

HOUSE AGRICULTURE, ACEQUIAS AND WATER RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 211

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO FINANCE; PRIORITIZING WATER PROJECT FUND PROJECTS THAT ARE URGENT TO ADDRESS PUBLIC HEALTH AND SAFETY; ALLOWING THE WATER TRUST BOARD TO AUTHORIZE WATER PROJECTS FOR WASTEWATER CONVEYANCE AND TREATMENT; PROVIDING THAT THE NEW MEXICO FINANCE AUTHORITY SET REQUIREMENTS OF FINANCIAL CAPABILITY OF QUALIFYING ENTITIES AND DETERMINE COSTS OF ORIGINATING GRANTS AND LOANS; REMOVING THE REQUIREMENT THAT ELIGIBLE ENTITIES CONDUCT AN AUDIT; REMOVING FISCAL AGENT FEES FROM ITEMS THAT ARE ELIGIBLE FOR GRANTS AND LOANS; REDUCING THE AMOUNT OF WATER PROJECT FUNDS DISTRIBUTED TO THE STATE ENGINEER FOR THE NEXT FIVE YEARS; ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO FUND WATER PROJECTS WITHOUT RECEIVING THE APPROVAL OF THE LEGISLATURE FOR THE NEXT FIVE YEARS; PROVIDING THAT MONEY IN THE WATER PROJECT FUND MAY BE USED TO HIRE CONTRACTORS TO PROVIDE TECHNICAL ASSISTANCE; CHANGING THE DATE THAT THE

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underscored material = new
~~[bracketed material]~~ = delete

1 WATER TRUST BOARD IS REQUIRED TO REPORT TO THE LEGISLATURE.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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SECTION 1. Section 72-4A-5 NMSA 1978 (being Laws 2001,
5 Chapter 164, Section 5, as amended) is amended to read:

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"72-4A-5. BOARD--DUTIES.--The board shall:

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A. adopt rules governing terms and conditions of
8 grants or loans recommended by the board for appropriation by
9 the legislature from the water project fund, giving priority to
10 projects that have been identified by the board as being urgent
11 to ~~[meet the needs of a regional water planning area that has a~~
12 ~~completed regional water plan that has been accepted by the~~
13 ~~interstate stream commission]~~ address public health and safety
14 issues; that have matching contributions from federal or local
15 funding sources available; and that have obtained all requisite
16 state and federal permits and authorizations necessary to
17 initiate the project;

18

B. authorize qualifying water projects to the
19 authority that are for:

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(1) storage, conveyance or delivery of water
21 to end users;

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(2) ~~[implementation of federal Endangered~~
23 ~~Species Act of 1973 collaborative programs]~~ wastewater
24 conveyance and treatment;

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(3) restoration and management of watersheds;

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- 1 (4) flood prevention; or
 2 (5) water conservation or recycling, treatment
 3 or reuse of water as provided by law; and

4 ~~[G. create a drought strike team to coordinate~~
 5 ~~responses to emergency water shortages caused by drought~~
 6 ~~conditions; and~~

7 ~~D.]~~ C. evaluate projects, including their
 8 environmental impacts, and recommend projects to the interstate
 9 stream commission pursuant to the provisions of Section
 10 72-14-45 NMSA 1978."

11 **SECTION 2.** Section 72-4A-7 NMSA 1978 (being Laws 2001,
 12 Chapter 164, Section 7, as amended) is amended to read:

13 "72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

14 A. Grants and loans shall be made only to
 15 qualifying entities that:

16 (1) agree to operate and maintain a water
 17 project so that it will function properly over the structural
 18 and material design life [~~which shall not be less than twenty~~
 19 ~~years];~~

20 (2) require the contractor of a construction
 21 project to post a performance and payment bond in accordance
 22 with the requirements of Section 13-4-18 NMSA 1978;

23 (3) provide written assurance signed by an
 24 attorney or provide a title insurance policy that the
 25 qualifying entity has proper title, easements and rights of way

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1 to the property upon or through which a water project proposed
2 for funding is to be constructed or extended;

3 (4) meet the requirements of the financial
4 capability set by the ~~[board]~~ authority to ensure sufficient
5 revenues to operate and maintain a water project for its useful
6 life and to repay the loan;

7 (5) agree to properly maintain financial
8 records ~~[and to conduct an audit of a project's financial~~
9 ~~records]~~ in accordance with all applicable laws; and

10 (6) agree to pay costs of originating grants
11 and loans as determined by rules adopted by the ~~[board; and~~

12 ~~(7) except in the case of an emergency,~~
13 ~~submit a water conservation plan with its application if~~
14 ~~required to do so and one is not on file with the state~~
15 ~~engineer, pursuant to Section 72-14-3.2 NMSA 1978]~~ authority.

