

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

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Tripp DATE TYPED 2/07/05 HB 346
 SHORT TITLE Appeal of State Engineer Decisions SB _____
 ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)
 Attorney Generals Office (AGO)
 Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

House Bill 346 removes the option provided for under existing statute allowing the state engineer to order a hearing before he enters a decision, takes action or refuses to act.

HB 346 also allows an aggrieved person to bypass the state engineer’s administrative review process and take an appeal of a state engineer decision directly to district court whenever the state engineer decision affects the “validity, quantity or priority date” of the aggrieved person’s water right.

Significant Issues

Under current law, an aggrieved person must first exhaust his or her administrative remedies before the state engineer prior to appealing to district court.

The State Engineer points out that current law requiring administrative hearings before appeal to district court helps ensure that technical and legal water permit issues are decided consistently across the State. Allowing direct appeals to district court would increase the risk of inconsistent determinations by the various district courts. Any such inconsistency in decisions would impair

the state engineer's ability to perform his statutory duty to supervise the appropriation of the waters of the State.

The Attorney General's Office notes the enactment of HB 346 could substantially impede the ability of the State Engineer to administer water rights under Section 72-2-9.1 NMSA 1978, which authorizes the State Engineer to administer water rights even when there has not been a final adjudication of water rights in a particular basin or stream. The ability of the State Engineer to administer water rights is critical to the State of New Mexico's ability to comply with interstate stream compacts.

PERFORMANCE IMPLICATIONS

Additionally, the Attorney General notes it is possible that the enactment of HB 346 could add to the backlog in the district courts of New Mexico by making the district courts—instead of administrative tribunals under the State Engineer's Office—the venue in which initial evidentiary hearing must be conducted on the issues in dispute. Under current law, Sections 72-2-16 NMSA 1978 and Section 72-7-1 NMSA 1978, when a matter is appealed to the district court from an administrative hearing before the State Engineer, the district court has the benefit of a fully developed administrative record, including the technical basis for the State Engineer's action or decision, and the State Engineer's Office's technical evaluation of the pros and cons of the issue presented. In addition, Section 72-7-1 NMSA 1978 provides that evidence presented in an administrative hearing before the State Engineer can be received in evidence on appeal to district court. Under HB 346, the evidence would have to be introduced for the first time in the district court, adding to the time required to process appeals from decisions of the State Engineer in the district court. Although most state district court judges have limited experience and expertise in handling water law claims, if HB 346 is enacted, the district court judges would become the initial adjudicators in these cases and they would have to decide these cases without the benefit of a fully developed administrative record, as now exists.

FISCAL IMPLICATIONS

HB 346 may require the State Engineer to increase litigation staff to accommodate the added responsibilities associated with this change in statute.

TECHNICAL ISSUES

The Office of the State Engineer notes a similar amendment to the water code to allow aggrieved applicants for state engineer permits to go directly to district court for a hearing on the state engineer's denial of their application was found to violate of the separation of powers doctrine in *Fellows v. Shultz*, 81 N.M. 496, 500 (1970).

OTHER SUBSTANTIVE ISSUES

Administrative hearings before the state engineer function as a form of alternative dispute resolution that is flexible and inexpensive for applicants and those protesting decisions. Hearing fees for administrative hearings are nominal compared with the filing fees of district courts, and the administrative hearing process is less formal and considerably more accommodating to parties unrepresented by counsel than are formal proceedings in the district courts.