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## FISCAL IMPACT REPORT

**SPONSOR** Bandy/Sen. Wirth      **ORIGINAL DATE** 01/26/19  
**LAST UPDATED** 03/08/19      **HB** 266/aHAFC

**SHORT TITLE** Forest & Watershed Restoration Act      **SB** \_\_\_\_\_

**ANALYST** Hanika-Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$1,000.0	\$1,000.0	Recurring	Improvement of the Rio Grande Income Fund
\$1,000.0	\$1,000.0	Recurring	New Mexico Irrigation Works Construction Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$2,000.0	\$2,000.0	Recurring	Forest Land Protection Revolving Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Conflicts with HB517 and SB438

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)  
 Indian Affairs Department (IAD)  
 Economic Development Department (EDD)  
 Office of the State Engineer (OSE)  
 Department of Game and Fish (DGF)  
 State Land Office (SLO)

## SUMMARY

### Synopsis of HAFC Amendment

The House Appropriations and Finance Committee Amendment to House Bill 266 adds the state engineer or his or her designee to the proposed “forest and watershed advisory board” administratively attached to the EMNRD, and further clarifies that the board’s duties include fostering partnerships and cooperation with various public and private organizations for the purpose of co-funding or leveraging funding for priority forest and watershed projects.

### Synopsis of Original Bill

House Bill 266 proposes the new Forest and Watershed Restoration Act. Sections 1 and 2 provide for definitions including “project” to mean large-scale forest and watershed projects on any lands in the state and “sponsor” to include corporations or organizations in conjunction with EMNRD in addition to federal, state or local government agencies and tribal entities. Section 3 would establish an advisory board of public members administratively attached to EMNRD.

Section 4 delineates the new board’s duties which include fostering partnerships with public and private organizations dedicated to forest and watershed conservation and restoration, and evaluating and recommending projects for funding to the Forestry Division at EMNRD. This section also allows the Forestry Division to seek and accept public and private funding, provide partial or full funding for approved projects, and adopt rules to carry out the Act’s provisions.

Section 5 allows the fund to also be used for forest and watershed restoration projects approved by the Forestry Division on any state lands. Projects could include planning, restoration treatments, economic development programs, and workforce development for wood utilization projects. This section also sets eligibility and prioritization requirements for project funding.

Section 6 requires the Forestry Division to submit a report 45 days prior to each legislative session on projects implemented and recommended legislation to the governor and legislature.

Section 7 also allows the existing forest land protection revolving fund to receive appropriations, gifts, and grants to fund approved projects pursuant to the Forest and Watershed Restoration Act.

Finally, Section 8 provides for recurring appropriations of \$2 million from OSE’s two main funds to the forest land protection revolving fund for approved projects pursuant to the new Act.

## FISCAL IMPLICATIONS

EMNRD reports it will require six FTE at a cost of \$500 thousand to implement the Act. For FY18, however, the agency only spent \$28 million out of \$31 million appropriated for personnel.

The improvement of Rio Grande income fund (IRGIF) and New Mexico irrigation works construction fund (IWCF) receive annual distributions from the land grant permanent fund, State Land Office, and other minor sources. At the close of FY20, OSE projects fund balances available for future expenditures of about \$20 million. HB 266 provides for a new annual distribution of \$1 million each from the IRGIF and the IWCF to the forest land protection revolving fund administered by EMNRD for forest and watershed restoration projects recommended by a new board for funding. The bill also allows the acceptance of other

appropriations, gifts, grants and donations. Money in the forest land protection revolving fund from this appropriation would not revert to the IRGIF or IWCF or to the general fund.

OSE is concerned mandatory annual distributions of \$1 million each from the IRGIF and IWCF would have significant fiscal implications for OSE and its Interstate Stream Commission (ISC). Monies from these funds have been appropriated in recent years to fund operations of the ISC and OSE's Litigation and Adjudication Program, and various ISC and acequia water projects. Distributing \$2 million every year from these two funds would accelerate the depletion of those funds, which in turn would require additional recurring appropriations from the general fund.

EMNRD noted concerns with the fund accepting appropriations, gifts, grants, and donations for forest and watershed management projects as this may prevent EMNRD from providing funding from federal agencies and other state agencies that have application and eligibility requirements and evaluation processes that conflict with those in the Act. In addition, the proposed amendment could result in the commingling of funds that may have differing requirements for expenditure.

