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FISCAL IMPACT REPORT

ORIGINAL DATE 2/03/2020

SPONSOR Small **LAST UPDATED** _____ **HB** 223

SHORT TITLE Agricultural & Natural Resources Trust Act **SB** _____

ANALYST Wan

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$150,200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 102

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Taxation and Revenue Department (TRD)
- Department of Agriculture (NMDA)
- Department of Game and Fish (DGF)
- Energy, Minerals and Natural Resources (EMNRD)
- New Mexico Environment Department (NMED)
- Office of the Natural Resources Trustee (ONRT)

SUMMARY

Synopsis of Bill

House Bill 223, the Agricultural and Natural Resources Trust Act, creates the agricultural and natural resources trust fund (trust fund) in the state treasury, which shall be a perpetual trust fund consisting of appropriations, gifts, grants, transfers, bequests, and other donations of money. The State Investment Council will invest the trust fund to obtain the highest return consistent with preservation of the fund. The bill also creates the agricultural and natural resources trust grant fund (grant fund) for a grant program that will support water enhancement projects related to both quality and quantity of water; preservation and conservation of open space, cultural land, and natural resources; and improvement, maintenance and enhancement of existing terrestrial and aquatic habitat. The grant program would also support projects that moderate and reduce anthropogenic impacts, reduce the potential for disease transmission, control and manage invasive species, restore natural fire regimes and watersheds impacted by wildfire, and promote

soil and rangeland health and enhance agricultural viability. HB223 further creates the Office of the Agricultural and Natural Resources Trust (office), which will be administratively attached to the Office of the Governor, to administer the grant program.

Money in the trust fund will be transferred to the grant fund each year, and money in the grant fund is appropriated to the office for staffing and administrative expenses to carry out the purposes of the Act. Grants are awarded to governmental agencies and nonprofit organizations to promote, preserve, and enhance the wildlife, multiple use, natural resource, or environmental heritage of New Mexico and its people.

HB 223 also creates the Agricultural and Natural Resources Trust Board (board), appointed by the governor and confirmed by the Senate, which will consist of nine members from each of New Mexico's major hydrologic regions and reflects a broad spectrum of experience, including local government, agriculture, energy and mining, land conservation, fish and wildlife, and watershed management. The board will establish the grant program, approve grant applications, adopt rules to carry out the Act, and hire a Director of the Office of the Agricultural and Natural Resources Trust.

HB223 appropriates \$150 million from the general fund to the trust fund and appropriates \$200 thousand from the general fund to the Office of the Agricultural and Natural Resources Trust for the purpose of administrative and operating costs to carry out the Act.

The effective date of this bill is July 1, 2020.

FISCAL IMPLICATIONS

The appropriation of \$150 million contained in this bill is a nonrecurring expense to the general fund for the purpose of creating a permanent fund in the state treasury. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund.

HB 223 includes a provision allowing for expenditures from the trust fund only if general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund, and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, the Legislature may authorize a temporary transfer from the trust fund to the general fund only in an amount necessary to meet general fund appropriations.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

The appropriation of \$200 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2021 shall revert to the general fund. This appropriation is recurring since the office will incur ongoing administrative and operating costs that are not allowable expenditures from the grant fund and the office would need to request funds in future fiscal years.

SIGNIFICANT ISSUES

HB223 specifies certain eligibility requirements for grant applications, including that grant projects may occur on public, private, or tribal lands. The board shall not require public access to private land as a condition to receive grant funds. Grant funds may be used for acquisition of personal property related to the grant project.

Some agencies note that HB223 may complement, duplicate, or provide a stable funding source for statutory and nonstatutory activities already underway in the state. ONRT provided the following analysis:

“While statute gives the Natural Resources Trustee broad responsibility for protecting New Mexico’s natural resources, historically ONRT has focused on carrying out its responsibilities under federal laws governing the release of hazardous substances into the environment.... The work contemplated by HB 223 would complement ONRT by expanding the state’s capacity beyond legally-mandated restoration projects to include a broad range of opportunities.”

EMNRD states that although “funding for the purposed defined in [HB223] is sorely needed,” the bill duplicates existing statutes and established programs for funding the types of projects eligible for grants under the Act, including the State Forestry Division of EMNRD, DGF, NMED, and the Soil and Water Conservation Districts. EMNRD provided the following analysis:

“The Forestry Division has long-established processes in place for conducting projects to improve forest and watershed health and prevent and mitigate detrimental impacts. The Forestry Division funds and manages such projects with state general funds appropriated by the Legislature for Watershed Restoration Initiative projects as well as recurring funds (\$2 million annually) under the Forest and Watershed Restoration Act. EMNRD administers the Natural Heritage Conservation Fund, the purpose of which is to fund conservation and agricultural easements and land restoration to protect the land and water available for forests and watersheds, natural areas, and agricultural production on working farms and ranches, among other purposes. EMNRD, in concert with the Natural Lands Protection Committee, is authorized to administer a grant program from the fund for conservation projects, and to receive public or private funds to carry out the purposes of the Natural Heritage Conservation Act.”

