

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/07
 LAST UPDATED 2/22/07 HB 988/aHVEC

SPONSOR Williams

SHORT TITLE Special Zoning District Terms & Commissions SB _____

ANALYST Propst

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Taxation and Revenue Department (TRD)
 New Mexico Association of Counties

SUMMARY

Synopsis of HVEC Amendment

DFA notes that the amendments clarify the type of taxing powers and election methods for their imposition and makes the imposition of the tax constitutional and legal.

In order to meet constitutional muster and avoid taxation limits and non representation, the amendment clarifies the type of taxing powers and election methods for their imposition.

The amendment also clarifies the issue of imposition of mill levy beyond maximum allowed under law for operating. By allowing elections of affected parties to tax themselves, DFA reports that the bill now meets constitutional muster.

Before the HVEC amendment, HB 988 would have allowed the special district commissioners to impose up to 1 mill (\$1 per \$1,000 of taxable value) for operating purposes without the approval of district voters. This would have illegally allocated taxes under the 20 mill constitutional limit and would have had the potential to exceed the 20 mill limit in some counties.

The Department of Taxation and Revenue notes that prior to amendment, the proposed measure would have probably violated the New Mexico constitution and related statutes. Article 8, Section 2 of the constitution states that property tax rates in excess of 20 mills may not be imposed unless approved by voters. Section 7-37-7 NMSA 1978 allocates the 20-mill total that may be imposed without voter approval as follows: 11.85 mills to counties, 7.65 mills to municipalities and .5 mills to school districts. Hence special zoning district commissioners may not approve property tax levies without voter approval. The Voters and Election Committee amendment requires commissions to seek voter approval of proposed (maximum 1-mill) property tax levies in special or general elections. The amendment also requires special zoning districts to compensate counties for the cost of the associated elections.

The New Mexico Association of Counties takes the position that this bill will create a morass of conflicting zoning and taxing problems within a county by granting an excessive amount of authority to special zoning commissions. These commissions would be given excessive and far reaching authority to impose zoning regulations and restrictions on top of and in addition to those already imposed by county commissions or extraterritorial zoning authorities. This creates an unwieldy and probably unworkable situation in terms of enforcing zoning regulations. In addition, the authority of the special zoning commission to impose taxes requires additional work and effort for county assessors and treasurers in assessing and collecting property taxes within the district. The county has absolutely no authority or control over these special zoning commissions, yet has to perform a variety of services on behalf of the zoning commission.

Synopsis of Original Bill

House Bill 988 broadens the powers of special zoning districts and authorizes revenue powers to pay for their operations.

SIGNIFICANT ISSUES

HB 988 broadens the powers of special zoning districts by allowing the division of territory under its jurisdiction into sub-districts, regulation of building construction and use, hiring a code enforcement officers, requesting help from the county sheriff to take action against code violators, and levying an ad valorem property tax to cover operating costs. HB 988 also staggers terms of zoning district commissioners.

DFA notes that while special zoning districts enable zoning for citizens in an area that want and need zoning, they must be carefully balanced to maintain a connection to the county's comprehensive plan and ensure accountability to elected county commissioners. And with the ability to develop new regulations on building construction and use, builders may face a bewildering array of differing zoning and building codes.

TECHNICAL ISSUES

DFA reports that the Special Zoning Enabling Act has been rarely used in New Mexico, in part due to a court case ruling them unconstitutional without a size limit. Subsequent legislation fixed that. Currently there is a special zoning district in Paradise Hills on the west side in Bernalillo County. There are two special zoning districts in northern Socorro County, where people wanted zoning, initially to prevent power plants from coming into the area. As Socorro County does not have zoning, they organized, voted, and created two special zoning districts. They had to create

two to cover most of the area as these districts are limited in both the size of the area covered and by population.

WEP/csd