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FISCAL IMPACT REPORT

ORIGINAL DATE 2-24-09
 SPONSOR Griego LAST UPDATED 3-05-09 HB _____
 SHORT TITLE Water and Sanitation District Revenue and Information SB 384/aSCONC
 ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal			Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 Taxation and Revenue Department (TRD)
 Public Regulation Commission (PRC)
 New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of SCONC Amendment:

1. deletes “*a recycling system or any other system*” from the definition of fee-for-service system;
2. modifies language in Section 73-21-14 NMSA 1978 regarding elections of board members to provide that, if the district publishes anything within 90 days of a board election that might promote an incumbent running for reelection, then equal space must be made available to opponents, also without charge.
3. replaces “*to be repaid from*” with “*secured by*” in regard to property tax revenue and indebtedness of a district;
4. makes technical corrections by deleting the words “*make and*” in reference to the issuance of industrial revenue bonds (one can’t “make” a bond” and inserts the word “*obtain*” as in obtain loans;
5. Clarifies the process when a water and sanitation district board chooses not to be subject to the jurisdiction of the PRC:
 - a. at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution, at which time, after hearing proponents and opponents, the board may reject, amend or adopt the resolution adjusting the rates, tolls, fees or charges;

- b. within thirty days after publication of the resolution adjusting rates, tolls, fees or charges, the new rates, tolls, fees or charges may be appealed by a tax paying elector to the district court of the county in which the district is located; and
- c. the district court shall consider the petition to overturn the adjustments, based on the record of the board hearing in which the resolution was adopted, under the court's rules governing review by a district court of administrative decisions or orders."

Synopsis of Original Bill

Senate Bill 388 makes a number of changes to the Water and Sanitation District Act, Chapter 73 Article 21 NMSA 1978 to allow the Taxation and Revenue Department (TRD) to disclose to a water and sanitation district certain information pertaining to taxpayers reporting gross receipts for that district. It additionally subjects officers and employees of a water and sanitation district to criminal penalties for the unlawful disclosure of such taxpayer information to persons other than officers or employees of the district or the Department.

The bill includes cleanup and clarification of various provisions throughout the Water and Sanitation District Act. Additional definitions of terms used in the Water and Sanitation District Act are included. The bill further clarifies the sources of revenue that may be pledged for water and sanitation district debt. For instance, the bill clarifies that property tax revenue from within water and sanitation districts may be used to repay general obligation debt of the district. The bill also provides that revenue bonds or loans may be repaid from district service fees, in addition to sources already specified in the Water and Sanitation District Act.

Finally, the bill would allow electors of a water and sanitation district to protest rates imposed by the district by filing a petition with the district court.

FISCAL IMPLICATIONS

According to TRD, this bill has no fiscal impact. However, there may be a minimal impact to the Public Regulation Commission (PRC).

According to the New Mexico Mortgage Finance Authority (NMFA), the bill clarifies language under section 21 pertaining to general obligation indebtedness of the districts for acquisition, construction, or installation of improvements in the amount of \$5,000 or more to repaid from property tax revenue within district. Water and Sanitation districts can undertake debt for the purposes of system improvements in the form of joint revenue bonds.

Joint revenue bonds can be issued on behalf of the district for system-wide improvements by adoption of a resolution by two-thirds vote of the members of the board payable from net systems revenue of the system. Board members are required to keep revenues sufficient to pay principal and interest on the bonds until maturity. A bondholder or taxpayer of the district consisting of twenty-five persons or five percent of the electors can petition the district court to have a mandatory order imposed to the board to keep the rates sufficient in regard to the debt.

Water and sanitation bonds can be refunded without election for the purposes of refunding or discharging debt for which they were initially imposed. The refunding of bonds can be executed by a majority vote of all board members at the maturity date or at a time the bonds are callable. The refunded bond proceeds shall be placed into the retirement of the bonds or placed in escrow with a national or state bank.

SIGNIFICANT ISSUES

The SCONC amendment prohibits a district from publishing material that promotes an incumbent's qualifications prior to a board election. This amendment provides for a more equal treatment of all candidates running for a board position in a Water & Sanitation District election. The amendment also clarifies the process when a water and sanitation district board has elected to not be subject to the jurisdiction of the PRC. The district must provide notice of board's intent 30 days prior to a public hearing on the resolution. If the resolution passes, it may be appealed by a tax paying elector within thirty days after the publication of the resolution to the district court of the county in which the district is located. The district court shall consider the petition to overturn the adjustments.

Section 18 of the bill removes the jurisdiction of the PRC over filing and protests of rate increases, and transfers that jurisdiction to the district courts. The threshold for triggering a review of rates remains the same: twenty-five or five percent of the electors filing a protest within thirty days. The bill, however, begins the time period from the date of the board's resolution, whereas current statute starts the time with filing of the proposed rates with the PRC. A bigger difference is the standard of review. Currently, the PRC rules for hearing rate protests subject them to much the same treatment as that for investor owned utilities with expert testimony and opportunity for intervention. The bill would limit judicial review to the record of the board meeting at which the resolution was adopted.

The section of this bill that impacts the Workforce Solutions Department amends 7-1-8 regarding the confidentiality of tax returns. The bill amends this section to add an exception for water and sanitation districts that have a gross receipt tax in place. This amendment also changes the name of the holder of that existing exception for unemployment insurance collection purposes from secretary of labor to secretary of workforce solutions.

PERFORMANCE IMPLICATIONS

This bill may reduce the PRC caseload.

ADMINISTRATIVE IMPLICATIONS

None for the PRC, although the agency occasionally does receive protest of these rates and has conducted hearings on them in the past.

DUPLICATION, RELATIONSHIP

Duplicates HB337 and Relates to HB 257

TECHNICAL ISSUES

This bill amends Section 7-1-8 NMSA 1978 to permit TRD to provide confidential information to water and sanitation districts. HB257 contains a comprehensive revision of this statute, and will conflict with this bill.

According to the Public Regulation Commission (PRC), the threshold for triggering a review of rates remains the same: twenty-five or five percent of the electors filing a protest within thirty days. The bill, however, begins the time period from the date of the board's resolution, whereas

current statute begins the time with the filing of the proposed rates with the PRC. Additionally, hearing rate protests receive the same treatment as that for investor owned utilities with expert testimony and opportunity for intervention. The bill would limit judicial review to the record of the board meeting at which the resolution was adopted.

OTHER SUBSTANTIVE ISSUES

Currently county officials can request similar information under Section 7-1-8(U) NMSA 1978 for taxpayers within their county (and are subject to the same proposed penalties); however, they cannot share this information with officials of a water and sanitation district located within their county. The proposed amendments to Section 7-1-8 NMSA 1978 do not precisely mirror the information that TRD is permitted to provide to counties under Section 7-1-8(U)(2) NMSA 1978. In that subsection, lists of businesses must be provided by the county seeking the information from TRD.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PRC will continue to receive rate filings by Water and Sanitation Districts and conduct hearings if sufficient protests are received in a timely manner.

DL/mc:mt

