their prices to recover fees placed upon them in the same way that businesses and municipal, private, and industrial water suppliers do. Agriculture is still an important part of the socioeconomic welfare of the state of New Mexico, and many rural counties and communities depend on this economic activity for existence.

According to the Department of Agriculture, dairy producers are considered commercial water users in New Mexico, and thus would be subject to this tax.

TECHNICAL ISSUES

EMNRD indicates the language in Section 3, paragraph A(2), imposing a fee on "persons supplying water for a commercial, industrial, mining or power production concern," is vague as applied to the use of water in the oil and gas industry and may have unintended consequences. Oil and gas operations often produce water that is typically high in salts or other minerals. Produced water is usually considered a waste product, and its proper use or disposal is essential to protect

the environment. Produced water may be used in drilling operations, or in water flood projects designed to increase oil and gas production. The state has made efforts to encourage the beneficial use of produced water. (Currently, Senate 111 and House Bill 197 propose a corporate income tax credit of \$1000 per acre foot for taxpayers who gather, transport or treat produced water disposed of in the process of generating electricity. Ironically, while the corporate entities that are gathering, transporting and treating the produced water for use in the generation of electricity will get a tax break, the operator producing the water will be charged a fee under HB 462.)

EMNRD indicates as written, Senate Bill 444 would apply to produced water, because it contains no definition limiting "water" to fresh water. Imposing a fee on "supplying" water for a commercial concern is vague as applied to the oil and gas industry. The fee would clearly apply to persons who sell water, including produced water, to others for use in drilling operations or water flood projects. It could also be interpreted to apply to oil and gas producers who use the water they produce in their own drilling operations or water flood projects. Conceivably the fee could apply to an operator who properly disposes of his produced water in his own disposal well or who disposes of it at a commercial disposal facility. To comply with Senate Bill 444, operators will have to measure the water withdrawn and, if not all of that water will be "supplied" to a commercial concern, will have to measure the amount of water "supplied." Unless the language is clarified, Senate Bill 444 may be taxing, and thus discouraging, the proper use and disposal of a waste product.

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