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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/17

SPONSOR Candelaria LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Ordinance Enforcement & Penalties SB 443

ANALYST Sánchez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	+/-(\$833.8)	+/-(\$833.8)	Recurring	General Fund, Court Automation Fund, Court Facility Fund, Jury & Witness Fund, Corrections Fund, Traffic Safety Fund, Brain Injury Fund, Victim's Reparation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$261.6	\$261.6	\$523.2	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Municipal League  
 Administrative Office of the Courts (AOC)  
 Department of Transportation (NMDOT)

### SUMMARY

#### Synopsis of Bill

Senate Bill 443 proposes to amend the section of law dealing with municipalities. Specifically, it

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adds civil enforcement of certain municipal ordinances adjudicated by an independent administrative hearing officer using procedures established by ordinance that meet the minimum constitutional due process requirements. The administrative hearing officer is authorized to impose civil monetary penalties of not more than \$50 per day up to a total maximum of \$500. The decisions of the administrative hearing officer may be appealed to the district court. Ordinances enforced by criminal prosecution will be heard by municipal or metropolitan courts.

The bill also makes changes to the zoning appeals; it allows an aggrieved party to appeal to an independent administrative hearing officer and gives the administrative hearing officer the same authority as the zoning authority in hearing and deciding appeals.

The bill clarifies that under Section 3-21-23 NMSA 1978 the ordinance of the commission may provide for civil or criminal enforcement of the Special Zoning District Act.

### FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) reports that this bill will impact various funds for which the magistrate courts and metropolitan court collect money. The impact is not limited to the courts as the funds for which the courts collect money belong to other agencies.

Because SB443 does not specify what type of ordinances it is intended to cover, it is difficult to determine the impact such a law would have on the courts.

Last year, the magistrate courts collected \$9.8 million in fine and fees from cases adjudicated involving violations of state law and municipal ordinances, exclusive of bench warrant fees. Fines and fees assessed are a higher amount and subject to potential future collection. Section 35-6-5 NMSA 1978 allow the magistrate courts to assess and collect a \$100 (bench warrant) fee upon issuance of a bench warrant. Any money collected is appropriated to AOC for staff, equipment and services to help collect outstanding fines, fees and costs. The AOC uses bench warrant fees to pay for the bench warrant program at AOC and the magistrate courts. This bill may impact that program.

The number of ordinance cases filed and adjudicated in magistrate courts throughout the state cannot be determined without reviewing each case. This bill will impact various funds for which magistrate courts collect money, but the amount cannot be estimated.

In the Bernalillo County Metropolitan Court (BCMC), the annual impact to various state funds could be in excess of \$1 million if **all** municipal and county ordinances were handled administratively instead of by BCMC. In FY16, 13,577 ordinance cases were filed in BCMC, the assessed fines and fees totaled \$1.3 million. The amount collected in FY16 on outstanding ordinance cases was \$833.8 thousand: \$755.6 thousand for the funds listed below and \$78.2 thousand to the metropolitan court warrant enforcement fund. Collection of fines and fees are from cases adjudicated from different years.

Funds that potentially could be impacted by the changes proposed in the bill include the:

- general fund,
- court automation fund,
- court facility fund,

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- jury and witness fund,
- correction fund,
- traffic safety fund,
- brain injury fund, and
- victim’s reparation fund.

Section 34-8A-12 NMSA 1978 allows BCMC to assess and collect a \$100 administrative fee upon issuance of a bench warrant. Any money collected is appropriated to the BCMC for staff, equipment and services to help collect outstanding fines, fees and costs. BCMC has 16 full-time positions of which eight are filled. Without the fee, the program may have to be scaled back, eliminated or funded with general fund dollars.

In FY16, the New Mexico Department of Transportation (NMDOT) received \$225.9 thousand from fees collected statewide and distributed to the traffic safety education and enforcement fund by the courts.

### **SIGNIFICANT ISSUES**

The New Mexico Municipal League indicates the bill would permit municipalities to replace appeals to the governing body of the municipality with an appeal to an administrative hearing officer. The bill would require the administrative hearing officer to use a procedure that meets all minimal due process requirements of the state and federal constitutions. This might require that the appeal be *de novo* meaning a full hearing including testimony of witnesses and right to cross examination. It does not seem to contemplate an “on the record” review of the evidence by the hearing officer or the governing body. Thus, there is a possibility that two complete evidentiary hearings would take place before an appeal to the district court.

According to NMDOT, if penalty assessment misdemeanor violations were moved to an administrative hearing officer process, they would no longer be handled as criminal cases, and the fees may not be assessed and distributed to the designated fund. NMDOT receives approximately \$500 thousand annually from penalty assessment misdemeanor fees collected by Motor Vehicle Division and traffic citation fees collected by the courts. Those fees are distributed to the traffic safety education and enforcement fund. These funds support traffic safety educational initiatives that are designed to reduce crashes, injury and death on New Mexico roadways. Half of the money deposited in the fund is allocated to the law enforcement agency that issued the citation. Law enforcement agencies use the funding to purchase equipment, including items used for processing persons arrested for or convicted of DWI, and support services that are necessary to establish and maintain a traffic safety program.

### **ADMINISTRATIVE IMPLICATIONS**

AOC notes the bill provides for appeals to the district court pursuant to NMSA 1978, Section 39-3-1.1, which would be a record appeal, not an appeal de novo.

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

Relates to HB428 Revise Certain Criminal Penalties, HB285 Magistrate & Metro Court Warrant Fees

**ALTERNATIVES**

The Municipal League suggests requiring a record review rather than a full due process hearing to save time and money.

It also recommends changing “three hundred sixty-four” in Section 1 of the bill on page 2 line 15 with one hundred seventy-nine since municipal courts have never had the authority to impose 364 days in jail, as that would trigger a jury trial, and municipal courts are precluded by other legislation from conducting jury trials.

**QUESTIONS**

Do the municipalities have the option under this bill to have all ordinance violations, including criminal offenses be heard as civil violations by an administrative hearing officer?

ABS/jle