

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Trujillo DATE TYPED 2/11/2004 HB 397/aHGUAC

SHORT TITLE County Water & Sanitation Authority Act SB \_\_\_\_\_

ANALYST Garcia

### APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Response Received From  
Public Regulation Commission

No Responses  
Department of Finance and Administration  
Association of Counties

### SUMMARY

#### Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee Amendment inserts new language in the bill. On page 4, line 4, the amendment adds the following language: “provided 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.” The amendment stipulates if Indian land is located within the boundaries of the newly created authority, the Indian pueblo or tribe may appoint a nonvoting member to the authority board.

On page 13, line 11, the HGUAC Amendment also adds the following language: “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, con-

sistent with all the powers and authorities granted pursuant to Chapter 3, Articles 26 and 27 NMSA 1978 and related statutes.” This language limits the territory the County Water and Sanitation Authority has exclusive rights over to provide services. The authority cannot encroach in territory within municipal limits and currently served by a municipality.

### 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 resi-

dent'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 effect municipal and county utilities funding and financing other than defining bond issuance and governing structures.

## **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/lg**