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FISCAL IMPACT REPORT

SPONSOR: Cisneros DATE TYPED: 02/16/01 HB _____
 SHORT TITLE: Additional Notice of Water Rights SB 118/aSPAC
 ANALYST: Dotson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 156
 Related to SB 24 and HB 237

SOURCES OF INFORMATION

Office of the State Engineer, New Mexico Ditch Association and the Association of Counties.

SUMMARY

Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments changes notification to only the entities in the files of the Office of the State Engineer and requires the State Engineer to maintain the records in a reasonable manner.

Synopsis of Original Bill

SB 118 outlines the additional notification requirements whenever a water rights transfer application is filed. These notifications include publishing notices in the newspaper of largest circulation and then notifications by certified mail to various water managing subdivisions and associations located in the county within which the point of diversion is located.

Significant Issues of SPAC Amendments

Reduces the burden of notification and record keeping. However, a reasonable effort by the State Engineer and the applicant is still necessary..

Significant Issues

The burden on the applicant to follow the notification requirements may be overwhelming. Streamlining the process may place an undo record keeping burden on the Office of the State Engineer.

According to the State Engineer, the number of entities an applicant would be required to provide with direct notice under the proposed bill would in many cases run into the hundreds. Because no register or single source for the identification of these entities or their addresses presently exists, the burden on the applicant and the Office of the State Engineer to comply with the notice provision would be formidable. It is doubtful if any applicant in many parts of the state could actually comply with its terms, and the most predictable result would be increased litigation. Under present case law, non-compliance with notice provisions renders an approved application null and void. Assuming the proposed requirements were adopted any asserted non-compliance might be raised years after the fact, and given the difficulty of actual compliance almost any approved application would be vulnerable to attack.

A change in the requirement for publication in a newspaper of “general circulation” to the newspaper with the “largest circulation” in the specified area will also lead to increased litigation. There is no definition of the newspaper of the “largest circulation” provided. It is unclear if this would include unpaid circulation, or whether newspapers were to be compared on the basis of daily, weekly or Sunday circulation. Also, a mandate to use the newspaper of the “largest circulation” will lead to complaints (and perhaps litigation) that certain statewide newspapers have been granted a monopoly for the publication of certain legal notices.

This bill along with related bills such as HB 237 and SB 24, have the cumulative effect of denying individuals the reasonable right to benefit from market opportunities.

This bill along with others is clarifying the role of individual property rights within a community based irrigation system.

PERFORMANCE IMPLICATIONS

According to the State Engineer, it is assumed that the Office of State Engineer would supply the applicant with the list of the public entities that have their names and address information “in the records” of the agency. This information is not compiled in any way that makes the information reasonably subject to search.

FISCAL IMPLICATIONS

According to the State Engineer, there would be significant fiscal implications on the Office of the State Engineer if this bill were enacted. One could anticipate both increased litigation concerning compliance, and additional staff necessary to compile the information required.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

According to the State Engineer, this bill in part duplicates SB 24 which provides for direct notice to a particular affected acequia when a member of that acequia seeks to transfer his or her water rights to a new place of use.

PD/ar