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FISCAL IMPACT REPORT

SPONSOR Snyder DATE TYPED 2/10/04 HB _____

SHORT TITLE Regulation of Utility Operators SB 131/aSCONC

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$70.0		See Narrative	Recurring	OSF

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB172
Companion to SB55

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	\$70.0		Recurring	New Public Water Supply System Operator and Public Wastewater Facility Operator Fund
	(\$20.0)		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Environment Department (ED)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment removes the language allowing the accrual of the ten percent yearly fee increases, thereby forcing ED to increase the fees each year or lose that year's ten percent.

Synopsis of Original Bill

Senate Bill 131 amends the Utility Operator Certification Act as follows:

- Clarifies the role of the Water Quality Control Commission (WQCC) as the rulemaking body for the Utility Operator Certification Program and the review entity for enforcement actions taken by the ED.
- Clarifies the role of the entity responsible for administration and enforcement of the Act.
- Strengthens the statutory provisions related to enforcement of the Act.
- Adds a new definition of the term “operate” to the Act to provide guidance regarding who must be certified.
- Creates a new fund, the Public Water Supply System Operator and Public Wastewater Facility Operator Fund.
- Raises the statutory maximums for fees relating to operator certification, provides limit for future fee increases.
- Eliminates the distinction between certified operators and certified supervisors.

Significant Issues

Currently, there are 2,954 water and wastewater certified operators in New Mexico. There are approximately 1,300 public water systems and 400 public wastewater systems that are required to have certified operators. Depending on the size of the water or wastewater system, one or more certified operators may be required. There are a significant number of public water systems that do not have certified water operators although they are required to do so by State statute and the Federal Safe Drinking Water Act. This bill strengthens the New Mexico Environment Department’s ability to enforce the requirement to have certified water and wastewater operators to protect public health, safety and welfare.

The Utility Operator Certification Program affects nearly every New Mexican; the program provides training, testing and licensing to ensure public utility operators have the knowledge and skill to properly operate and maintain public water and wastewater systems. Proper operation of these public facilities is critical because:

- Improper operation can seriously jeopardize public health by allowing operational failures that can result in unsafe drinking water or sewage spills.
- The State has invested billions of public dollars in water and wastewater utility infrastructure statewide, and this investment must be protected.
- Proper operation protects the environment, especially the quality of our limited ground and surface water resources; one of the worst fish kills in New Mexico in recent years was caused by an improper discharge from a drinking water plant to the Rio Ruidoso, a result of operator error.

ED is responsible for ensuring that public water systems operate to ensure a safe drinking water supply. An effective operator certification program is critical to ensuring that public water systems are operated properly and that public water supplies are safe.

ED also measures its performance in responding to emergency conditions at public water systems and its efficiency in collecting compliance water samples at public water systems. The bill has the potential to reduce the number of emergency conditions that the agency would have to address in the event of contaminated water supplies due to improper operation and maintenance of a drinking water system. An increase in the number of certified operators serving public water systems in New Mexico also has the potential to decrease monitoring requirements and would likely reduce the number of samples collected by ED.

ED is responsible for ensuring that public wastewater systems are operated in a manner that is protective of surface and ground water quality. An effective operator certification program is critical to ensuring that public wastewater systems discharge properly treated effluent and manage solids in accordance with state requirements so that the State's limited water resources are protected.

FISCAL IMPLICATIONS

SB131 creates a new fund and will provide approximately \$70.0 in fee revenue to support Utility Operator Certification Program operations. Approximately \$20.0 will come from fees that are currently going to the General Fund. An additional \$161,900 will be appropriated from the Corrective Action Fund pursuant to SB55. These dollars are not reflected in the Appropriation or Revenue tables because they depend on pending legislation. Both sources of funding are necessary to maintain the most basic program operations.

The proposed amendments affect Utility Operator Certification fees as follows:

- Fees will go to an earmarked fund to be used solely for administration and enforcement of the Act.
- The bill allows the WQCC to adopt an initial fee increase of up to \$50.
- Future fee increases adopted by WQCC will be capped at 10% annually, up to a maximum of \$200.
- Fees will continue to cover 3 year renewal cycle.
- The actual fee schedule will be adopted by regulation by the WQCC, the fee schedule that will be proposed to the WQCC ranges from \$25 for small systems to \$50 for large systems. Currently fees range from \$5 to \$25.
- Proposed fees will support approximately 20% of program costs.
- Operators are willing to pay higher fees if they know that the fees will directly support the certification program.

Successful Utility Operator Certification Program implementation helps to secure federal funds earmarked for New Mexico's State Drinking Water Revolving Loan Program (used to upgrade and build publicly owned drinking water systems). For example, U.S. Environmental Protection Agency approval of the program in 2003 leveraged \$1.6 million in federal funds for the state Drinking Water Revolving Fund. The Drinking Water Revolving Fund is used to provide low interest loans to construct or improve eligible drinking water facilities.

Continuing Appropriations

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

ADMINISTRATIVE IMPLICATIONS

ED reports that the Utility Operator Certification Program has been struggling to maintain operations with limited federal and water conservation fee funding for the past 2 years. Without dedicated funding, it will be increasingly difficult to provide training to operators and to ensure safe operation of the state's public water and wastewater systems. With additional funding, the Department will be better situated to ensure public water systems meet Safe Drinking Water Act mandatory requirements to have a certified operator in order to protect public health.

DUPLICATION/COMPANIONSHIP

SB131 duplicates HB172

SB131 is a companion bill to SB55 which provides \$161,900 in funding from the Corrective Action Fund for day to day operations of the Utility Operator Certification Program.

OTHER SUBSTANTIVE ISSUES

The provisions contained in this bill were developed through a stakeholder workgroup convened in May 2003; the workgroup includes representatives of ED, certified operators, municipalities, and rural water systems

DW/sb:yr