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FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 02/12/15
 LAST UPDATED 03/03/15 HB _____

SHORT TITLE Water Trust Fund Solvency SB 399

ANALYST Cerny

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	\$18,000.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	\$18,000.0		Nonrecurring	Water Trust Fund

Relates to SB 63, SB 159, SB 174, SB 184, SB 260, HB 157, and HJM 6

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 399 seeks a general fund appropriation of \$18 million to the Water Trust Fund (WTF) for expenditure in FY16 and subsequent fiscal years to carry out the purposes of the WTF.

FISCAL IMPLICATIONS

The appropriation of \$18 million contained in this bill is a nonrecurring expense to the general

fund. Any unexpended or unencumbered balance remaining at the end of FY 2016 shall not revert to the general fund.

SIGNIFICANT ISSUES

The WTF was created in the State Treasury and is invested by the State Investment Officer. Any earnings from the investments are to be credited to the WTF.

Money in the WTF cannot be expended for any purpose but an annual distribution made to the Water Project Fund in accordance with the Act. The Water Project Fund is administered by the New Mexico Finance Authority (“NMFA”). The NMFA makes grants and loans for qualified projects recommended by the Water Trust Board and authorized by the Legislature.

In 2006, the WTF was first endowed with \$40 million from HB 2, the General Appropriations Act. In 2008, there was a subsequent transfer from the General Fund to the WTF of \$15 million. SB 399 would increase the fund by \$18 million through a General Fund Appropriation.

The Water Project Finance Act, Section 72-4A-1 to 10 NMSA 1978 (the “Act”), created the WPF as a permanent fund to provide annual funding of water projects using earnings from the WTF, while leaving the corpus of the WTF intact for future earnings and distributions.

The WTF provides an annual distribution of \$4 million on July 1 of each year to the Water Project Fund until that amount is less than an amount equal to 4.07 percent of the average year-end market values of the WTF for the immediately preceding five calendar years. The first distribution made from the WTF into the Water Project Fund took place July 1, 2007. In 2007, the annual distribution of \$4 million from the Water Trust Fund represented 10 percent of the total fund.

According to a program evaluation conducted by the LFC of the WTF (Report 13-12, November 21, 2013, pp 22-24):

The State Investment Council (SIC) projects the WTF will be depleted by 2033. The fund has not received an appropriation since 2007 and has realized an average annual return on investments (ROI) of \$2.2 million, or five percent per year.

At the September 2013 Water Trust Board (WTB) meeting, the SIC reported to the board the current value of Water Trust Permanent Fund was \$43.9 million. The SIC approved a new asset allocation for the fund to improve expected returns and reduce volatility; however, the new asset allocation expected rate of return of 7.5 percent does not make the Water Trust Permanent Fund self-sustaining. The SIC reported a better than 50 percent chance the fund will shrink to \$0 by 2033.

The SIC recommended three options to stabilize the fund: 1) a one-time appropriation estimated at \$18 million to adjust for inflation; 2) annual legislative appropriations; or 3) reduction of annual distributions to the Water Project Fund. The current legislation requires the distribution of the greater of \$4 million or 4.7 percent of the 5-year average. The SIC suggested making a change to the statute to reduce the annual distributions to the lesser of these two amounts. An indirect consequence of reducing the distributions

from the WTF will reduce the distribution to the Office of State Engineer (OSE) and the Administrative Office of the Courts (AOC) for water rights adjudications.

The OSE receives 10 percent of any funds distributed into the Water Project Fund annually for water adjudication. The adjudication processes have far-reaching consequences with the goal of developing a comprehensive inventory of water rights for managing water and enforcing priorities. One adjudication can involve tens of thousands of claims and a decision on one can adversely impact many other claims. A reduction in the WTF transfer amount will reduce the adjudication budget.

RELATIONSHIP

SB 63 authorizes 128 projects to be eligible for funding from the Water Project Fund pursuant to the Water Project Finance Act, Section 72-4A-1 to 10, NMSA 1978. The NMFA establishes the terms and conditions of the loans and grants awarded from the Water Project Fund as recommended by the WTB.

SB 159 proposes 141 projects totaling \$128,795,350 to be funded from issuance of Severance Tax Bonds. The bill proposes 30 projects totaling \$41,492,494 to be funded by appropriating dollars from various programs and funds including NMFA's Public Project Revolving Fund, the Colonias Infrastructure Project Fund administered through NMFA and the Water Project Fund. Funds being appropriated from the Water Project Fund total \$2 million to be used by Energy, Minerals and Natural Resources Department to plan, design and construct watershed restoration improvements statewide. As with the Colonias Infrastructure Project Fund, the Water Project Fund has insufficient funding to meet all needs so while the proposed projects may be worthwhile the fiscal impact is that other Water Project Fund projects will not be funded.

SB 174 proposes administrative changes that may influence the policies by which funds are invested, managed, and reported on within the WTF. The WTF is a constitutional fund overseen by the SIC and provides a recurring annual appropriation to the Water Project Fund.

SB 184 prohibits funding projects statewide from severance tax bond proceeds in the event any ordinance exists that increases the costs of extraction of oil, natural gas, carbon dioxide or geothermal resources. The State Board of Finance would be prohibited from selling severance tax bonds that would support any project statewide if such an ordinance existed. The Water Project Fund receives an annual distribution of 20 percent of the proceeds of severance tax bonds.

SB 260 amends the Water Project Finance Act, specifically Section 72-4A-4, by mandating that the Chair of the WTB be elected from only the public membership of the WTB. SB 260 does not ensure a broad selection of experienced water related candidates by limiting the selection of the candidates for chair of the WTB to only six public members versus the entire membership of 16.

HB 157 requires at least twenty percent of loans and grants made each year from the Water Project Fund be used to fund water conservation projects, which is one of five eligible types of projects. HB 157 has the potential of reducing available funds to be used for loans and grants of other qualified and eligible projects, reducing annual water adjudications with the OSE, and potentially creating a surplus of unused funds in the event there are not sufficient water conservation projects available.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The compounding effect of using the corpus of the Water Trust Fund to fulfill the annual distributions will continue to deplete the fund, thereby reducing the amount of funding for water projects statewide that are recommended by the Water Trust Board.

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