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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Campos LAST UPDATED 2/21/07 HB 1080

SHORT TITLE 100-Year Water Use Planning Period SB _____

ANALYST Propst

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

New Mexico Municipal League (NMML)

New Mexico Higher Education Department (NMHED)

SUMMARY

Synopsis of Bill

House Bill 1080 seeks to amend NMSA 1978, § 72-1-9, as enacted in 1985, to remove the legislative acknowledgment of the State's recognition of the State Engineer's policy to allow municipalities, counties and other qualified entities to acquire and hold unused water rights pursuant to water development plans for reasonably projected additional needs for periods not to exceed forty years. The bill additionally seeks to amend NMSA 1978, §§ 72-1-9, 72-1-10 and 72-6-3 to provide that a reasonable planning period shall not exceed 100 years.

FISCAL IMPLICATIONS

The Office of the State Engineer (OSE) indicates that an increase in recurring operating budget, for as many as 4 FTEs, appears reasonable due to the fact that OSE staff would evaluate every water development plan submitted with water rights applications; moreover, increasing the planning period to 100 years would effectively double the current work load of existing staff.

SIGNIFICANT ISSUES

The New Mexico Municipal League indicates that water needs are not limited to the potential needs of a community for a short period of time. While 40 years seems to be such a period, we need only look at the communities of Rio Rancho Los Lunas, Moriarty, Artesia and Roswell as examples of communities that have experienced rapid, unexpected growth within much shorter periods of time. A 100 year plan is not an unreasonable period to plan for based on the experience of the communities cited and the potential growth of New Mexico and its municipalities.

OSE advises that the bill raises a number of significant issues. First, New Mexico does not maintain an official legislative history or record of the laws enacted; nor does the Legislature, as a rule, include any statement within a statute to explain or provide the purpose, reason or basis for its action. The enactment of NMSA 1978, § 72-1-9 in 1985 is one of the few exceptions to the rule. The significance of the Legislature's statement, in paragraph (A), that the statute codifies existing State Engineer policy should be carefully considered before being removed. While the legislature's actions are presumed not to be arbitrary or capricious, they are susceptible to attack on that basis in the absence of an official history or record. Therefore, it must be inferred that the Legislature found it important to support its enactment of a 40-year water development planning period by including the historical precedent of State Engineer policy. Changing the period to 100 years and removing the basis the Legislature originally relied upon to support the reasonableness of a 40-year planning period is ill advised without a thorough analysis of the possible, but unintended, consequences.

Second, OSE indicates that the merits and benefits that may justify changing the planning period to 100 years must be weighed against the negative consequences of doing so identified in the analysis, if any.

Finally, OSE suggests that a 100-year planning period should consider the effects of:

- Providing a significant exception to the constitutional prior appropriation doctrine requiring beneficial use within a reasonable period of time.
- Limiting other uses and economic benefits the State will forgo by allowing water rights to go unused for extended time periods.
- Stressing a limited water right market with increased demands that will result in increased prices in the short term and reduced supply in the long term.
- Allowing entities to have 100-year plans when not typical for other types of planning infrastructure, for example. The basis for evaluating 100-year needs is unknown and will have to be established by the State Engineer.
- Inhibiting the development of new reuse technologies, conservation efforts, and other potential advances in technology.
- Whether it would provide any additional water security that doesn't already exist.

ADMINISTRATIVE IMPLICATIONS

OSE notes that, if enacted, State Engineer rules and regulations and administrative guidelines will have to be amended to be consistent. The application process is time consuming and new FTEs will be required to handle the increased workload attributable to the increased complexity of reviewing 100-year plans; otherwise, the length of time between the filing of and action on water rights applications will increase unacceptably. If this bill is enacted without new FTEs to handle the increased workload, it will negatively affect the OSE's ability to meet its required performance measures associated with processing water right applications.

OTHER SUBSTANTIVE ISSUES

The New Mexico Higher Education Department observes that legal time limits for planning are inconsistent among cities, counties, and the state causing problems in developing and processing water rights applications. Extending the state statute planning period up to 100 years would help to synchronize the system statewide.

OSE indicates that “it has been stated that this bill is necessary to meet subdivision regulations enacted by counties that have timing periods of greater than 40-years. It is noted that subdivision regulations are not speculative. Subdivision regulations require wet water availability analyses to ensure the subdivision will be able to meet its water quantity statements. These are for specific future demands. NMSA 1978, § 72-1-9 allows covered entities to hold water rights unused for a reasonable time period. The projections generally used for this are estimates of potential future growth.”

ALTERNATIVES

OSE suggests that it is possible for both scenarios described in the “OTHER SUBSTANTIVE ISSUES” section to be addressed, but it is more reasonable to provide for them with separate provisions. One for projected (estimated) water demands and another for commitments to provide water for approved subdivisions. There are many other issues related to water planning in the State of New Mexico that indicate the need for a comprehensive analysis of how the State should address long-term planning and water supply and demand before any radical amendments are considered. Further, that the State Engineer would support a Memorial directing that he undertake such an analysis and report with recommendations to the 2008 Legislature for its consideration.

DUPLICATION

Duplicates HB 551.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The New Mexico Municipal League suggests that not enacting this legislation will not give municipalities and counties the opportunity to adequately plan for potential growth of their community.

WEP/csd