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FISCAL IMPACT REPORT

SPONSOR HVEC **ORIGINAL DATE** 03/07/11
LAST UPDATED _____ **HB** 293/HVECS
SHORT TITLE ESCAFCA Single-Member District **SB** _____
ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|------|------|----------------------|-------------------------|------------------|
| Total | | NFI | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB306 and SB121

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (OAG)

Secretary of State (SOS) (for SB 121)

SUMMARY

Synopsis of Bill

The House Voters and Elections Committee Substitute for House Bill 293 amends the Eastern Sandoval County Arroyo Flood Control (ESCAFCA) Act to provide for elected representation from “single-member” districts rather than having all members for the authority be elected at large.

A temporary provision requires that on or before September 1, 2011, ESCAFCA shall retain a demographic consultant to provide three proposed districting plans, which shall be submitted to the Chief Judge of the 13th Judicial District. The judge shall choose one of the three plans to be implemented by the board of directors for the initial single-member districts for the Authority.

The bill further provides that by December 31, 2011, the board shall establish its single-member districts. The bill specifies that the board shall comply with applicable laws when determining the districts to ensure that the districts recognize communities of interests and remain as contiguous, compact and equal in population as is practicable. The districts shall be assessed after each federal decennial census. The bill also sets up the terms of six years and lays out how the election of members shall be staggered over the next three elections. Candidates/members

shall reside in the district for which they are nominated, although incumbent directors whose residences are redistricted out of their districts may serve out their term of office.

The final provision establishes a process by which a member can be subject to recall by the qualified voters of each district on the basis of malfeasance or misfeasance in office or violation of the oath of office by the director concerned. The governor is authorized to fill vacancies by appointing a qualified elector who lives within the district with the vacancy who will serve the unexpired term.

FISCAL IMPLICATIONS

No fiscal impacts were reported.

SIGNIFICANT ISSUES

According to the Albuquerque Journal, the flood authority was created by law in 2007 after three Sandoval County communities suffered flood damage. Governor Richardson initially appointed members to the five-person board. By law, the continued existence of the authority and the board depended on receiving voter approval for bonds to fund flood control projects. The bonds would be backed by property taxes. In 2008, the authority received voter approval to issue up to \$6 million in bonds by a 54 percent to 45 percent margin. However, the board was criticized for not providing full disclosure of all costs, including the operating costs, that are funded through the bonds -- and property owners received larger tax bills than expected. There was much public comment, particularly from the residents in the Village of Placitas, that the “election at large” process left that community without representation. In addition, concern was expressed that the flooding potential in Placitas was different than in the rest of the area under the authority. Two Placitas residents were elected to the board in November 2004.

Also according to the Albuquerque Journal, “the ESCFCA’s board is concerned the flood authority could risk a legal challenge.” According to the newspaper, “this occurred to the Albuquerque Metropolitan Arroyo Flood Control Authority, which switched to districted representation to settle a lawsuit that claimed at-large board representation violated the Voting Rights Act because it disenfranchised some voters.”

The OAG understands “that the ESCAFCA board voted on November 16, 2010 to change into single-member districts, but there has been legal controversy whether this change was permissible absent statutory change.”

The OAG summarizes the primary issue, as follows:

There is also some concern about largely minority communities not being represented on the board and the possibility that this could raise a legal challenge. Since the bill addresses issues of representation, the bill might mitigate concerns about representation of minority communities.

The bill does this by having the current board hire a demographic consultant, who would act as an independent expert to identify three optional plans for setting up the single-member districts. The Chief Justice of the 13th Judicial District will then choose the final plan to be implemented by the board of ESCAFC, another step in making the final districting as objective as possible.

The bill gives a deadline date of September 1, 2011 for the board to engage the demographic consultant. However, no deadline is given for the report to be given to the judge for his or her decision. Furthermore, the bill specifies that the board shall establish its single-member districts by December 31, 2011. It is possible that the time between board hiring the consultant (September 1, 2011) and the deadline for implementing the judge's decision (December 31, 2011) would only be four months. Depending on the complexity of the analysis and the judge's docket, it is uncertain whether this is sufficient time for the process to be completed.

The OAG notes that under current law there are five board members under the ESCAFCA. Section 72-20-8 NMSA 1978, which sets the size of the board at five members, remains in statute under the bill. Presumably, the final plan adopted by the judge will have five single-member districts, with one member representing each district.

It does not appear that the process for setting up the final districts incorporates a process that includes public comment.

ADMINISTRATIVE IMPLICATIONS

At each election, one or two members will be elected to the board. After every federal census, the board will need to review the boundaries of each district.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 293 now conflicts with Senate Bill 121, which sets up a different process for establishing the single-member districts and who can vote in the election.

House Bill 293 conflicts with House Bill 306, which would split the area into three districts and allow each district to exclude itself from the ESCAFCA. Flood projects under way would be placed under the responsibility of Sandoval County.

TECHNICAL ISSUES

The OAG raised two issues in its analysis for SB 121 that remain relevant to this bill:

Under SB 121, the current board would be required to establish the single-member districts no later than December 31, 2011. The amendment also provides that the board "shall determine by lot the district from which directors shall be elected in the next three subsequent elections." This particular provision is unclear as to whether this means that the current board determines, after establishing the districts, which district each member represents or whether the current board is to establish the districts by lot. This language, however, may lead to confusion in the implementation of the bill if made law.

However, within the substance of the bill it appears clear that the member shall represent the district in which he or she resides and the drawing of lots refers to how to stagger the first three elections.

SB 121 changes the time with which a candidate has to withdraw their name. Previously, a candidate had to withdraw his name before the first publication of the notice of election. Under SB 121, a candidate needs to withdraw their name before the "time established by the county for purposes of absentee ballots or as set forth in the Election Code." This

substitution seems to provide more flexibility in this regard but it also creates more ambiguity. Which deadline is more important?

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Even if the Eastern Sandoval County Arroyo Flood Control District Authority wants to hold elections under a single-district process, board members may not be able to implement this election process and board members will continue to be elected “at large.” An independent process for setting up the districts would not be implemented.

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