SLO noted the bill provides opportunities to leverage funds with its state trust lands restoration and remediation fund. Increased collaboration and funding should result in treating more acres through collaborative partnerships to improve watershed conditions across New Mexico and state trust lands. Further, multi-jurisdictional collaborations may provide more seamlessly designed partnerships across ownerships allowing more efficient response to the State's resource needs.

### **SIGNIFICANT ISSUES**

The bill requires the Forestry Division in the EMNRD to give an eligible project priority for funding if the project leverages federal, state, local, tribal, or private sources or has support from other public or private water, forest, fire, wildlife habitat or economic development programs.

EMNRD noted the new Act provides for projects on any lands within the state. Unless certain conditions exist, use of state funds on private lands violates the anti-donation clause of the New Mexico Constitution. There are two primary conditions that must be met. First, the funds must be spent for a public governmental function not just for a public purpose. To be considered a public governmental function, funds must be administered through a state agency or other political subdivision of the state pursuant to authority granted under state law. A private individual or entity cannot administer or directly receive the funds. Second, the state agency or political subdivision must have complete control over the funds and their disbursement. The project must also be for a purpose that individual landowners working separately cannot accomplish.

OSE reports the IRGIF is for use in the Rio Grande basin. The bill's use of the funds is for projects statewide, not just in the Rio Grande Basin. Sections 72-14-1 through -44 NMSA 1978 already grant ISC the authority to use funds from the IRGIF and IWCF for the purposes proposed in the bill. Further, creation of a Forest and Watershed Advisory Board to perform the same or similar tasks ISC already has authority to perform would create duplication of effort, time, and expense.

### **ADMINISTRATIVE IMPLICATIONS**

The Forestry Division will be required to submit annual reports to the governor and legislature.

The proposed Forest and Watershed Advisory Board would be administratively attached to EMNRD and include the state forester, commissioner of public lands, secretary of economic development, secretary of the environment, director of game and fish, the State fire marshal, and three public members appointed by the governor to represent the forest products industry, local governments, and academic or nonprofit conservation organizations. The board would develop guidelines for projects, foster cooperation among organizations dedicated to forest and watershed conservation and restoration, and recommend projects to the Forestry Division for funding.

### **CONFLICT, RELATIONSHIP**

HB266/HAFC may conflict with committee substitutes HB517 and SB438 (duplicates) which would add a mandatory annual distribution of \$2.5 million from the IWCF, an increase of \$600 thousand from current law, to a proposed new fund at OSE for acequia infrastructure projects. If both this bill and committee substitutes HB517 and SB438 are enacted, it could have a significant impact on the IWCF for OSE if revenue from oil and gas activities were to decline.

The HAFC Substitute for House Bills 1 and 2 in Section 5 includes a one-time special appropriation of \$800 thousand from the RGIF and \$1.2 million from the IWCF in FY20 for forest and watershed projects contingent on the passage of this bill or similar legislation.

### **TECHNICAL ISSUES**

The bill allows projects to submit proposals as early as July 1, 2019. However, the bill does not specify the date (e.g. July 1 of each fiscal year) the annual disbursements will begin between the three funds. Also, the new board must be up and running July 1 to examine any proposals.

### **OTHER SUBSTANTIVE ISSUES**

OSE noted although watershed restoration has many benefits, for example, to help prevent catastrophic wildfires that clog rivers or streams with sediment and debris, watershed restoration does not necessarily increase runoff and contribute to compliance with interstate compacts.

### **ALTERNATIVES**

EMNRD suggests directing the two new distributions to the natural heritage conservation fund that was established to protect and restore New Mexico's forests and watersheds but has not been funded, or amend the bill to create a new “forest and watershed restoration fund” to receive the distributions instead of directing those funds to the land protection revolving fund. According to EMNRD, this would avoid commingling of revenue received for forest and watershed projects that may have eligibility, application and evaluation processes that conflict with those in the Act.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

DGF reported it would continue to conduct wildlife habitat and watershed restoration projects with partners across land ownership types and EMNRD would continue to use established processes for prioritizing, funding, and administering forest and watershed restoration projects.