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FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/16

SPONSOR Martinez LAST UPDATED _____ HB _____

SHORT TITLE Regional Water Utility Authority Act SB 204

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$0-\$81.2	\$0-\$81.2	\$0-\$162.4	Recurring	Environment Department Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Environment Department (NMED)
 Office of the State Engineer (OSE)
 Public Regulation Commission (PRC)

No Responses Received From

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 204 allows the creation of a new statutory entity – a Regional Water Utility Authority (RWUA) – that may be incorporated through the cooperation of two or more entities that provide water or wastewater treatment services:

- An RWUA may be created to construct or acquire water supply works or wastewater treatment systems; to manage or maintain such regional facilities; to develop renewable energy projects integral to such facilities; and to implement storm water management strategies. The bill would provide for the transfer of assets and liabilities from the incorporating entities to the RWUA.

- RWUAs would be incorporated, under the supervision of the Secretary of State, by the cooperating entities and would be governed by a board of directors elected from within the RWUA's service area.
- RWUAs would have the power to: borrow money, issue bonds, encumber revenues, and mortgage property; establish rates, assessments and fees for service, and enforce them with shut-off notices, collection suits, and liens; acquire water rights from willing sellers; to acquire real property; to condemn property, through eminent domain, for infrastructure construction, maintenance, and operations; to compel connection within the service area; and to participate in regional water planning.
- The bill provides detailed procedures for the predecessor entities to give notice, hold public hearings, and proceed with incorporation. The board would have the authority to hire employees.
- An RWUA would have the exclusive right to provide service within its service area, subject to the right of existing providers to continue service to their existing customers and subject to the RWUA's ability to provide service promptly.
- An RWUA would be authorized, within its service area, to restrict new domestic wells, and to require water conservation measures, as well as to compel connection to RWUA systems. An RWUA would be subject to New Mexico Environment Department (NMED), Office of the State Engineer (OSE), and Department of Finance and Administration (DFA) regulations. Authorities would also be subject to the Open Meetings Act, the Inspection of Public Records Act, the Audit Act, the Procurement Code, the Governmental Conduct Act, and other applicable state laws.

FISCAL IMPLICATIONS

According to NMED analysis, SB204 could impose additional demands on the agency's Water Protection Division and Drinking Water Quality Bureau. If NMED dedicates one FTE to overseeing RWUA's, it would require \$81.2 thousand annually based on the average cost of an FTE in the Water Protection Division.

SIGNIFICANT ISSUES

Regionalization is an effective process to address technical, managerial, and financial capacity deficiencies. Through economies of scale, regionalization promotes greater efficiency in maintaining infrastructure and providing services, assists entities with regulatory compliance, and enhances resiliency in the face of water supply problems. Currently, entities that want to regionalize have to submit proposed legislation on a case by case basis which is burdensome and time consuming, thereby discouraging regionalization and collaboration among entities.

About 80 percent of New Mexico's roughly 1,100 water systems provide water to fewer than 500 people. Mutual domestic water consumer associations (MDWCAs) are one of the smallest local governments eligible for public funding to reach rural areas of the state. Only three board members are required to create an MDWCA. A water system is only public and subject to regulation under the federal Safe Drinking Water Act (SDWA) if it has 15 connections or serves a population of at least 25 people for six months out of the year or more. The differences in population requirements create a loophole wherein MDWCAs with 3-14 connections are eligible

for public funds for water system infrastructure but are not required to follow any regulations in serving water to their community. Theoretically, very small MDWCAs could form a regional authority and still be exempt from the SDWA. NMED recommends that Authorities created pursuant to SB204 be required to follow SDWA requirements as incorporated in the state's drinking water regulations.

NMED supports regionalization, but has some concerns with the language. While SB204 requires RWUAs to comply with NMED, OSE, and DFA regulations, it does not expressly task an agency with overseeing the general operation of RWUAs. The lack of clarity as to whether or not oversight is to be vested in an RWUA's board or one of the state's executive agency. NMED does not have current funding for regulatory oversight of these newly created authorities.

OSE also raised concerns with the bill's language. First, the bill requires RWUAs to seek OSE approval of service area and place of use documents. However, OSE does not currently have the power to approve the service areas of water or wastewater service providers, and the bill provides no criteria for this approval. The agency recommended amending the bill to provide clarity on the necessary steps for the authority: 1) to file a plat with the appropriate county clerk or clerks to designate a service area, and 2) to make the necessary filings with the state engineer to reflect the change in ownership of water rights and to combine and commingle water rights.

