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FISCAL IMPACT REPORT

SPONSOR Aragon DATE TYPED 2/3/04 HB _____
 SHORT TITLE Water Protection Fee Act SB 386
 ANALYST Maloy

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	In determinate		Recurring	Trust Water Protection Fund

Relates to HB 289, also establishing water use fees and establishing the Water Resource Fund.

Also relates to HBs 312 and 313, establishing the Strategic Water Reserve Donation Tax Credit and Strategic Water Reserve, and SBs 360 and 362, also establishing the Strategic Water Reserve Donation Tax Credit and Strategic Water Reserve.

SOURCES OF INFORMATION

LFC Files

Response Received From

New Mexico Department of Agriculture

No Response Received From

Office of the State Engineer

SUMMARY

Synopsis of Bill

- Senate Bill 368 creates a new Act, the Water Protection Fees Act. Pursuant to this new law, the following fees are imposed:
 - Irrigation districts, conservancy districts, artesian conservancy districts, irrigation districts cooperating with the United states, one dollar fifty cents (\$1.50) per acre-foot annually;

- Persons diverting water for agricultural uses, one dollar fifty cents (\$1.50) per acre-foot annually;
 - Persons diverting water non-consumptively used for electrical generation or mill or industrial purposes, one dollar (\$1.00) per cubic foot per second of water non-consumptively used based upon the maximum yearly diversion paid;
 - Persons diverting water for commercial, industrial or mining purposes, eighteen dollars (\$18.00) per acre-foot annually;
 - Persons diverting water for public water supply or for power production purposes, sixteen (\$16.00) per acre-foot annually;
 - Persons storing water in an open reservoir behind a constructed dam, two dollars (\$2.00) per acre-foot evaporated annually;
 - Persons diverting water for livestock purposes, one dollar fifty cents (\$1.50) per acre-foot annually; and
 - Persons owning a domestic well permitted pursuant to Section 72-12-1.1, NMSA 1978 and from which water is diverted, a fixed annual fee of nine dollars (\$9.00) per well.
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- The bill provides that, with the exception of the domestic wells that are assessed a fixed annual fee, the water protection fee shall be based on the actual diversion or withdrawal of water if measured by a metering system approved by the State Engineer. Otherwise, the fee shall be based on the amount of the permitted, declared or adjudicated water right. Fees for evaporation shall be assessed only for reservoirs of greater than one acre in surface area.
 - The bill outlines the “point of measurement or a diversion”.
 - The bill expressly notes that payment of fees imposed by the Water Protection Fee Act neither confirm nor are evidence of any right to appropriate the public waters of the state.
 - The bill provides the county assessor shall collect the water protection fee imposed pursuant to the Act, and that the fee shall be assessed with the property tax bill for the property on which the domestic well is located. Thereafter, the county assessor shall remit the fee to the Taxation and Revenue Department within 30 days.
 - The Taxation and Revenue is granted regulation-making authority for the collection of the fees.
 - The Office of the State Engineer, Department of the Environment and Public Regulatory Commission are charged with providing the Taxation and Revenue Department with information and records necessary to assess the fees of the Act.
 - The bill creates the Water Protection Fund, to be administered by the Office of the State Engi-

neer. Balances in the Fund at the end of any fiscal year shall not revert to the General Fund. The money in the Fund is appropriated to the Office of the State Engineer for the following purposes:

- complete adjudications;
 - conduct hydrologic investigations;
 - actively manage the waters of the State of New Mexico; and
 - preserve, protect and develop the waters of the state.
- Finally, the bill amends the Tax Administration Act to expressly provide the water protection fees shall be considered a “tax” for the purposes of the state’s tax laws.

Significant Issues:

- New Mexico’s drought is worsening every year. Proactive steps to protect the state’s water resources should have been undertaken more than twenty years ago. Now, time is of the essence, as is serious commitment.
- The NMFA has estimated New Mexico’s water needs at \$4.8 billion. This bill will aid, though minimally, in meeting these needs. The Office of the State Engineer did not provide an analysis of this bill. It is unknown how much the Office would estimate the fees / tax would generate to the New Fund.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. This bill proposes to generate recurring revenue to the Water Protection Fund. Unexpended or unencumbered balances at the end of a fiscal year shall not revert to the general fund.

Continuing Appropriations

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

RELATIONSHIP

- This bill is similar to HB 289. However, one significant difference is HB 289 contains express exemptions from the fees for:
 - Water diverted or withdrawn by the interstate stream commission, state parks division of the energy, mineral and natural resources department, and the game and fish department for public use or benefit.
 - Water diverted or withdrawn for agricultural use by a member of an acequia association on the member’s land.
 - Water diverted or withdrawn from a livestock well; and

- Water diverted or withdrawn by an Indian nation, tribe or pueblo.
- Senate Bill 368 also relates to:
 - HB 313, Strategic Water Reserve Donation Tax Credit;
 - HB 312, Strategic Water Reserve;
 - SB 362, Strategic Water Reserve Donation Tax Credit; and
 - SB 360, Strategic Water Reserve.

OTHER SUBSTANTIVE ISSUES

The New Mexico Agriculture Department notes:

- Power production and electrical generation are not defined. One could assume that these are the same and therefore the fee would be a sort of double taxation to this sector of the economy as well as industrial diversions.
- This Act does not exempt water diverted or withdrawn by an Indian nation, tribe or pueblo on tribal or pueblo lands.
- This Act does not exempt water diverted or withdrawn for agricultural use by a member of an acequia association on the member's land.
- This Act does not exempt the State or State agencies from payment of the fees.

POSSIBLE QUESTIONS

The Agriculture Department asks:

- Adjudication has been completed in only 20% of the state, dating back as far as 1956 on the Pecos River.
- Is there equity of the distribution and access to the water protection fees to fund different types of projects?
- Does the federal government have to pay the protection fee on a declared water right?
- Does any state, entered into an interstate compact with New Mexico, have to pay the protection fee for evaporation or storage at lakes governed by interstate compacts?

SJM/lg