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FISCAL IMPACT REPORT

SPONSOR Snyder DATE TYPED 02/17/05 HB _____

SHORT TITLE Amend Sanitary Projects Act SB 286

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates
HB 838

SOURCES OF INFORMATION

LFC Files

Responses Received From

SUMMARY

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

Synopsis of Bill

Senate Bill 286 revises and updates the Sanitary Projects Act regarding the creation and operation of private, nonprofit water system associations. It deletes language referring to the sanitary projects fund which no longer exists.

The bill removes obsolete language and clarifies some of the remaining provisions. The bill imposes new requirements on associations intended to strengthen the associations and make them more accountable to their membership and to the NMED.

Most significantly, the bill:

- Stipulates explicitly that associations formed under the Act are “political subdivisions

of the State” and that they are subject to the provisions of the State Procurement Code.

- Prohibits formation of a new association if the service area is an unincorporated area currently served by a municipality.
- Prohibits formation of any new capital stock corporations under the Act after July 1, 2005.
- Clarifies some of the financial requirements for the associations and adds a provision requiring the associations to maintain “a reserve fund for non-major capital items.”
- Adds a new section to the Act which provides for the merger of two or more associations into one association.
- Adds a requirement that each association must annually file a member accountability report with the NMED. The report must include a financial statement prepared in accordance with generally accepted accounting principles and a copy of the Open Meetings Act resolution adopted by the association’s board of directors.
- Allows the NMED to conduct periodic reviews of associations and intervene when an association is not being operated for the benefits of its membership

Significant Issues

According to NMED, the authority for oversight over the roughly 200 mutual domestic associations formed under the Sanitary Projects Act is clouded by archaic language. NMED frequently receives complaints that associations are using unfair or preferential practices that may include providing more water to certain users than other users and having poor or no financial accounting.

NMFA writes that the additional financial requirements, especially the establishment of the reserve fund and implementation of generally accept accounting principles, will enhance the stability of the operations and the security of NMFA loans to the associations.

OSE writes that, while the bill does not have a direct effect on the OSE, it is not uncommon for these associations to have incomplete or even no water rights on file with OSE. Associations may also be registered under an individual name or a previous name. OSE argues that, as records of these associations are updated by NMED, it is important that records also be updated with OSE so that water rights declarations and changes of ownership are accurately portrayed in OSE records. Establishing a record with OSE will protect the associations’ water rights in an adjudication or in the event of a water rights protest proceeding.

FISCAL IMPLICATIONS

The bill may result in increased costs to NMED to meet additional responsibilities related to oversight, records management, and compliance.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

With the exception of one difference, this bill duplicates House Bill 838. The exception is that Senate Bill 286 states that project engineers must be approved by the environmental improvement division of the NMED in accordance with the Procurement Code. House Bill 838 includes the same requirement for compliance with the Procurement Code but does not require that the project engineers be approved by the environmental improvement division. NMED notes that this reference is antiquated.

TECHNICAL ISSUES

NMED notes two technical issues with the bill. First, in Section 3, the bill requires the association to have its selection of a project engineer approved by the environmental improvement division of the department. NMED suggests removing this approval requirement.

Second, the bill requires each member of a board of directors to complete a minimum of 8 hours of training as determined by the department (Section 5, subsection F). NMED recommends making this requirement permissive and giving NMED the authority to determine who may require training.

Finally, there appears to be a typographical error on page 3, line 25 of the bill, which contains and errant "4."

EF/lg