

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 03/02/09

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Conservancy District Courts & Elections SB 683

ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$1.0*	\$1.0*		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

Department of Finance and Administration (DFA)

Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 683, with the emergency clause, would suspend the Middle Rio Grande Conservancy District (MRGCD) election scheduled for June 2009, require the Conservancy Court for the MRGCD to assume control of the MRGCD within 10 days of the effective date of the bill and appoint a receiver who would:

- manage operations of the MRGCD and
- craft boundaries for the election of MRGCD directors.

The bill would provide for regular elections in even numbered years for members who would serve staggered terms of four years. Members elected in the 2010 election would determine initial term durations by lot.

FISCAL IMPLICATIONS

Senate Bill 683 contains no appropriation. The DFA states that the requirement for the Conservancy Court to appoint and pay for a receiver to run the MRGCD would require a great deal of expenditures from the District Court. These judicial institutions are already financially strained to the limit.

SIGNIFICANT ISSUES

The AGO states:

Senate Bill 683 removes all current, duly elected members of the Board of Directors of MRGCD from office before the expiration of their terms in office and turns control of the district over to the conservancy court.

The bill appears to direct the crafting of new boundaries for the election of conservancy district directors by a receiver appointed by the conservancy court but gives no guidelines as to how these new boundaries are to be drafted. Conceivably, the receiver could craft the same boundaries that are currently in place since there is no legislative guidance to the contrary.

The bill provides that the election of a new board of directors occur at the 2010 general election but it is not clear if the names of candidates are to appear on the general election ballot and if the polling places are to be the same polling places as those used in the general election. This seems problematic since not all registered voters within a given precinct are necessarily also eligible to vote in the MRGCD election. Precinct boundaries may cross MRGCD boundaries.

NMSA 1978 Section 73-14-24 provides that there shall be an election of the board of directors on the first Tuesday after the first Monday in June 2001 and in each odd numbered year thereafter. This bill provides that the same election is to be held at the time of the general election (November) beginning in 2010 but it does not repeal Section 73-14-24 which states otherwise.

The DFA states:

SB 683 provides for drastic changes in the MRGCD's operation by appointing a receiver as well as replacement of board members.

Per the MRGCD attorney, Chuck DuMars:

The predecessor to current existing legislation regarding MRGCD elections provided for an appointed Board that was appointed by the Conservancy Court in Bernalillo County. A lawsuit was filed pointing out that the then elected Conservancy Court Judges were not elected by the residents of Sandoval,

Valencia or Socorro Counties or the Pueblo members living in some of those Counties. Because the Board governed residents of these other counties and those other residents had no opportunity to vote, appointment by elected Judges from the Conservancy Court (Bernalillo County District Court) was challenged in federal court as taxation without representation and as a violation of principles of one person one vote.

As a result of the federal court challenge, the statute was amended to make it constitutional by providing for elections that met one person one vote principles and also contained detailed methods for describing the districts from which person are elected with rough population proportionality among counties.

The MRGCD is a political subdivision with taxation power that is subject to United States Constitutional standards. Even so, SB 683 proposes to void all properly held elections by the MRGCD under existing law and remove all elected officials within the MRGCD without a hearing. In place there would be an appointed unelected person with no criteria for such person's requirements that would spend taxpayers' money. Voiding an existing election after the time allowed for a challenge to such elections would disenfranchise all persons who voted for these elected officials and thereby violate the voting entitlement provisions of the United States Constitution as well as the equal protection clause of the Constitution. Furthermore, allowing an appointed judge within Bernalillo County to replace elected officials properly elected by their constituents would violate the one person one vote principles embodied within the Constitution. Allowing an appointed judge to operate and manage a political subdivision with taxing power without input from elected officials would violate the Separation of Powers Doctrine in violation of the New Mexico Constitution.

Finally, SB683, contains no description of how a judge would determine election boundaries and is overbroad and provides not constitutional criteria that would require proportional representation. If a political subdivision were found to be in violation of DFA standards for financial operations, then in that case provisions exist for the DFA to step in to operate the financial side of the operation. There is no evidence the MRGCD is in violation of any audit principles. The MRGCD continually has provided quarterly reports to the Local Government Division (LGD), Department of Finance & Administration (DFA) that reflects sound fiscal status. Furthermore, per the Office of the State Auditor, the MRGCD has had relatively clean audits with few minor exceptions. But even if it were, the elected officials would remain in place to exercise policy judgment--the job they were elected to do.

Normally, if there is a problem with a board determined by the electorate, a lawsuit is filed first.

The OSE notes that SB 683 is silent on the question of the status of currently serving district directors but the requirement that MRGCD be placed under the control of the Conservancy Court, which would appoint a receiver to manage MRGCD operations, indicates that the functions of currently serving directors would cease.

TECHNICAL ISSUES

The AGO notes:

Senate Bill 683 refers to “middle Rio Grande conservancy district directors” and “commission members” which both apparently refer to the same office holders.

Page 2 lines 14 and 15 state “F. Members of the middle Rio Grande conservancy district shall be elected for staggered four-year terms;” This should be “Members of the board...” Since members of the district (as opposed to members of the board) are qualified voters and not elected officials.

GH/svb