

<b>LFC Requester:</b>	<b>Jonas Armstrong</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*{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** February 24 , 2015  
**Bill No:** SB665

**Sponsor:** Sen. Griggs  
**Short**    Water wells, leasing,  
**Title:**    hearings, & abandonment

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**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 amends NMSA 1978, Section 72-1-9 to add water and sanitation districts to the entities entitled and required to plan for a forty year water development planning period, and adds a subsection providing a water right held but unused for forty years by an entity listed is not lost after forty years except by forfeiture or judicial abandonment proceedings.

Section 2 amends the water leasing provisions in NMSA 1978, Section 72-6-4 to allow the state engineer to approve the use during the pendency of the hearing process for leases of less than 3 years and less than 200 acre feet per year.

Section 3 amends NMSA 1978, Section 72-12-3 to require protestants to an application for use of underground water to furnish evidence of the protestant’s water rights and impairment, and if the protestant is alleging that granting the application will be contrary to the conservation of water or detrimental to the public welfare, the protestant must produce evidence of substantial and specific affect from the granting of the application. Impairment to the protestant’s water right cannot be the basis for such an objection on these grounds. And, additional language requires the protestant’s evidence of standing to be included in the protest filed no later than 10 days after the last publication of the notice of application, and an applicant may seek to recover attorney fees and costs for a frivolous protest.

Section 4 amends NMSA 1978, Section 72-12-22, which provides for drilling and use of a replacement well within 100 feet of the original well prior to application to the state engineer and hearing thereon, by deleting the words, “and only the same” in reference to the need for the replacement well to be drilled into the same underground stream or other source. It also adds new language providing that “the amount of water available for appropriation” in an application for a replacement well drilled within 100 feet of the original well, is the greater of the amount put to beneficial use, the amount of the permitted water or declared water right, provided that at least some portion of the owner’s permitted or declared right had been put to some beneficial use.

Section 5 makes the same changes to NMSA 1978, Section 72-12-23, governing applications for replacement wells over 100 feet from the original well, as those made in Section 4, above.

Section 6 makes changes to NMSA1978, 72-12-24, providing for supplemental well applications and uses after application therefore but prior to hearing, by deleting the requirement that the supplemental well be drilled into the same, deleting “and only the same” underground stream, channel.... and adding the same additional language increasing the amount of water available for appropriation under this section to the greater of the amount of the owner’s prior actual beneficial use, permitted or licensed use so long as some of the owner’s water right had been beneficially used.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

Section 4, by deleting “and only the same”, p. 9, lines 4-5, appears to allow replacement wells to be drilled into more sources of underground water than were the source for the well being replaced. This could increase the appropriation and potentially cause impairment from the additional sources being tapped by the replacement well. The other changes in new language referencing “amount of water available for appropriation” are confusing in that the purpose of the replacement well is not to create any new appropriation, but rather simply to substitute a new diversion well for an old one that has become unusable. Further, the allowance for the appropriation to be the greater of several measures, see, p.9, line 25 through p. 10, line 7, allows a replacement well to substantially increase the amount diverted through the replacement well, even before any application with the state engineer has been filed. This could substantially increase the amount of water used than was used in the well being replaced. This could cause significant increases in depletions in closed basins and cause impairment prior to any application for the replacement well even being submitted to the state engineer, and would defeat the purpose of the closing of the basin.

Sections 5 and 6 present the same problems as Section 4, for replacement wells beyond the 100 foot limit and for supplemental wells.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

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