

LFC Requester: _____

**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 2/28/2013
Bill No: HB 259(CS)--305

Sponsor: Rep. Emily Kane
Short Title: State Action for Injury to Water Resources

Reviewing Person Writing Attorney General's Office
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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

The House Energy and Natural Resources Committee Substitute for HB 259 proposes to amend the Natural Resources Trustee Act to ensure that injured ground and surface water resources (or their equivalent) in the state are restored and that the state is compensated for the loss of use and enjoyment of the resource. The bill addresses part of the Tenth Circuit’s decision in *New Mexico v. General Electric Co.*, 467 F.3d 1223 (10th Cir. 2006), in which the court found no injury to the extensively contaminated ground water in the South Valley because the ground water in that area was fully appropriated and there were no direct users of the ground water claiming injury.

HB 259 creates a state law cause of action to clarify that the clean ground water has value to the public, regardless of whether a direct user claims harm. Valuing ground water in this manner is consistent with the federal regulations under the Comprehensive Environmental Response, Compensation and Liability Act or “CERCLA” currently relied upon by the Trustee. *See* 43 CFR 11.83(c) (“Compensable value is the amount of money required to compensate the public for the loss in services provided by the injured resources between the time of the discharge or release and the time the resources are fully returned to their baseline conditions, or until the resources are replaced and/or equivalent natural resources are acquired. *The compensable value can include the economic value of lost services provided by the injured resources, including both public use and nonuse values such as existence and bequest values. . . . (ii) Nonuse value is the economic value the public derives from natural resources that is independent of any direct use of the services provided.*”) (emphasis added).

The substitute extends the same limitations to the cause of action as exist under federal law, i.e., the substitute prohibits “double recovery” for injury to the resource and prohibits liability if a release of a hazardous substance is permitted under state or federal law. The substitute provides for the same limitation period of three years as under federal law, and provides that the claim is limited to injuries occurring after December 11, 1980, as under federal law. The substitute defines “release” and “hazardous substance” in the same manner as federal law, and therefore does not extend the scope of liability. The substitute also excepts state agencies from liability.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None identified.

SIGNIFICANT LEGAL ISSUES

None identified.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None identified.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None identified.

TECHNICAL ISSUES OR DRAFTING ERROR

None identified.

OTHER SUBSTANTIVE LEGAL ISSUES

None identified.

ALTERNATIVES TO ENACTING THIS BILL

None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The *General Electric* case will continue to make uncertain New Mexico's ability to obtain compensation for injured ground and surface water resources.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

None identified.