

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Jennings DATE TYPED: 2/12/03 HB _____
 SHORT TITLE: Damages for Franchise Fee Overcharges SB 463
 ANALYST: Maloy

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	Indeterminate		Recurring	Local Municipal General Funds

SOURCES OF INFORMATION

Responses Received From

The Construction Industries Division, Regulation and Licensing Department

SUMMARY

Synopsis of Bill

Senate Bill 463 amends existing law. The bill adds the following language to New Mexico’s municipality / utility franchise laws:

“G. A utility shall not overcharge its customers franchise fees it may pass through pursuant to a contract with a municipality. Upon the complaint of a customer, a municipality may require an overcharge to be refunded to the customer plus damages in the amount of three times the overcharge per customer.”

Significant Issues

- The existing law provides that a municipality may, by ordinance, grant a franchise to any person, firm or corporation for the construction and operation of any public utility.
 - Citizens of the municipality may challenge the granting of a franchise by petition. Upon receiving a petition signed by 20% of those who voted at the last municipal regular election, the governing body shall submit the question of granting the franchise to a vote of qualified electors.

- If successful at election, the franchise ordinance duration is capped at 25 years. During those 25 years, the municipality may contract with the utility for such services as are necessary for the health and safety of the municipality.
- The municipality may pay a sum agreed upon by the contracting parties (the governing body and the utility).
- SB 463 provides that should the utility pass on costs to its customer that should be charged to the municipality under the franchise agreement, the utility shall be required to reimburse the customer for the overcharge *PLUS pay damages in an amount of 3 times the overcharge.*
- **With regard to the receipt of a customer complaint and the reimbursement of an overcharge plus triple damages, the following should likely be clarified in the language of the new provision:**
 - The utility is entitled to some sort of due process in adjudicating the complaint.
 - The triple damages, like the base overcharge reimbursement, are to be paid to the customer and not the municipality. (If this is what is intended.)
 - What should be done if the costs (wrongly overcharged to the customer) were not charged to the municipality at all? Should the utility forfeit the right to collect the costs from the municipality under the franchise agreement? Or, should the utility still be allowed to collect the costs from the municipality?
 - Should there be a penalty paid to the municipality by the utility (in addition to that which is paid to the customer via the overpayment reimbursement and the triple damages)?

FISCAL IMPLICATIONS

SB 463 does not contain an appropriation. The bill should not affect the state general fund. However, it will affect local, municipal general funds. The amount of the local effect is indeterminate.

ADMINISTRATIVE IMPLICATIONS

Any administrative effects will be at the local, municipal level. For instance, the local governing body will be responsible for handling the proposal of a franchise agreement, any required elections, the negotiation and administration of the contract, and (now with SB 463) the resolution of complaints, any legally required due process, and enforcement.

SJM/njw