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FISCAL IMPACT REPORT

ORIGINAL DATE 03/0809
 LAST UPDATED 03/17/09 **HB** _____

SPONSOR SFC _____

SHORT TITLE Water & Wastewater System Assistance **SB** CS/335/aSFI#1

ANALYST Aubel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	Unknown	Recurring	Liquid Waste Fund
	Unknown	Recurring	Water Quality Management Fund
	Unknown	Recurring	Corrective Action Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Unknown	Unknown	Recurring	Water and Wastewater System Management Assistance Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to Appropriation in the General Appropriation Act
 Companion to SB 30/SFCS

SOURCES OF INFORMATION

LFC Files

Responses Used From SB335

Department of Finance and Administration (DFA)
 New Mexico Environment Department (NMED)
 New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of SFI Amendment

The Senate Floor Amendment #1 removes various sources of funding for the new water and wastewater system assistance management fund:

- Transfers from the water quality management fund; and
- Transfers from the corrective action fund.

FISCAL IMPACT

The amendment leaves donations, appropriations, interest earned, and transfers from the liquid waste fund not to exceed \$200 thousand from the unexpended balance of the fund. NMED provides the following background information on liquid waste fund:

This fund has been used for liquid waste program expenses with very little carryover to the next fiscal year. Liquid waste permit fee revenues have decreased from \$847,700 during FY 06 to \$576,800 in FY 08. Actual fee revenues from July 2008 through February 2009 show that revenues have decreased even further in FY 09, and will amount to about \$465,000 by the end of the fiscal year, a total reduction of approximately 45% over a three year period. It is anticipated that the Liquid Waste Fund will have a \$0 fund balance at the end of this fiscal year.

Synopsis of Original Bill

The Senate Finance Committee Substitute for Senate Bill 335 creates a “water and wastewater system assistance management fund” in the State Treasury to pay for hiring a certified operator, administrative management, or connection fees to regional water or wastewater system for small water and wastewater systems. The bill provides for funding from appropriations, donations and transfers from three other existing funds currently managed by the department: the liquid waste fund, the water quality management fund and the corrective action fund. The fund would be administered by the NMED and no more than 5 percent of the fund shall be used on an annual basis to pay the department’s cost. The bill would assist small water and wastewater systems obtain professional operation and management services.

FISCAL IMPLICATIONS

The appropriation of \$2 million contained in this bill is a recurring expense to the general fund, assuming a continued demand for some expenditures—particularly connection fees—which can be quite substantial. NMED notes a recent quote of nearly \$500 thousand to allow a small wastewater system to connect to the regional public sewer system. NMED indicates that if connection fees were dealt with under a separate bill, the \$2 million would suffice to meet the other objectives in the bill and would be, therefore, nonrecurring. Any unexpended or unencumbered balance remaining at the end of FY10 shall not revert to the general fund.

The appropriation or transfer from existing funds contained in this bill is a recurring expense. Any unexpended or unencumbered balance remaining at the end of FY10 shall not revert to the fund from which it was transferred. Because NMED notes a recent quote of nearly \$500 thousand to allow a small wastewater system to connect to the regional public sewer system, the funding of the program would be recurring to adequately address water quality issues.

The bill provides for appropriations in future years when general fund may be available. The three funds identified to provide a source of revenue to the new fund are currently used for their statutory purpose and appropriated within the General Appropriation Act to the department. The bill does not specify how much from each fund shall be transferred. Updated fund projections are unavailable, although projections for both the liquid waste fund and the corrective action fund are likely to be less than originally expected for FY10 due to the economy. The chart below shows the average revenues and expenditures from each fund:

Fund	Revenues (in thousands)	Expenditures (in thousands)
Liquid Waste Fund (FY02-FY08)	\$602.1	\$675.3
Water Quality Management Fund (FY95-FY08)	\$240.7	\$205.6
Corrective Action Fund (FY95-FY08)	\$15,143.9	\$15,797.3

The bill appropriates transfers directly from the corrective action fund and not from the 30 percent set aside for meeting the state match to federal grants and other operating costs.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

