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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Cervantes</u>	<b>LAST UPDATED</b> <u>02/27/23</u> <b>ORIGINAL DATE</b> <u>02/16/23</u>
<b>SHORT TITLE</b> <u>Water Trust Board Members &amp; Appts</u>	<b>BILL NUMBER</b> <u>Senate Bill 391/aSRC</u>
<b>ANALYST</b> <u>Sanchez</u>	

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

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

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Finance Authority (NMFA)  
 Indian Affairs Department (IAD)  
 New Mexico Department of Agriculture (NMDA)  
 Office of the State Engineer (OSE)

## SUMMARY

### Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 391 (SB391) changes language relating to the appointment of members of the Interstate Stream Commission. The amendment adds language specifying that the six public members appointed by Legislative Council be [individuals] “who are geographically diverse.” The amendment also removes language stating that the ninth board member must be a public member appointed by the Indian Affairs Commission and instead inserts language saying that this member must be a *pueblo tribal* member appointed by the Indian Affairs *Department* (emphasis added).

### Synopsis of Original Senate Bill 391

Senate Bill 391 (SB391) amends Section 72-4A-4, NMSA 1978, to change the composition of the Water Trust Board, ultimately reducing its membership from 16 individuals to 15. The bill removes the executive director of the New Mexico Finance Authority (or their designee) and the director of the Department of Game and Fish (or their designee).

SB391 increases the number of public members from five to six and reassigns appointment power from the governor to the New Mexico legislative council. Further revisions to the list of public members include:

- Removing the stipulation that the member representing an irrigation or conservancy district be limited to representing a district that uses surface water.
- Eliminating the position of an irrigation or conservancy district representative from a district that uses groundwater and replacing them with a member of the agricultural community.
- Adding a seat for a member of a water association organized under the Sanitary Projects Act.
- Removing the stipulation that the representative for Navajo Nation be either the president or their designee. Instead, adding that the Navajo Nation representative be a resident of New Mexico appointed by the president of Navajo Nation.

SB391 further changes the timeline for staggering the terms of representatives, removing the variability of the length of terms, and instead stipulating that terms are staggered such that only three terms shall end every two years.

Finally, SB391 adds language specifying the process for filling vacancies and limiting the appointment of members to vacant positions to the remainder of the term for which they are filling said vacancy.

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**

None of the agencies providing analysis for this bill indicated that it would have any fiscal impact.

## **SIGNIFICANT ISSUES**

The reduction of the size of the board from 16 members to 15 is among the substantive changes but was not mentioned as a concern in any of the multiple agency analyses reviewed by the LFC. However, the change that received the most feedback was the elimination of the seat for the executive director of the New Mexico Finance Authority (NMFA).

Analysis from the Indian Affairs Department also noted that the preservation of two seats for tribal members, while appreciated, still leaves the representatives in a position of having to relay the concerns of all 23 Tribal Nations through two individuals. Because one of these representatives is designated as a member of the Navajo Nation, essentially all 22 other Tribal Nations must be represented by one person. IAD suggests allowing for separate seats for Apache, Navajo, and Pueblo representatives separately to allow for a more geographic and culturally diverse representation of Native American concerns.

Analysis from the New Mexico Finance Authority points out that the current process of allowing the appointment of members by the governor and requiring Legislative approval of the annual list of grants and loans maintains a balance between the branches of government. The changes proposed in SB391 would remove the governor from the equation and, at least in theory,

eliminate the need for legislative authorization of projects since the Legislature would appoint all members of the Water Trust Board.

NMFA further expressed concerns that the elimination of its seat on the Water Trust Board could lead to projects being put forward that the agency, as the entity responsible for funding the board's operations, may be unable to approve because of concerns related to creditworthiness. Analysis from the Office of the State Engineer echoed these concerns citing the "invaluable technical and financial expertise" provided by the executive director of the Water Trust Board.

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