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FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/15
LAST UPDATED _____ **HB** 221 _____

SPONSOR Zimmerman

SHORT TITLE Mutual Domestic Water Association Governance **SB** _____

ANALYST Armstrong

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY15 | FY16 | FY17 | | |
| | \$.4 | \$.4 | Recurring | General Fund |

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--|------|---------|---------|----------------------|------------------------------|------------------|
| Total | | \$261.7 | \$250.4 | \$512.1 | See Below | General Fund |
| Additional FTE & Supplies | | \$250.4 | \$250.4 | \$500.8 | Recurring | General Fund |
| Professional Development | | \$11.3 | | \$11.3 | Nonrecurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)
 New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 221 amends the Sanitary Projects Act to subject mutual domestic water consumers associations (MDCWA) that have two thousand or more members to the jurisdiction of the PRC and the provisions of the Public Utility Act. The bill also amends the definition of “person” under the Sanitary Projects Act to include individuals who rent or lease a residence served by an MDWCA and are billed for service by the association. Finally, HB 221 lowers the threshold for

NMED to consider petitions for investigations of MDWCA operations and management. This is due to the bill amending a provision requiring 25 percent of the association's members support to allow the department to consider petitions by the lesser of the current 25 percent threshold or 50 members of an association.

FISCAL IMPLICATIONS

There are four MDWCAs with more than 2,000 members. In order for the PRC to regulate these entities, an additional three FTE's would likely be required (1 engineer FTE, 1 attorney FTE, 0.5 economist FTE and 0.5 accountant FTE– or some combination thereof), all at Range 80 levels (\$83,150 in salary and benefits). In addition, each new employee would need to attend “Rate School” offered by the National Association of Regulatory Commissioners (a \$3,750 nonrecurring cost per employee). Administrative costs would include office supplies (\$300 per FTE per year from the General Fund).

PRC filing fees/revenues for utilities range from \$1 to \$25. With the addition of four MDWCAs to PRC's jurisdiction, this would likely amount to additional revenue of up to \$400 per year (\$100 per MDWCA).

SIGNIFICANT ISSUES

The Sanitary Projects Act defines the powers of an MDWCA including the board of directors power to set and adjust rates and fees for services. The Public Utility Act defines a public, or investor owned, water utility and details the jurisdiction of the PRC over these utilities, which includes oversight of setting/adjusting rates and fees.

NMED generally supports the intent of HB 221. As MDWCAs grow in size and scope, so do their regulatory needs. These political subdivisions grow to become large organizations that increase and expand services to larger geographic areas, and leading to an increase in the number of members. MDWCAs that contain more than 2,000 members may benefit from additional regulatory oversight provided by PRC and the Public Utility Act.

Still, NMED has a few concerns:

The proposed new material in the Sanitary Projects Act applies the Public Utility Act to MDWCAs, under which a public utility includes a plant owned by a person for furnishing or providing water to the public for domestic uses. However, the definition of a person within the Public Utility Act contemplates individuals, firms, partnerships, companies, a rural electric coop, corporation or lessee, trustee, or receiver appointed by a court. 62-3-3(E) NMSA 1978. Because an MDWCA is a public body corporate, 3-29-15 NMSA, a change to the definition of a “person” within 62-3-3(E) NMSA may be needed to properly bring associations with at least 2,000 members under the Public Utility Act.

The proposed amendment in Section 2 potentially conflicts with existing language and significantly restricts an association's ability to define its membership through local rules and/or bylaws adopted by an MDWCA's board of directors. The current language allows an association to define members as property owners and/or as renters in local rules and bylaws. HB 221 would remove a board's and local community members' ability to decide if renters are considered voting members or if that voting responsibility should

reside with the long term property owners in each community. This additional language implies that all renters of residences served by the association should be members as well, which could require them to have a right to vote on association business. Specifically, this could impact communities with high populations of seasonal renters who may vote on association business but may not live in the association's service area for several months out of the year.

Section 3 amends the requirements for member redress petitions and allows a lower NMED investigation trigger threshold. Current NMED practices follow a standard complaint review process for all complaints submitted by MDWCA members. This process requires written documentation of a complaint to be submitted to the MDWCA Board and to NMED, and allows the Board the opportunity to respond to the complaint in writing before an investigation is initiated by NMED. All MDWCA Board complaints submitted to NMED follow this process regardless of the number of complainants; therefore this change would likely not impact current SPA investigation practices by NMED.

PERFORMANCE IMPLICATIONS

According to PRC analysis:

If this bill does pass, thereby making larger MDWCAs subject to the jurisdiction of the Public Utility Act, it may take some time, likely one to two years, for the MDWCAs to become familiar enough with PRC rules for filings to proceed in a smooth and efficient manner. This may result in an additional workload for PRC staff within the Records Bureau and certain hearing examiners that are assigned to hearings and proceedings involving MDWCAs.

HB 221 would have minimal impact to NMED's performance as the revisions to the petition requirements could potentially increase the number of requests to investigate association operations, slightly increasing the agency's workload and potentially slowing the investigation and determination process.

ADMINISTRATIVE IMPLICATIONS

PRC jurisdiction over MDWCA's, would require modification of rules and regulations for public water utilities to ensure there are no conflicts between the application of the Sanitary Projects Act and the Public Utility Act. PRC notes this could take 12 to 18 months.

HB 221 would likely require additional training for PRC and NMED staff as well as members of the affected MDWCA boards to become more familiar with both the Public Utility Act and the Sanitary Projects Act. Regulations regarding required board training would have to be modified to reflect this.

OTHER SUBSTANTIVE ISSUES

The amendment in Section 2 expands membership to "individuals who rent or lease a residence served by the association," but does not further define this expansion. For instance, there is no time period set on how long a person must rent or lease a residence to be eligible for

membership. In some seasonal communities, a residence may host multiple renters in a relatively short period of time. This could lead to confusion in determining exactly who is eligible for membership.

Additionally, HB 221 should ensure consistency among the Public Utility Act, the powers and duties of the Public Regulation Commission, the Sanitary Projects Act, and the powers and duties of NMED. For example, Section 62-6-12 NMSA allows for the consolidation and merger of public utilities. The merger of mutual domestic water consumer associations is currently governed by Section 3-29-20.1 NMSA. If an association were subject to both the Public Regulation Commission and the Sanitary Projects Act, it would be unclear which statute would apply. Perhaps these potential conflicts could be resolved by subjecting associations with at least 2,000 members to the Public Utility Act and the Public Regulation Commission to the extent that they do not conflict with the Sanitary Projects Act.

ALTERNATIVES

PRC analysis notes the Legislature modified the State Water and Sanitation District Act in 2009 to remove review of rate change protests from PRC jurisdiction, with final adjudication being handled by district courts. Water sanitation districts can request PRC regulatory oversight via a formal resolution from their board; currently, the PRC regulates only one water and sanitation district. PRC suggests this approach may present an alternative to a portion of this proposed bill.

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