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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** 2/12/2024  
**Bill No:** SB 294

**Sponsor:** E. Stefanics  
**Short Title:** STRATEGIC WATER SUPPLY PROGRAM

**Agency Name and Code**    SBOF/DFA-341  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	\$100,000	Nonrecurring but authorized for FY25 through FY27	Severance Tax Bonding Fund (via issuance of short-term severance tax notes)

(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)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Senate Bill 294 introduces a new section of Chapter 75 NMSA 1978 to create the Strategic Water Supply Program. The purpose of the program is to reduce reliance on limited freshwater resources while furthering clean energy and advanced manufacturing development that meaningfully contributes to the state achieving a measurable reduction in greenhouse gas emissions. The Department of Environment would administer the program.

The bill authorizes the State Board of Finance (SBOF) to issue up to \$100,000,000 in severance tax bonds from fiscal years 2025 through 2027 for the purpose of acquiring and managing treated brackish water.

The SBOF would issue short-term bonds upon certification by the Department of Environment for the need of the issuance (i.e., funding). The bill requires the Department of the Environment to concur with the Office of the State Engineer, the Indian Affairs Department, and the Economic Development Department in its certification to the SBOF.

Any unencumbered funds two years after the issuance of bonds would revert, and any proceeds from the sale of treated brackish water would go equally to the severance tax bonding fund and the general fund.

The bill lays out requirements for brackish water treatment projects and for reporting by the Department of the Environments on the implementation of the strategic water supply program.

**FISCAL IMPLICATIONS**

The bill authorizes the State Board of Finance (SBOF) to issue up to \$100,000,000 in short-term severance tax bonds in fiscal years 2025 through 2027 for the purpose of acquiring and managing treated brackish water. The appropriation would be funded with short-term senior severance tax notes.

The SBOF currently estimates FY25 total senior severance tax bonding capacity available for appropriation at \$1.1 billion. This includes, however, both long and short-term capacity. Short-term senior severance tax bonding capacity, which would be tapped for this appropriation, is estimated at \$723.8 million for FY25. Accounting for \$285 million in earmark funding for water, colonias, and tribal projects, as well as earmarked Housing Trust Fund projects, the SBOF estimates approximately \$439 million in short-term senior severance tax bonding capacity

available for appropriation in FY25. Should the bill be enacted, \$100 million of that capacity would be reserved for the strategic water supply program. The capacity would be reserved up until the short-term notes are sold or 2027. Thus, the authorization would be considered “authorized but unissued” up until the time the Department of Environment certifies the need for the sale of notes. This would be accounted for annually prior to the SBOF reporting to the legislature on the severance tax bonding capacity available for appropriation.

For Fiscal Years 2026 and 2027, capacity available for appropriation is estimated to remain historically high, at \$1.0 million and \$984 million, respectively. Should the Department of Environment not certify the need for the issuance of bonds until FY26 or FY27, the SBOF is still estimating sufficient short-term senior severance tax note capacity to fund the existing earmark programs and the strategic water supply program, with some capacity remaining for the traditional capital outlay appropriation process. While an unexpected decline in revenues could reduce capacity, that is not projected to occur at this time, per the Consensus Revenue Estimating Group revenue estimates.

## **SIGNIFICANT ISSUES**

The bill is ensuring that funding is appropriated in order to develop the state’s Strategic Water Supply Program. This will secure a funding source to acquire water once contracts are in place for the treatment of brackish water. A funding commitment is important to ensure the facilities and treatment occur by the private sector.

The bill appropriates short-term severance tax note proceeds for the acquisition of treated brackish water. Short-term taxable severance tax notes have been a source of capital funding under the state’s severance tax bonding program since the 1990s. These notes, in conjunction with long-term severance tax bonds, have been used to fund capital projects annually appropriated by the legislature, as well as public school capital projects, as overseen by the Public School Capital Outlay Council (since the late 1990s/early 2000s). The state issues severance tax notes 1x to 2x per year, in December and in June, prior to transferring severance tax revenues otherwise not used for debt service to the severance tax permanent fund. Senior notes, which would be used to purchase treated water, are used for appropriated capital projects, while supplemental notes are reserved for public school capital projects.

Severance tax notes are nearly always used for “capital expenditures.” Taxable bonds and notes are outside the IRS’s capital expenditure requirements for tax-exempt issuances, but state legislation authorizing taxable issuances has historically imposed the same or similar restrictions on the use of taxable proceeds for capital purposes, with some exceptions. Bond and tax counsel reviewed federal requirements for determining whether the purchase of water under the Strategic Water Supply Program could be considered a capital expenditure. It was determined that the expenditures are capital in nature because there will be an obligation for the sellers of the water in question to provide water to the state.

The bill also places parameters around the period of time the funds can be encumbered as well as what the certification of need must include for the SBOF to issue short-term senior severance tax notes. The bill stipulates that any unencumbered balance of severance tax note proceeds shall revert to the severance tax bonding fund two years from the issuance date. This provides incentive for not only the SBOF to sell notes only when the funds are ready to be expended, but it ensures proceeds will be quickly expended, as they would otherwise revert back to the severance tax bonding fund.

The bill stipulates that the certification must demonstrate (1) the price to be paid for treated brackish water represents a fair market value as determined by a market analysis of comparable sales, (2) the Department of Environment consulted with the Office of the State Engineer, the Indian Affairs Department, and potentially impacted Indian nations, tribes, and pueblos and determined that the project would not impair existing water rights or adversely impact owners, and (3) a selected contractor has demonstrated technology to treat water that meets applicable standards for water quality, as established by the water quality control commission. These requirements serve as safeguards to the release of funding and address specific concerns. Regarding the purchase price of water, the requirement that the price represent fair market value ensures that the purchase of water does not conflict with or violate the anti-donation clause of the state's constitution. The second requirement placed on the certification of need works to ensure that the program does not negatively impact Indian nations, tribes, and pueblos. The third requirement ensures that the Department of the Environment has selected a contractor that is able to meet any and all requirements for the treatment of brackish water to be laid out by the state. Finally, the general requirement that the Department of the Environment concur with the Office of the State Engineer, the Indian Affairs Department, and the Economic Development Department ensures that critical state agencies are involved in the program and providing sufficient expertise and oversight.

The requirement that the Department of the Environment report semiannually to the Legislative Finance Committee and appropriate legislative interim committee will allow for additional oversight and transparency.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

There are no administrative implications of the bill beyond the SBOF accounting for the authorization of up to \$100 million in its annual calculations of severance tax bonding capacity and capacity available for appropriation.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 217, Severance Tax Bond Fund Distributions, which requires the SBOF to transfer \$82 million to the Severance Tax Permanent Fund (STPF) by December 1 of each year from 2024 through 2034 would impact the capacity available for appropriation, because such required transfers to the STPF would reduce the revenues used to estimate capacity for appropriation each year.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**