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FISCAL IMPACT REPORT

SPONSOR <u>HAAWC</u>	LAST UPDATED <u>2/8/24</u> ORIGINAL DATE <u>1/24/24</u>
SHORT TITLE <u>Water Project Prioritization</u>	BILL NUMBER <u>CS/House Bill 211/HAAWCS/aHAFC</u>
ANALYST <u>Carswell</u>	

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
		\$8,260.0	\$7,466.0	\$6,917.0	\$6,359.0	Nonrecurring	Water Project Fund
		(\$8,260.0)	(\$7,466.0)	(\$6,917.0)	(\$6,359.0)	Nonrecurring	State Engineer water rights adjudication distribution

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 148 and 201 and Senate Bills 1 and 185

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Finance Authority (NMFA)
 Office of the State Engineer (OSE)
 State Auditor (OSA)
 New Mexico Environment Department (NMED)

Agency Analysis was Solicited but Not Received From

Department of Finance and Administration (DFA)
 New Mexico Municipal League (NMML)
 New Mexico Counties

SUMMARY

Synopsis of HAFC Amendments to HAAWC Substitute for House Bill 211

The House Appropriation and Finance Committee amendments to the House Agriculture, Acequias and Water Resources Committee substitute for House Bill 211 reduce the suspension of legislative authorization for projects funded through the Water Trust Board from five years to

two years and restores eligibility for water project funds for projects to implement federal Endangered Species Act collaborative programs.

Synopsis of HAAWC Substitute for House Bill 211

The House Agriculture, Acequias and Water Resources Committee substitute for House Bill 211(HB211) amends the Water Project Finance Act for a number of purposes including to make wastewater projects eligible for funding through the Water Trust Board (“the board”), to allow water project funds to be used for technical assistance services, to direct the board to prioritize projects that address public health and safety issues, to suspend legislative authorization for projects funded through the board for five years, and to temporarily reduce statutory distributions from the water project fund to the State Engineer for water rights adjudication.

Additionally, HB211 eliminates projects for implementation of federal Endangered Species Act collaborative programs from qualification for water project funds and makes changes to the statutory conditions for grants and loans from the water project fund. The changes empower the New Mexico Finance Authority, rather than the board, to set requirements for financial capacity to repay loans and operate and maintain qualifying projects; eliminate the requirement to audit a project’s financial records; and eliminates the requirement that entities seeking funds submit a water conservation plan with its funding application or have one on file with the State Engineer, if required to do so.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The water project fund is administered by the New Mexico Finance Authority, which makes grants and loans to water projects recommended for funding by the Water Trust Board and authorized by the Legislature. The water project fund receives a 9 percent annual earmark on senior severance tax bond (STB) capacity and an annual distribution from the water trust fund of the greater of \$4 million or 4.7 percent of the average year-end value of the trust fund over the previous five years.

The Office of the State Engineer receives 10 percent of the annual distributions to the water project fund from severance tax bond proceeds and the trust fund for water rights adjudication, and 20 percent of the OSE distribution is then sent to the Administrative Office of the Courts for its costs associated with adjudication. In FY24, the 10 percent distribution is expected to total \$12.9 million and in FY25 it would total \$12.5 million, according to current bonding capacity estimates from the Board of Finance. HB211 would reduce this distribution for five years starting in FY25 by stipulating that, for that period, the lesser of \$4 million or 8 percent of all water project funds shall be dedicated to the State Engineer for water rights adjudication and 2 percent to the Administrative Office of the Courts. In analysis submitted by the State Engineer, the agency did not indicate the reduction would cause any operational issues.

The fiscal impacts estimated in this report to the water project fund and to the State Engineer’s adjudication distribution are based on the Board of Finance’s January 2024 severance tax bonding capacity estimates, which extend through FY28. The capacity estimates necessarily make assumptions about a volatile revenue source and are subject to change.

SIGNIFICANT ISSUES

NMFA notes there is significant demand for grants to fund wastewater treatment facilities and conveyance systems and limited demand for projects related to Endangered Species Act programs. Additionally, making wastewater projects an eligible use of water project funds, which are state money, creates an opportunity to leverage federal funds available for wastewater projects through the clean water state revolving fund.

However, the New Mexico Environment Department indicates this change could create a new source of competition for the revolving fund, which has struggled for years to attract enough applicants to commit all available funding. NMED states: “The addition of more eligibilities for WTB funding may enable WTB funding to be combined with CWSRF funds, but the timeframe for the WTB program would make it difficult to co-fund projects in a timely manner and this competition could impact the use of CWSRF funds in the state. CWSRF accepts applications year-round and can make awards at any time. WTB is a once-a-year process that takes approximately 10 months from application to award. This process may speed up if the bill passes and the legislative approval process is eliminated.”

NMFA states allowing water project funds to be used to hire contractors to provide technical assistance to applicants and borrowers will support small water systems, many run by volunteers, in accessing funding through the Water Trust Board. Increasing access to the water project fund is important because the high levels of state and federal funding currently available for water projects are not expected to continue indefinitely, according to the agency.

The suspension of legislative authorization for projects funded by the Water Trust Board will provide applicants with additional time to complete applications, according to NMFA, though the agency states the current evaluation and prioritization criteria are not expected to change. Suspending legislative authorization is also likely to create administrative efficiencies for NMFA. The agency also administers the colonias infrastructure fund, which receives a similar earmark on severance tax bond capacity; projects funded by the Colonias Infrastructure Board do not require legislative authorization. Under HB211, legislative authorization for Water Trust Board projects would resume in FY27.

Bill analysis submitted by NMFA indicates that though HB211 removes a requirement for audits of project records, entities applying for funding would still be required to demonstrate financial capability and to maintain financial records in accordance with all applicable laws, including the State Audit Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB148, which authorizes water project fund awards for 65 qualifying projects in FY24.

Relates to HB201/SB185, duplicate bills which appropriate \$150 million from the general fund to the water project fund to support funding for eligible projects that cannot be covered by the dedicated revenue sources.

Relates to SB1, which appropriates \$100 million to the water trust fund, which would increase future distributions to the water project fund.