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## FISCAL IMPACT REPORT

SPONSOR Wirth/Salazar ORIGINAL DATE 02/20/19  
 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Regional Water Authority Utility Act SB 509

ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Environment Department (NMED)

Department of Finance and Administration (DFA)

Energy, Minerals and Natural Resources Department (EMNRD)

Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of Bill

Senate Bill 509 proposes to enact the Regional Water Utility Authority Act that allows for the creation of regional water utility authorities (RWUAs) to plan, develop, manage, maintain, or coordinate regional water and wastewater facilities; purchase, acquire, establish, or construct waterworks to supply water and wastewater systems; and develop renewable energy projects.

RWUAs would be political subdivisions of the state, incorporated, and governed by a board of directors elected from a RWUA's service area. RWUAs would, among other powers, have the power to borrow money, encumber revenues, establish rates for services, authorize liens, acquire water rights, condemn property for infrastructure, and compel connection within a service area.

An RWUA would have exclusive rights to provide services within its service area, subject to the right of existing providers to continue services and to the planned and funded extensions of existing services, provided those are completed within 18 months of an RWUA's incorporation date.

An RWUA would be authorized to regulate and restrict the drilling of domestic wells and compel connection within the service area to RWUA systems. An RWUA would be subject to NMED, OSE, and DFA rules, but not subject to Public Regulation Commission (PRC) jurisdiction unless it chooses to be. Finally, the bill adds RWUAs to the list of entities that statute allows to implement a water development plan for a period of up to 40 years.

## **FISCAL IMPLICATIONS**

DFA commented that water and sanitation services involve large shared infrastructure costs, and adding more customers usually means that each one pays a smaller share of these costs.

## **SIGNIFICANT ISSUES**

Both DFA and OSE noted the bill would provide a mechanism for small water or wastewater providers to combine their resources which, through economies of scale, would promote greater efficiency in maintaining infrastructure and providing services and more consistent compliance with regulatory requirements, which would enhance resiliency in the face of water supply problems.

OSE provided the following comments relating to administrative and permitting:

Section 11 deals with the mechanics of combining incorporating entities' water rights for the purpose of providing water within the service area.

- 1) Subsection B of Section 11 would require that upon incorporation, a RWUA would file a plat designating the RWUA's initial service area with the county clerk of each of the counties in which the service area is located (p. 12, lines 18-20). In addition, the bill would require the RWUA to file change of ownership documentation with the OSE (p.12, lines 21-23). Then, "upon [the authority's] recording of the change of ownership form with the clerk of the county in which the water rights are located, the place of use of the incorporating entities' water rights shall be deemed to be the authority's water rights place of use (Subsection B(2), p. 12-13).
- 2) The bill would, "if the service areas of the incorporating entities will be combined," require the RWUA and the incorporating entities to file an application with the OSE to combine and commingle the water rights of the incorporating entities (p. 13, lines 2-6). The bill should mention that the same permitting requirements would apply to entities that join after incorporation.

NMED noted the bill does not address which agency, if any, is responsible for overseeing an RWUA's operations and investigating complaints, especially if the RWUA does not choose to be under PRC jurisdiction. NMED is also concerned over the lack of a requirement for an RWUA to meet a minimum number of connections/populations served in order to align with the EPA's definition of a public water system and be subject to state and federal drinking water regulations.

EMNRD noted state agencies are not included in the definition of "entity." A state agency or institution may wish to join an RWUA for provision of water or wastewater services. If SB509 is enacted, EMNRD could contract with an RWUA to provide a state park with water or wastewater utilities. This could reduce operation and maintenance burdens created by the need to operate and maintain complex water and wastewater treatment systems to serve state park

visitors.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB509 duplicates House Bill 175.

## **TECHNICAL ISSUES**

Section 4 (A) revises the minimum number of entities required to create a RWUA from two to one. It is unclear what purpose would be served for a single entity to “regionalize” or reorganize under this act and how any of the requirements would apply to a single entity. Section 4 (A) also requires dissolution and merger prior to adopting a resolution of intent to form an RWUA. However, Section 4 E states the RWUA’s corporate existence does not begin until the Secretary of State issues a certificate of incorporation, at which time the incorporating entities shall be dissolved. This language is inconsistent as entities will have already been dissolved pursuant to Section 4 (A), and it may create a significant gap in oversight and ownership of the systems.

Furthermore, Section 4 (B) requires a public hearing, and given that most boards operate through public meetings subject to the Open Meetings Act, NMED questioned whether a public meeting would suffice, with an opportunity to request a hearing if there is contention, to alleviate unnecessary administrative burdens. Section 4 also does not provide full relief to creditors in cases where involuntary dissolution results in the division of assets insufficient to satisfy all debt, expenses, or obligations. Section 12 provides the new entity will accept that transfer “following dissolution;” but the dissolution of an entity itself may dispense of remaining obligations leaving the creditor, without full compensation. NMED suggested that explicit language be provided in Section 12 that addresses the transfer or resolution of debt associated with the merging entities.

Finally, Sections 6 (A) items 12, 13 allows RWUA to compel the connection of a homeowner’s water or wastewater system to the RWUA’s water or wastewater system and to compel the connection of any new development within the RWUA’s service area. To prevent cross contamination and for sanitary purposes, NMED commented no homes with private wells should be allowed to connect to a RWUA’s system without proof of proper private well disconnection.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Water and wastewater utilities that desire to merge regionally would continue to do so without benefit of a statutory procedure, which could discourage collaboration and regionalization.

## **AMENDMENTS**

EMNRD proposed amending the definition of entity to include stage agencies or institutions.

OSE suggested the following amendment:

On page 13, line 3, insert “joining or” before “incorporating entities.”

On page 13, line 4, insert “joining or” before “incorporating entities.”

NMED suggested the following amendment:

Section 4 (A) One or more entities may create an authority as provided in the Regional Water Utility Authority Act. An Authority shall not be created unless it has at least fifteen connections or serves a population of at least twenty-five people.

Section 4 (E) Upon the issuance of a certificate of incorporation by the secretary of state, the corporate existence of an authority shall begin, and the incorporating entity shall be dissolved, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of an authority. All existing debt owned by the entity(ies) incorporating into the new authority shall become part of the new authorities' debt and owed under the original loan terms of the original entity to the issuer of the debt.

AHO/sb/al