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FISCAL IMPACT REPORT

SPONSOR Cook ORIGINAL DATE 02/20/13
LAST UPDATED _____ HB 529
SHORT TITLE Gov't & Telecomm Dispute Resolution by PRC SB _____
ANALYST Clark

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Up to \$17.5	Up to \$70.0	Up to \$70.0	Up to \$157.5	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 477

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 529 amends Section 62-1-1 NMSA 1978 to permit the "commission" to resolve any conflicts that arise between a provider of public telecommunications service and a county or municipality that has granted the provider a franchise.

FISCAL IMPLICATIONS

The PRC reports that there are a number of outstanding franchise disputes between municipalities, counties, and telecommunications companies. Many of these agreements have expired and are due for renegotiation. In a franchise fee agreement, the municipality or county is paid through the levy of a franchise fee or percent fee on the intrastate telecommunications revenues in that jurisdiction. Intrastate revenues on telecommunications services have been declining, and therefore the revenues to those municipalities or counties from those providers under those franchise fee agreements have been declining. It is unknown what fiscal impact interjecting the PRC into the resolution of the renegotiation of those franchise fee disputes will have on the revenue stream from those franchise fee agreements to counties and municipalities.

If the PRC is asked to resolve many of those franchise fee disputes, additional resources may have to be devoted to this issue. As such, an additional FTE may be needed at the PRC to assist in this effort, which could add up to \$70 thousand annually to the operating budget for each full fiscal year in which this amendment is in effect.

SIGNIFICANT ISSUES

This bill gives authority to the PRC to resolve any conflict between telecommunications companies and counties or municipalities. The PRC reports it has at its disposal several tools to resolve disputes, such as mediation, arbitration, or contested hearings. However, the PRC does not currently have experience resolving these forms of disputes and would have to develop a methodology for doing so. This may include deciding what a fair franchise percentage may be (see final paragraph of TECHNICAL ISSUES), which services that fee would apply to, and the resolution of the propriety of other terms and conditions in the agreement. In essence, the PRC would be asked to be the final arbiter in a contract dispute between two parties.

ADMINISTRATIVE IMPLICATIONS

The PRC reports one additional FTE may be needed if the PRC is asked to resolve many such disputes.

RELATIONSHIP

SB 477 also affects franchises but does not conflict with this bill. Among other functions, SB 477 would allow a percentage of a public utility's gross revenue to be collected as a right-of-way fee.

TECHNICAL ISSUES

The PRC analysis notes this bill affords the PRC with the authority to resolve “any conflicts,” and this language could be construed to relate to matters beyond franchises. The following replacement language would limit the PRC's authority:

The commission may resolve any conflicts that arise between a board of county commissioners or a governing body of a municipality and a provider of public telecommunications service relating to a franchise that has been granted to the provider of public telecommunications service.

The PRC further notes it may be unclear that “commission” refers to the New Mexico Public Regulation Commission. It may be more appropriate for authority for the PRC to resolve these disputes to be inserted into Section 63-7-1.1 NMSA 1978.

Additionally, the New Mexico Supreme Court has held that the PRC does not have jurisdiction over franchise fees. *See El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n.*, 149 N.M. 174, 246 P.3d 443 (2010). Accordingly, a statute would be necessary to confer this jurisdiction.