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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/21

SPONSOR Lara LAST UPDATED \_\_\_\_\_ HB 195

SHORT TITLE Camino Real Regional Utility Authority SB \_\_\_\_\_

ANALYST Hanika-Ortiz

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)

New Mexico Attorney General (NMAG)

Office of the State Engineer (OSE)

#### No Response Received

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

House Bill 195 (HB195) enacts a new section in Chapter 73 which relates to the organization of artesian conservancy districts. This new section creates the camino real regional utility authority, its board of directors and terms of their appointments. The bill also gives the new entity the authority to set policy, regulate, and supervise and administer the provision of water and wastewater within the authority's service area, including the determination and imposition of rates for those services.

The new authority would replace the current utility authority originally created by a joint powers agreement between Sunland Park and Dona Ana County, and assumes the previous authority's assets and liabilities and water and wastewater service area, as it may be modified or expanded by this new authority. The new authority would be a political subdivision, not subject to PRC or the Public Utility Act. The new authority could issue "utility system revenue bonds" or other obligations to improve water facilities and wastewater facilities, short-term "revenue anticipation notes," or pledge net revenues for payment towards the revenue bonds or other obligations. Furthermore, those bonds and their income would be exempt from all state and local taxation, upon

an affirmative vote “of a majority of all members of the board of directors of the authority.”

The new authority would be overseen by a seven member board, including two city councilors appointed by the City of Sunland Park, two commissioners appointed by Dona Ana County, one public member appointed by municipal and county members, and two members appointed from nominations by the state senator or representative from the largest service area of the authority.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

The authority would take on the current authority’s assets and liabilities, impose rates for water and wastewater services, and exempt bonds and their income from taxation with board approval.

Because there are no due process requirements in the bill, the new authority will not be explicitly required by statute to conduct a hearing prior to raising or adjusting rates for services provided.

Although the responding agencies did not suggest any fiscal implications; if the new authority’s water service activities give rise to permitting or other issues, it could increase costs for ratepayers.

## **SIGNIFICANT ISSUES**

Section 1(H) provides that the authority is subject to the Procurement Code, Eminent Domain Code, limitations imposed by Section 72-1-9 NMSA 1978 regarding water rights obtained or water rights condemned pursuant to a water development plan, and provisions of Chapter 72 NMSA 1978 regarding any change to the point of diversion or the place or purpose of use of any water right to any place selected by the authority in order to make the water available to the authority.

However, OSE commented the authority’s water service activities could give rise to permitting or other issues that Section 1(H) does not cover. Therefore, the bill should include language regarding the general applicability of the Water Code such as in Section 73-26-1 (G)(8) and (9), stating the Lower Rio Grande Public Water Works Authority is subject to Chapter 72 and to OSE rules and regulations, and in Section 73-27-19 (C), stating the Eastern New Mexico Water Utility Authority is subject to the rules and regulations of OSE and to “applicable” articles of Chapter 72.

## **PERFORMANCE IMPLICATIONS**

NMAG noted there are features of the bill that are distinct from the enabling statutes of the Lower Rio Grande Public Water Works Authority and Eastern New Mexico Water Utility Authority:

- 1) The bill does not include a procedure to follow when raising rates for services. Unlike a water and sanitation district, which provide an administrative hearing on the matter of rate adjustments if the district is not subject to the jurisdiction of PRC, this authority would not be required by statute to conduct a hearing prior to raising or adjusting rates for services. Rate adjustments must contain due process protections. *See* Amendments, below.
- 2) The bill does not describe the boundaries of the new authority’s service area, or provide an ongoing obligation to serve. Paragraph E states in part the authority shall provide services

within the entity's service area, as it may be modified or expanded by the authority.

- 3) The bill does not allow ratepayers to elect to bring the authority under the jurisdiction of the PRC at some point in the future.

### **ADMINISTRATIVE IMPLICATIONS**

NMAG also noted it is likely the new authority would be subject to other laws as a political subdivision of the state. This includes the Governmental Conduct Act and Inspection of Public Records Act. In addition, meetings of the board would be subject to the Open Meetings Act.

### **TECHNICAL ISSUES**

NMED further noted Subsection H outlines several state regulatory codes to which the new authority will be subject. As the authority's main services would be drinking water and wastewater treatment and delivery, subsection H should include relevant drinking water, wastewater or other regulatory programs administered by NMED. Specifically, Subsection H should expressly state that the newly created authority is subject to Chapter 74 NMSA to remove any confusion regarding the applicability of necessary protections for public health and the environment. *See* amendment.

### **OTHER SUBSTANTIVE ISSUES**

According to NMED, the current Camino Real Regional Water Utility Authority is in the process of securing a Drinking Water State Revolving Loan from the New Mexico Finance Authority. This loan is intended to be used for the construction of an arsenic treatment plant within their Santa Teresa border crossing service area to address long-standing noncompliance with state and federal drinking water requirements. HB195 specifically requires the new authority to take on liabilities, including for the current authority's repayment of this Drinking Water State Revolving Loan.

Furthermore, NMED explained, the current Camino Real Regional Water Utility Authority has entered into a settlement agreement with NMED as a result of violations of the Safe Drinking Water Act (SDWA) and New Mexico drinking water regulations. Although the new authority would take on the liabilities of the current authority, the bill does not expressly discuss the regulatory liabilities under the SDWA or any other regulatory requirements overseen by NMED.

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

The Camino Real Regional Utility Authority will continue to operate under its existing authority.

### **AMENDMENTS**

NMAG suggested adding due process requirement for rate adjustments to Section 1(F)(2).

NMED suggested adding in Subsection H: "(5) the requirements of Chapter 74 NMSA 1978 and any associated and existing orders, agreements, or responsibilities applicable to the authority's predecessor."

AHO/al