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FISCAL IMPACT REPORT

ORIGINAL DATE 2-1-2006

SPONSOR Vigil LAST UPDATED _____ HB 778

SHORT TITLE Natural Gas Pipeline Condemnation SB _____

ANALYST Dearing

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$70.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance & Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 778 appropriates \$70,000 from the general fund to the Public Regulatory Commission for expenditure in fiscal year 2007 for oversight of natural gas pipelines owned by municipal utilities.

Additionally, House Bill 778 provides for the municipal condemnation of natural gas facilities and amends two acts -- the Public Utilities Act, Sections 3-23-1 NMSA 1978 and the Gas Utility Act, Sections 3-25-1 NMSA 1978. Essentially, the amendments create more instances in which municipalities are permitted to condemn natural gas facilities and therefore simplifies this process.

FISCAL IMPLICATIONS

The appropriation of \$70,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund.

At the State level, this bill would have a second, minimal fiscal impact above and beyond the

\$70,000 recurring appropriation previously mentioned which would arise due to the necessity to amend existing statutes and software in various state agencies. Additionally, there could be increased costs to the judiciary due to an overall increase in civil actions, via lawsuits for injunctions of condemnation proceedings.

SIGNIFICANT ISSUES

House Bill 778 enhances Section 3-23-3 NMSA 1978 to include more exemptions to the provisions concerning specified actions and conditions prior to the condemnation of natural gas facilities conducted by municipalities. As currently written, Section 3-23-3 NMSA 1978 stipulates conditions and provisions for the acquisition and financing of such utilities, pursuant to the issuance and sale of revenue bonds (Section 3-23-3 § a.) 1 & 2 NMSA 1978), requiring an appraisal or other valuation mechanism; or engineer's estimate in instances where new facilities are created. Section 3-23-3 § b.) stipulates that no revenue bonds can be issued until all contractual elements of the securities' issuance are established by the Public Regulatory Commission. Lastly, as currently written, Section 3-23-3 § c.) NMSA 1978 provides exemptions to these prior sections (a & b) in the event that a condemnation by a municipality having a population in excess of 25,000 according to the 1990 federal decennial census of electricity, sewage and water facilities.

Enactment of this legislation would have the effect of constructing a new Section 3-23-3 § d.) NMSA 1978 such that the exemptions to the previously mentioned sections, (a & b) would be expanded to those condemnations of natural gas facilities by municipalities, provided that the municipality has owned and operated a municipal natural gas facility for a period of more than ten years.

Section 3-25-2 NMSA 1978, Gas or Geothermal Utility—Authorization to Acquire—Charges, as currently written specifies that where satisfactory natural gas supplies are not privately supplied in sufficient quantity, a municipality may acquire and operate natural gas and geothermal energy facilities to allow distribution of heat or natural gas.

Enactment of this legislation would have the effect of amending Section 3-25-2 such that the enacted version would remove the sufficiency of service clause, and construct a clause such that municipalities may additionally, by ordinance, maintain, contract for and condemn for use as a municipal utility, natural gas and geothermal facilities, regardless of private ownership, and includes language specifying applicability to transportation of gas & heat, in addition to distribution. Enactment of legislation includes language to specifically include pipelines within applicable facilities.

Section 3-25-4 NMSA 1978, Financing Acquisition of Gas or Geothermal Utility, as currently written specifies the requirements regarding issuance of bonds for financing the acquisition of these facilities to include provisions found in Sections 3-30-5; 3-30-8; and 3-31-1 through 3-31-12 NMSA 1978 and includes exceptions found in Section 3-23-4 NMSA 1978.

Enactment of this legislation would have the effect of amending Section 3-25-4 NMSA 1978 to expand the aforementioned requirements of bond issuance to include the condemnation of such facilities. Enactment of legislation includes language to specifically include pipelines within applicable facilities.

Section 3-25-5 NMSA 1978, Gas or Geothermal Utility—Eminent Domain Power—Procedure, as currently written, allows for the exercise of eminent domain powers within or without municipal boundaries for the acquisition of such facilities or an interest in such facilities for the location of or for the extension of the such facilities. Additionally, as written, this section stipulates that actions enabling the condemnation for acquisitions of facilities are in accordance with the Eminent Domain Code.

Enactment of this legislation would have the effect of amending Section 3-25-5 NMSA 1978, such that the provisions of this section apply to condemnation of those facilities, regardless of private ownership. Enactment of this legislation stipulates that municipalities may acquire, operate, maintain and condemn natural gas, geothermal, and pipeline facilities and assets, provided that these remain within the purview of PRC jurisdictional oversight. Enactment of legislation includes language to specifically include pipelines within applicable facilities.

Additionally, there are several linguistic changes proposed throughout the aforementioned statutes. Lastly, the effective date of the provisions of this act would take effect immediately, as this is determined to be an emergency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 389, HB 643

SB 389 is essentially the same legislation, with the exception that the intent of the senate bill does not include natural gas and geothermal *pipelines*.

HB 643 is essentially the same legislative proposal, with the exception that HB 643 does not include the clause which states that municipalities may acquire, operate, maintain and condemn natural gas, geothermal, and pipeline facilities and assets, provided that these remain within the purview of PRC jurisdictional oversight, which is located in Section 35-25-2 a.) 2

Additionally, HB 778, while interrelated and nearly duplicative of HB 643 & SB 389, adds a \$70,000 appropriation from the general fund to the PRC for the oversight of natural gas pipelines by municipal utilities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Failure to enact would result in status quo with respect to when and how a municipality can condemn or exercise the power of eminent domain for the purpose of acquiring natural gas or geothermal utilities. Additionally, there would be no appropriation of \$70,000 for PRC oversight of municipally owned and operated pipelines.

PD/mt