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## FISCAL IMPACT REPORT

**SPONSOR** Cervantes      **DATE TYPED** 2/10/04      **HB** 102 /aHAFC

**SHORT TITLE** Create Domestic Well Impact Fund      **SB** \_\_\_\_\_

**ANALYST** Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
\$700.0	\$1,400.00			Recurring	Other State Fuunds

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
\$700.0 See Narrative	\$1,400.0		Recurring	New Domestic Well Impact Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 89.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department

Environment Department

New Mexico Department of Agriculture

Office of the State Engineer

### SUMMARY

#### Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amended House Bill 102 as follows:

1. The fee for all shared wells is \$200 (hundred) per household, instead of \$1,000 (thou-

sand), or \$2,500 for a shared well serving a subdivision of three or more lots.

2. The direction that “money in the fund be used to purchase water rights to offset the effects of domestic well pumping” is removed.
3. There are two “clean-up” corrections, one correcting a legal citation and the other substituting a more specific reference to domestic well.

NOTE: With regard to the insertion of “domestic well” at page 3, line 2 of the amendment, it appears the term should be plural (i.e., domestic wells).

### Synopsis of Original Bill

House Bill 102 creates the Domestic Well Impact Fund in the state treasury. Money appropriated to, or accruing in, the Fund is appropriated to the State Engineer for the purchase of water rights to offset the effects of domestic well pumping in critical management areas or stream corridor areas, and for expenses associated with metering, measuring, and administering water uses.

The bill establishes the following fee schedule for application for “use of underground water for domestic purposes”:

- \$200 for a single household well,
- \$1,000 for a shared household well,
- \$2,500 for a shared household well for three or more lots.

Fees collected are to be deposited in the Domestic Well Impact Fund.

Money in the fund may be expended by the State Engineer upon vouchers signed by the secretary of the Department of Finance and Administration. Money in the fund shall not revert to the general fund at the end of any fiscal year.

The bill contains an emergency clause.

### Significant Issues

#### **According to the Office of the State Engineer:**

- The state engineer currently charges \$5 for domestic well appropriation application fees and an additional \$25 for proof of completion of a well and proof of beneficial use.
- Establishment of the Domestic Well Impact Fund will aid the Office of the State Engineer in purchasing and retiring water rights in order to prolong the life of a water supply, and increase the state’s ability to protect senior water rights and meet interstate stream obligations.
- Studies performed by the state engineer demonstrate domestic wells are depleting interstate streams. Potential impacts to interstate streams from domestic wells may be 5,000 to 14,000 acre-feet per year currently. The number of domestic wells in New Mexico is

probably in excess of 140,000. Domestic wells continue to be a popular source of water supply and their combined impacts will increase with time. Approximately 7,000 new domestic well applications were processed last year. A significant portion of these new well applications are approved in basins that are in connection with interstate streams.

- The state engineer **is required** by statute to approve domestic well permits but no requirements to obtain offsets to stream depletions have been imposed for these permits. SB 89 would allow the state engineer to require stream offsets in selected areas. Due to drought and other factors New Mexico has struggled to meet its interstate stream obligations. Measures are urgently needed to offset the stream impacts due the use of domestic wells. HB 102 supports this urgent necessity.
- Shared domestic wells offer some advantages over single household domestic wells. The public will expend less money by using one shared well rather than parcel owners drilling their own well. Shared wells are often ideal in areas in which aquifer conditions are poor. Certain parcels may be more favorable for drilling successful wells compared to other parcels due to geologic variation. It is also in the public interest to limit the number of wells in the state since each well is a potential pathway for groundwater contamination. For these reasons, shared domestic wells should be encouraged where local authorities have approved a subdivision that can be served by domestic wells. Adopting the recommended fee structure in this analysis would support this goal.
- It would also be beneficial for subdivisions of greater than 3 lots to be required to either develop a water system for the subdivision or connect to the nearest mutual domestic, municipality, water and sanitation district, or other water system. To accomplish this, changes to the subdivision act would be required.

**According to the State Parks Division of Energy, Minerals and Natural Resources Department:**

- The fees imposed by HB 102 conflict with application fees currently set forth in Section 72-2-6. See proposed amendments below to achieve consistency.

If this bill is passed, there needs to be consistency among all statutory provisions referencing domestic permit fees.

- The significant increase in fees may pose an economic hardship for some individuals.

**The Environment Department notes:**

- Given the current demand on groundwater as a drinking water source and the current drought situation, the impact fee has the potential to positively affect water conservation within the state by helping to reduce the impact on threatened aquifers or water systems.
- An increase in the fee for a domestic well may impact the consumer's ability to obtain a domestic well permit and may result in more consumers choosing to connect to existing public water systems.

## **FISCAL IMPLICATIONS**

The bill creates a new fund, the Domestic Well Impact Fund. The State Engineer estimates this bill will generate \$1.4 million in FY05 to the Fund, and less than half of that amount for the remainder of FY04 due to time needed for implementation. Money from the Fund is appropriated to the State Engineer for the purchase of water rights and monitoring water uses as addressed in the bill.

### Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

## **ADMINISTRATIVE IMPLICATIONS**

Any additional administrative implications associated with the purchasing of water rights with fund revenue should be readily absorbable into existing Office of the State Engineer resources.

While the Office of the State Engineer proposes new staff would be needed, the office's budget recommendation includes funding for contractors that currently provide such services for the office.

## **RELATIONSHIP**

HB 102 relates to SB 89 which authorizes the State Engineer to condition the granting of domestic well permits in critical management areas upon the acquisition and transfer by the applicant of an existing right to a new domestic well to offset the effects of the new well.

## **TECHNICAL ISSUES**

The State Parks Division of Energy, Minerals and Natural Resources proposes:

Section 1 of HB 102 states that the fees are for applications for use of ground water for domestic purposes pursuant to Section 72-12-1. That section, however, refers to three other statutes under which well permits are sought: 72-12-1.1 (household uses), 72-12-1.2 (livestock uses), and 72-12-1.3 (temporary uses for construction and drilling). Therefore, the reference should, instead, be to Section 72-12-1.1

## **AMENDMENTS**

Per the Technical inconsistency noted by the State Parks Division, amend the reference to Section 72-12-1 in Section 1 to Section 72-12-1.1.

Amend Section 72-2-6 to clarify that domestic well permit applications are governed by a different fee schedule.

**SJM/lg:njw:dm**