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FISCAL IMPACT REPORT

SPONSOR Sedillo Lopez **ORIGINAL DATE** 03/06/19
LAST UPDATED 03/07/19 **HB** _____

SHORT TITLE Interstate Stream Commission Water Planning **SB** 560

ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	\$10,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Land Office (SLO)

New Mexico Attorney General (NMAG)

No Response Received From

Office of the State Engineer

SUMMARY

Synopsis of Bill

Senate Bill 560 appropriates \$10 million from the general fund to the Interstate Stream Commission (ISC) for expenditure in FY20 through FY24 for state and regional water planning.

Senate Bill 560 also amends 72-14-3 NMSA 1978 (Water Code), granting new powers to the Interstate Stream Commission (ISC) to

- 1) Negotiate interstate compacts for groundwater, or otherwise provide for the interstate distribution and division of groundwater;
- 2) Implement programs related to the conservation or protection of water supplies;
- 3) Quantify surface- and groundwater supplies that are legally and physically available;
- 4) Develop, conserve, protect, etc. groundwater;
- 5) Conduct state and regional water planning; and

- 6) Advise the State Engineer and employ “water professionals” (in addition to attorneys and engineers under the existing statute).
- 1) Section 72-14-3.1 (State Water Plan) is amended to add specificity to water planning efforts and require the state water plan be fact- and science-based. It also requires the state water plan: Emphasize solving water-related problems at local and basin-wide scales, including developing cooperative strategies for meeting the gap between supply and demand;
- 2) Recognize climate change and aridification in its projections for future trends;
- 3) Develop strategies to increase longevity of groundwater resources in decline; and
- 4) Develop strategies for compliance with interstate stream compacts.

SB560 directs ISC and Office of the State Engineer, in accordance with the State Tribal Collaboration Act, to consult with the Indian nations, tribes, and pueblos to formulate a policy and process to guide participation of the Indian nations, tribes, and pueblos, as they desire, in regional water planning, as well as to guide New Mexico’s compliance with interstate stream compacts.

Section 72-14-3.1 is further amended to require meetings involving a member of ISC convened for developing the state water plan, or any component thereof, comply with the Open Meetings Act (OMA) and the minutes of the meeting reflect the substance of the meeting discussion and the rationale for any decisions made. The five-year reviews of the state water plan must consider successes or failures of implementation plans and priorities set out in the preceding plan.

A new section of 72-14-43 is enacted as the “Regional Planning Act” that recompiles Section 72-14-43 and amends it to establish more detailed requirements for the ISC’s administration, support, and funding of a regional water planning program. It sets numerous criteria for funding regional water planning proposals and approving regional water plans and requires ISC conduct regional water planning for a region in the event that no responsive proposals are received.

FISCAL IMPLICATIONS

The appropriation of \$10 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balances at the end FY24 revert to the general fund. It is not clear if the appropriation is sufficient to cover additional operating budget costs for ISC to negotiate compacts for groundwater, implement water conservation programs, conduct regional water planning, and develop models to ensure the state water plan is fact- and science-based.

SIGNIFICANT ISSUES

Page 2, line 3, adds a requirement that ISC negotiate compacts for the equitable distribution and division of interstate ground waters, which SLO noted is a significant change from existing law.

SLO noted regional water plans could be an important source of quantitative and qualitative data to inform water policy and planning. The inclusion of well-defined planning criteria in the bill would likely improve the quality of and consistency among the state’s 16 regional water plans.

SLO also noted the bill’s requirement that all meetings to develop the state water plan, or any component thereof, comply with the OMA is so broad it could include almost any meeting related to water planning, even internal meetings. It also appears to be inconsistent with OMA

requirements, which apply to meetings where there is a quorum of a decision-making body.

The NMAG also commented about language in the bill relating to public meetings:

Section 12 of the Bill proposes to create a new “water planning advisory committee.” (See pages 26-27, lines 11-7.) Although the Bill specifies that at least two committee meetings per year must be “public” and suggests that such meetings will have agendas, it does not specify whether the committee would be subject to the requirements of the Open Meetings Act. Generally, the OMA applies only to “policymaking” bodies. NMSA 1978, § 10-15-1(B). For this reason, it would appear that the committee, as an advisory body, would not be subject to the OMA unless otherwise specified. The Bill could clarify this potential issue by stating definitively whether or not the committee was subject to the OMA (as it already proposes to do for other meetings).

TECHNICAL ISSUES

NMAG noted there may be a typographical error in Section 1, line 25. It appears to contain an extra comma after the word “compacts.” This is grammatically incorrect and should be stricken.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 560 substantially duplicates House Bill 186.

AHO/al/gb