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FISCAL IMPACT REPORT

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| SPONSOR <u>SJC</u> | LAST UPDATED <u>03/07/2023</u> |
| SHORT TITLE <u>Regional Water System Resiliency</u> | ORIGINAL DATE <u>01/23/2023</u> BILL NUMBER <u>CS/Senate Bill 1/SJCS/aHAAWC/aHFI#1</u> |
| | ANALYST <u>Sanchez</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|------|------------------|---------|---------|-------------------|---------------------------|---------------|
| NMED | No fiscal impact | \$890.8 | \$890.8 | \$1,781.6 | Recurring | General Fund |

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Office of the State Engineer (OSE)
 New Mexico Finance Authority (NMFA)
 New Mexico Attorney General (NMAG)
 Department of Environment (NMED)

SUMMARY

Synopsis of HFI#1 Amendment to SJC Committee Substitute for Senate Bill 1

The House Floor Amendments to the Senate Judiciary Committee Substitute for Senate Bill 1 combines two subsections in the portion of the bill describing the powers and duties of the newly created Regional Water Utility Authorities. The changes reorganize subsection (2) and (3) to state:

B. An authority may:

- (2) Assess a one-time fee for the privilege of connecting a property to the authority's service at a future date if the property line is within three hundred feet of the authority's service lines and that property line is located within the boundaries of the authority;
- (3) Establish rates and impose assessments, fees and charges and take action necessary for the enforcement thereof;

The effect of these changes will be to remove the word “shall” which would imply a set of

required actions on the part of Regional Water Utility Authorities. By combining and renumbering the sections under (B) the RWUAs will maintain some discretion as to which of the actions they undertake.

Synopsis of HAAWC Amendment to SJC Committee Substitute for Senate Bill 1

The House Agriculture, Acequias and Water Resources Committee amendments to the Senate Judiciary Committee Substitute for Senate Bill 1 adds language in Section 2 requiring Regional Water Utility Authorities formed under the Regional Water System Resiliency Act to apply to the Office of the State Engineer to change the point of diversion of any water rights transferred during formation. The amendments also strike the words “and subsequent boards” in Section 6 describing the makeup of “the initial and subsequent boards” and adds the word “board” in their place, limiting the requirements listed in Section 6 only to the initial board.

Synopsis of SJC Committee Substitute for Senate Bill 1

The Senate Judiciary Committee Substitute for Senate Bill 1 would enact the Regional Water System Resiliency Act allowing for the consolidation of two or more public utilities providing water or wastewater services (entities) to create a regional water utility authority (RWUA). The bill describes the process entities must follow to create an RWUA. The bill outlines the powers, privileges, and duties an RWUA will possess and the structure of the governing board. Finally, the bill sets forth the authority’s rights to accept assets and liabilities and acquire water rights to provide water to its customers.

Section 3 of the bill describes the process entities must follow to create an RWUA, which includes the adoption of a resolution by each founding or joining entity signifying the intention to establish or join an authority, the publication of this intent, and the requirement to conduct at least two public meetings in which proposed articles of incorporation and bylaws are available for public viewing and comment. This section also specifies that before transferring any compliance liability, a compliance schedule that addresses the liability shall be developed and approved by the authority and relevant state or federal agencies. Section 6 establishes the process for electing board members, the frequency of meetings, meeting attendance requirements, and the process by which vacancies are filled.

Section 5 describes the power and duties of an RWUA, including the authority’s ability to provide water and wastewater services, road improvements to protect the authority's infrastructure, renewable energy projects, or other projects that are integral to the operation and maintenance of the authority's facilities. This section also describes the authority’s ability to establish rates, impose assessments, acquire water rights, connect and disconnect service, and enter contracts for services.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

In its analysis of the original bill, the Environment Department (NMED) expressed concerns about the lack of direct appropriations or resources for the agency to assist entities in pursuing consolidation as RWUAs. The agency cites its ongoing efforts through the Drinking Water Bureau and Ground Water Quality Bureau in helping entities organize meetings, file documents

with state agencies and navigate the complicated tasks required for regionalization. NMED estimates approximately \$890.8 thousand in recurring funding would be needed to fully fund the work of three current staff in the Drinking Water Bureau and Ground Water Quality Bureau (\$664.3 thousand) and to provide two additional staff positions (\$226.5 thousand), including base salary and benefits. This recurring funding will be necessary to allow NMED staff to focus on coordinating regionalization efforts throughout the state.

SIGNIFICANT ISSUES

The bill creates a legal framework for smaller water systems to consolidate and pool their resources to utilize limited resources better. In addition, the bill specifically aims to ensure that smaller water and wastewater systems have the option to consolidate into RWUAs, but also includes language protecting the rights of existing non-joining entities against encroachment. The bill will allow RWUAs to share the costs associated with planning, design, and construction of new water and wastewater systems and enable joining members to share the costs of necessary maintenance, repairs, and improvements.

PERFORMANCE IMPLICATIONS

In its analysis, the Office of the State Engineer (OSE) stated that creating a new type of public subdivision would require processing applications, creating additional demands on the agency's mission. However, the agency did not estimate the costs of processing these additional applications or their burden on existing staff workloads.

ADMINISTRATIVE IMPLICATIONS

The Attorney General currently represents the interests of residential and small business consumers in proceedings before the Public Regulation Commission (PRC) under Section 8-5-17 NMSA 1978. Changes proposed in SB1 Section 5(F) would remove the jurisdiction of the PRC and disallow NMAG's continued advocacy role. In its analysis of the bill, NMAG expressed concerns that the bill would reduce involvement from the state intended to protect consumers and provide oversight to water use.

The New Mexico Finance Authority (NMFA) explained that creating an RWUA as a political subdivision of the state would make these newly created authorities eligible to apply for financial assistance from the water project fund through the Water Trust Board (WTB). Recent initiatives taken by the WTB to support water system collaboration and regionalization seem, in the agency's analysis, to be supported by the provisions of SB1. NMFA explained that in August 2022, the WTB revised its project management policies to allow NMFA to waive loan requirements for projects if a project serves fewer than 500 connections or is consolidating with another system. The loan waiver, however, requires that the applicants complete an Asset Management Plan for current and future maintenance, replacement, and repair of water systems, a requirement for smaller systems to merge that is not included in the bill, as written.