

LFC Requester:	Jonas Armstrong
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**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	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>Feb. 6 , 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>SB 461</u>

Sponsor:	<u>Sen. Howie Morales</u>	Agency Code:	<u>Attorney General's Office</u>
		Person Writing	<u>Sarah Bond , AAG</u>

Short Title:	<u>NEW MEXICO UNIT FUND FOR CERTAIN PROJECTS</u>	Phone:	<u>827-7481</u>	Email	<u>sbond @nmag.gov</u>
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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)

Conflicts with SB 455

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 461 Section 1.A requires the Interstate Stream Commission (ISC) to pay from the New Mexico unit fund for costs of implementing water utilization alternatives to meet water supply demands in the southwest water planning region of New Mexico that are categorized as non-diversion alternatives to the development or construction of a New Mexico unit.

Subsection B provides that no less than \$77,000,000, indexed to 2014 dollars, of the total amount distributed to the state pursuant to the federal Colorado River Basin Project Act of 1968 (as amended by the federal Arizona Water Settlements Act) shall be allocated to implement nondiversion alternatives to meet water supply demands in the southwest water planning region of New Mexico.

FISCAL IMPLICATIONS N/A

SIGNIFICANT ISSUES

The ISC is in currently in litigation in state district court regarding its decision related to the New Mexico unit. Because SB461 appears to conflict with the federal legislation requiring the ISC to be the decision maker on the issue and appears to mandate a different decision than the ISC has already made, SB 461 would likely result in additional litigation and impact the ongoing litigation in state court.

SB 461 appears to contradict the federal Arizona Water Settlements Act, P.L. 108-451 (AWSA), by redefining the funding allocation criteria and invalidating the ISC decision made in accordance with the AWSA. SB 461 is therefore likely preempted under the supremacy clause. U.S. Const., art. VI, cl. 2. The bill also effectively deprives the ISC of the funding to implement its decision made in November 2014, notice of which the ISC sent to the United States in November 2014 in accord with AWSA, by mandating the expenditure of over one-half of all available funding to non-diversion projects.

The AWSA provides that withdrawals from the New Mexico unit fund pay costs of the New Mexico unit *or* other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the ISC in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration. AWSA, Section 212(i). By mandating that the \$77,000,000 instead be used exclusively for specified water utilization alternatives, the bill appears to contradict the federal legislation.

PERFORMANCE IMPLICATIONS

The Attorney General's Office may be drawn into the litigation the passage of this bill would engender.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP Related to SB 455.

TECHNICAL ISSUES None

OTHER SUBSTANTIVE ISSUES None identified.

ALTERNATIVES None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The consequences of not enacting SB 455 would be that the ISC decision would continue to be governed by current law and that the possible litigation would be avoided.

AMENDMENTS None identified.