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FISCAL IMPACT REPORT

SPONSOR: Stell DATE TYPED: 03/18/03 HB 544/aHBIC/aHJC/aHAFC

SHORT TITLE: Water Well Drillers Licensing Act SB _____

ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$150.0	Non-Recurring	General Fund
			\$.01 (See Narrative)	Recurring	Water Well Drillers Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$.01 (see Narrative)	\$.01 (see Narrative)	Recurring	Water Well Drillers Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 New Mexico Environment Department (NMED)
 Office of the State Engineer (OSE)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriation and Finance Committee amendment to House Bill 544 strikes the appropriation of \$150.0 for implementing the provisions of the act. OSE stated it would need 2 FTE to carry out the responsibilities outlined. OSE would have to use personnel in the Water Resource Allocation Program until sufficient revenue is deposited in the fund to establish a funding source for the management of the water well drillers licensing activities.

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 544 amends the definition of “water well” to exclude wells associated with oil and gas operations that are subject to regulation by the oil and gas conservation division of EMNRD. It requires a well driller to disclose to the client and State Engineer any adverse conditions about the quantity and quality of ground water in the area of a prospective well and Section 72-12-15. “UNAUTHORIZED DRILLING—RELIEF” shall not affect the existing right of a court of equity in the exercise of its general equity powers to grant relief to the state by injunction or otherwise.

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 544 strikes applicability to injection wells and adds wells associated with aquifer storage or return flow credits. In addition, it strikes the installation of a pump on water wells.

Synopsis of Original Bill

House Bill 544 appropriates \$150.0 from the general fund to OSE for the purpose of carrying out the provisions of the Water Well Drillers Licensing Act. The act requires that all water wells must be drilled by a licensed water well driller meeting specific requirements stated in the act. The State Engineer is executive agent for developing license requirements, conducting examinations, requiring continued proficiency and establishing ethical standards for licensure. The bill specifies general requirements for age, filing fees and renewal requirements. Issuance of a license shall require the posting of a \$25,000 bond. Provisions for denial, suspension or revocation are established. The bill proposes fines for individuals fraudulently representing themselves as licensed well drillers.

House Bill 544 creates the Water Well Drillers Fund into which license and examination fees will be deposited. Application fees are set at \$25.00 and license fees at a maximum of \$400.0 as determined by the State Engineer. The fund is to be self-sustaining to meet expenses without additional general fund. All money in the fund is appropriated to the State Engineer to carry out the provisions of the Water Well Drillers Licensing Act.

Significant Issues

RLD states that this bill would create concurrent or dual jurisdiction on drilling groundwater wells with the Construction Industries Division (CID) who is responsible for licensing the installation of the electric pumps. CID has taken the position, under the Construction Industries Li-

censing Act, that installation and electrical service to the pump on any well must be performed by a technician with an electrical contractor's license as well as an electrical journeyman certification. These licenses are issued by CID.

EMNRD states the inclusion of "injection wells" and "monitoring wells" under the definition of a water well (page 1, lines 23-24) creates possible conflicts with existing jurisdiction and responsibilities of other agencies. Section 70-2-12.B(14) gives jurisdiction for injecting natural gas or any other substances for purposes of repressuring, cycling, pressure maintenance or secondary or enhanced recovery of oil or natural gas to the Oil Conservation Division (OCD) of EMNRD. In addition, injection wells are part of discharge plans regulated by OCD and fall under the provisions of the Water Quality Control Act.

OSE states that the bill provides for more stringent requirements for obtaining a license to become a well driller than currently exist. The agency estimates 2 FTE would be required to administer the program. OSE may revise the Rules and Regulations Governing Drilling of Wells and Appropriation and Use of Ground Water in New Mexico to incorporate the requirements of this bill.

FISCAL IMPLICATIONS

The appropriation of \$150.0 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriation from that fund to the State Engineer. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

TECHNICAL ISSUES

The definition of "water well" on page 1, line 23 should be clearly defined.

OSE states it is unclear as from whom or how the civil penalty in Section 5 D will be collected. The agency recommends that the following be added to the end of the sentence on page 4, line 10: "against a person who drills a well in violation of the provisions of the Water Well Drillers Licensing Act."

Page 8, line 6, strike "wise" and insert "way".

NMED recommends a section covering Public Water Supply Wells stating that all plans and specifications should be reviewed by the New Mexico Environment Department as cited under Sections 20.7.7.10.200 and 20.7.10.201 NMAC of the Drinking Water Regulations as revised December 4, 2002.

NMED also recommends small monitoring wells not be covered by the exemption in Section 3 C.

POSSIBLE QUESTIONS

1. Is there to be separate certification on well drillers by OSE and electricians by CID?
2. Can the State Engineer levy the collection specified in Section 5 D or does it need to be assessed in district court?

GAC/prr:njw