

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

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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 Feb 1, 2024

Bill No: HB 301

Sponsor: Rehm, Duncan, Hochman-Vigil,
Lundstrom, Allison
Short Title: Future Water Trust Fund

Agency Name and Code 337 SIC
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
Continuous appropriation of money in the fund to the Office of the State Engineer		Recurring	Future Water Project Fund (NEW)
Subject to Legislative appropriation; may appropriate "investment income" to the Future Water Project Fund (see significant issues)		Recurring	Future Water Trust Fund (NEW)

(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)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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: HB301 seeks to create the Future Water Trust Fund (FWTF), a non-reverting fund in the state treasury to be managed by the State Investment Officer with oversight from the State Investment Council (SIC). The fund is to be managed with the same risk and return profile as the Land Grant Permanent Fund, pursuant to Chapter 6, Article 8, NMSA 1978. The FWTF is subject to appropriation by the legislature, and investment income in the fund may be legislatively appropriated to the Future Water Project Fund (“Project Fund”), another new fund to be created in the Treasury to be administered by the Office of the State Engineer. The State Engineer shall use the Project Fund to purchase water rights from outside New Mexico, conduct studies and advocate for projects that deliver water to New Mexico from outside the state, and to fund projects that deliver water to New Mexico from outside the state. Disbursements for these efforts are to be requested by the State Engineer and approved by the Secretary for the Department of Finance and Administration.

This bill makes a continuous appropriation of monies in the Future Water Project Fund to the Office of the State Engineer.

If passed and signed, the bill would become effective May 15, 2024.

FISCAL IMPLICATIONS

Since the bill does not contain an initial appropriation to seed either the Future Water Trust Fund (FWTF) or the Future Water Project Fund, and because there is some uncertainty as to how the fund could prudently be invested by the State Investment Officer (see significant issues), there is limited if any fiscal impact to be determined at this time.

Language in the bill would appear to offer additional flexibility in how and how much the legislature can appropriate the FWTF, at least relative to the existing Water Trust Fund – which is also managed by the SIC, but is constitutionally protected (Article 16, Section 6) in the NM Constitution. It is worth noting that the existing Water Trust Fund “shall not be expended for any purpose”, but that it does have a current distribution rate of \$4M/year to the Water Project Fund, with that rate currently established only in statute, which can be adjusted without a Constitutional Amendment.

SIGNIFICANT ISSUES

The New Trust Fund is Subject to Appropriation. Language in the bill indicates the money in the

Future Water Trust Fund is subject to appropriation by the legislature. However, the subsequent line in the bill says the legislature may appropriate any investment income in the fund to the future water project fund. While not in direct conflict, the language can be interpreted as attempting to direct the FWTF earnings/income to the project fund, while leaving the FWTF balance also open to additional appropriations for other undefined and potentially unrelated funding needs of the state. This is also a fair assumption given that the FWTF will not have constitutional protections like the existing Water Trust Fund.

“Investment Income” is Not Defined. Separately, “investment income” that is to be appropriated by the legislature from the FWTF to the project fund is not a defined term in the bill, leaving both the timeframe for that investment income and the term itself open to interpretation, especially since the language indicates the legislature “may” (not shall) appropriate the investment income. Is this intended to be the amount of total return achieved on the portfolio (e.g. the overall investment gain of the total fund net of any contributions or distributions to/from the fund), or would it mean the cash distributions to the fund specifically from income-earning assets (such as real estate or real return assets)? Is this intended to mean investment income as determined on an annual basis? Or is it to be investment income earned since inception of the fund or for some other period? These details also inform the State Investment Officer as to how the fund can prudently be managed on a risk/return basis and what liquidity requirements will be needed for the FWTF.

Impact of Uncertainty on Prudent Management of the New Trust Fund. This uncertainty around how much capital the fund will have and when it may be appropriated could limit the types of strategies in which the FWTF can be invested, despite the bill’s language indicating it is to be invested as the Land Grant Permanent Fund. The LGPF for example, has a set annual distribution rate/spending policy of 5% and a supplemental 1.25% distribution from the LGPF’s largest component, the Permanent School Fund. This allows the LGPF to be invested in long-term investment vehicles like institutional real estate or private equity, which have investment horizons of up to 15 years. Long-term investments like this typically give up short-term liquidity in exchange for a long-term return premium. The FWTF as proposed however, could be appropriated 100% by the legislature in any given year, which, depending on the fund’s size, would potentially not allow it to be invested in long-term strategies to take advantage of the related “illiquidity premium” expected from such investments.

Like all funds managed by the SIC, investment of the FWTF would fall under the Uniform Prudent Investor Act (45-7-602, NMSA 1978), which dictates a fund’s investment risk/return metrics align with the established long-term goals and appropriate risk tolerances for the fund and its beneficiaries. If those goals are short-term in nature, the State Treasurer’s Office may be better suited to invest the FWTF. If a goal of the bill is to create the FWTF to increase investment income yields outside STO’s traditional and more stable fixed income investment returns, the State Investment Officer would seek additional understanding and guidance from the legislature and, in this case, the State Engineer who will be overseeing the project fund beneficiary.

PERFORMANCE IMPLICATIONS

The State Investment Officer, with the approval of the State Investment Council would manage the new trust fund in accordance with the Uniform Prudent Investor Act and would seek to ethically optimize risk-adjusted returns and grow the FWTF over time.

The Council does not currently have a “boilerplate” asset allocation for any fund, including the proposed trust fund, but given the above-mentioned uncertainty of liquidity needs for this fund, the FWTF may need to be invested more conservatively (in more liquid assets) than other permanent/trust funds, which could reduce the fund’s performance relative to other funds under the Council’s management.

ADMINISTRATIVE IMPLICATIONS

While managing the new fund would create additional investment, administrative and oversight requirements for the State Investment Office, it is expected that the additional burden of managing the FWTF can be addressed through the standard budgeting authorization process in the legislature.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Page 3, lines 8-11 state, “Money in the [Future Water Trust Fund] is subject to appropriation by the legislature. The legislature may appropriate any investment income in the fund to the future water project fund.

The bill does not define “investment income”, which leaves the meaning and intended timeframe open to interpretation (see Significant Issues). We recommend adding clarifying language that defines both the term and the intended time horizon for which investment income is to be calculated.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS