

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

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/11

SPONSOR SIAC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE State's Share of Water Rights Settlements SB 376/SIACS

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 HB 515

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Indian Affairs Department (IAD)  
Office of the State Engineer (OSE)  
Attorney General's Office (AGO)

#### Responses Not Received From

Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of Bill

Senate Indian & Cultural Affairs Substitute for Senate Bill 376 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 Bill 376/SIACS. 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**

House Bill 515 duplicates Senate Bill 376/SIACS.

**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.

The IAD reports that Senate Bill 376/SIACS provides a means for the state to pay its share of the costs required through the water rights settlements.

**AMENDMENTS**

OSE suggests the following amendment to 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/mew