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## FISCAL IMPACT REPORT

01/25/13  
**ORIGINAL DATE** 02/24/13  
**LAST UPDATED** 03/07/13    **HB** 201/HAGCS/aHJC

**SPONSOR**    HAGC

**SHORT TITLE**    State Engineer Appeals to District Court    **SB** \_\_\_\_\_

**ANALYST**    Weber/Chabot

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General Office (AGO)  
Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to the House Agriculture and Water Resources Committee Substitute for House Bill 201 deletes the changes in Section 72-2-16 B which leaves the subsection as currently found in statute. In subsection B(2) the phrase “whose application has not been protested” is inserted to the beginning of B(2) which would allow any person aggrieved by a State Engineer decision and whose application has not been protested may request an appeal of that decision.

#### Synopsis of Bill

HB 201 amends Section 72-2-16 NMSA 1978 to provide that an applicant, on an application that has not been protested, may request the state engineer authorize an appeal of the state engineer’s decision, act or refusal to act directly to the district court. If the state engineer determines that an immediate appeal to district court (rather than a hearing by the state engineer) would materially advance the ultimate termination of the proceeding, the state engineer shall state so in a written order specifying the issue or issues to be addressed on appeal to the district court. The applicant shall then take the appeal to the district court pursuant to Section 72-7-1 NMSA 1978. If the state engineer does not authorize a direct appeal, the matter shall be set for hearing.

The bill further clarifies that an order by the state engineer to hold a hearing, refer the matter to mediation or alternative dispute resolution or the state engineer's decision not to authorize a direct appeal to district court shall not constitute a decision for which the applicant may request a direct appeal to district court.

### **FISCAL IMPLICATIONS**

No fiscal implications identified.

### **SIGNIFICANT ISSUES**

OSE notes:

The bill allows aggrieved applicants for water permits to request, if the SE under certain circumstances agrees, to appeal an initial SE decision directly to the district court without first having an administrative hearing before the SE. The act does not apply to protested applications which remain subject to Section 72-2-16 administrative hearing requirements before an appeal is allowed. Both instances allow for the SE to exercise his expertise to address applications and protests and a thorough administrative record to be developed for *de novo* review in a district court appeal of a final SE decision. The courts have long recognized that the SE "has far greater expertise in the resolution of issues of fact arising in connection with the administration of our water laws than do most, if not all, of our judges...." *Fort Sumner Irrig. Dist. v. Carlsbad Irrig. Dist.*, 87 N.M. 149, 152, 530 P.2d 943, 946 (1974).

The law governing the administrative hearing process required for water permit applications that are protested by other water right owners would not be changed by the committee substitute for HB 201. Such protested applications would still be required to go through the SE administrative hearing process before an appeal to district court.

MW:GC/blm