Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR	Rehm/Duncan/Hochman-Vigil/ Lundstrom/Allison	**LAST UPDATED**	2/13/24
		ORIGINAL DATE	2/4/24
SHORT TITLE	Future Water Trust Fund	**BILL NUMBER**	House Bill 301/aHAFC
		ANALYST	Wan Smith

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSE	No fiscal impact	$120.0 to $360.0	$120.0 to $360.0	$240.0 to $720.0	Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
State Investment Council
State Land Office
Office of the State Engineer

SUMMARY

Synopsis of HAFC Amendment to House Bill 301

The House Appropriations and Finance Committee (HAFC) amendment to House Bill 301 clarifies that the Legislature may appropriate investment income in the future water trust fund from the previous fiscal year. The amendment also strikes the bill's continuing appropriations language and specifies that money in the future water project fund is subject to appropriation by the Legislature.

Synopsis of Original House Bill 301

House Bill 301 (HB301) creates the future water trust fund as a nonreverting permanent fund in the state treasury. Money in the fund will be invested by the state investment officer with the same risk and return profile as land grant permanent funds. Investment earnings are credited to the fund and may be appropriated by the Legislature to the future water project fund.

HB301 also creates the future water project fund as a nonreverting fund administered by the Office of the State Engineer (OSE). Money in the fund is appropriated to OSE for the purposes of:

(1) purchasing water rights from outside the state, (2) conducting studies on and advocating for projects that deliver water to New Mexico from outside the state, and (3) funding projects in New Mexico for delivery of water that comes from outside the state.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Language in HB301 does not redirect revenue from another source to the future water project trust fund, nor does it make an initial appropriation to the fund. The revenue that this fund may be able to generate is, therefore, indeterminate at this time.

OSE reports that additional staff would be needed to administer the future water project fund, conduct studies, purchase water rights, and advocate for projects, but does not provide an FTE or cost estimate. Based on the information provided and typical personnel needs for administering a new fund, LFC estimates an operating budget impact between $120 thousand and $360 thousand for 1 to 3 FTE or contractual services.

SIGNIFICANT ISSUES

Fund Purpose and Administration

OSE comments, while it has no objection to the funds proposed by HB301, the purpose for which these funds would be created—acquiring out-of-state water rights—is not the agency's highest priority strategy for addressing New Mexico's water needs. As written, the bill would preclude this funding source from being used on other types of water projects that may be more efficient, restricting spending to a strategy that has several implementation issues.

According to OSE, interstate transfers of water are extremely rare, expensive, technically challenging, and controversial. The two interstate water transfer projects New Mexico is currently party to required decades of planning, negotiations in relevant interstate compacts, and substantial federal appropriations. The Gila diversion, which was authorized by Congress to implement the Arizona Water Settlements Act, is an example of a water transfer project that was unsuccessful due to prohibitive costs and environmental impacts.

At present, there are no proposals for interstate water transfer projects that appear feasible, according to OSE. Neighboring states face the same long-term water challenges that New Mexico does and, as such, can be expected to strongly resist any efforts to export water. This resistance can take the form of legal and regulatory challenges to hinder any attempts to acquire and transfer water rights from their states, likely increasing the time and expense associated with already time-consuming and expensive projects.

The major engineering and technical obstacles inherent in the transport of water over significant distances, especially to a high-elevation state, make this strategy logistically difficult as well as resource intensive. To use federal funds, a project will generally require a National Environmental Policy Act (NEPA) review, further complicating and lengthening the process.

The State Land Office (SLO) also points out that the expenditure authority granted to OSE by HB301 is inconsistent with how state water infrastructure funds are currently allocated. Projects supported by the existing water trust fund must be appropriated by the Legislature after being recommended by the Water Trust Board, a group with subject-matter expertise, established evaluation criteria, and representation of diverse stakeholder interests. In contrast, the future water project fund created by HB301 would be administered by OSE with broad authority and no mechanism for legislative oversight. The bill does not establish a process or criteria for evaluating and selecting projects to be supported by the fund.

Investment Strategies

Analysis from the State Investment Council (SIC) raises the concern that the meaning of the term "investment income" as used in the bill is vague. The language could be interpreted to mean either the total amount of return achieved on the investment portfolio or the cash distributions to the fund from income-earning assets. These details would inform SIC's management of the fund on a risk/return basis, as well as the liquidity requirements.

SIC further reports that not knowing how much capital the trust fund will have and when it may be appropriated could limit the investment strategies available. The land grant permanent fund (LGPF), for example, has a set annual distribution rate of 5 percent and a supplemental 1.25 percent distribution from the permanent school fund. These policies allow the LGPF to be invested in long-term investment vehicles, which typically exchange short-term liquidity for a long-term return premium. Without established limits on annual appropriations from the trust fund, SIC may not be able to take advantage of long-term strategies that maximize investment returns.

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