

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: **Date** February 24, 2015
Original **Amendment** **Bill No:** SB 647
Correction **Substitute**

Sponsor: Senator Cervantes **Agency Code:** Attorney General's Office
Short Rules of Priority **Person Writing** Sarah Bond, AAG
Title: Administration of Water **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)

Conflicts with SB 648

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:

Section 1 would amend NMSA 1978, Section 72-2-9.1 by substituting “Article 16 of the constitution of New Mexico and the doctrine of prior appropriation” for the word “priorities” in section B.2. It also would add language to section C of the current statute to include a reference to that same Article of the New Mexico constitution and the doctrine of prior appropriation. The language appears to require the statute to be consistent with Article 16 of the NM constitution and the doctrine of prior appropriation.

FISCAL IMPLICATIONS

None

SIGNIFICANT ISSUES

The Bill adds references to the Constitution, but the New Mexico Supreme Court has already held the current statute is consistent with the Constitution. *Tri-State Generation and Transmission Assoc. Inc. v. D’Antonio*, 2012-NMSC-039. The substituted language in section B.2 means the same thing as the language removed. The additional language in section C. similarly changes nothing.

It is a cardinal rule of statutory construction that the legislature is well informed and does not intend to enact a nullity. “We presume that the legislature is well informed as to existing statutory and common law and does not intend to enact a nullity, and we also presume that the legislature intends to change existing law when it enacts a new statute. *State ex rel. Bird v. Apodaca*, 91 N.M. 279, 284, 573 P.2d 213, 218 (1977).” *Incorporated County of Los Alamos v. Johnson*, 1989-NMSC-045, 108 N.M. 633, 776 P.2d 1252. Thus, this statute would likely cause confusion by amending a statute already interpreted by the New Mexico Supreme Court to mean what the amendment purports to include. It does not change the law, but could cause confusion by creating the inference that a change was intended.

PERFORMANCE IMPLICATIONS

The AGO spent almost 10 years defending 72-2-9.1 as it exists now. Changing the language would likely give rise to additional litigation requiring AGO participation, but the bill contains no additional appropriation for staffing.

ADMINISTRATIVE IMPLICATIONS

See, performance implications, above.

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A