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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/10/15

SPONSOR SJC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Lower Rio Grande Water Works Rights & Liens SB 392/SJCS

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with CS/HB 413.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 New Mexico Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 392 amends the statute that creates the Lower Rio Grande Public Water Authority (Authority) to:

- Require an entity merging with the Authority whose service area is contiguous with that of the Authority to combine and commingle its water rights with those of the Authority; and
- Establish a procedure for the filing and enforcement of liens for nonpayment of money owed which the Authority must follow, including provisions that:
  - Allow multiple charges or assessments against one property owner to be included in the same lien;
  - Declare authority liens to be first and prior liens on the property subject only to general state and county tax liens;
  - Provide methods for releasing a lien;
  - Reference procedures for foreclosing on liens, including the right of redemption;

- Allow reasonable attorneys fees to be awarded to the prevailing party as part of the costs; and
- Prescribe the order of distribution of the proceeds of a foreclosure sale: first to costs of noticing and conducting the sale; second to liened indebtedness for federal, state, county and ad valorem taxes; third to liened indebtedness for the authority; fourth to liened indebtedness for all other special assessments; and fifth to the former owner, mortgage holder or other parties having an interest in the property.

## **FISCAL IMPLICATIONS**

No anticipated fiscal impact to the State.

## **SIGNIFICANT ISSUES**

NMDA provides these comments on the requirement that a merging entity's water rights be combined and commingled with the Authority, which it asserts:

may further complicate matters as to what "contiguous" might mean as it relates to any entity that might want to join the authority. In other words, if an entity that is not contiguous to the area served by the authority wanted to join the authority, but was not contiguous, then it would not be compelled to combine and commingle water rights. However, if an entity would then join the authority contiguous to an entity that did not combine and commingle its water rights, would the first entity then have to combine and commingle its water rights? Also, under what circumstances would an entity seek to join the authority and not add its water rights to the authority's water rights if the purpose would be to connect users to the water system?

However, AGO suggests this language resolves any potential conflict with the current administrative practice of the state engineer for mergers, and allows the LRGPPWA to merge with a noncontiguous entity whose water rights are in a different administrative basin and cannot be combined or commingled.

As to the provisions concerning the filing and enforcement of liens, AOC in its analysis of the earlier version of this bill stated that it believed those improve the existing statute, which is vague about placing and enforcing a lien as it simply provides that the Authority has the right to place and enforce a lien "in a manner pursuant to law." It pointed out there are a number of ways to place and enforce a lien pursuant to law, such as for mechanic's liens, materialmen's liens, tax liens, and attorney charging liens, and commented that similar provisions in the earlier bill clarified the specific procedures for placing and foreclosing this type of lien. It advised that provisions such as these do not enlarge the power of the Authority, but are consistent with lien authority granted to other incorporated water associations under the Municipal Code. See, for example, Section 3-28-16, NMSA 1978.

## **CONFLICT**

CS/HB 413 conflicts with this bill as to the distribution of sale proceeds provision contained in Section 1(R)(2)-(5); otherwise it is a duplicate of this bill.

## **OTHER SUBSTANTIVE ISSUES**

AOC noted there is no impact on the water source (Mesilla Valley Basin and Lower Rio Grande), since the amendment only clarifies the procedures for collecting charges and assessments by the Authority, which serves unincorporated communities (Berino, Desert Sands, La Mesa, Mesquite and Vado), located in largely rural areas in the southern part of Dona Ana county. This is an area that is largely agricultural: alfalfa, cotton, pecans, chile and other crops. The communities are small, usually between 200 to 1,200 residents. The water source is used primarily for agriculture in this area.

MD/bb