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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Cervantes LAST UPDATED _____ HB _____

SHORT TITLE State Engineer Jurisdiction Over Dams SB 1090

ANALYST Woods

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB978

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 1090 seeks to amend § 72-5-32 NMSA 1978 to provide for the safe operations of dams, by requiring the submission of detailed plans for both the design and operations of the dam. State Engineer approval of construction of a dam is contingent upon him finding that the planned design and operation of the dam is safe. The bill would also update § 72-5-32 to provide for flood and erosion control dams, which do not impound water for longer than 96 hours and there will be no beneficial use of the water. The bill specifically provides that either detailed plans or a notice of intent be submitted to the state engineer by persons intending to construct and operate flood and erosion control dams depending on the amount of water that the proposed dam would impound, in lieu of an application to appropriate water.

There is no appropriation attached to this legislation.

SIGNIFICANT ISSUES:

As background, OSE notes that the bill recognizes the importance of evaluating the safe operation of a proposed dam before the state engineer approves construction. Specifically requiring that the safe operation of the dam being considered is consistent with the state engineer's authority under § 72-5-11 NMSA 1978 to take action to protect life and property from an unsafe water storage structure. Since 1976 the state engineer has waived the requirement for owners of flood or erosion control dams from making an application for an appropriation and use of water if the dam stores water for less than 96 hours and water is not put to beneficial use. This waiver provision is included in the OSE Rules and Regulations for Dams. Currently, Section 72-5-32, NMSA 1978 requires all owners to make an application for an appropriation of water and does not recognize the exemption provided for flood and erosion control dams. The bill recognizes that flood and erosion control dams that impound water for short durations should not be required to apply for an appropriation of water where none will be placed to beneficial use.

OSE adds that the bill also provides a streamlined process by providing for the filing of a notice of intent for small flood and erosion control dams to allow the state engineer to have a record that construction was not for the purpose of appropriating and beneficially using water. Further, it recognizes the state engineer should have the final authority to determine height, storage and impoundment duration.

EMNRD indicates that the legislation changes the State Engineer's authority over dams to now allow, without State Engineer approval, flood and erosion control dams, regardless of size, to impact water for up to 96 hours. While the bill continues the exemption from State Engineer approval of dams holding no more than ten acre feet, it eliminates the ten foot height requirement, which would now allow taller dams. For such dams, the bill eliminates the prohibition of establishing such dams for recreation, aesthetic purposes or fishing and would allow such uses without State Engineer review and approval.

ADMINISTRATIVE IMPLICATIONS:

OSE anticipates minimal implications for staff to field check small flood and erosion control dams per notice of intent filings.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

OSE notes that SB1090 is a duplicate of HB978.

OTHER SUBSTANTIVE ISSUES:

OSE indicates that Subsection B does not recognize that impoundment duration longer than 96 hours may be required, whereas, OSE Rules and Regulations for Dams allow the state engineer to evaluate the consequences of longer impoundment and grant a waiver if appropriate.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSE advises that the state engineer's practice of excepting owners of flood and erosion control dams that impound more than 10 acre-feet of water from making an application for the appropriation and use of water. In addition, § 72-5-32 will not include express language

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directing the state engineer to evaluate operation of the dam when evaluating safety issues.

AMENDMENTS:

OSE suggests the following language: Page 2, Line 17 after “hours” insert “unless specifically authorized by the state engineer”

BFW/csd