

LFC Requester:

Scott Sanchez

**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

**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 3/14/2023

Original ☐ Amendment ☐

Bill No: HB 121

Correction ☐ Substitute ☒

**Sponsor:** Reps. C. Chandler, S. Herrera,  
and Senator P. Wirth

**Agency Name and Code** 305—Office of the Attorney General

**Number:**

**Short Title:** Water Right Lease Effective Date

**Person Writing** Zachary Ogaz

**Phone:** 505-795-3225 **Email** legisfir@nmag.gov

**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<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 Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.*

### **BILL SUMMARY**

#### **HB 121 House Judiciary Committee Substitution Synopsis:**

Section 72-2-20 NMSA 1978 is amended to require the OSE to post notice of an expedited lease application on its website and require notice be placed in a local newspaper within 45 days of the date of the application.

Section 72-6-3 specifically allows a water right holder to lease water to another potential user under an expedited temporary lease. This section also provides that applicants for expedited temporary leases must follow the notice and opportunity for hearing provisions in accordance with Section 72-6-4 and 72-6-6.1 (as proposed in HB 121) NMSA 1978. It further allows for water to be leased to municipalities for up to 40 years, but municipalities cannot lease water for up to 40 years under an expedited temporary lease. Finally, it provides that a lease of a water right served by an acequia or community ditch is subject to a prohibition on expedited temporary water leases.

The HB 121 substitute adds language to Section 72-6-4 NMSA 1978 that allows for expedited temporary leases.

In Section 72-6-5 NMSA 1978, the bill adds language to place the burden of proof on the applicant to show a water lease application is for a beneficial use, will not impair existing rights, will not be contrary to the conservation of water, or detrimental to the public welfare.

Section 72-6-6 NMSA 1978 allows for expedited temporary leases to be filed, but requires expedited temporary leases to be filed in accordance with Section 72-2-20 NMSA 1978. This section provides specific criteria for standing to file a protest against a lease or expedited temporary lease; and specifically allows the state and any of its branches or agencies to have standing to file a protest without meeting the same criteria as other potential objectors. It also requires the OSE to hold a hearing if a protest is filed against a lease or expedited temporary lease; also requires the OSE to hold a hearing if the OSE denies or grants only a partial approval of a lease or expedited temporary lease. If no protests are filed, the OSE may grant the application for a lease or expedited temporary lease without hearing. It also states that any application for an expedited temporary lease shall be subject to an expedited hearing and ruling process. Finally, it allows for an applicant to file an expedited temporary lease application and non-expedited lease application concurrently.

The HB 121 substitute also creates Section 72-6-6.1, which provides the OSE with the authority to approve an expedited temporary lease application, provided the application meets the criteria specified in Section 72-6-6.1.

### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

N/A

## **SIGNIFICANT ISSUES**

There has been significant consideration of the State Engineer's authority to approve expedited temporary water lease applications and the impacts those approvals may have on due process rights. The HB 121 substitute has addressed the concerns raised in the AGO's original bill analysis.

Specifically, the HB 121 substitute has added language that provides the OSE with the authority to approve expedited temporary water leases. These changes resolve the statutory authority concerns previously raised in the original HB 121 bill analysis.

The HB 121 substitute bill has also added or amended language that explicitly provides for notice and an opportunity for an expedited hearing process following the filing of application for approval of an expedited temporary water lease. These changes resolve the due process concerns previously raised in the original HB 121 bill analysis.

## **PERFORMANCE IMPLICATIONS**

None to this office.

## **ADMINISTRATIVE IMPLICATIONS**

None to this office.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

None

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The possibility of continued litigation and competing arguments as to whether the term "immediate use" in Section 72-6-3 allows the State Engineer to issue preliminary approvals or authorizations of changes to lease agreements pending the outcome of the administrative hearing process under the Water-Use Lease Act and the state's Water Code.

## **AMENDMENTS**

None.