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## FISCAL IMPACT REPORT

SPONSOR HGUAC DATE TYPED 3/8/05 HB 373/HGUACS/aHJC

SHORT TITLE Judicial Recourse for Inadequate Budgets SB \_\_\_\_\_

ANALYST Hadwiger

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AG)

Department of Finance and Administration (DFA)

No comments were received from the Association of Counties.

### SUMMARY

#### Synopsis of HJC Amendment

The HJC amendment would delete the provision provide the assessor with an explicit right to petition the district court for a writ of mandamus (presumably to force the board of county commissioners to adequately fund the assessor's office).

#### Synopsis of HGUAC Substitute

The HGUAC Substitute for House Bill 373 would

- 1) Repeal the statutory provision that provides that DFA shall not approve the operating budget of any county in which there is not an adequate allocation of funds to the county assessor for the purpose of fulfilling his responsibilities for property valuation maintenance;
- 2) Require DFA to consult with the Taxation and Revenue Department, board of county commissioners and county assessor if DFA questions the adequacy of the county assessor's budget; and
- 3) If the issue of the adequacy of the assessor's budget remains unresolved after consulta-

tion, provide the assessor with an explicit right to petition the district court for a writ of mandamus (presumably to force the board of county commissioners to adequately fund the assessor's office).

### Significant Issues

The primary policy question raised by the bill is who is better equipped to determine whether a budget for a county elected official is adequate—the DFA or the courts?

DFA noted that the bill would eliminate current budget authority that is vested with the agency's Local Government Division (LGD). LGD's mission is to provide budget direction and fiscal oversight to local governments to provide the best public services in the most efficient manner possible. HB 373 removes one of the few controls LGD maintains in the budget process.

According to DFA, in the past, conflicts have occurred during the budget approval process between county assessors, county commissioners and county managers, as a result of the inadequacy of the amounts appropriated for the county assessor's office. The HGUAC substitute would shift the burden of determining the adequacy of operating budgets, if a resolution cannot be achieved through consultation, from LGD to the district courts.

DFA was concerned that the HJC amendment would remove the language permitting the county assessor to file a writ of mandamus in district court. The task of determining the adequacy of operating budgets would revert to the county commission and the LGD/DFA. However, the proposed legislation continues to delete portions of Section 7-36-16d NMSA that contains the language granting budget authority to LGD. As a result the current bill still weakens LGD's budget authority to effectively adjust, amend and approve the operating budget.

### **FISCAL IMPLICATIONS**

The Administrative Office of the Courts and DFA do not anticipate a significant fiscal impact from this bill.

### **OTHER SUBSTANTIVE ISSUES**

DFA indicated that the HGUAC Substitute for HB373 would fail to ensure an efficient or effective method of creating an operating budget that provides the necessary resources for county assessor to perform the required tasks of that elected office. The option of allowing the district courts to intervene in the budgetary process will add another layer of bureaucratic involvement that will delay the implementation of an operating budget. If budget resources are not approved and implemented in a timely manner, essential services from the county assessors office will be directly affected and will obstruct the tax collection process.

The Attorney General provided the following comments with regard to the substitute prior to the HJC amendment:

*As Appleman v. Beach, 94 N.M. 237, 608 P. 2d 1119 (1980), makes clear, a county's failure to adequately fund its county assessor is an open invitation to litigation. This is because property owners whose properties have been reassessed may justifiably believe that they are*

*paying a disproportionate share of the tax burden as compared to the property owners whose properties have not been reassessed due to insufficient funding of the assessor. Under current law, county assessors are required to determine property values for tax purposes and are required to implement programs to update property values so that “current and correct values of property are maintained.” NMSA 1978, § 73-36-16(A). Current law also provides that DFA must regularly evaluate assessors’ valuation activities with particular emphasis on the maintenance of current and correct values. If enacted into law, the bill would redefine DFA’s role to consultative and provide assessors with a statutory right to petition the district court for a writ of mandamus, presumably to compel the board of county commissioners to authorize adequate funding. Under *Appleman v. Beach*, supra, it appears that the remedy of mandamus to compel adequate funding for an under-funded county appraiser may already exist, but the bill (prior to the HJC amendment) made it explicit.*

DH/yr:lg