

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Pirtle</u> <b>SHORT TITLE</b> <u>Retention of Water Rights Original Documents</u>	<b>LAST UPDATED</b> <u>03/01/2023</u> <b>ORIGINAL DATE</b> <u>02/09/2023</u> <b>BILL NUMBER</b> <u>Senate Bill 222/aSJC</u>  <b>ANALYST</b> <u>Sanchez</u>
--	--

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

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Equipment</b>	\$18.0	No fiscal impact	No fiscal impact	\$18.0	Nonrecurring	OSE Operating Budget
<b>File Transportation Costs</b>	\$250.0	No fiscal impact	No fiscal impact	\$250.0	Nonrecurring	OSE Operating Budget
<b>District 2 Staff (3 FTE)</b>	\$345.0	\$345.0	\$345.0	\$1,035.0	Recurring	OSE Operating Budget
<b>District 5 Staff (3 FTE)</b>	\$345.0	\$345.0	\$345.0	\$1,035.0	Recurring	OSE Operating Budget
<b>District 7 Staff (2 FTE)</b>	\$230.0	\$230.0	\$230.0	\$690.0	Recurring	OSE Operating Budget
<b>Storage Space in each District</b>	\$253.2	\$253.2	\$253.2	\$759.6	Recurring	OSE Operating Budget
<b>Total</b>	<b>\$1,441.2</b>	<b>\$1,173.2</b>	<b>\$1,173.2</b>	<b>\$3,787.6</b>		<b>OSE Operating Budget</b>

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

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

## SUMMARY

### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 222 strikes the words “at all times” from the section proposing that water rights documents be kept in the water district in which they were originally filed. The amendment also adds language specifying that documents may be temporarily removed from their districts of origin to carry out the purposes of the Water Data Act. While these amendments address some of the concerns expressed by the Office of the State Engineer regarding the agency’s ability to carry out duties related to the Water Data Act, they do

not solve the issue of moving and storage of the files. The proposed amendments would not prevent the costs described in the fiscal implications section of the original analysis from falling on the agency.

## Synopsis of Original Bill

Senate Bill 222 proposes amending Section 72-4B-1 NMSA 1978 (the Water Data Act) to add a new section requiring original documents relating to water rights and water data to remain at all times in the water district where they were originally filed.

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

The Office of the State Engineer's (OSE) analysis described the recurring and nonrecurring costs the agency would incur to adhere to this bill's requirements as follows:

- (1) Purchase of at least two scanning stations (\$7,500/commercial scanner, \$ 1,500/computer and monitor, bar code reader) - \$ 18,000 (assuming Albuquerque scanners redistributed)
- (2) Need 3 FTE for abstracting/imaging/archiving in District 2 (Roswell) @ \$100,000 salary/benefits/employee plus \$15,000/employee operating cost - \$300,000/year salary and benefits + \$45,000/year operating costs
- (3) Need 3 FTE for abstracting/imaging/archiving in District 6 (Santa Fe) - \$300,000/year salary and benefits + \$45,000/year operating costs
- (4) Need 2 FTE for abstracting/imaging/archiving in District 7 (Cimarron) - \$200,000/year salary and benefits + \$30,000/year operating costs
- (5) Vendor with seven (7) moving vans to transport files from Albuquerque and Santa Fe to Districts 1, 2, 3, 4, 5, 6, and 7. - \$50,000
- (6) Space increase in each district (purchase). 7 districts x 300 ft<sup>2</sup>/district x \$120.61/ft<sup>2</sup> = \$253,281 (price source: [www.commercialcafe.com](http://www.commercialcafe.com))

OSE's analysis estimates total first-year costs to be approximately \$1.4 million and subsequent recurring costs to be approximately \$1.2 million annually.

## SIGNIFICANT ISSUES

Under the current system, OSE staff transport files to Albuquerque for abstraction and imaging into the Water Administration Technical Engineering Resource System (WATERS). Additionally, records belonging to the New Mexico Institute of Mining and Technology's Bureau of Geology, Interstate Stream Commission, Office of the State Engineer, Department of Environment, and the Energy, Minerals and Natural Resources Department are all currently held in OSE offices or the state archive in either Albuquerque or Santa Fe.

Senate Bill 222 would require OSE to move all originals from Albuquerque, Santa Fe, and the state archive in Santa Fe to the appropriate districts throughout the state, which would require additional office space for storage at the districts. Currently, districts are distributed as follows: District 1 (Albuquerque), District 2 (Roswell), District 3 (Deming), District 4 (Las Cruces), District 5 (Aztec, District 6 (Santa Fe), and District 7 (Cimarron). According to OSE's analysis:

The current practice of transporting files to Albuquerque for abstracting and imaging into the State Engineer’s online database would cease, and the speed at which files are made available online would be greatly reduced. The public would be required to travel to the appropriate district office to view water rights files that are not online.

OSE’s analysis points out Senate Bill 222 conflicts with the goals set forth in the Water Data Act (Section 72-4B, NMSA 1978), which requires state agencies to “collect, organize, integrate, distribute and archive water data that at a minimum ... integrate water data managed by state and local entities using consistent and standardized formats” (Section 72-4B-2) and “develop an integrated water data and information platform” and (Section 72-4B-3).

## **PERFORMANCE IMPLICATIONS**

One of the performance measures for the Water Resource Allocation Program is “the number of transactions entered abstracted annually into the water administration technical engineering resource system database.” Most of the work done to meet this performance measure is completed at the OSE office in Albuquerque. Senate Bill 222’s requirement that records be housed in the district in which they were originally filed would likely reduce the speed and efficiency of this program and hinder its ability to meet this performance goal.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 222, if enacted, would conflict with the purpose of Section 72-4B NMSA 1978 as described above.

## **OTHER SUBSTANTIVE ISSUES**

Analysis from the Office of the State Engineer states:

The State Engineer and his staff are working with the Pecos Valley Artesian Conservancy District on a plan to copy and image the original files in the Roswell District Office before they are transported to Albuquerque for abstracting and entering of the data into the WATERS Database. This should reduce or eliminate concerns in the Roswell area about original files being moved outside the district. The State Engineer has also agreed to permanently house the original records in Roswell upon completion of the abstracting process.

Analysis from the Office of the Attorney General states:

A water user who decides to file a declaration for a water right may record a copy of the declaration in the county where the water works are located. 19.26.2.8 NMAC. Copies of water right deeds/transfers of ownership are to be filed with the state engineer and with the county clerk where the water right is located. 19.26.2.17 NMAC.

In short, watersheds are not drawn along county lines, and there may be instances where the County Clerk’s office is not located within the same watershed, so in some instances this statute may be in conflict with current regulations or may create confusion as to where the original copy is to be kept. All state engineer administrative hearings are to be held in Santa Fe, NM. 19.25.2.21 NMAC. So, if originals are required for a hearing in Santa, Fe there may be some conflict with SB222.