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FISCAL IMPACT REPORT

SPONSOR Taylor DATE TYPED 3/3/05 HB _____

SHORT TITLE Albuquerque-Bernalillo Water Authority Powers SB 879/aSPAC

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB859.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AG)
 Department of Finance and Administration (DFA)
 Department of Environment (NMED)
 Office of the State Engineer (OSE)

SUMMARY

Synopsis of SPAC Amendment

The SPAC amendment to Senate Bill 879 would make the Albuquerque-Bernalillo County Water Utility Authority subject to Chapter 72 NMSA 1978 regarding any change to the point of diversion or the place or purpose of use of any water right to any place selected by the authority in order to make water available to the authority.

Synopsis of Original Bill

Senate Bill 879 proposes a substantial revision of Section 72-1-10 NMSA 1978 creating the Albuquerque-Bernalillo County Water Utility Authority. In particular, the bill would:

1. Establish a process for allowing members of the board of directors to appoint substitutes if they cannot attend a meeting;
2. Set a one-year term for board members;

3. Have board members, except for the Albuquerque mayor or his designee, serve at the discretion of the Albuquerque City Council President (for members selected from the Council) and at the discretion of the Bernalillo County Commission Chairman (for members selected from the Commission);
4. Enable the Authority to set policy, regulate and supervise the utility; to assume all powers necessary to carry out and effectuate its public and corporate purposes; to use the city or county procurement processes or to contract with the city or county to further its public or corporate purposes; and to acquire, maintain, contract for, condemn or protect water or wastewater facilities;
5. Eliminate statutory language requiring that utility funds be held in one or more accounts separate from other governmental accounts of the city or county;
6. Allow the City of Albuquerque and Bernalillo County to delegate additional powers to the Authority.
7. Prohibit the Authority from acting so as to isolate and make nonviable any portion of water or wastewater facilities within or outside Bernalillo County.
8. Extend the Authority's jurisdiction, for the purposes of acquiring, maintaining, contracting for, condemning or protecting water and wastewater facilities, beyond the boundaries of Bernalillo County to the territory physically occupied by the water and wastewater facilities and to privately owned water and wastewater facilities interconnected to the utility system.
9. Make the Authority subject to water rights limitations in Section 72-1-9 NMSA 1978 and provisions of the Eminent Domain Code.
10. Require the Authority to pay condemnees for the value of the water right as well as the market value of real property to which the water right is appurtenant if the real property has been in active agricultural operation and the condemnation of the water right requires permanent retirement from agricultural operation of some or all of the real property.
11. Exempt the Authority from jurisdiction of the Public Regulation Commission and provisions of the Public Utility Act. The utility is granted a water use planning period not to exceed 40 years.
12. Allow the City or County to grant the Authority a franchise for the operation, construction and maintenance of the utility system and for the use and rental of rights of way in exchange for a consideration.
13. Authorize the Authority to issue revenue bonds and obligations pursuant to the Public Securities Short-Term Interest Rate Act for acquiring real and personal property needed for the utility system and for extending, enlarging, renovating, repairing or improving water and wastewater facilities. The bill would also authorize the authority to issue revenue anticipation notes with maturities not exceeding 13 months upon terms approved by the Board. Revenue bonds could be payable at intervals or at maturity, and specifies other conditions of bond issuance and redemption.
14. Exempt the Authority's bonds from state and local taxation.
15. Exempt the Authority from statutes applying to municipal utilities that prohibit municipalities from acquiring a municipal utility from revenue bond funds without voter approval and without approval by the Public Utilities Commission (Public Regulation Commission).
16. As a temporary provision, transfer all functions, appropriations, money records, equipment and other real and personal property pertaining to the Albuquerque water and wastewater utility not transferred under previous statute to the Authority.

Significant Issues

The Albuquerque Bernalillo County Water Utility Authority (Authority) was created in 2003, through legislation codified in Section 72-1-10 NMSA. The amendments to Section 72-1-10 are designed to transfer current municipal and county operating powers of the water and wastewater utility to the ABWUA. Without the changes, the Authority may encounter difficulties operating and maintaining the system. Even with the contemplated amendments, the Authority will still lack some legal authority (e.g. home rule powers) previously used by the City to operate the water and wastewater system. In general, the provisions of the bill extend powers already granted to municipal water and wastewater utilities under statute to the Authority.

Eminent domain powers.

