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FISCAL IMPACT REPORT

SPONSOR Lente ORIGINAL DATE 2/12/21
LAST UPDATED _____ HB 197
SHORT TITLE State Engineer Decision Appeal Leal Costs SB _____
ANALYST Wan

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	At least (\$64.0)	At least (\$64.0)	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 197 would amend Section 72-7-1 NMSA 1978 to prohibit a district court from ordering the State Engineer to pay the litigation costs of other parties in appeals of State Engineer administrative decisions.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The Office of the State Engineer (OSE) reported HB197 would have no fiscal impact on the agency. However, without this legislation, a district court may order the State Engineer to pay the litigation costs of other parties in appeals of State Engineer decisions. There have been two instances in the past four years in which a district court entered a cost award against the State Engineer (the first, in 2016, was for \$65 thousand and the second, in 2020 and which is now on appeal, was for \$400 thousand). Therefore, LFC's analysis is that enactment of HB197 would reduce potential expenditures associated with similar court decisions that may occur in the future. Based on the first cost award against the State Engineer, LFC estimates this bill could reduce OSE operating expenditures by at least \$64 thousand, but exact annual savings would depend on judicial interpretations and the litigation costs of each appeal.

SIGNIFICANT ISSUES

Analysis from OSE explains that HB197 would address two recent judicial interpretations of a provision within the water code that ordered the State Engineer, for the first time in a century, to pay the litigation costs of parties appealing State Engineer decisions. According to the agency, this interpretation of statute “threaten[s] to undermine the State Engineer’s ability to fully exercise his supervisory authority over the State’s waters and provide his technical expertise to the courts” because the risk of having cost awards assessed in appeals could influence decision making that should be based on data and administrative analysis.

HB197 would prohibit a district court from assessing costs against the State Engineer in appeals of administrative decisions, returning to the long-standing practice that had been in place before the 2016 decision.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSE is concerned that if a district court’s ability to assess cost awards against the State Engineer is not addressed in the way proposed by HB197, cost claims against the State Engineer will become a standard part of appeals from agency decisions. According to OSE, “Litigation over these appeals will become more drawn out, the State Engineer’s available resources for appeals will become more strained, and those cost awards assessed against the State Engineer that are upheld on appeal will directly impair the State Engineer’s ability to carry out his duties.”

CW/al/rl