

LFC Requester:	Jonas Armstrong
-----------------------	-----------------

**AGENCY BILL ANALYSIS
2015 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 Feb. 6, 2015
Bill No: SB455

Sponsor: Sen. Joseph Cervantes
NEW MEXICO UNIT REPORTS
TO LEGISLATURE

Agency Code: Attorney General's Office
Person Writing Sarah Bond, AAG

Short Title: _____

Phone: 827-7481 **Email:** sbond @nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB467, Conflicts with SB461.

SECTION III: NARRATIVE

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

BILL SUMMARY

Synopsis:

SB 455 prohibits the New Mexico Central Arizona Project Entity (NM CAP Entity) from entering into a contract with the United States Department of Interior to construct or develop a New Mexico Unit of the Central Arizona Project (CAP) on the Gila River until the Interstate Stream Commission (ISC) has presented a written report signed by the State Engineer to the Legislative Finance Committee (LFC), and the committee has notified the NM CAP Entity that the committee finds the report adequately addresses 10 requirements including a demonstration of the financial capability of the NM CAP Entity to pay the costs to design, build, operate and maintain the New Mexico unit.

FISCAL IMPLICATIONS N/A

SIGNIFICANT ISSUES

SB 455 conflicts with the federal Arizona Water Settlements Act (AWSA) (P.L. 108-451), and thus is preempted under the federal supremacy clause. U.S. Const., art. VI, cl. 2.

Under the AWSA, the NM CAP entity and the Secretary of the Department of Interior (“Secretary”) have the exclusive authority to approve the New Mexico Unit Agreement. SB 455 requires an additional approval by the LFC, which adds an additional approval and contradicts the AWSA.

SB 455 enacts requirements that cannot be met, and thus effectively prevents New Mexico from complying with both SB 455 and the AWSA. For example, the AWSA requires the New Mexico CAP Entity and the Secretary to execute the New Mexico Unit Agreement within one year of notice to the Secretary that New Mexico intends to pursue a New Mexico Unit of the CAP. New Mexico sent that notice to the Secretary on November 24, 2014, and therefore the deadline to execute the New Mexico Unit Agreement is November 24, 2015. The terms of the New Mexico Unit Agreement, the parties to the agreement and the deadline are all defined in the federal AWSA. But, under SB 455, the New Mexico unit cannot be approved until the ISC submits a report to LFC that contains information that won’t be available to ISC or the New Mexico CAP entity prior to the deadline of November 24, 2015. Thus under the requirements of SB 455, New Mexico could not execute an agreement with the Secretary by November 24, 2015, as it is required to do under current deadlines set by AWSA.

PERFORMANCE IMPLICATIONS N/A

ADMINISTRATIVE IMPLICATIONS N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP None identified

TECHNICAL ISSUES None identified

OTHER SUBSTANTIVE ISSUES None identified

ALTERNATIVES None identified

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Existing law will stand; New Mexico will comply with applicable federal law.

AMENDMENTS None identified