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FISCAL IMPACT REPORT

		LAST UPDATED	03/02/23
SPONSOR	SHPAC	**ORIGINAL DATE**	02/15/23
SHORT TITLE	T or C Water Line Improvements	**BILL NUMBER**	CS/Senate Bill 359/ec/SHPACS
		ANALYST	Sanchez

APPROPRIATION*
(dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY27		
$20,000.0		Nonrecurring; for expenditure in FY23 to FY27	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	$300.0	$300.0	$600.0	Nonrecurring	NMED Operating Budget (Water Protection Division)
Total		**$300.0**	**$300.0**	**$600.0**	**Nonrecurring**	

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

Sources of Information

LFC Files

Responses Received From
Department of Finance and Administration (DFA)
Department of Environment (NMED)

SUMMARY

Synopsis of SHPAC Substitute for Senate Bill 349

The Senate Health and Public Affairs Committee Substitute for Senate Bill 359 (CS/SB359) appropriates $20 million from the general fund to the Department of Environment for the purpose of funding the planning, design, construction, and replacement of water lines in Truth or Consequences in Sierra County. The bill states that this is of the utmost importance because the city of Truth or Consequences is experiencing leaks causing the loss of 20 million gallons of water, or 43 percent of its total water each year.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

The appropriation of $20 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY27 shall revert to the general fund.

The Construction Programs and Drinking Water Bureaus at the Department of Environment (NMED) currently face budget and staffing issues that challenge their ability to fulfill the basic duties of their programs. According to NMED, Construction Programs Bureau technical staff currently oversee 126 projects each. Additionally, these programs do not currently receive any general fund appropriations and instead rely on the diversion of approximately $965 thousand annually from the corrective action fund to pay for staff salaries and professional service contracts. Senate Bill 359 will place a significant additional workload on agency staff without allowing for use of any of the funds appropriated to cover these administrative costs. NMED analysis states:

> The General Services Department receives a 3 percent administrative fee on all capital project appropriations for GSD owned facilities (pursuant to 15-3B-10 NMSA 1978), and NMED would require that amount to administer the appropriation in SB359. A fee of 3 percent is similarly appropriate for capital projects funding administered by NMED and would be $600 thousand for this project.
>
> Regardless of whether NMED supports the intent of proposed legislation, NMED does not support legislation placing additional duties on the agency and its employees unless the proposal is fully funded in the agency's base operating budget.

SIGNIFICANT ISSUES

NMED's analysis points to a potential conflict of interest, stating:

> NMED is responsible for the issuance of violations, fines, or penalties when regulated entities such as water utilities are in violation of state or federal regulations that are within NMED jurisdiction. Requiring NMED to plan, design, construct, replace and improve drinking water infrastructure is a conflict of interest with NMED's regulatory role.

In 2022, over 200 million gallons, or 43 percent of the water in T or C's water system, was lost to leakage, up from 28 percent in 2019. Line breaks in the fragile system are a near-daily event, with over 400 repairs made last year.

According to a 2021 LFC Program Evaluation of State-Funded Water Projects, both state and federal governments play an ongoing role in funding capital improvements to water and wastewater systems. In 1988 and 1996, the federal government created the Clean Water State Revolving Fund and Drinking Water State Revolving Fund, with each state administering its own version of each fund according to federal rules and with annual grants from the U.S. Environmental Protection Agency and state matching dollars. The funds primarily offer low-interest loans to wastewater and drinking water systems, with limited grant dollars, or "subsidy," available each year and criteria to qualify for a subsidy. The revolving funds are intended to be self-perpetuating, and most states allocate most of their financial assistance for water and wastewater projects through these funds.

New Mexico is the Only State to Provide a Majority of Drinking Water and Wastewater Funding from its Own Loan and Grant Programs Rather than its Federally-Backed Revolving Funds

Rank	State	Total State Funding for Drinking Water and Wastewater Projects, 1988-2019 (in thousands)	Percent from State-Based Loan and Grant Programs	Percent from Federally-Backed Clean Water and Drinking Water State Revolving Funds
1	New Mexico	$2,179,818	67%	33%
2	West Virginia	$2,831,061	46%	54%
3	Maryland	$5,970,111	46%	54%
4	Texas	$17,522,755	44%	56%
5	Colorado	$3,380,531	42%	58%
6	Wisconsin	$5,783,485	37%	63%
7	Washington	$4,486,283	36%	64%
8	Kentucky	$3,052,105	35%	65%
9	Oregon	$2,726,221	35%	65%
10	Alaska	$1,378,690	33%	67%

Source: EPA NIMS data

New Mexico's singular status in this area reflects policy choices by the Legislature and executive branch for the state to provide significant support to public water and wastewater systems in the form of legislative capital outlay and programs funded with earmarked severance tax bonds, including the water trust board, colonias infrastructure fund, and tribal infrastructure fund. These funds provide both generous, zero-interest loan terms and higher proportions of grant funding than revolving funds. They have historically outcompeted the revolving funds in attracting applicants for funding.

According to the same 2021 LFC evaluation, over a third of the grant money awarded to water projects from FY16 to FY20 was appropriated without an assessment of the local entity's ability to take on debt, with $31 million going to the state's largest water systems. Local entities' reliance on grant funding and hesitancy to raise rates and take on debt can limit the timely completion of projects and increase the risk that state investments will not result in public benefits. If managed effectively, most water and sewer utilities should have at least some capacity to undertake debt – even small systems. Rate structures that reflect the cost of operations, maintenance, and existing debt and allow utilities to put money into reserve accounts to cover emergencies or future capital costs are foundational best practices of utility management.

ALTERNATIVES

NMED suggested:

> The funding in SB359 should be awarded to the community, with funding included to cover the costs of oversight and management by NMED. An example is the grant to Eastern New Mexico water utility authority for the Eastern New Mexico rural water system, including funding to NMED for administrative costs to oversee construction.

SS/al/ne