In general, the Authority would exercise eminent domain similar to that exercised by municipal utilities under existing New Mexico statute. The following paragraphs compare the two:

SB879 would give specified condemnation powers to the Authority within and outside the boundaries of Bernalillo County to the territory physically occupied by the by the water and wastewater facilities and to privately owned water and wastewater facilities interconnected to the utility system. The Authority could condemn wastewater facilities; private property for construction, maintenance and operation of wastewater facilities; and privately owned water and wastewater facilities used for the collection, treatment and disposal of wastewater of the authority or its customers (all in Section 72-1-10F of SB879). Additionally, Albuquerque and Bernalillo County could delegate municipal condemnation powers for water rights, right-of-way or water facilities, and privately owned water facilities used or to be used to supply water to a municipality

Under current statute, a municipality may, within or without the municipality, condemn: private property for construction, maintenance and operation of wastewater facilities; privately owned sewer facilities used or to be used for the collection, treatment and disposal of sewage of the municipality or its inhabitants; water rights and other water supplies, as well as right-of-way or water facilities; and privately owned water facilities used or to be used to supply water to a municipality or its inhabitants.

SB879 stipulates additional damages to agricultural interests for properties that may be taken out of production due to a water condemnation.

Public Regulation Commission Oversight Exemption

Both SB879 and current statute exempt municipal authorities from the Public Utility Act.

SB879 specifies that the Authority is not subject to the jurisdiction of or approval from the Public Regulation Commission (Section 72-1-10I). Current law, in Section 62-3-3E NMSA 1978, specifies: "In the absence of voluntary election by a municipality to come within the provision of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act...and no such municipality shall for any purpose be considered a public utility."

Voter Approval Exemption

Both SB879 and current statute exempt the Albuquerque water/wastewater utility from requirement for voter approval of utility revenue bonds. SB879 specified that the Authority is not subject to voter approval of utility revenue bonds. Existing statute (Section 3-23-2D) exempts municipalities from voter approval of utility revenue bonds.

Application of Water Code

Both the AG and Office of the State Engineer (OSE) were concerned that the bill does not explicitly state that the Authority must comply with the Water Code in general and with regard to changing the point of diversion or place and purpose of use of a water right that has been acquired or condemned by the Authority.

SB879 defines the Authority to be a political subdivision of the state (Section 72-1-10A) similar to counties and municipalities. Under current law (Sections 72-5-1 and 72-6-2 NMSA 1978), Water Code provisions related to acquisition and leasing of water apply to the State of New Mexico and its subdivisions. Proponents of SB879 indicate that, if there is any ambiguity about this provision, they would support amending SB879 to clarify that the Water Code would apply to the new Authority. The SPAC amendment explicitly references the applicability of Chapter 72 NMSA 1978, pursuant to a recommendation by the OSE with regard to the original bill.

Other Comments

NMED suggested that the membership of the Board of Directors should be expanded to include members of the public that are representatives of water and wastewater users from within the City of Albuquerque and Bernalillo County. NMED noted that the Authority may work to offer small water systems the opportunity to consolidate and more readily address source water protection and water resource issues, while delivering safe drinking water to Bernalillo County.

The Office of the Attorney General offered the following concerns about this bill:

- The amendments exempt the Authority from the jurisdiction of the Public Regulation Commission and the Public Utility Act. As noted above, this provision is consistent with current statute related to municipal utilities.
- The bill grants the Authority the authority to, “acquire, maintain, contract for, condemn or protect water and waste water facilities”. SB879 permits the Authority to extend its jurisdiction for acquisition of water outside of Bernalillo County to territory physically occupied by the water or interconnected to the utility system. This means that the jurisdiction of the Authority could reach as far as the New Mexico borders. As noted above, this provision is consistent with current statute related to municipal utilities.
- SB879 provides in Section 72-1-10(H), that if the Authority condemns water rights it will only be liable for the value of the water rights as well as the market value of the real property to which the water right is appurtenant if the real property has been in active agricultural operation. The amendments do not address what liability the Authority will have for fallowed land or for real property that is utilizing its existing water rights for an operation other than agricultural use.

FISCAL IMPLICATIONS

To the degree that this bill would make the Authority a state agency, there might be requests from the Authority for state support at some time in the future.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB859.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Without some statutory changes, the Albuquerque-Bernalillo County Water Utility Authority may encounter difficulties operating under the current structure.

DH/yr:rs