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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/14
LAST UPDATED 02/11/14 **HB** _____

SPONSOR SPAC

SHORT TITLE City Ordinance Violation Civil Remedies **SB** CS/61/aSJC

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY14 | FY15 | FY16 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|----------------------------|------|----------------------|------------------------------|------------------|
| Total | | See Fiscal Implications | | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Administrative Office of the Courts (AOC)
 New Mexico Municipal League (NMML)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Public Affairs Committee substitute for Senate Bill 61 inserts on page 2, line 20, after “remedies” the phrase, “promulgated for violations of zoning pursuant to Chapter 3, Article 21 NMSA 1978,” thus explicitly providing for municipalities to establish rules and regulations to ensure that any administrative proceedings conducted under this bill adhere to basic due process principles and considerations as recommended by the state’s Attorney General’s Office.

Synopsis of Original Bill

The Senate Public Affairs Committee substitute for Senate Bill 61 proposes to augment the authority granted to municipalities to enforce municipal ordinances and resolutions under Section 3-17-1 NMSA 1978 (1965, as amended through 1993).

Section 3-17-1 authorizes municipalities to enforce ordinances and resolutions through prosecution in the municipal or metropolitan courts; upon conviction, the courts may impose:

- A fine of not more than \$500 and/or imprisonment of up to 90 days for most offenses;
- A fine of not more than \$1,000 and/or imprisonment for up to 364 days (DWI convictions); or

- A fine of up to \$1,000 a day for violations of an industrial user wastewater pretreatment ordinance as required by the U.S. Environmental Protection Agency.

SB 61 proposes to amend Section 3-17-1 to provide municipalities with an alternative to prosecutions in the municipal or metropolitan courts, namely, civil administrative remedies. As amended, Section 3-17-1 would permit a municipality to conduct a civil administrative hearing, using an administrative hearing officer, and upon the hearing officer's findings at the hearing, to impose penalties of not more than \$500 per violation. If a municipality seeks a civil administrative remedy, it must provide for adequate notice and a de novo right to appeal. The civil administrative process described in the amendment was not previously within the authority granted to municipalities under Section 3-17-1.

FISCAL IMPLICATIONS

Municipalities electing to use civil administrative proceedings may incur increased costs associated with administrative hearings, such as compensation for hearing officers, costs of conducting and noticing hearings, and witness attendance at hearings (the legislature may consider authorizing municipalities to impose the costs associated with conducting civil administrative proceedings).

Alternatively, if all ordinances were handled administratively as opposed to being handled in municipal or metropolitan courts, the annual impact to various state funds could be as high as \$1.3 million (funds potentially impacted include: the general fund, court automation fund, court facility fund, jury and witness fund, correction fund, traffic safety fund, brain injury fund, and traffic safety fund).

The AOC explains that since the bill does not specify what type of ordinances it is intended to cover, it is difficult to determine the fiscal implication; the fiscal implication is determined by what ordinances the bill applies to. Last year the Bernalillo Metropolitan court disposed of 16,896 ordinance cases. If all ordinances were handled through a civil administrative process, over a million dollars in fines and fees would not be accessed and not go into the state general fund and a number of other fee funds.

SIGNIFICANT LEGAL ISSUES

NMML points out that bill does not define a civil administrative penalty nor does it limit its applicability to specific ordinances or classes of ordinances. Such a broad application creates the unintended consequence of making all municipal ordinances subject to this legislation. That would mean that several offenses that are traditionally and historically criminal offenses may be de-criminalized.

Changing an offence from criminal to administrative would result in a change in the constitutional standard of proof as well as other constitutional implications. The standard of proof for criminal proceedings is the onerous beyond a reasonable doubt standard, whereas administrative violations would carry the less burdensome preponderance of the evidence standard. Additional constitutional rights such as the right to confront and cross examine witnesses, the right to a court appointed attorney and the right to be free from self incrimination would be lost in an administrative process.

The AG notes also that although the use of civil administrative proceedings are commonplace in New Mexico, particularly in the context of discipline for licensed professionals, such proceedings are novel in the municipal ordinance resolution and enforcement context; therefore, municipalities should establish rules and regulations to ensure that any administrative proceedings conducted under this bill adhere to basic due process principles and considerations. The legislature may deem it wise to include such a directive and explicitly grant authority to the municipalities to promulgate such rules and regulations.

TECHNICAL ISSUES AND POTENTIAL AMENDMENTS

Both AOC and NMML recommend an amendment to clarify which municipal ordinances the administrative hearing process should be used for. For example, it might be appropriate to consider limiting this bill to certain types or classes of municipal violations such as animal control, code compliance and zoning, leaving for the criminal justice system those offenses that are crimes under common law.

The AGO notes that the bill appears to intend that the civil administrative penalties are to be imposed at the time the civil administrative hearing takes place. In other contexts, such as professional licensing disciplinary hearings, the hearing officer is often not in a position to make immediate findings, but instead must take time to consider all evidence and testimony presented at a hearing and to render findings at a later date. The legislature should allow additional time for a hearing officer to consider the record created at an administrative hearing and to issue findings and impose any penalties.

The legislature may consider authorizing municipalities to impose the costs associated with conducting civil administrative proceedings on the offender where the hearing officer has concluded that the offender committed the alleged offense in order to eliminate or defray the impacts to municipal operating budgets.

The use of the word “or” on page 2, line 19 suggests that prosecution of infractions of municipal ordinances or resolutions in municipal or metropolitan courts and the civil administrative proceedings contemplated in the bill are mutually exclusive. If the will of the legislature is not to place such limitations on the authority of the municipality, but rather, to authorize concurrent judicial and administrative proceedings, it should consider the effect of using the existing language and any pre-existing authority for municipalities to conduct such concurrent proceedings.

Finally, if the legislature deems it wise to enact the policy contained in the bill, it may wish to extend to counties the authority to undertake civil administrative proceedings for violations of county ordinances and resolutions as well.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Municipalities will only have authority to pursue infractions of municipal ordinances/resolutions via prosecution through the Municipal or Metropolitan courts