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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/17  
LAST UPDATED 3/02/17

SPONSOR Cervantes HB \_\_\_\_\_

SHORT TITLE Lower Rio Grande Water Works Rights & Liens SB 110/aSJC/aHAWC

ANALYST Armstrong

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)  
Administrative Office of the Courts (AOC)  
Office of the Attorney General (OAG)

### SUMMARY

#### Synopsis of HAWC Amendment

The House Agriculture and Water Resources Committee adopted the amendment recommended by OAG analysis to clarify that a court may order, rather than tax, reasonable attorneys fees as part of the costs in favor of the prevailing party.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 110 adds if the authority places a lien on property of money owed, it must be filed in the office of the “county or counties in which the property is located”.

#### Synopsis of Original Bill

Senate Bill 110 (SB110) amends the statute that creates the Lower Rio Grande Public Water Authority (Authority) to:

- Clarify that only an entity merging with the Authority whose service area is contiguous with that of the Authority must 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;
  - Set out 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 any foreclosure sale.

## **FISCAL IMPLICATIONS**

No fiscal impact.

## **SIGNIFICANT ISSUES**

SB110 changes existing statute to clearly provide that the combining and commingling of water rights is required only when the service area of the merging entity is contiguous with the service area of the Authority. According to OSE, this change continues to allow the benefits of economies of scale and greater efficiencies for mergers even if the merging entity is not contiguous to the original Authority's service area (as with a noncontiguous entity whose water rights are in a different administrative basin and cannot be combined or commingled). Further, as OSE notes, these new provisions do not prohibit a non-contiguous merging entity and the Authority from applying to combine and commingle their water rights if both feel it is advantageous. The bill states that any combining and commingling of water rights can be accomplished only by application to and a permit issued by the State Engineer.

As to the provisions concerning the filing and enforcement of liens, AOC believes they improve the existing statute, which is vague about placing and enforcing a lien since it simply provides that the Authority has the right to place and enforce a lien "in a manner pursuant to law." It points 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 that this bill clarifies the specific procedures for placing and foreclosing an Authority lien. These provisions 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.

## **OTHER SUBSTANTIVE ISSUES**

AOC notes there is no impact on the water source (Mesilla Valley Basin and Lower Rio Grande), at least as to those provisions which establish procedures for collecting charges and assessments by the Authority. The Authority 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 is used primarily for agriculture in this area.

**AMENDMENTS**

OAG analysis notes the word “taxed” in Section 1(Q) is used outside of its common meaning and suggests replacing the word with “approved”, “assessed”, “ordered”, or “granted”.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

An entity that elects to merge with the Authority will continue to be required to combine and commingle its water rights with those of the Authority regardless of whether its service area is contiguous with the service area of the Authority.

JA/al/sb