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FISCAL IMPACT REPORT

SPONSOR HENRC ORIGINAL DATE 3/17/17 CS/CS/418/HAWCS/
 LAST UPDATED _____ HB HENRCS

SHORT TITLE Inter-Basin Water Right Transfer Requirements SB _____

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			See narrative		Recurring	OSE operating budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From

Office of the State Engineer (OSE)

Response Not Received From

Office of the Attorney General (OAG)

SUMMARY

Synopsis of Substitute Bill

The House Energy, Environment and Natural Resources Committee Substitute for House Bill 418 (HB418) requires persons intending to transfer groundwater to a location outside of the water's "area of origin" to file an application with OSE. The bill also requires OSE to consider additional factors in review of applications to transport groundwater from one basin to another, including:

1. whether the transfer is in compliance with the regional water plans for the move-from and move-to basins;
2. whether the source of supply can reliably sustain the proposed diversion and whether the proposed depletion to the aquifer will exceed the recharge rate;
3. whether the county commissioners or any acequia or community ditch in the move-from basin have adopted a resolution opposing the application;
4. the amount of potable water available for future appropriation in the move-from basin; and
5. the availability of alternative sources of supply for the proposed use.

The bill exempts applications for less than 500 acre-feet of water per year, inter-basin diversion projects authorized and approved which began construction before July 2017, temporary transfers no longer than two years, and applications from municipalities that have historically transported water between the area of origin and the proposed receiving area.

FISCAL IMPLICATIONS

Previous versions of the bill required OSE to conduct studies to obtain the information necessary to review the additional factors at the applicant's expense. However, the HENRC substitute does not require studies or an applicant to cover the associated costs. HB418 does not include funding to support these studies, so OSE would be forced to absorb any additional costs of considering the factors included in the bill. The bill requires the state engineer to consider the factors and does not mandate studies to satisfy the required consideration, so OSE could make these determinations based on available information and existing resources.

SIGNIFICANT ISSUES

Current statute requires the state engineer to make a determination based on the availability of water, potential impairment or detriment to existing water rights, conservation of water, and the public welfare.

According to OSE analysis, the factors listed in HB418 can already be considered by the state engineer and are presented as evidence in the event of an administrative hearing. The factors in HB418 are intended to protect interests of the move-from basin and do not address the interests in the move-to basin. Existing law, however, requires the state engineer to consider whether granting the application will be contrary to the conservation of water within the state and is not detrimental to the public welfare of the state. HB418 could be interpreted to elevate the interests of the move-from basin over those of the move-to basin, or the interest of the state.

The agency's analysis also notes that the bill requires the state engineer to consider "whether the source of supply can reliably sustain the diversion's anticipated firm yield and whether the diversion will exceed the recharge rate of the aquifer in the area of origin." While HB418 only requires the state engineer to consider this factor, it could be interpreted to set a new standard for the acceptable level of regional drawdown in an aquifer caused by a new appropriation. HB418 appears to limit the diversions to only that amount that is recharged in the area of origin. This is contrary to the state engineer's administration of regional drawdown in mined aquifers. Mined aquifers are those where diversions outpace recharge, often where no measurable recharge occurs. For over 50 years the state engineer has administered mined aquifers to sustain an economic life of 40 years. This practice has repeatedly been confirmed by the courts. In aquifers that do not have meaningful recharge, the proposed approach would mean that no one could have a new diversion from the aquifer.

TECHNICAL ISSUES

OSE analysis provides that the definition of "area of origin" is vague and likely would conflict with how groundwater basins are declared because they have reasonably ascertainable boundaries. HB418 could be construed to mean the state engineer's declared groundwater basins are not based upon reasonably ascertainable boundaries.