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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/11  
 LAST UPDATED 02/15/11    HB 226/aHAGC

SPONSOR Crook

SHORT TITLE Soil & Water District Assessment Extension    SB \_\_\_\_\_

ANALYST Haug

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	\$1.5-\$2.5	\$1.5-\$2.5	\$1.5-\$2.5	\$4.5-\$7.5	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AGO)  
 Department of Agriculture (NMDA)  
 Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of HAGC Amendment

The House Agriculture and Water Resources Committee Amendment limits the applicability of the act to soil and water conservation districts that have an assessment imposed pursuant to 73-20-46 NMSA 1978 on or after the effective date of the bill.

#### Synopsis of Original Bill

House Bill 226, with the emergency clause, amends the Watershed District Act, Sections 73-20-1 through Section 73-20-49, to allow supervisors to extend assessments beyond the time originally authorized by referendum, without going back to the district voters with an additional referendum.

### FISCAL IMPLICATIONS

The NMDA asserts that House Bill 226, if enacted, is likely to increase the number of referenda that are held over the next several years. The soil and water conservation commission (SWCC) is required to approve the holding of a referendum, and addresses requests or petitions from the public which would result from the public's increased awareness of SWCD operations. While the expense of a mill levy referendum is borne by the SWCD, the assistance of NMDA field staff

to ensure that proper procedures are followed will likely increase expenses such as fuel and per diem for NMDA. The SWCC does not have a dedicated budget; all mileage and per diem expenses as well as any others expenses related to the SWCC are borne by NMDA.

The NMDA provides no data with respect to the number of referenda to held should the bill pass, nor does it comment on where or when those referenda might be held. Given the parsimony of information about the drivers of additional cost, an estimate of \$1.5 thousand dollars to \$2.5 thousand dollars is used in the table above to indicate a reasonable guess as to possible annual costs for the types of costs indicated in the paragraph above.

## **SIGNIFICANT ISSUES**

The NMDA states:

Out of 47 SWCDs in New Mexico, 23 currently collect a mill levy on real property within the district boundary. Of those, 17 are currently subject to the 10-year time limit (or sunset provision) that requires a district to either: 1) be in debt to the federal or state government, or 2) hold a referendum and get voter approval, in order to continue to the mill levy.

The sunset provision was inserted into the SWCD Act in 1989. Several SWCDs were authorized to collect a mill levy prior to 1989. SWCDs which were not in debt by 1999 were instructed by the soil and water conservation commission to hold a referendum in order to come into compliance with the sunset provision; most complied. SWCDs which were in debt in 1999 continued to collect their mill levies and were not required to hold a referendum.

In December 2007, in response to a mill levy issue presented by the Soil and Water Conservation Commission, the Attorney General (AG) of New Mexico issued an advisory letter which states, in part: “The legislature did not apply the requirements imposed under the 1989 amendment of Section 73-20-46 to resolutions providing for annual levies under the previous law. Therefore, a reasonable interpretation of the amendment is that the requirement for resolutions limiting levies to a period of up to ten years applied only to resolutions adopted after the amendment’s effective date.”

Based upon this advisory letter, six SWCDs which have not held a mill levy referendum since the effective date of the 1989 amendment are considered to be unaffected by the sunset provision and able to collect a mill levy indefinitely without incurring debt.

The December 2007 AG advisory letter also contained a reference stating: “New Mexico law presumes that a statute will operate prospectively unless the legislature clearly indicates that the statute is to be given retrospective effect.” *City of Albuquerque v. State ex rel. Village of Los Ranchos de Albuquerque*, 111 N.M. 608, 616, 808 P.2d 58, 66 (Ct.App.1991) Citing *Psomas v. Psomas*, 99 N.M. 606, 661 P.2d 884 (1982).

House Bill 226, if enacted, would therefore be presumed to affect only SWCD mill levies that are authorized by voters after the effective date of the legislation. The 17 SWCDs that are currently subject to the 10-year sunset provision would continue to be subject to that provision, until such time as voters approved assessment of a mill levy under the amended statute.

The current statute effectively encourages many SWCDs to remain in debt over an extended period of time in order to stabilize revenue, which allows for long-term planning on natural resource issues and continuity of services to landowners and the general public. It is possible that public funds could be used more effectively on conservation projects and programs if funds were not being used to service debt.

Removing the 10-year limit could potentially make it harder for an SWCD to obtain voter approval for a mill levy. Once a mill levy was authorized, voters would be able to influence the collection of the mill levy by voting on the elected positions on the board of supervisors. One or two election cycles (up to four years) could be required for voters to seat a majority of new supervisors on a board, depending on the size of the board and the number of positions up for election in a given year.

### **TECHNICAL ISSUES**

The NMDA suggests that striking the words “for a stated period of up to ten years” from the first sentence of 73-20-46 A would eliminate some confusion over the need to state the effective period of a mill levy that would in effective be indefinite, contingent only upon resolutions of a board. On a ballot, a stated period of time for a mill levy would mislead voters.

### **ALTERNATIVES**

According to the NMDA, recurring funding from the state budget dedicated to soil and water conservation districts would be an alternative to enacting this bill to stabilize mill levy income.

GH/bym