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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/19

SPONSOR Chandler LAST UPDATED 03/13/19 HB 379/aHAWC/aHJC/aSJC

SHORT TITLE Acequia Property Liens from Court Judgements SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal			Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Acequia Association (NMAA)
 Administrative Office of the Court (AOC)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to House Bill 379 as twice amended requires release of acequia assessment liens to be filed within 15 days, and eliminates language requiring such liens to be first and prior liens on the property subject only to a lien for federal, state or county taxes.

Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 379 as amended by the House Agriculture and Water Resources Committee further clarifies that the judgment and lien on the debtor’s property shall not be filed with the county clerk until all appeals taken are exhausted.

Synopsis of HAWC Amendment

The House Agriculture and Water Resources Committee Amendment to House Bill 379 attempts to clarify the status of the lien until the appeal process has concluded; however, the amendment should probably read “...and any appeal filed is final” (which would correct a misspelled word).

Synopsis of Original Bill

House Bill 379 adds a new subsection “C” to Section 73-2-26 NMSA 1978 to provide that a monetary judgment from a magistrate or district court in favor of an acequia or community ditch in order to collect delinquent assessments from a property owner is a lien on that owner’s property to which the water rights that incurred those fees or assessments are attached. The monetary judgment shall not be filed before the appeal process has concluded and requires the acequia or community ditch to provide written notice to the owner that a lien has been filed.

Further, once the judgment has been fully satisfied, the bill states that it is the duty of the acequia or community ditch to file a release of lien in the county. The cost of filing the release of lien shall be assessed against the property owner and shall be collected before the release of lien is filed.

Finally, the bill makes these liens subject only to the liens of federal, state or county taxes.

FISCAL IMPLICATIONS

AOC noted allowing the judgment creditor to obtain a lien on the judgment debtor’s property may cause more cases to go to trial which could require additional resources from the courts.

SIGNIFICANT ISSUES

HB379 attempts to make it easier for an acequia or community ditch that has had difficulty recovering delinquent assessments, to file a post-judgment lien on the person’s real property.

Section 73-2-26 NMSA 1978 allows acequias or community ditches to bring a civil action for delinquent assessments in either magistrate or district court; however, it does not provide that a money judgment from either court is a lien on property. HB 379 clarifies that acequias or community ditches may place a lien on property after receiving a favorable court judgment provided that (1) the appropriate documentation has been filed with the right county, (2) the judgment has not been filed before the last date an appeal of the judgment may be made, and (3) written notice has been provided to the owner that a lien has been placed on their property.

Currently, in order for acequias to place liens on property for delinquent assessments, acequias must take a certified copy of the magistrate court judgment and request, along with payment of all district court fees, to district court to open a new case, give it a district court case number, and assign it to a judge. The district court judge can choose to close the case administratively. The transcript of judgment is then recorded with the county clerk and a lien placed on the property. This middle step is expensive for acequias of limited means, the NMAA reports, and unnecessary, considering the acequia has already received a favorable judgment in magistrate court.

PERFORMANCE IMPLICATIONS

HB379 may duplicate parts of existing law with regard to judgments of the district court. Under Section 39-1-6 NMSA 1978, NMAG noted that a party may request a transcript of any money judgment from the district court. “The judgment shall be a lien on the real estate of the judgment debtor from the date of the filing of the transcript of the judgment in the office of the county clerk of the county in which the real estate is situate[d].” *Id.* Transcripts of district court judgments are required to be recorded with the county clerk. *See* NMSA 1978, § 39-1-7. Furthermore, when a

judgment has been fully satisfied, “it is the duty of the judgment creditor to file a release of the lien in the office of the county clerk of the county in which the real estate is situate[d]”.

OTHER SUBSTANTIVE ISSUES

According to the NM courts website, district courts hear real property rights cases. Additionally, unlike district courts, magistrate judges in most NM counties are not required to be lawyers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Acequias will continue to need a district court’s transcript of judgment to place liens on property and will not have a tool other water management entities have to collect on delinquent accounts.

AHO/sb