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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/2020

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE Ag & Natural Resources Trustee Act SB 273

ANALYST Wan

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$50,000.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB223

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (NMAG)
 State Auditor's Office (SAO)
 State Investment Council (SIC)
 Department of Game and Fish (DGF)
 Energy, Minerals and Natural Resources (EMNRD)
 State Land Office (SLO)
 Office of the State Engineer (OSE)
 Indian Affairs Department (IAD)
 Environment Department (NMED)
 Office of the Natural Resources Trustee (ONRT)
 Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

Senate Bill 273 creates the agricultural and natural resources trust fund, in the state treasury, which shall be a perpetual trust fund consisting of appropriations, gifts, grants, and donations of money. SIC 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), consisting of distributions from the trust fund, appropriations, gifts, grants, and donations of money, that will support agricultural and natural resources trust grants as well as staffing and

other administrative expenses to carry out the purposes of the Agricultural and Natural Resources Trust Act. SB273 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.

Each year, an annual distribution in the amount of the earned income of the trust fund from the prior fiscal year shall be made from the trust fund to the grant fund. Money in the grant fund is appropriated to the office and no more than 5 percent of the distribution from the trust fund in any one year may be used for staffing and other administrative expenses. Grants are awarded to state agencies, political subdivisions of the state, Indian nations, tribes, or pueblos, or nonprofit organizations to promote, preserve, and enhance the native wildlife, natural resources, or environmental heritage of New Mexico and its people. Projects may occur on public, tribal, or private land.

SB273 also creates the Agricultural and Natural Resources Trust Board (board), which will consist of nine members as follows: the Commissioner of Public Lands, the directors of DGF and NMDA, and six public members appointed by the governor and confirmed by the senate. The public members must include two members with backgrounds in agriculture, with at least one representing acequias and community ditches; one member representing hunting or fishing interests; one member representing land conservation interests; one member who is a member of an Indian nation, tribe, or pueblo; and one member representing energy industry interests. Additionally, at least three of the board members shall have advanced degrees in either fisheries or wildlife biology, rangeland science, restoration ecology, or soil science. 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.

Projects funded by the grant program must provide a public benefit and may be used on a broad range of conservation efforts, including efforts to preserve or improve range, habitat, agricultural land, and soils.

Grant funds may not be used for the reintroduction of endangered species, legally mandated mitigation, reclamation, or restoration activities, or operating or administrative costs of recipients, other than costs directly related to the grant project. Grants over \$350 thousand must be approved by the board of finance.

Grant funds may not be used for the acquisition of real property in the first five years of the program or until the corpus of the trust fund reaches \$300 million. There are other significant restrictions on the acquisition of real property, including that water rights may not be severed from the property.

Finally, grants may be awarded to create land easements. Those easements will include the state as a third-party beneficiary, so the state can enforce the easements if the grantee does not do so. The state may also take legal action if the easement is extinguished by the grantee without the state's consent.

SB273 appropriates \$50 million from the general fund to the trust fund in FY21 for the purposes of the trust fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

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

FISCAL IMPLICATIONS

The appropriation of \$50 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.

SB273 includes a provision allowing for expenditures from the trust fund 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.

SIGNIFICANT ISSUES

Some agencies note that SB273 may complement, duplicate, or provide a stable funding source for statutory and nonstatutory activities already underway in the state.

NMED states, “SB273 may complement or duplicate some activities currently administered by NMED in the areas of nonpoint source management, wetlands, and river stewardship and water quality. NMED is the primary state agency that addresses water quality; adding NMED’s Water Protection Division Director or their designee as a member of the Board would facilitate coordination of projects and avoid duplication of efforts.”

According to EMNRD, SB273 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.”

OSE notes “A handful of existing programs managed by the Interstate Stream Commission,

including the Strategic Water Reserve and the acequia program, seek to achieve some of these same objectives. This bill, if enacted, would provide stakeholders with additional flexibility and funds for those purposes, and would therefore aid in the conservation of the state's water resources.”

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.”

ONRT reports that “The work contemplated by SB273 would complement ONRT by expanding the state’s capacity beyond legally-mandated restoration projects to include a broad range of opportunities.”

NMAG states that “grant projects occurring on private lands may be permissible under the Anti-donation Clause of the state constitution, to the extent that the public benefit of the project far outweighs the incidental benefit to the property owner.”

SIC reported the following:

“Although the Trust Fund will be a permanent fund, the investment and distribution protocol established by the Act will likely result in lower returns than the 7 percent currently targeted by the [land grant permanent fund (LGPF)]. The Act calls for the Trust Fund to be “invested by the state investment council in a manner to obtain the highest return possible consistent with preservation of the fund corpus.” Taken literally this would require investing the Trust Fund in a manner so as not to experience any negative volatility, i.e., only in investments guaranteed to produce a positive return. The expected return of guaranteed investments is significantly lower than those targeted by the LGPF because, over an entire market cycle, a portfolio that includes more volatile investments is likely to outperform a portfolio constrained to only guaranteed investments. However, as the Trust Fund distributes all earnings every year, maintaining a low volatility will be important for the fiscal planning of the board and Office (the LGPF achieves smoothed distributions for beneficiaries by using a five year average of the fund value to determine distributions). Further, as all earnings are distributed every year, the real distributions will decrease year over year due to inflation, unless additional funds are given to the Trust Fund.