Second, in granting RWUAs authority similar to that provided to municipalities to place further limitations on domestic wells permitted by OSE within their service area. However, the bill also contains material for which there is no analogous provision in existing statutes. OSE analysis notes the language of Section 15(B) could create confusion between the respective jurisdiction of an RWUA and the OSE over domestic wells by stating that an RWUA has "jurisdiction over new domestic wells within the authority's service area." The agency proposed amending the bill to clarify that OSE continues to have jurisdiction and authority over new domestic wells but that an RWUA has the authority to further limit an OSE domestic well permit. Analysis from the Attorney General's Office also noted that the bill should be clarified to provide that RWUA regulations are supplemental to OSE regulations and that domestic well permits still need to be obtained from OSE prior to obtaining any regional water utility authority permit.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 196 duplicates SB204.

TECHNICAL ISSUES

NMED analysis notes:

- Section 4(B) does not provide adequate information regarding the list of "all persons who have requested advance notice of hearing." It is not clear who is responsible for compiling the list and how it can be created if the authority has not yet formed.
- Section 4(H) on page 8, lines 15-18, should provide a mechanism by which all regulating entities are informed when an RWUA is incorporated.
- Sections 8(A), on page 13-14, lines 24-7, allows an RWUA to compel the

connection of a homeowner's water or wastewater system to the authority's water or wastewater system and to compel the connection of any new development within the authority's service area. To prevent cross contamination issues and for sanitary purposes, no homes with private wells should be allowed to connect to an authority's system without proof of proper private well disconnection.

NMED also suggests the following amendments:

- On page 2, line 24, strike “minimize” and replace with “prevent”. New Mexico's water quality regulations intend to prevent water pollution rather than minimize it.
- On page 26, strike lines 12-16 in their entirety. Section 20 on page 33, lines 6-18, is sufficient to incorporate by reference NMED's regulatory authority over environmental protection elements of the authorities.

OSE suggested the following amendments to address concerns with the bill's domestic well provisions:

- On page 23, strike lines 24 and 25 and reletter succeeding subsections accordingly.
- On page 24, lines 18-19, strike “with a new domestic water well drilling policy” and insert in lieu thereof “that has adopted a resolution pursuant to subsection C. of this section”.
- On page 24, lines 20-21, strike “state engineer's approval” and insert in lieu thereof “issuance of a domestic well permit by the state engineer pursuant to section 72-12-1.1”.
- On page 43, line 9, strike all new material.
- On page 43, lines 9-10, remove the brackets and the line through “firm or corporation”.
- On page 43, line 24, after “with” insert “all applicable resolutions adopted by an authority pursuant to”.
- On page 43, line 25, strike the underscored language “and other applicable laws”.

OTHER SUBSTANTIVE ISSUES

Section 8, on page 12, lines 20-22, purports to grant an RWUA the authority acquire and hold a water rights permit issued pursuant to Section 72-1-9 NMSA 1978, which allows certain entities to acquire and hold unused water rights in excess of their reasonable need within the next 40 years. It is not clear, however, that RWUAs would be able to obtain a permit issued in accordance with Section 72-1-9 as RWUAs are not included in the list of entities set out in that statute. While existing statute includes “special water users' associations” as entities eligible to hold such permits, this term is not defined by current statute or SB204.

The grant of authority to participate in regional water planning provided in Section 8 on page 13,

line 15, is unnecessary because all water right owning entities may participate in water planning and do not need express statutory authorization to do so.

SB204 exempts RWUAs from Public Regulation Commission (PRC) jurisdiction. PRC analysis noted:

Granting RWUAs the authority to establish an exclusive service territory may affect PRC jurisdiction over service territory disputes between and among Mutual Domestic Water Consumer Associations (MDWCAs) which are organized pursuant to the Sanitary Projects Act. MDWCAs are considered political subdivisions and would thus be eligible to merge to form RWUAs. This would remove PRC authority to resolve service territory disputes of unreasonable interference between and among PRC regulated public water utilities and entities that were formerly MDWCAs. Although SB204 excludes those areas formerly served by others from an RWUA's service territory, this does not necessarily remove the potential for such disputes.

Section 8(A)(9) grants RWUAs the power of eminent domain, but only as the "last resort" and "only for the purpose of construction, maintenance and operations of the authority's infrastructure." If RWUAs exercise this power over the property of a public utility regulated by the PRC, there would be no PRC jurisdiction over involuntary transfers, however PRC approval of the transfer may be required if the RWUA and public utility reach agreement through negotiation.

JA/jo/al