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FISCAL IMPACT REPORT

SPONSOR Romero, A LAST UPDATED _____
ORIGINAL DATE 02/21/2023
SHORT TITLE State Engineer Qualifications BILL NUMBER House Bill 489
ANALYST Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 499

Sources of Information

LFC Files

Responses Received From
Office of the State Engineer (OSE)

SUMMARY

Synopsis of House Bill 489

House Bill 489 (HB489) proposes to amend Section 72-2-1 NMSA 1978, to change the qualifications of the State Engineer. Under the current statute, the State Engineer must be a “technically qualified and registered professional engineer under the Engineering and Land Surveying Practice Act.” The changes proposed in HB489 would also allow the State Engineer to be a “qualified and appropriately credentialed hydrologist, geohydrologist, geologist, environmental scientist, or attorney with at least 10 years of experience.” HB489 also proposes to make some minor changes to the language of Section 72-2-1 to make the statute gender-neutral.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023 (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Analysis from the Office of the State Engineer indicated that enactment of House Bill 489 would have no fiscal implications for the agency.

SIGNIFICANT ISSUES

House Bill 489 would change the statutory requirements for a cabinet-level position to include water resource professionals who are not registered professional engineers. The most significant impact this bill would have is to expand the pool of candidates eligible to lead in the Office of the State Engineer.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 499 (HB499) also proposes to amend Section 72-2-1, NMSA 1978. Although the changes proposed in HB499 would maintain the current qualifications for candidates to serve as the State Engineer, the differences would need to be reconciled if both bills were adopted.

ALTERNATIVES

Analysis from the Office of the State Engineer included an explanation of changes to the Engineering and Surveying Practice Act (Section 61-23-2, NMSA 1978), which the agency felt might be necessary to ensure a person serving as the State Engineer, who was not a licensed professional engineer, could not be found in violation of that state statute:

Under the Engineering and Surveying Practice Act (E&SPA), §§ 61-23-1 through -36, “any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that [s/]he is qualified to so practice and shall be licensed as provided in the [E&SPA].” Id. It goes on to state that “[n]o person except a licensed professional engineer shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that includes the performance or responsible charge of engineering work.” § 61-23-27.

Holding the office of “State Engineer” could be interpreted as either “practicing or offering to practice engineering.” If the office holder is not a licensed professional engineer, then that person could be in violation of the E&SPA.

Therefore, an amendment may be appropriate to clarify that, if the person holding the office of State Engineer is not a licensed professional engineer, that person is not subject to the provisions of the E&SPA.

In the alternative, the position of “State Engineer” could be changed to a different title, such as “Director” or “Secretary,” to avoid any confusion about whether the individual in the position is holding himself or herself out to be an engineer.

Further, there are some duties performed by the office of the state engineer, such as inspecting and irrigation works, that require engineering certification; an amendment could clarify that those duties shall be performed by a licensed professional engineer within the Office of the State Engineer, so as to make clear that the agency head does not need the professional certification.