New Mexico has over 600 community water systems and over one-third are Mutual Domestic Associations run by volunteer boards of directors. According to NMED, “those associations typically have a small revenue base and have difficulty meeting the requirement for a certified operator and frequently lack professional bookkeeping expertise. Those deficiencies jeopardize the ability of the system to provide safe and adequate service and operate in a sustainable manner. Establishing a water and wastewater system management assistance fund would provide “seed money” to hire a certified operator and assist with administrative management that could provide service to several small systems within a region. The intent, after starting the program, is to bring the participating systems up to self sufficiency within one to two years so they could completely support the expenses of the operator and necessary management with their own funds.”

Water and wastewater systems throughout New Mexico are required by law to set aside a rate structure to pay for operations and maintenance of their systems. NMFA details this requirement, as follows:

“The Sanitary Projects Act illustrates the definition that public water or wastewater systems are deemed for the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the

state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

Section §3-29-12 (C) NMSA 1978 of the Sanitary Projects Act states that funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed if necessary on a yearly basis, and the funds shall be obtained by the association by a monthly assessment against the users of the facilities, the assessment to be determined by the board of directors.”

This bill would aid the water and wastewater systems comply with statute by providing professional assistance. NMED maintains that, while the agency supports regionalization, including the connection fees in this bill may dilute the effort to provide this professional assistance because such fees could quickly deplete the fund. The department suggests that connection fees and regionalization be a topic of a separate bill.

ADMINISTRATIVE IMPLICATIONS

NMED would need to develop implementing policies, contract with contractors for the services, and encumber and disburse the funds. Monitoring the performance and progress of the program and its expenses would also be required. NMED notes the department has the expertise to complete these tasks, but additional staff would be required to fully implement this new program. SB 335/SFCS does provide funding for administration needed to support these additional requirements up to 5 percent of the fund.

The bill allows transfers from three existing funds to help provide revenue to this new fund. The statutory purpose for each of the funds is noted below:

Liquid Waste Fund	Chapter 74-1-15 NMSA 1978	Collection of liquid waste system, modification, construction, treatment fees, certification, re-inspection and variance fees. Used to cover associated operational costs.
Water Quality Management Fund	Chapter 74-6-5-2 NMSA 1978	Collection of discharge permits fees. Revenues used to cover costs associated with the Ground Water Quality Bureau's Discharge permitting activities Petroleum products loading fees. Revenue is used to cover cleanup of above- and below-ground petroleum storage tanks and bureau operating costs. 30% is used for the state's share of federal leaking underground storage tank grants and other grants/operating costs related to water quality.
Corrective Action Fund	Chapter 74-6B-7 NMSA 1978	

Contractors for services under this fund shall be selected by a competitive bid process. Guidelines of their use shall be devised by the State Treasury.

COMPANIONSHIP, RELATIONSHIP

SB 30/SFCS is a companion bill to SB 30/SFCS that creates a new fund to provide assistance to qualified households for replacing improper or failed septic systems.

SB 335/SFCS relates to appropriations made to NMED in the General Appropriation Act as noted under Fiscal Impacts.

TECHNICAL ISSUES (Comments from SB 335 are updated to track with the Committee substitute.)

DFA notes that Section D (Page 3, Line 1) does not include “certified operator” as part of its definitions. This program is established by statute and a reference would clarify this point.

NMED notes that “connection fees” are broadly defined in the bill, excluding only related legal fees. The agency suggests that the issues of regionalization and connection fees be addressed separately from this bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED states that small water and wastewater systems will continue to struggle with proper operation, maintenance, and management of their systems. Poor operation, maintenance, and management can create threats to human health and safety and to the environment.

POSSIBLE QUESTIONS

1. How will this bill affect systems that are in compliance and are operating under good asset management plans?
2. A new program was created in NMED to provide this community assistance, the Water and Wastewater Infrastructure Development Program. How does this program fit into that structure and are there duplicating costs?
3. Would this bill allow NMED to reduce its general fund appropriation dedicated to the Water and Wastewater Infrastructure Development Program?

MA/mc:mt