

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Salazar, T/Sen Wirth ORIGINAL DATE 2/01/19
LAST UPDATED _____ HB 186

SHORT TITLE Regional Water Planning Act SB _____

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	\$10,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Indian Affairs Department (IAD)
Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)
Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 186 (HB 186) adds to the general powers of the Interstate Stream Commission (ISC) the authority to negotiate the terms of federal legislation or water sharing agreements to settle interstate controversies; plan and implement federal programs related to the conservation or protection of water supplies and the flows of interstate streams; quantify surface and ground water supplies; conduct state and regional water planning activities; improve data and models used in developing water plans; and reflect on and address successes or failures of implementation plans.

The bill also adds goals and provides for consultation with governments of Indian nations, tribes and pueblos to integrate tribal water plans into the state water plan; settle all tribal water rights claims; and comply with interstate stream compacts that affect Indian nations, tribes and pueblos.

Finally, the bill enacts the Regional Water Planning Act that requires ISC to provide professional and financial support to assist individual regions with planning future water use; develop a regional water planning program; solicit proposals from water planning entities to receive state

funding to address water resource issues; and convene a diverse “water planning advisory committee.” The bill makes an appropriation to ISC in FY20 through FY24 for state and regional water planning.

FISCAL IMPLICATIONS

The appropriation of \$10 million contained in this bill is a recurring expense to the general fund, as it may be expended across fiscal years for state and regional water planning. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund.

FISCAL IMPLICATIONS

OSE reported \$10 million is not sufficient to cover the additional operating budget impact as it would require additional technical staff, water planners, clerical staff, and contracts administration staff to identify new data models and conduct projects and manage and report on the work efforts.

SIGNIFICANT ISSUES

NMAG noted the bill removes most of the guidance for the ISC’s authority to appropriate groundwater or buy water rights. A new section is added to create a regional water planning program for developing water plans, making ISC the coordinating agency. Requirements for how the commission handles the planning regions and sub-regions are included and very detailed.

OSE said adding “and aquifers” on page 2, line 3 would be a significant change from existing law as the bill would require ISC to negotiate agreements with other states for division of groundwater. Additionally, page 1, line 24 strikes “with other states” following “compacts.” This could be interpreted as authority to negotiate compacts not just with neighboring states, but with other entities such as Indian Tribes, Nations and Pueblos. Under existing law, NMAG has authority to settle water rights claims in litigation, including water rights claims in stream system adjudications, and the judiciary has authority to determine water rights claims in those adjudications.

OSE also noted the bill requires ISC to manage water at the regional scale which could reduce the authority of regional water planning entities to plan for their own water future and of associated political subdivisions of the state to implement regional plan projects. Further, the bill may complicate integrating approved regional water plans into the state water plan, as it does not require regional entities to use the same methodologies to produce a plan or work on the same schedule.

PERFORMANCE IMPLICATIONS

OSE was concerned the bill adds certain powers to the ISC some of which could be interpreted to impose a mandate on ISC that could lead to conflict with the State Engineer, who by law has authority over the measurement, appropriation, and distribution of the waters of the State.

IAD noted the State-Tribal Collaboration Act, in Section VII.C. Limitations, states the “The Policy shall not be construed to waive the sovereign immunity of the State of New Mexico or a Tribal Government, or to create a right of action by or against the State of New Mexico or Tribal

Government or its officials for failure to comply with this Policy.” HB186 states on page 9, Section 2.D line 12, “The interstate stream commission and the office of the state engineer in accordance with the State-Tribal Collaboration Act shall consult directly with the governments of Indian nations, tribes and pueblos to formulate a statement of policy and process to guide...”. Thus, STCA does not legally require the state to consultation compliance, but HB 186 states ISC shall consult.

ADMINISTRATIVE IMPLICATIONS

The bill requires compliance with the Open Meetings Act for all meetings regarding water plans which would be costly and administratively cumbersome, OSE believes. Further, the Water Planning Program already conducts public meetings and makes meeting notes available.

RELATIONSHIP

SB 5 changing ISC membership to include NTP; HB175 Regional Water Utility Authority Act; HB187 Water Law Evaluation and Review; HB174 Rio Grande Water Management and Planning.

SUBSTANTIVE ISSUES

IAD noted that the importance of effective communication, collaboration and consultation with New Mexico Nations, Tribes and Pueblos (NTP) within the framework of regional water planning cannot be overstated. The NTP are effective scientific managers of their own natural resources in traditional and culturally appropriate methods. Several NTP have established water quality standards enforced through the EPA that require base flows of water in the NTPs’ water ways.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSE said ongoing efforts to improve the water planning process will continue.

AHO/sb/gb