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FISCAL IMPACT REPORT

SPONSOR Begaye **DATE TYPED** 2/08/05 **HB** 415

SHORT TITLE Create Indian Water Rights Settlement Fund **SB** _____

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$4,300.0		Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB-126, SB-172, HB-14

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$4,300.0	Indeterminate	Recurring	Indian Water Rights Settlement Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 415 appropriates \$4.3 million dollars from the general fund to the Indian Water rights Settlement Fund to facilitate the implementation of the state's portion of Indian water rights settlements.

House Bill 415 bill provides the legislature with a means through which it can be informed of, and approve, the costs to be borne by the state resulting from settlements involving the water rights claims of Indian tribes and pueblos. This bill requires expenditures from the fund be reported to the legislature each year prior to September 15.

Significant Issues

HB 415 provides that upon congressional funding of the federal share of an Indian water right settlement the State Engineer would inform the legislature of the state's share and request approval of the settlement. Upon legislative approval, the Interstater Stream Commission would be able to expend money from the Indian Water Rights Settlement fund to implement the settlement.

The LFC in the interim has expressed concern that the settlement process does not include the legislature until after congressional approval of such settlements. The LFC seemed to view this as a problem that could prove critical to a settlement's successful implementation.

The state engineer agrees and notes the terms of such settlements typically provide for the construction of infrastructure projects and the acquisition of water rights to augment the existing supply of water. Many times this process begins many years after congressional approval of a settlement. At present, the state is not able to assure the settlement parties and congress that the legislature both approves of the settlement and guarantees that state funds will be made available on the schedule required by the settlement. This is due to the lack of a process for obtaining legislative approval under existing law until funding for the state's shares of costs is requested from the legislature. At present, the only way to obtain legislative approval and commitment to the implementation of a settlement is for the legislature to make the necessary appropriations years after congress has approved the settlement. The LFC has pointed out that it is possible that the parties and congress will discover that their settlement cannot be implemented when years later the legislature does not fund the state's share of the costs, either because it does not approve of the settlement, or because no funds are available to make the requisite appropriations at the time required by the settlement.

The state engineer has worked to address the legislature's suggestion the legislature be included in the settlement process early enough to ensure that the settlement process proceeds in a manner consistent with the legislature's intent. This bill proposes to provide the parties and congress with a statement of the legislature's approval so that they may proceed accordingly before a settlement is submitted to congress. It also provides the legislature with the option of setting aside the state's funds over a number of years to complement its existing authority to make lump sum appropriations.

FISCAL IMPLICATIONS

The appropriation of \$4.3 million dollars contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year does not revert but remains in the Indian water rights settlement fund.

Revenue estimates from December 31, 2004 indicate \$43 million dollars is expected to be received in FY06 from Indian gaming entities.

ADMINISTRATIVE IMPLICATIONS

Some additional administrative burden would accrue to the ISC that relates to the ISC's administration and supervision of the projects being funded by the state. The ISC's role in reporting to the legislature and in administering the fund is intended to provide the legislature with oversight by an agency with the expertise to assure the prudent and legal expenditure of the funds expended under this act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 415 is almost identical to SB 172 and HB 126 except that HB 415 provides for annual funding of the settlement fund from monies in the general fund equivalent to "ten percent of all revenues received on a quarterly basis by the state as the state's share of Indian gaming revenue." In contrast, SB 172 and HB 126 contain no appropriation to establish or fund the settlement fund. HB 415 is also related to House Bill 14, which appropriates \$8,400,000 to the Interstate Stream Commission for expenditure in fiscal year 2006 to initiate the Gallup-Navajo Pipeline Project, contingent on matching funds from the federal government. The Gallup-Navajo Pipeline Project is required under the terms of a settlement agreement recently approved by the Navajo Nation Council and the New Mexico Interstate Stream Commission. This settlement agreement is currently being reviewed by the New Mexico Attorney General.

TECHNICAL ISSUES

The Office of the state Engineer proposes the following amendments for consideration by the legislature:

Page 1, line 18: after with word "congressional" insert "authorization of"

[Explanation: Under section B of this act, that state engineer informs the legislature of the settlement terms prior to congress' authorization of and commitment to fund the settlement. Upon congressional authorization, the legislature needs to be informed as quickly as possible of that action and of any substantive changes required by congress to the terms of the settlement. The state engineer therefore proposes this amendment to ensure that the legislature is informed in a timely fashion of any congressional authorization and of the expected state contribution. Since congressional funding of Indian water right settlements typically lags behind congressional authorization, without this amendment the legislature might not be notified in a timely manner of the expected state contribution to a settlement.]

Page 1, line 22: after the word "Upon" strike "approval of a settlement by"

[Explanation: This amendment contemplates that the legislature will have at least two opportunities to approve an Indian water rights settlement after action by congress. A joint resolution approving the ISC expenditure of funds on the settlement, which the legislature could pass after congress has approved a settlement, would be the first such opportunity. The second opportunity would be when the legislature completes the appropriation of all the funds necessary to fully implement the terms of a settlement.]

Page 3, line 9: strike "that have been" and insert in lieu thereof "as"

[Explanation: This amendment is intended to clarify that the expenditures from the fund are to

be consistent with the amount approved by the legislature, and to foreclose an interpretation that fund expenditures can vary from the amount actually approved as long as they are expended to implement a settlement approved by the legislature. This amendment recognizes and attempts to maintain the legislative check over agency expenditures.]

ALTERNATIVES

HB 126 and SB 172 offer the alternative of establishing the Indian Water Rights Settlement Fund without appropriating any monies into that fund.

PA/sb