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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/09

SPONSOR Crook LAST UPDATED _____ HB 861

SHORT TITLE Eastern NM Water Utility Authority Act SB _____

ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 New Mexico Environment Department (NMED)
 Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 861 would create the Eastern New Mexico Water Utility Authority (ENMWUA), encompassing Curry County and Roosevelt County, to develop, acquire and operate waterworks, pipelines, and wastewater systems within or outside its boundary, for the benefit of the two counties and six municipalities that are members of the Ute Reservoir Water Commission. The ENMWUA would be governed by a seven-member Board of Directors appointed by the members of the Ute Reservoir Water Commission.

The bill would authorize the ENMWUA Board to issue tax-exempt revenue bonds, maintain offices, employ staff, initiate legal actions, set rates for its services, execute liens and lawsuits to collect unpaid charges, and compel connection to its systems for health and sanitary purposes.

The ENMWUA would be a body politic and corporate and political subdivision of the State, with the power to sue and be sued; enter into contracts; acquire, dispose of and encumber real and personal property; establish infrastructure to convey water to its customers; regulate on-site wastewater treatment (*e.g.*, septic tanks); undertake 40-year water planning; and exercise eminent domain, but only for the establishment of infrastructure.

The ENMWUA would be authorized to assume the assets, liabilities, and service area of a variety of existing water service providers upon the request and following the dissolution of that provider. The ENMWUA, except by its own election, would not be subject to Public Regulation Commission jurisdiction.

The Authority would be the successor to the Eastern New Mexico Rural Water Authority, acquiring all its property, debts, and contractual obligations. The bill would become effective on July 1 of the year following federal authorization of the Eastern New Mexico Rural Water System.

FISCAL IMPLICATIONS

Respondents report no fiscal implications.

SIGNIFICANT ISSUES

The NMED reports that the northeastern portion of New Mexico obtains its drinking water from the Ogallala Aquifer, which is being mined for water. Eastern New Mexico communities have banded together to find a long-term source of water that will rely on the Ute Reservoir, a surface water source. The creation of a water authority, as proposed in HB 861, would provide for regional governance across county and municipal boundaries for more effective management and recognition of economies of scale. The Authority can accept assets from other water organizations to further promote regionalization. The governing body would consist of three members from Clovis, two members from Portales, one member from Curry County and one member, on rotating basis, from either Texico, Melrose, Eldia, or Grady. A representative from Roosevelt County is not included on the board. Elements in the bill that directly support NMED's goals include compelling hookups to a water system for health and sanitary purposes, although this should not be limited to water systems but also include wastewater systems. Undertaking regional wastewater planning and promulgating rules for on-site systems also aligns with NMED goals. Revenue bonds can be sold without a popular vote but by a super majority of the board consisting of five of the seven board members. Clovis and Portales will have a total of five votes.

The OSE points out that Sections 6 and 7 of the bill specify the powers of the ENMWUA and its board, but the bill does not set out any limitations on those powers. In contrast, the 2003 legislation establishing the Albuquerque-Bernalillo County Water Utility Authority (Laws 2003, ch. 437, and Laws 2005, ch. 345, codified at 72-1-10 NMSA 1978) expressly identified specific laws to which that authority is subject as a public body. Similarly, in the current legislative session, the House Judiciary Committee Substitute for the House Agriculture and Water Resources Committee Substitute for HB 185 on pages 5-6 sets out in detail the provisions of existing law to which the authority proposed in that bill would be subject. From the perspective of the OSE/ISC, at a minimum HB 861 should be amended as set out below to provide that the ENMWUA would be subject to the provisions of the New Mexico water code and the rules and regulations of the State.

The OSE notes further:

- The ENMWUA's authority is not exclusive. Existing water or wastewater systems are not required to cooperate or defer to its authority. These existing systems may operate

under the authority of the PRC which raises the possibility of competing systems serving the same geographic area under different regulatory regimes. The bill is not clear, for example, whether it would authorize the ENMWUA to compel connection of customers of other water providers.

- It is not clear why Roosevelt County would be the only member of the Ute Reservoir Water Commission without authority to appoint a member to the ENMWUA Board.
- There appears to be no territorial restriction on where the ENMWUA can seek to provide services.

The DFA states that if enacted, the Eastern New Mexico Water Utility Authority could possibly be subject to the budget reporting requirements of the Department of Finance and Administration with which water associations must comply. HB 861 also proposes the Water Utility Authority of Eastern New Mexico not be under the jurisdiction of the Public Regulation Commission. The Water Utility Authority should be responsible to an authoritative oversight agency in efforts to ensure rates are sufficient to maintain their system and proper rate/cost analysis is conducted.

TECHNICAL ISSUES

The NMED notes that it appears the Authority will have no oversight unless it elects to subject itself to the jurisdiction of the Public Regulation Commission, although it may be subject to the Local Government Finance provisions. To clarify that financial oversight is provided, it is recommended the bill be amended to specifically provide for oversight of the budget and stipulate the budget be established by a rate setting analysis to ensure full cost pricing. It is also recommended that for consumer protection oversight of the Public Regulation Commission be mandatory. Consumer issues with the Authority could be overseen by the Public Regulation Commission or the Environment Department under the Sanitary Projects Act.

ALTERNATIVES

The NMED suggests the following amendments:

Amend Section 5.E (7), page 5, Line 21, to read:

(7) fix and from time to time increase or decrease water and sewer rates, fees or other charges for water delivery, wastewater disposal or other related services or facilities operated or made available by the authority and adopt an operating budget that totally supports the full cost of operation, maintenance and replacement as established by an asset management plan and a rate setting analysis subject to the following conditions:

Add a new Subsection (b) to Section 5.E (7) on Page 6, Line 2, to read:

(b) the operating budget of the authority shall be subject to the approval of the New Mexico department of finance and administration as required by [Section 6-6-2](#) et seq., NMSA 1978, as enacted or amended.

Renumber the remaining Subsections of Section 5.E (7).

Amend Section 5.E (7) (e) Page 6, Line 25 to read:

(e) for health and sanitary purposes, the board may compel the owners: 1) of inhabited property within the territory of the authority to connect their property with the water or wastewater systems of the authority.

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Amend Section 18 Page 19, Lines 7-16, strike the word “not” (line 7), put a period after the word “commission” (line 8), and strike the remainder of the section.

The OSE suggests:

On page 9, between lines 8 and 9, insert a new section as follows:

“Section 7. ~~AUTHORITY--LIMITATIONS.~~--The authority shall be subject to Chapter 72 NMSA 1978 and the rules and regulations of the state engineer.”

Renumber succeeding sections accordingly.

GH/svb