NMDA provided the following list and summaries of statutes and programs that relate to or have similar purposes to the purposes of the trust fund and grant program created by HB223:

- Healthy Soil Act (76-25-1 to 76-25-5 NMSA 1978) – purpose is to promote and support farming and ranching systems and other forms of land management that increase soil organic matter, aggregate stability, microbiology and water retention to improve the health, yield and profitability of the soils of the state.
- Soil and Water Conservation District Act (73-20-25 through 73-20-48 NMSA 1978) – purpose is to control and prevent soil erosion; prevent floodwater and sediment damage; further the conservation, development, beneficial application and proper disposal of water; promote the use of impounded water for recreation, propagation of fish and

wildlife, irrigation and for urban and industrial needs; and by the application of these measures, conserve and develop the natural resources of the state, provide for flood control, preserve wildlife, protect the tax base and promote the health, safety and general welfare of the people of New Mexico.

- Natural Heritage Conservation Act (75-10-1 through 75-10-9 NMSA 1978) – purpose is to protect the state’s natural heritage, custom and culture by funding conservation and agricultural easements and by funding land restoration to protect the land and water available for forests and watersheds, natural areas, wildlife and wildlife habitat, agricultural production on working farms and ranches, outdoor recreation and trails and land and habitat restoration and management.
- Natural Lands Protection Act (75-5-1 to 75-5-6 NMSA 1978) – purpose is to acquire and protect unique and ecologically significant lands in New Mexico by the state and corporations.
- Land Conservation Incentives Act (75-9-1 to 75-9-6 NMSA 1978) – purpose is to encourage private landowners to be stewards of lands that are important habitat areas or contain significant natural, open space, natural resources, biodiversity conservation, outdoor recreation, farmland and forestland preservation, historic preservation and land conservation purposes.
- Water Project Finance Act (72-4A-1 to 72-4A-10 NMSA 1978) – purpose is to provide for water use efficiency, resource conservation and protection and fair distribution and allocation of New Mexico’s scarce water resources for beneficial purposes of use within the state.
- New Mexico environment department’s (NMED) river stewardship program to enhance the economic benefits of healthy rivers systems; restore or maintain stream and river hydrology; improve habitat for fish and wildlife.
- NMED’s wetlands program to protect and restore the state’s wetland and riparian areas – comprehensive program for wetlands restoration.
- Wildlife Corridors Act (17-9- 1 to 17-9-4 NMSA 1978) was passed in 2019 to identify and protect wildlife corridors; requires a wildlife corridors action plan to provide comprehensive guidance to state agencies for identifying, prioritizing and maintaining important areas for wildlife movement; and to direct development of a list of priority projects based on the action plan.

NMDA notes that the program created by HB223 may or may not duplicate the above activities, and “may enhance opportunities for successful conservation of natural resources in the state.”

PERFORMANCE IMPLICATIONS

NMED reports “NMED administers watershed planning and restoration programs through its nonpoint source management program, wetlands program, river stewardship program, and total maximum daily load program. The grant program’s funding of watershed enhancement projects will assist NMED in achieving its performance measures.

ADMINISTRATIVE IMPLICATIONS

NMED states “NMED would coordinate with the [Office of the Agricultural and Natural Resources Trust] Director and Board to ensure that selected projects are complimentary to and not duplicative of NMED programs. NMED already coordinates with other agencies to prevent

redundancy and enhance outcomes from related funding sources, and NMED would include the Director in those planning and coordination sessions.”

ONRT states “the Office of the Agricultural and Natural Resources Trust can effectively collaborate with [ONRT] to expand restoration opportunities beyond those funded by Responsible Parties in specific natural resource damage settlements.”

TECHNICAL ISSUES

TRD reports:

“Section 10 of the legislation requires the Audit and Compliance Division (ACD) of the TRD to annually audit the fund. It is anticipated what is intended is a financial statement audit, not a tax compliance audit. Section 7 provides for the audit under Section 12-6-3 of the Audit Act, which is performed by the State Auditor. TRD believes this was a drafting error.”

ALTERNATIVES

EMNRD supports the establishment of the trust fund created by HB223, but notes it would be more efficient to distribute funding to existing programs within state agencies. EMNRD proposes “the funds from the grant fund could be distributed by percentages to existing state funds and programs... that are already established to fund the types of projects outlined in HB223.”

TRD recommends that the language in section 10 be changed to replace “audit and compliance division of the taxation and revenue department” to “State Auditor” to address the technical issue discussed above.

CW/al/rl