



There is no appropriation attached to this legislation.

## **FISCAL IMPLICATIONS**

OAG notes that although the legislation does not contain any appropriations. Nonetheless, the local governmental entities that would be required to prepare water management plans pursuant to HB1234 will incur additional expenses if HB1234 is enacted. In addition, the State Engineer, who is required to review and approve these plans, will incur additional administrative expenses.

## **SIGNIFICANT ISSUES**

This FIR has been updated to reflect the comments of the Office of the State Engineer (OSE) and the American Planning Association (APA).

APA advises that the legislation simply outlines specific criteria that must be included in the water development plan. Additionally, the water development plan would need to be updated every three years, be approved by the appropriate governing body and be made available to the public. Further, that proposed criteria to be included in the water development plan include:

- An assessment of (1) existing water demand, including surface water diversions and groundwater depletions by category of use; (2) existing water supply, including point of diversion, purpose of use, place of use and priority of the rights; and (3) future water demands and needs for the forty-year planning period;
- A description of proposed management alternatives for balancing water demand and supply over the forty-year planning period; and
- An evaluation of the consistency of the water development plan with the regional water plan.

APA indicates that while there is no appropriation attached to this legislation, cities, counties and other entities are already required to prepare water development plans and the State Engineer is already charged with reviewing these plans. However, realistically, there should be funding earmarked for such planning to assist smaller communities and entities charged with preparing such plans. APA indicates a potential language correction to the bill which changes the word “management” to “development” throughout, so the names of the planning document are consistent.

APA concludes that the current statute requires modification because it does not:

- Outline useful and specific criteria which must be included in the plan, meaning these plans lack consistency. This bill would allow these plans to become more useful, effective planning documents. Additionally, given a lack of existing criteria set forth by the State Engineer to determine whether there is a “reasonable need,” this will create a practical way for the State Engineer to enforce this restriction;

- Require that these plans be adopted by the appropriate governing body, so that they can be more useful as on-the-ground planning documents used to drive local decisions; and
- Require that these plans be made public.

Further, that the effects of the legislation include: promoting long-term, local water planning; creating consistency and usefulness in planning documents; and developing a plan whereby New Mexico's water suppliers can balance water use with a renewable supply.

OSE suggests that this statute proposes to codify the process by which 40-year water development plans must be developed. The state engineer recognizes the importance of standardizing the 40-year development planning process. However, this is best done through either a rule promulgation process or development of a policy directive. Additionally, the proposed bill goes far beyond the statutory duties of the state engineer. Concepts related to land use planning; political feasibility; and social and cultural impacts (lines 16, 17, and 18 of page 5) go far beyond the current administrative considerations of the state engineer. OSE adds that it expends 2 FTEs on reviewing 40-year water development plans and, currently, a 40-year water development plan requires approximately 0.05 FTE for an unprotected application, .25 FTE for a protested application, and that the proposed criteria roughly double the necessary review times.

OAG notes that in *Colorado v. New Mexico*, 467 U.S. 310 (1984), the U.S. Supreme Court made it clear that, under the rules of equitable apportionment, a state must demonstrate a need for interstate waters or risk losing them to another state that can make such a demonstration. In 2003, the Legislature required the preparation of a state water plan. Section 72-14-3.1, NMSA 1978. One purpose of the state water plan was to protect New Mexico's apportionments in interstate waters from appropriation by other states. Similarly, the Legislature created the state's regional water planning program in 1987. Sixteen regional water plans have been developed to document the state's water planning for specific geographic regions of the state.<sup>2</sup>

OAG adds that the legislation would advance this important public purpose of planning for the state's future water needs by requiring planning at the local level, which would complement planning that has already occurred and is ongoing at the state and regional level. State law already prohibits local governmental entities from acquiring and holding water rights to meet future demand in an amount greater than the amount necessary to meet their reasonable needs within 40 years. However, without local water planning, there is no practical way for the state to enforce this restriction. HB1234 would require certain local governmental entities to submit water management plans.

NMHED indicates that the revisions concern water use planning and require that water management plans conform to specified criteria and be submitted to the State Engineer. Specific language details the content of water management plans dealing with issues of assessment, water depletion, points of diversion, water quality, future projections, conservation, proposed management alternatives, and other technicalities. The water plans would be made public. No water rights would be acquired until management plans were approved by the State Engineer.

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<sup>2</sup> [http://www.ose.state.nm.us/isc\\_regional\\_plans.html](http://www.ose.state.nm.us/isc_regional_plans.html)

NMHED concludes that this act focuses on the mention of state universities in the act. The state promotes the conservation of water by state universities among other municipalities and entities. New Mexico State University is the largest holder of water rights among postsecondary institutions. The language "state university" in the water law statute begs the question of whether or not all postsecondary institutions are included in the planning processes for their future water use. Further, NMHED recommends that the State Engineer's Office review the list of required entities that are allowed to acquire and hold unused water rights to ensure that the growing needs of all postsecondary campus communities are taken into consideration

### **ADMINISTRATIVE IMPLICATIONS**

NMHED notes that the requested water management plan would help to synchronize the system statewide. New Mexico's state universities would be responsible for submitting required plans to ensure maintenance of water rights and usage to meet the demands of the campus communities.

NMDA suggests that there would not be any administrative implications to NMDA, but all entities required to produce water management plans would encounter administrative costs, while the state engineer will have to administer a program to evaluate plans and enforce the legislation.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HB1234.

### **TECHNICAL ISSUES**

OAG suggests that, although the Interstate Stream Commission has been extensively involved in state and regional water planning activities, it is not given any explicit review or approval authority in HB1234. The Interstate Stream Commission is administrative attached to and works closely with the State Engineer, who is given approval authority over local water management plans in HB1234. It may be beneficial for the State Engineer to involve the Interstate Stream Commission at some level during his review and approval process for local water management plans. This could be addressed in the rules that the State Engineer is required to promulgate in the proposed subsection 72-1-9(E).

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

OAG states, "Continuation of the status quo, which could include challenges by other states to New Mexico's appropriations of interstate waters."

BFW/csd