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FISCAL IMPACT REPORT

SPONSOR Cisneros DATE TYPED 2/12/2004 HB _____

SHORT TITLE County Water & Sanitation Authority Act SB 446/aSCONC/aSFL#1

ANALYST Garcia

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 397, except for amendment.

SOURCES OF INFORMATION

LFC Files

Response Received From

Public Regulation Commission
 Department of Finance and Administration
 New Mexico Finance Authority
 Environment Department

No Responses

Association of Counties

SUMMARY

Synopsis of SFL#1 Amendment

Senate Floor Amendment #1 to Senate Bill 446 adds language which specifically identifies the counties in which county water and sanitation authorities may be created. The amendment adds the language “and under one hundred seventy thousand persons.”

Significant Issues

Under the provisions of this amendment, only Santa Fe County would be impacted. With the amendment, a County Authority can be established in counties having populations between 125,000 people and 175,000 people.

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment adds language that “if more than one Indian nation, tribe or pueblo is located within the territory comprising the territory of the authority, each Indian nation, tribe or pueblo that is not represented on the board may appoint an ex-officio nonvoting representative to the board”. This allows an Indian pueblo to have nonvoting representation on the Authority Board, if the Authority encroaches on Indian land.

In addition, the amendment adds an exemption to the ability of the Authority to have the exclusive right to provide water and sanitation services in the territory where the Authority is located. The exemption is as follows: “except territory located within municipal limits, territory that is under the jurisdiction of a municipality or territory currently served, or that could be served, by a municipal water or sanitation utility.”

Synopsis of Original Bill

The bill establishes a water and sewer authority for Class A counties with a population of over 125,000 persons according to the last decennial census and having an assessed value of over \$3.7 billion.

The bill spells out the organization authority and debt issuance authority of the newly created special districts. The bill states that a board of five directors from the county where the special district is created is the governing body. Three of the directors will be elected among citizens of the particular county and the remaining two directors will be appointed by the board of county commissioners. Initial directors will all be appointed by the county commission. The board has all powers and duties vested in them on the operations of the Water and Sanitation Authority. The bill also states the Authority is created as a political subdivision and has the power similar to other political subdivisions.

Section 9.A states that a county authority created under this new statute may claim all service territory of the following: “The initial service area of a county water and sanitation authority...may consist of the territorial limits of the county in which an authority is established except the territory encompassed within a municipality, an existing water and sanitation district or the territory actually served on the effective date of the County Water and Sanitation Authority Act by an existing mutual domestic consumer water association. A county water and sanitation authority shall have the exclusive right to provide water and sanitation services within the territory served by that authority.”

The bill also goes on to set the terms and authorization of issuing revenue bonds. The bill states revenue bonds can be issued for “acquiring real and personal property needed for an authority project, including the purchase of water rights, etc.” The revenue bonds will be tax exempt and will not be issued under the state’s credit rating, but the rating of the special district.

Lastly, the bill allows the County Water and Sanitation District to be exempt from the jurisdiction of the public regulation commission or the terms and provisions of the Public Utility Act.

Significant Issues

- 1) Section 9.A. of this act would allow a county water and sanitation authority created under the act to claim exclusive right to service territory within the entire county, notwithstanding that area already served by a municipality, water & sanitation district, or mutual domestic water consumer association. According to the PRC, not only would this infringe on the service areas of other water and/or sewer systems not included in the exclusory language, it would permanently prohibit any further expansion of any other system including municipalities, water and sanitation districts, and mutual domestic water consumer associations.
- 2) An authority created under this act would have the power to force any resident to tie into the authority's sanitation system within 60 days, with no recourse, whether this is against the resident's wishes or ability to pay. The authority would have the right to place a lien on any resident's property to pay for a connection to the system, without need to request the right to place such a lien from any court or other authority.
- 3) Section 8.S. of this act gives a county water and sanitation authority created under the act the power of eminent domain and condemnation of private property necessary for the exercise of the powers granted to the authority.
- 4) Section 10 of this act gives a county water and sanitation authority created under the act the authority to issue revenue bonds for acquiring real and personal property. NMSA 1978, §3-23-3, "Municipal utility; approval of New Mexico public utility commission", provides for commission over-site of revenue bond issuance for the acquisition of a utility. In comparison, this act contains no similar over-sight of a county water and sanitation authority issuance of revenue bonds for the acquisition of a utility.

Section 15 of this act provides that revenue bonds issued by a County Water and Sanitation authority are "collectible only from the pledged revenues of the water or wastewater system... payable solely from the pledged revenues of the water or wastewater system." With that limitation on revenue bonds, Section 16 of this act maintains the authority shall establish rates for services rendered by the water or wastewater system sufficient with regards to the revenue bond commitments. In the event such rates are not established, any bondholder may apply to district court for a mandatory order requiring the authority to establish rates to provide adequate revenues.

FISCAL IMPLICATIONS

The bill has no direct fiscal impact to the state. However, it is unclear how or if the bill will affect municipal and county utilities funding and financing other than defining bond issuance and governing structures.

DUPLICATION

Senate Bill 446 duplicates House Bill 397.

OTHER SUBSTANTIVE ISSUES

The bill does not mention the service territory of Investor Owned Utilities ("IOU") such as those regulated under the Public Utility Act. With regard to water and sewer IOU's the Public Utility Act provides, in part:

“The following are declared to be the objects and purposes of this 1991 act. Experience has proven that the construction, development and extension of proper plants and facilities cannot be accomplished without unnecessary duplication and economic waste within areas certificated to water and sewer utilities without controls against duplicative intrusions into certificated areas by municipal utilities. A rational basis exists to prohibit intrusion of municipal water or sewer facilities or service into areas in which a public utility furnishes regulated services until that municipality elects to come within the terms of the Public Utility Act, in which event both systems will be brought into parity of treatment with respect to the commission’s independent jurisdiction and power to prevent unreasonable interference between competing plants, lines and systems. Without such controls as provided by Section 62-9-1.1 NMSA 1978, the declared policy of the Public Utility Act, the provision of reasonable and proper utility services at fair, just and reasonable rates and the general welfare, business and industry of the state may be frustrated.” [§62-3-2.1 C., NMSA 1978.]

A county water and sanitation authority created under this statute would have no such constraints and would apparently be able to encroach into a public utility’s service area with impunity.

DG/yr