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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/11
 LAST UPDATED 03/02/11 **HB** _____

SPONSOR Griego, P.

SHORT TITLE Mutual Domestics in Wastewater Loan Act **SB** 42

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Environment Department (NMED)

No Response Received From

Office of the State Engineer (OSE)
 New Mexico Finance Authority (NMFA)
 Association of Counties

SUMMARY

Synopsis of Bill

Senate Bill 42 proposes to add "mutual domestic water consumer associations" as eligible for funding under the Clean Water State Revolving Fund (CWSRF).

FISCAL IMPLICATIONS

Senate Bill 42 makes no appropriation.

The NMED stated a concern that adding mutual domestic water consumer associations as eligible for CWSRF loans might result in higher risk of loan defaults because "because management is often made up of volunteers, a lack of financial oversight, there is no law in place requiring repayment of loans, mutual domestic water consumer associations can be easily dissolved, and there is no financial audit requirement by the state auditor."

Further research on the NMED’s assertions show the following corrections are necessary.

- Mutual domestic water consumer associations are created as local public bodies under the Sanitary Projects Act (Chapter 3, Article 29 NMSA 1978).
- As local public bodies, the associations are subject the duties described in Section 6-6-3 NMSA 1978 including “to keep all the books, records and accounts in their respective offices in the form prescribed by the local government division.”
- Mutual domestic water associations created under New Mexico Laws preceding the Sanitary Projects Act are subject to the provisions of the Act.
- The associations have the authority in statute to invest in water infrastructure, set rates for consumers and attach liens to the property of non-paying association consumers.
- The NMED has the power in statute to require a mutual domestic water association to “require the association to submit information to the department” and to “require submittal of financial reports required pursuant to the Audit Act.”
- Under the Audit Act mutual domestic water associations are explicitly included, and depending on their annual revenues, are subject to an annual financial examination or audit. The only exemption is for “an association [with revenues of] less than ten thousand dollars (\$10,000) and [which] does not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, it is exempt from submitting and filing quarterly reports and final budgets for approval to the local government division of the department of finance and administration and from any financial reporting to the state auditor.”

It appears these associations have the mechanisms available to responsibly take on debt. Also, the recent implementation of the Uniform Loan Application ensures “best practices” of full financial disclosure and capacity before a loan is approved.

SIGNIFICANT ISSUES

The NMED estimates that approximately 200 mutual domestic water consumer associations exist in the state. The NMED also claims they often do not qualify for loans because of their lack of capacity to take on debt.

ADMINISTRATIVE IMPLICATIONS

The NMED notes that no additional staffing is available for NMED to take on the potential additional loan analyses or projects eligible under this bill. They did not provide an estimate of any additional resources they might need if the bill is passed.

TECHNICAL ISSUES

The AGO finds that the meaning of “mutual domestic water consumers association” needs clarification. It may be intended to refer to an entity formed under the Sanitary Projects Act.

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Without clearer definition or reference to existing statute there will likely be confusion as to which of the numerous types of water associations are covered by the bill. This term could be added as an amendment to the bill.

The NMED also believes that “Mutual domestic water consumer associations” should be defined to make it clear what types of legal entities are eligible. Senate Bill 42 could refer to the definition of “association” in the Sanitary Projects Act at NMSA 1978, § 3-29-2(B).

JCH/svb:mew