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FISCAL IMPACT REPORT

SPONSOR Candelaria ORIGINAL DATE 2/5/15
LAST UPDATED _____ HB _____

SHORT TITLE Ordinance Civil Enforcement and Penalties SB 382

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Municipal League (NMML)

SUMMARY

Synopsis of Bill

Senate Bill 382 proposes to amend Section 3-17-1 NMSA 1978, the Municipal Code, to provide for enforcement of certain municipal ordinance through civil penalties rather than criminal prosecution. The bill provides an alternative enforcement vehicle by creating civil administrative remedies that will be imposed at an administrative hearing by an administrative hearing officer. The bill adds civil enforcement to the Municipal Code allowing municipalities to enforce through civil administrative

FISCAL IMPLICATIONS

The AOC foresees minimal fiscal impact from this bill.

SIGNIFICANT ISSUES

The NMML reports that 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 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.

AOC points out that committing resolution of certain matters to an administrative process is generally regarded as being more efficient and timely. Administrative hearings can generally be conducted less formally as well. Administrative hearings can become too informal, thereby creating clumsy and unusable decisions. However, that is a matter of quality control rather than a structural issue with administrative processes.

ADMINISTRATIVE IMPLICATIONS

According to NMML, the administrative practice will be extended to include zoning violations under this bill.

AOC anticipates the judicial branch will potentially realize a small reduction in administrative impact from this bill. Municipal and county proceedings come to the district courts on appeal already. The matters that proceed criminally through municipal courts are subject to an appeal de novo. This bill would truncate that appeal process, and thus lessen the administrative burden, by limiting the appeal to a review of the record made by the hearing officer.

ABS/bb