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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/11

SPONSOR Madalena LAST UPDATED \_\_\_\_\_ HB 515

SHORT TITLE Severance Taxes for Indian Water Settlements SB \_\_\_\_\_

ANALYST Burrows

### Revenue (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$14,900.0	\$14,600.0	Recurring	Indian Water Rights Settlements

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicate to SB376/SIACS

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)

Attorney General's Office (AGO)

#### Responses Not Received From

Department of Finance and Administration (DFA)

Indian Affairs Department (IAD)

### SUMMARY

#### Synopsis of Bill

House Bill 515 amends the severance tax bonding act to temporarily allocate 6 percent of annual senior severance tax bonding capacity to fund the state's share of Indian water rights settlements authorized by federal law. The bonds would be issued in the same manner and be subject to the same restrictions as other severance tax bonds. The distribution would be in effect from FY12 through FY21. Any remaining funds following the final disbursement from the water rights settlement fund would revert to the severance tax bonding fund.

The effective date of the provisions of this bill is July 1, 2011.

**FISCAL IMPLICATIONS**

The impact is calculated from the consensus severance tax bond capacity estimate for FY11. The figure below illustrates the distribution allocation under current law and under Senate House Bill 515. The distribution will decrease the net senior severance tax bond capacity by 6 percent each year.

<b>Consensus Estimate</b>	<b>Current Law</b>		<b>SB376</b>	
	<b>FY12</b>	<b>FY13</b>	<b>FY12</b>	<b>FY13</b>
Senior Long-Term Issuance	\$180.5	\$180.5	\$180.5	\$180.5
Senior Sponge Issuance	\$67.3	\$63.2	\$67.3	\$63.2
<b>Senior STB Capacity</b>	<b>\$247.8</b>	<b>\$243.7</b>	<b>\$247.8</b>	<b>\$243.7</b>
Authorized Unissued	\$0.0	\$0.0	\$0.0	\$0.0
Water Project Fund	\$24.8	\$24.4	\$24.8	\$24.4
Colonias Infrastructure Project Fund	\$12.4	\$12.2	\$12.4	\$12.2
Tribal Infrastructure Fund	\$12.4	\$12.2	\$12.4	\$12.2
Indian Water Rights Settlements	\$0.0	\$0.0	\$14.9	\$14.6
<b>Net Senior STB Capacity</b>	<b>\$198.2</b>	<b>\$195.0</b>	<b>\$183.4</b>	<b>\$180.3</b>

The amount of each annual distribution to the water rights settlement fund will depend on the STB capacity for that year, which is itself a function of severance tax revenue. If the revenue source should decline due to decreased oil and gas prices or volumes, the amount of the distribution to the water rights settlement fund might also decrease. Likewise, increases in severance tax revenue could lead to larger distributions.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

**SIGNIFICANT ISSUES**

The settlements were enacted by the U.S. Congress pursuant to the Claims Resolution Act of 2010 and the Omnibus Public Law Management Act of 2009. The Aamodt settlement provides for the construction of a regional water system to serve the Pueblos of Tesuque, Nambe, Pojoaque, and San Ildefonso as well as surrounding communities in northern New Mexico, with a non-federal cost share of 40 percent. The Taos settlement solidifies and makes permanent water-sharing arrangements between the Pueblo of Taos and neighboring communities. The settlement also protects and restores the Pueblo of Taos’s Buffalo Pasture, a culturally sensitive and sacred wetland. In each of these settlements, the tribes have agreed to forego litigating their assertion of water rights in exchange for infrastructure funding.

According to the OSE, Congress has authorized \$1.16 billion, has appropriated \$327.8 million, and has budget requests for an additional \$150.5 million for the Aamodt, Taos, and Navajo Nation water rights settlements, subject to the state share of \$130 million. This is approximately a 9-1 leveraging of funds appropriated in this bill.

**DUPLICATE**

Senate Bill 376/SIACS duplicates House Bill 515.

**OTHER SUBSTANTIVE ISSUES**

According to the OSE, these infrastructure projects will create jobs, generate gross receipts revenue, and benefit neighboring communities as well as the tribe. Moreover, failure to enact this bill puts at risk the settlements, the water rights adjudications, the federal funding, and the infrastructure improvements authorized through the settlements.

**AMENDMENTS**

OSE suggests the following amendments:

On page 2, line 21: strike “sector” and substitute “section.”

On page 2, line 24: strike “money” and substitute “monies.”

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Indian water rights settlement fund will not receive a distribution of 6 percent of the severance tax bonding fund. Other revenue sources will need to be identified to fulfill the settlement agreement authorized by federal law.

LKB/svb