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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/10  
 LAST UPDATED 02/17/10      HB \_\_\_\_\_

SPONSOR Smith

SHORT TITLE Study Municipal and County Franchise Fees      SJM 48/aSFC

ANALYST Clifford

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
NFI	NFI	NFI		

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee amendment deletes the references in the Memorial to the N.M. Court of Appeals ruling in State of New Mexico ex rel Madrid v. UU Bar Ranch Ltd Partnership, 137 N.M. 719, 114 P.3d 399 that public rights of way are interests in real property and therefore subject to statutes governing disposition of interests in real property. The amendment also deletes the assertion that public utilities in New Mexico have delayed new franchise fee agreements with various counties and municipalities.

#### Synopsis of Original Bill

Senate Joint Memorial 48 would direct the interim Revenue Stabilization and Tax Policy Committee to study issues raised by current franchise fee provisions and to make recommendations for legislation establishing statutory franchise fees or authorizing imposition by municipalities and counties of a franchise tax.

Provisions are effective July 1, 2010.

**FISCAL IMPLICATIONS**

No direct fiscal impacts would stem from the memorial.

**SIGNIFICANT ISSUES**

SJM 48 notes the following issues concerning franchise fees:

- Current law authorizes counties and municipalities to enter franchise agreements with public utilities.
- Municipalities are permitted to charge a reasonable franchise fee as compensation for the use of public streets by public utilities but counties are prohibited from doing so by Attorney General opinions and court decisions.
- The anti-donation clause prohibits the state or local governments from making donations to private entities.
- The use of public rights of way without payment of reasonable fees constitutes a disposition of property and violates the anti-donation clause.
- The proper resolution of these issues may be granting municipalities and counties statutory authority to impose franchise fees.

**RELATIONSHIP**

Relates to House Bill 269 and the duplicate Senate Bill 256 “Utility Right-of-Way Access Fees”

TC/svb:mew