

LFC Requester:	Carswell
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.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}

Check all that apply:

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

Date 01/24/2024

Bill No: House Bill 211

Sponsor: Herrera, Ortez, Cates,
Castellano, Lara
Short Title: WATER PROJECT
PRIORITIZATION

Agency Name and Code OSA - 308
Number: _____
Person Writing D. Craig
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$4,030	\$4,030	\$4,030	\$12,090	Nonrecurring	Water Project Fund to OSE
Total	(\$1,606)	(\$1,606)	(\$1,606)	(\$4,818)	Recurring	Water Project Fund to AOC

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 211 (HB211) amends provisions of the Water Project Finance Act, specifically those that relate to board duties, conditions for grants and loans, and the purpose of the Water Project Fund. HB211 removes Water Board requirements related to having a completed regional water plan approved by the Interstate Stream Commission prior to having a project funded from the Water Project Fund. HB211 removes federal Endangered Species Act collaborative programs from the list of qualifying projects and replaces it with wastewater conveyance and treatment, as well as removing the requirement to create a drought strike team to coordinate emergency water shortages caused by drought conditions.

HB211 changes the conditions for grants and loans made from the Water Project Fund by removing a requirement to have structural and material design lives greater than 20 years. HB211 removes grant or loan requirements for entities from the Water Project Fund to conduct an audit of the project's financial record and replaces it with language to maintain financial records in accordance with all applicable laws. HB211 removes the Water Board's authority to set financial capability standards necessary to repay loans and places that authority with the New Mexico Finance Authority (NMFA). HB211 also removes requirements to conform to the rules of the Water Board for paying originating grants and loans and replaces it with that of NMFA's rules. HB211 removes requirements for plans and specifications for a water project to be reviewed and recommended by the State Engineer and Department of Environment prior to approval of NMFA.

HB211 modifies distributions from the Water Project Fund to temporarily adjust the distribution to the State Engineer for water rights adjudications from 10 percent to the lesser of \$4 million or 10 percent for fiscal years 2025 through 2029 (FY25 to FY29). HB211 permanently modifies distributions from the Water Project Fund to the Administrative Office of the Courts from 20 percent of set asides for water rights adjudications to a flat two percent of the fund.

FISCAL IMPLICATIONS

Using the balance of the Water Project Fund from the 2022 Water Trust Board annual report listed at \$72.27 million after distributions of 10% to the Office of the State Engineer (OSE), OSA constructed a FY22 beginning balance of \$80.3 million ($X \cdot .90 = \72.27 million, where $X = \$80.3$). At 10% distribution, OSE received approximately \$8.03 million. With the provisions of HB211 in place, and the lesser of \$4 million distributed to OSA over the next five fiscal years, the fund would receive a net increase of \$4.03 million.

Similarly, HB211 changes the distribution to the Administrative Office of the Courts (AOC) from 20 percent of the money dedicated for water rights adjudications to two percent of all water projects funds. NMFA has an agreed upon procedures review that does not disaggregate distribution to governments, but the 2022 annual report of the Water Trust Board seems to indicate that historically AOC has not received a distribution. The provisions of HB211 require a distribution, and two percent of the \$80.3 million balance would be approximately \$1.06 million.

The Water Projects Fund is supported through two primary sources: a percentage of senior supplemental severance tax bond proceeds (senior SSTB) and a distribution of the Water Trust Fund. For FY22, this was nine percent of the senior SSTB's and \$4 million from the Water Trust Fund. Whereas the severance tax proceeds have increased yearly since FY22, therefore raising the available SSTB bonding capacity and sales, the distribution to the Water Project Fund has likewise increased yearly. Therefore, estimates of percentage distributions displayed here trend conservative (low) to what will take place.

SIGNIFICANT ISSUES

The main recipients of grants and loans from the Water Project Fund are entities like mutual domestic water consumers associations, municipalities, counties, or soil and water conservation districts. Many of these small, local public bodies have not conducted up-to-date agreed upon procedures reviews as required for financial compliance with the Audit Act. As such, the local public bodies are constrained from accessing direct legislative appropriations through the current Executive Order 2013-006, which ensures an entity's financial operations have received financial compliance certification required by the Audit Act prior to distribution of capital outlay direct legislative appropriations in order to properly safeguard taxpayer dollars. As of January 18, 2024, the OSA provided assistance to remove such access restrictions for approximately \$2.2 million in withheld appropriations to acequias, land grants, and MDWCA's.

However, financial compliance certification is one step for many of these local entities seeking grants and loans from NMFA. HB211 changes requirements that entities must have an audit of the project's financial records to requirements to properly maintain financial records in accordance with all applicable laws. Whereas some of these entities are not required to have a full financial audit under the Audit Act's tiered financial compliance system, this change may be appropriate if entities otherwise are timely in those financial compliance reviews as required by other applicable laws.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

OSA does not take a position on the other items of policy, such as requirements for applicants to

have a completed regional water plan approved by the interstate stream commission, adding wastewater conveyance and treatment projects, removal of a drought strike team to coordinate emergency water shortages caused by drought, removal of requirements of applicants to have structural and material design lives greater than twenty years, and removal of requirements for plans and specifications for a water project be reviewed and recommended by the State Engineer and Department of Environment prior to approval of NMFA. However, it is worth noting that these additional requirements and board duties will no longer be in place to safeguard project quality or taxpayer dollars or impede qualified entity's access to Water Project Fund distributions, depending on the point of view.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS