

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02-04-09

SPONSOR R. Gonzales LAST UPDATED 03-15-09 HB 337/aHAGC/aSJC

Water and Sanitation District Revenue and

SHORT TITLE Information SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal			Non-recurring	General Fund
		Moderate			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department
 Taxation and Revenue Department
 Public Regulation Commission

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee (SJC) amendment to HAGC amended HB 337 defines “proponents and opponents” to mean residents or nonresidents of a district who pay or are liable for paying rates, tools, fees and charges assessed by the district.

The amendment expands the HAGC amendment in regards to the process a board must follow to adjust rate when it chooses not to be subject to the jurisdiction of the PRC. The amendment clarifies rate adjustments may be appealed to the district court of the county in which the district is located by a customer who appeared before the board at the public hearing and protested the adjustment to the rates, tolls, fees or charges.

The amendment provides that a class A county, not subject to the jurisdiction of the PRC, in addition, must appoint a hearing officer to conduct public hearings and hire a court reporter to produce a written record of the hearing. Following the decision of the hearing officer and within twenty-three days of the hearing officer’s decision, the decision can be appealed by a proponent or opponent. The board may approve or amend the hearing officer’s decision and shall mail its decision to the proponents and opponents. Within thirty days after the mailing of board’s decision, a proponent or opponent may appeal to the district court.

Synopsis of HAGC Amendment

The House Agriculture and Water Resources Committee Amendments include:

1. deletes “*a recycling system or any other system*” from the definition of fee-for-service system;
2. replaces “*to be repaid from*” with “*secured by*” in regard to property tax revenue and indebtedness of a district;
3. makes technical corrections by deleting the words “*make and*” in reference to the issuance of industrial revenue bonds (one can’t “make” a bond” and inserts the word “*obtain*” as in obtain loans;
4. Clarifies the process when a water and sanitation district board chooses not to be subject to the jurisdiction of the PRC:
 - 1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution, at which time, after hearing proponents and opponents, the board may reject, amend or adopt the resolution adjusting the rates, tolls, fees or charges;
 - 2) within thirty days after publication of the resolution adjusting rates, tolls, fees or charges, the new rates, tolls, fees or charges may be appealed by a tax paying elector to the district court of the county in which the district is located; and
 - 3) the district court shall consider the petition to overturn the adjustments, based on the record of the board hearing in which the resolution was adopted, under the court's rules governing review by a district court of administrative decisions or orders."

Synopsis of Original Bill

The bill makes a number of changes to the Water and Sanitation District Act, Chapter 73 Article 21 NMSA 1978 to allow the Taxation and Revenue Department (TRD) to disclose to a water and sanitation district certain information pertaining to taxpayers reporting gross receipts for that district. It additionally subjects officers and employees of a water and sanitation district to criminal penalties for the unlawful disclosure of such taxpayer information to persons other than officers or employees of the district or the Department.

The bill includes cleanup and clarification of various provisions throughout the Water and Sanitation District Act. Additional definitions of terms used in the Water and Sanitation District Act are included. The bill further clarifies the sources of revenue that may be pledged for water and sanitation district debt. For instance, the bill clarifies that property tax revenue from within water and sanitation districts may be used to repay general obligation debt of the district. The bill also provides that revenue bonds or loans may be repaid from district service fees, in addition to sources already specified in the Water and Sanitation District Act.

Finally, the bill would allow electors of a water and sanitation district to protest rates imposed by the district by filing a petition with the district court.

FISCAL IMPLICATIONS

According to TRD, this bill has no fiscal impact.

There may be additional fiscal impact on the judiciary that would be proportional to the number of appeals to district courts to overturn decisions of boards. This could have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The HAGC amendment clarifies the process when a water and sanitation district board has elected to not be subject to the jurisdiction of the PRC. The district must provide notice of board's intent 30 days prior to a public hearing on the resolution. If the resolution passes, it may be appealed by a tax paying elector within thirty days after the publication of the resolution to the district court of the county in which the district is located. The district court shall consider the petition to overturn the adjustments.

Section 18 of the bill removes the jurisdiction of the Public Regulation Commission ("PRC") over filing and protests of rate increases, and transfers that jurisdiction to the district courts. The threshold for triggering a review of rates remains the same: twenty-five or five percent of the electors filing a protest within thirty days. The bill, however, begins the time period from the date of the board's resolution, whereas current statute starts the time with filing of the proposed rates with the PRC. A bigger difference is the standard of review. Currently, the PRC rules for hearing rate protests subject them to much the same treatment as that for investor owned utilities with expert testimony and opportunity for intervention. The bill would limit judicial review to the record of the board meeting at which the resolution was adopted.

The section of this bill that impacts the Workforce Solutions Department amends 7-1-8 regarding the confidentiality of tax returns. The bill amends this section to add an exception for water and sanitation districts that have a gross receipt tax in place. This amendment also changes the name of the holder of that existing exception for unemployment insurance collection purposes from secretary of labor to secretary of workforce solutions.

PERFORMANCE IMPLICATIONS

This bill may reduce the PRC caseload.

ADMINISTRATIVE IMPLICATIONS

None for the PRC, although the agency occasionally does receive protest of these rates and has conducted hearings on them in the past.

RELATIONSHIP

Relates to HB257

TECHNICAL ISSUES

This bill amends Section 7-1-8 NMSA 1978 to permit TRD to provide confidential information to water and sanitation districts. HB257 contains a comprehensive revision of this statute, and will conflict with this bill.

OTHER SUBSTANTIVE ISSUES

Currently county officials can request similar information under Section 7-1-8(U) NMSA 1978 for taxpayers within their county (and are subject to the same proposed penalties); however, they cannot share this information with officials of a water and sanitation district located within their county. The proposed amendments to Section 7-1-8 NMSA 1978 do not precisely mirror the information that TRD is permitted to provide to counties under Section 7-1-8(U)(2) NMSA 1978. In that subsection, lists of businesses must be provided by the county seeking the information from TRD.

Water and sanitation districts recently imposed a tax increment on taxpayers doing business within the districts boundaries, and would like information from Taxation and Revenue on taxpayer returns of businesses that are reporting to the county or city.

ALTERNATIVES

An alternative to revising Section 7-1-8 may be to obtain business permit information from the county and/or city. Business permits are public information.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PRC will continue to receive rate filings by Water and Sanitation Districts and conduct hearings if sufficient protests are received in a timely manner.

DL/mc:mt