16 B. Plans and specifications for a water project
17 shall be approved by the authority after review and upon the
18 recommendation of the state engineer and the department of
19 environment before grant or loan disbursements to pay for
20 construction costs are made to a qualifying entity. Plans and
21 specifications for a water project shall incorporate available
22 technologies and operational design for water use efficiency.

23 C. Grants and loans shall be made only for eligible
24 items, which include:

25 (1) to match federal and local cost shares;

- 1 (2) engineering feasibility reports;
- 2 (3) contracted engineering design;
- 3 (4) inspection of construction;
- 4 (5) special engineering services;
- 5 (6) environmental or archaeological surveys;
- 6 (7) construction;
- 7 (8) land acquisition;
- 8 (9) easements and rights of way; and
- 9 (10) legal costs [~~and fiscal agent fees~~]."

10 SECTION 3. Section 72-4A-9 NMSA 1978 (being Laws 2001,
11 Chapter 164, Section 9, as amended) is amended to read:

12 "72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE.--

13 A. The "water project fund" is created in the [~~New~~
14 ~~Mexico finance~~] authority and shall consist of distributions
15 made to the fund from the water trust fund and payments of
16 principal of and interest on loans for approved water projects.
17 The fund shall also consist of any other money appropriated,
18 distributed or otherwise allocated to the fund for the purpose
19 of supporting water projects pursuant to provisions of the
20 Water Project Finance Act. The fund shall be administered by
21 the authority. Income from investment of the water project
22 fund shall be credited to the fund. Balances in the fund at
23 the end of any fiscal year shall not revert to the general
24 fund. The water project fund may consist of such subaccounts
25 as the authority deems necessary to carry out the purposes of

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1 the fund. The authority may establish procedures and adopt
2 rules as required to administer the fund and to recover from
3 the fund costs of administering the fund and originating grants
4 and loans. Ten percent of all water project funds shall be
5 dedicated to the state engineer for water rights adjudications,
6 and twenty percent of the money dedicated for water rights
7 adjudications shall be allocated to the administrative office
8 of the courts for the courts' costs associated with ~~[those]~~
9 water rights adjudications; provided that from July 1, 2024
10 through June 30, 2029, the lesser of four million dollars
11 (\$4,000,000) or eight percent of all water project funds shall
12 be dedicated to the state engineer for water rights
13 adjudications and two percent of all water project funds shall
14 be dedicated to the administrative office of the courts for the
15 courts' costs associated with water rights adjudications.

16 B. Money in the water project fund may be used by
17 the authority to:

18 (1) make loans or grants to qualified entities
19 for ~~[any project approved by the legislature and for]~~ projects
20 and water rights adjudications; provided that beginning on July
21 1, 2029, projects shall require legislative approval; and

22 (2) hire contractors to provide financial and
23 administrative capacity development and direct technical
24 assistance on water projects.

25 C. The authority is authorized to issue revenue

1 bonds payable from the proceeds of loan repayments made into
2 the water project fund upon a determination by the authority
3 that issuance of the bonds is necessary to replenish the
4 principal balance of the fund. The net proceeds from the sale
5 of the bonds shall be deposited in the water project fund. The
6 bonds shall be authorized and issued by the authority in
7 accordance with the provisions of the New Mexico Finance
8 Authority Act."

9 SECTION 4. Section 72-4A-10 NMSA 1978 (being Laws 2001,
10 Chapter 164, Section 10) is amended to read:

11 "72-4A-10. REPORT TO LEGISLATURE.--The board shall report
12 to the legislature no later than [~~October~~] December 1 of each
13 [~~calendar~~] calendar year the total expenditures from the water
14 project fund, their purposes, an analysis of the
15 accomplishments of the expenditures and recommendations for
16 legislative action."

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