PERFORMANCE IMPLICATIONS

NMED states that the grant funding provided in SB273 “will help restore watersheds and wetlands and reduce water quality impairments,” thus contributing to the agency’s mission and achievement of performance measures.

EMNRD provided the following information on how SB273 might affect State Parks:

“As State Parks manages 35 parks across the state and has many different resource issues, there would be the potential that the grant fund could help in key resource protection and land management projects. Of the types of projects listed [in the bill], the following could be applicable to State Parks: water enhancement projects to improve stream function, as there are many streams and lakes within the park system; preservation of open space through conservation easements, as State Parks manages such easements as part of park lands; improvement and enhancement of habitat to maintain wildlife populations; control of invasive species and noxious weeds; habitat improvement by restoring natural fire regimes; and implementation of land and watershed management techniques. These projects could be identified and matched with other state and/or federal funds.

In addition, there may be opportunities for land acquisition for State Parks, which could increase outdoor recreation opportunities. Finally, some State Parks are comprised of conservation easements, which could be supported by the trust fund and could help in protecting critical habitat.”

According to SLO,

“SB273 could benefit state trust lands and their long-term sustainability in that [SLO] is eligible as a state agency to submit applications for grants from the Grant Fund. In addition, many agencies, tribes and pueblos, and non-profit organizations that [SLO] often partners with or has the potential to partner with would also be able to submit applications that could be used to leverage the State Trust Lands Restoration and Remediation Fund and/or contractual services funds to undertake projects of a multi-jurisdictional nature that benefit state trust lands.”

ADMINISTRATIVE IMPLICATIONS

OSE notes that SB273 could have an impact on the agency’s permitting process, and that “it is difficult to predict how the role of the OSE would intersect with the funding processes effected by the board, but presumably the new office and the OSE would need to work together to harmonize their respective roles.”

NMED would coordinate with the new office as it does with other agencies to prevent redundancy and enhance outcomes from related funding sources.

SLO states that the time commitment associated with the Commissioner of Public Lands serving on the board as required by SB273 would be significant.

SIC states “taking on additional assets with new strategic goals may result in additional resource needs at the SIC” but did not provide an estimated amount or specific FTE need.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB273 is similar to HB223 in its creation of an agricultural and natural resources trust fund, office, board, and grant program, with some key differences. SB273 lowers the appropriation in HB223, changes the composition of the board, removes the appropriation for administrative costs, and removes provisions preventing money in the grant fund from being expended for the acquisition of real property or water rights.

TECHNICAL ISSUES

According to SIC,

“There is a timing issue that could be problematic as the bill calls for distributions of the “earned income” for the prior fiscal year on July 1. The SIC would not have preliminary asset valuations for the fiscal year just ended June 30, until approximately July 21st, and those numbers would not be based on fully audited financial statements. The SIC’s audit, which includes significant adjustments for private-market investment valuations, is

submitted to the auditor more than five months after the close of the last fiscal year, and is usually not approved by OSA for another month, or January of the next calendar year.

Unless the language is referring to the fiscal year ending 366 days prior, the funding mechanism for the grant fund and the actual amount it will receive is unrealistic for a July 1 distribution. This could be solved by either basing the fiscal year distribution on a calendar-year-end valuation, which is how the LGPF and STPF distributions operate, or by adopting a fiscal year valuation with distributions on a monthly basis, allowing for adjustments once audited figures become final.

On page 2, line 18, the bill calls for the transfer from the Trust Fund to the Grant Fund in the amount of “earned income” of the Trust fund from the prior fiscal year. This may imply something different than earlier language in the bill (p.2, line 10: ‘Earnings from the investment of the trust fund shall be credited to the trust fund...’). If the concept is to direct all earnings, including capital gains, dividends and interest of the trust fund to the grant fund, the stand alone term ‘earnings’ is correct. If the intent is to only take the trust fund income, while leaving capital gains to compound, then ‘income’ is preferable. The combined term ‘earned income’ may have different interpretations to different people.”

SLO notes that the bill does not define the term “public land” or state whether state trust land would be considered public land under the Act.

ALTERNATIVES

EMNRD proposes that rather than creating a new office and program, “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 SB273.”

IAD suggests it may be more beneficial to require the board have three Indian members, each representing a different Tribe, Nation, or Pueblo, rather than the one currently required by the bill, so that the diversity of Tribal perspectives is represented on the board.

CW/sb