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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Campos</u>	<b>LAST UPDATED</b> <u>2/17/23</u> <b>ORIGINAL DATE</b> <u>2/1/23</u>
<b>SHORT TITLE</b> <u>Water Protection Permanent Fund</u>	<b>BILL NUMBER</b> <u>Senate Bill 195/aSCONC</u>
<b>ANALYST</b> <u>Sanchez</u>	

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
-	\$150,000.0	Nonrecurring	General Fund (to the Water Protection Permanent Fund)
-	\$8,000.0	Nonrecurring	General Fund (to the Water Protection Fund)

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### REVENUE\* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
-	\$8,000.0	\$8,000.0	Recurring	Water Protection Fund
-	-	(\$8,000.0)	Recurring	Water Protection Permanent Fund

Parentheses ( ) indicate revenue decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Responses to Amended Bill Received From

Office of the State Engineer (OSE)

State Treasurer (STO)

Responses to Original Bill Received From

Office of the State Engineer (OSE)

Department of Finance and Administration (DFA)

State Investment Council (SIC)

State Treasurer (STO)

## SUMMARY

### Synopsis of SCONC Amendment to Senate Bill 195

The Senate Conservation Committee amendment to Senate Bill 195 adds language which proposes to amend Section 6-8-1, NMSA 1978 (Investment of Public Money: Definitions) to include a water protection permanent fund definition. The amendment would insert language specifying that the water protection permanent fund is “the fund established by section 2 of this 2023 act.” The SCONC amendments also update the section numbering and strike language assigning administration of this fund from the Interstate Stream Commission and instead assigns it to the Office of the State Engineer. Finally, the SCONC amendment adds language which would allow funds to be used for eligible projects located on the lands of an Indian nation, tribe, or pueblo.

### Synopsis of Original Senate Bill 195

Senate Bill 195 amends Chapter 72 NMSA 1978 (Water Law) to add new sections creating two new funds at the State Treasury, the water protection permanent fund and the water protection fund to be administered by the Interstate Stream Commission and disbursed by the Department of Finance and Administration.

Senate Bill 195 appropriates \$150 million from the general fund to the water protection permanent fund (WPPF) to be invested by the State Investment officer. On July 1<sup>st</sup> of each year, the WPPF will distribute \$8 million to the water protection fund (WPF) until 4.75 percent of the five-year average income of the WPPF is greater than \$8 million. Once 4.75 percent of the five-year average income exceeds \$8 million, 4.75 percent of the five-year average income will be distributed instead.

Senate Bill 195 appropriates \$8 million from the general fund to the water protection fund to be administered by the Interstate Stream Commission to provide full-time-equivalent employees and funding for the planning, engineering, design, construction, restoration, repair, and improvement of reservoirs, diversions, and dams statewide.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

The appropriation of \$150 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall not revert to the general fund.

The appropriation of \$8 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall revert to the newly created water protection permanent fund.

The State Investment Council’s analysis of the original bill stated:

Based on a 5 percent return assumption, the WPPF could continue to support an \$8 million distribution to the water protection fund over the long-term (25+ years), but the market value of the WPPF could decline over time if distributions exceed investment gains... However, returns would largely be derived from the assets in which the WPPF will be invested. The State Investment Office seeks to structure asset allocations for new endowment funds in a manner that would ethically optimize risk-adjusted returns and grow the fund over time.

The language included in the bill requiring a disbursement to the water protection fund of \$8 million, regardless of the fund's performance, might also result in decreases in the overall fund balance based on market conditions. The long-term sustainability of the permanent fund will rely on the fund's ability to maintain positive growth in out-years. However, the language in the bill requiring an \$8 million disbursement regardless of fund performance may impact the fund's sustainability.

## **SIGNIFICANT ISSUES**

Analysis of the amended bill from the Office of the State Engineer (OSE) explained that the definition of "water protection fund" proposed in the amendments to Section 6-8-1, NMSA 1978 would need to be updated if the bill passes to remove the language which states "the fund established by Section 2 of this 2023 act" to instead identify the appropriate statutory citation containing the final act.

Analysis of the original bill from OSE expressed concerns about the constraints regarding which projects may access funding in the water protection permanent fund. OSE stated:

SB195 is constrained to provide funding and support to water infrastructure projects tied specifically to reservoirs, diversions and dams. To the extent that New Mexico's communities identify other projects or activities necessary to increase water resilience, through regional planning processes or otherwise, this fund would not be available for those purposes...The OSE, not the ISC, has the staff expertise to develop and oversee Dam projects. As written, the OSE would not be able to access funding appropriated through this bill for such projects.

OSE's analysis of the original bill shared additional concerns relating to the types of projects not eligible to access money in the water protection fund:

Protecting New Mexico's water supplies will likely require significant additional efforts related to natural or green infrastructure, such as levees and river system restoration to reduce flood risk, increase conveyance efficiencies, and benefit the environment, as well as conservation measures, and data collection and analysis none of which would be supported by the current bill.

## **TECHNICAL ISSUES**

The Department of Finance and Administration flagged one potential oversight in its analysis of the original bill:

The legislation does indicate that the water protection fund be created in the OSE but that language is missing from the water protection permanent fund.

The State Investment Council’s analysis of the original bill included concerns about the wording of the distribution language, as stated below:

The bill states the water protection permanent fund is to distribute \$8 million annually to the water protection fund, until that amount is exceeded by 4.7 percent of the average permanent fund balance for the previous five calendar years, then the distribution will be 4.7 percent of the five-year average. Once the fund begins distributing 4.7 percent of the five-year average, it is unclear what would happen if a significant down market lasting one or more years later resulted in the percentage distribution falling below \$8 million. Would the distribution continue to be 4.7 percent of the five-year average, or should the distribution revert back to the \$8 million?

Because the bill does not specify that the distribution should be the greater of the two, the distribution could be reasonably interpreted as remaining at 4.7 percent into perpetuity after that mechanism is initially triggered, regardless of whether the percentage distribution happened to fall below \$8 million in subsequent years. If this is not the intent, an amendment could be considered to make the distribution the *greater of* \$8 million or 4.7 percent of the five-year average.

## ALTERNATIVES

The Office of the State Engineer proposed two amendments in its analysis of the original bill:

- “Page 3. Line 4. Insert “to the ISC and Office of the State Engineer” between “funding” and “for”.”
- “Page 3. Line 6. Insert “river systems including levee’s,...” between “of” and “reservoirs”.”

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