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FISCAL IMPACT REPORT

ORIGINAL DATE 1-30-06
 SPONSOR Nunez LAST UPDATED 2-10-06 HB 438/aHENRC/aHFL#1/aSCONC
 SHORT TITLE Sanitary Projects Funding Amendments SB _____
 ANALYST Hadwiger

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$100.0		\$200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB128 as amended.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Environment (NMED)

Department of Finance and Administration (DFA)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment deletes the previous amendments and combines them into a single amendment.

Synopsis of HFL#1 Amendment

The House Floor amendment to House Bill 438 clarifies that enforcement actions taken by the New Mexico Department of Environment (NMED) will affect mutual domestic water consumers

associations (MDWCA) rather than individual officials or staff of the associations. In this case, it places the onus of replying to a compliance order on the association rather than on an individual person.

Synopsis of HENRC Amendment

The House Energy and Natural Resource Committee amendment makes three changes. First, it substitutes reuse for reclamation with regard to the types of projects covered by the act. Second, it restricts formation of new MDWCAs such that new associations will not be allowed to form on the boundary or within the service area of municipalities *and water and sanitation districts* (WSDs) unless the association can show that services cannot be provided by the municipality or WSD at or below the cost proposed by the association. The previous language did not include water and sanitation districts. Finally, it clarifies that enforcement actions taken by the New Mexico Department of Environment will affect the associations rather than individual persons.

Synopsis of Original Bill

House Bill 438 updates and overhauls the Sanitary Projects Act including:

- Deletion of language regarding the defunct Sanitary Projects Fund,
- Clarifying rate-setting and enforcement powers of MDWCAs and other associations formed under the Sanitary Projects Act,
- Clarifying composition and operations of these associations,
- Empowering NMED to provide oversight of the associations and to issue compliance orders, as well as prescribing other enforcement mechanisms, including civil penalties not more than \$250.00 per day for noncompliance with a compliance order. Penalties would be deposited in the general fund.

FISCAL IMPLICATIONS

Although the civil penalties would be deposited in the general fund, it is unlikely that significant revenues will result. NMED indicates that HB438 requires the agency to undertake additional responsibilities that will require sufficient funding to assure adequate oversight, records management, and compliance with the required actions established by this bill. Specifically, the associations' filing of the member accountability report and the statement of public availability of this report in the consumer confidence report may require additional oversight and responsibilities of the Department.

The New Mexico Finance Authority indicated the additional financial requirements, especially establishment of the reserve fund and implementation of GAAP procedures, should enhance the stability of the operations and the long-term sustainability of the water systems. These conditions would enhance the security of NMFA loans to the associations.

SIGNIFICANT ISSUES

DFA reported that the Sanitary Projects Fund was created in 1947 and amended in 1956. It traditionally carried a small appropriation for water projects associated with mutual domestic associations around the state. The fund balance was depleted over forty years ago and has been inactive since then. HB438 eliminates the Sanitary Projects Fund. The bill also amends outdated language in the Sanitary Projects Act that clouds NMED enforcement authority over mutual domes-

tic associations. According to DFA, the bill strengthens NMED's authority over associations in the technical designs, operating standards and quality standards for water supply, remediation and wastewater treatment facilities in New Mexico. The bill provides NMED with a hearing process for associations that are out-of-compliance with water quality standards. It allows the Department to assess a civil penalty of not more than \$250 per day for failure to take corrective action beyond the time specified in a compliance order.

NMED indicated that more than 200 mutual domestic associations have been formed under the Sanitary Projects Act. NMED has sole oversight authority over these organizations but this authority is clouded by archaic language tied to the Sanitary Project Fund, which no longer exists. The most frequent complaints regarding these associations received by NMED concern unfair or preferential practices, such as providing more water to certain users than other users and poor financial accounting. The proposed revisions eliminate archaic language and provide for more accountability from the associations to ensure the operation of a safe and sound water system. The revisions include clarification of NMED's enforcement authority and authorize the collection of a penalty for violation of a compliance order. NMED notes that the changes proposed were developed with significant cooperation from the associations and have a broad base of local support.

NMED explained the HENRC amendments as follows: The first amendment to HB438 concerns restrictions on forming a new mutual domestic association. The original bill was amended to include water and sanitation districts at the suggestion of the water and sanitation districts. Under this amendment, new associations will not be allowed to form on the boundary or within the service area of municipalities and water and sanitation districts unless they can show the services cannot be provided by the municipality or WSD at or below the cost proposed by the association. 2) The second amendment clarifies enforcement action by NMED to remove the term "person" and replace with "association." Concern was expressed that the use of the term "person," given the definition of "person" in the beginning of the law, would subject individuals to enforcement action. The intent of NMED was to initiate actions against the association, not individuals, so the amendment clarifies and makes plain how this would happen. The third amendment replaces the term "reclamation" with "reuse." The concern was "reclamation" could mean a variety of things. By replacing "reclamation" with "reuse," the bill recognizes the need to reuse wastewater and encourage reuse with less ambiguous language. NMED concurs and supports the bill as amended.

The House Floor amendment further clarifies the second HENRC amendment by placing the onus of replying to a compliance order on the association rather than on an individual person.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The original version of HB438 duplicates SB128.

OTHER SUBSTANTIVE ISSUES

NMED indicated the department's strong support for these revisions to the Sanitary Projects Act to clarify and update archaic language. NMED stated the revisions more clearly define associations as political subdivisions of the State, even though past attorney general's opinions have consistently found them to be so. New associations could not be formed next to areas served by municipalities, whether within the boundaries of incorporation or not and preclude new organiza-

tions forming as capital stock corporations. The powers of the board of directors would be clarified, addressing problems encountered with setting and collecting service charges. The intervention of NMED would be clarified by providing for issuance of a compliance order and allowing NMED to appoint a representative to oversee operations, and allowing for periodic reviews of the association management. Funds to operate the association must be derived from a rate-setting analysis that includes a reserve fund for maintenance and future replacement of equipment. Elements that must be included in articles of incorporation would be expanded to include the definition and voting rights of members and provide clear requirements of board powers to require compliance tolls and charges. A new section would provide guidelines for associations to merge, encouraging sharing of resources or regionalization.

DH/mt:nt