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FISCAL IMPACT REPORT

ORIGINAL DATE 3/09/09

SPONSOR HJC LAST UPDATED _____ HB 40/HJCS

SHORT TITLE Prohibit Condemnation By Municipalities SB _____

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Purchasing Water Rights		Indeterminate	Indeterminate	Indeterminate	Recurring	Municipalities*
Court Costs		(Indeterminate)	(Indeterminate)	(Indeterminate)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*Reported as .01 in original bill. The \$5.0 million provided by Municipal League for HB40/HHGAC was incorrect.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
Office of the State Engineer (OSE)
Administrative Office of the Courts (AOC)

Other Response From

New Mexico Municipal League

SUMMARY

Synopsis of HJC Substitute Bill

The House Judiciary Committee Substitute for House Bill 40 concerns the municipal condemnation of water rights.

Section 3-27-1 NMSA 1978 is amended to add a new subsection B explicitly incorporating the procedures of the Eminent Domain Code and Section 3-27-2 NMSA 1978.

Section 3-27-2 NMSA 1978 is amended to add a new section B restricting municipalities from condemning surface water owned or served by irrigation districts, conservancy districts, state political subdivisions, or those acequia and ditch associations in existence before July 1, 2009.

However, municipalities retain the right of eminent domain for acquisition of other water or water rights.

A new section F is added providing elective arbitration procedures.

A new section G provides that if the water is not needed for public health or safety purposes, the following conditions precedent must be met: (1) suitable water rights are unavailable for voluntary sale at up to 125 percent of appraised value or are unavailable for purchase at up to 125 percent of appraised value (2) a water conservation plan must have been implemented, and (3) the proposed acquisition must be consistent with the regional water plan.

A minor addition is made to Section 3-27-3 NMSA 1978, keeping certain language about “protecting water facilities” consistent in sections A and B.

FISCAL IMPACT

The Municipal League indicates that the bill may increase the purchase cost of water rights by an indeterminate amount.

The AOC indicates that the bill may reduce court costs by an indeterminate amount, as follows:

Section 3-27-1 and 3-27-2 amendments limiting a municipality’s exercise of the power of eminent domain when acquiring water facilities may reduce the number of condemnation actions brought in the courts;

Section 3-27-2 amendments allowing for compromise and settlement and the election of proceeding through an arbitration process as well as the awarding of expenses and fees may also reduce the number of condemnation proceedings brought in and continuing on in the courts;

Section 3-27-2 amendments setting out criteria a municipality must satisfy prior to commencing a condemnation proceeding may further reduce the number of condemnation proceedings brought in the courts; and

The HJC substitute permits a condemnee, within 20 days from the filing of a petition to condemn, to elect to proceed through an arbitration process pursuant to the Uniform Arbitration Act by filing a written notice with the condemner. Section 44-7A-29 NMSA 1978, contained within the Uniform Arbitration Act, permits appeals to be taken from orders emanating from an arbitration proceeding and a final judgment pursuant to the Uniform

SIGNIFICANT ISSUES

The substitute bill clarifies when condemnation cannot be used and adds provisions for arbitration to settle a suit. It also sets conditions for the condemnation of water rights imposing conservation and other requirements.

PERFORMANCE IMPLICATIONS

AOC states that this bill may have an impact on the measures of the district courts for case loads and filings.

TECHNICAL ISSUES

OSE suggests that the bill should include a provision that the condemned water or water rights require a state engineer permit prior to use and provides the following amendment:

Page 3, line 13, after the word “municipality” and before the period insert “, pursuant to a permit issued by the state engineer”.

OTHER SUBSTANTIVE ISSUES

The OSE raises a potential issue: “Because the prohibitions on condemnation of water and water rights under this bill would essentially eliminate condemnation as a tool for municipalities to use to acquire senior water rights, a seller’s market would be created. If senior water rights are not available on the market and cannot be condemned to offset depletions associated with existing groundwater rights, senior surface water rights could be impaired and the state’s ability to comply with interstate stream obligations could be impacted.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Municipalities will retain their current powers of condemnation and range of jurisdiction.

MA/mt