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FISCAL IMPACT REPORT

SPONSOR <u>Chasey/Little/Herndon/Garratt</u>	LAST UPDATED <u>3/12/2023</u>
	ORIGINAL DATE <u>02/23/23</u>
SHORT TITLE <u>Nuisance Penalties & Procedures</u>	BILL NUMBER <u>House Bill 462/aHGEIC/aHJC</u>
	ANALYST <u>Hitzman/Gray</u>

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
(\$308.3)	Roughly (\$1,537.5)	Roughly (\$1,537.5)	Recurring	Court Automation Fund
(\$100.3)	(\$100.3)	(\$100.3)	Recurring	DWI Drug Court Fund
Unknown	Roughly (\$350.0)	Roughly (\$350.0)	Recurring	Metropolitan Court Bond Guarantee Fund
(\$94.8)	Roughly (\$427.0)	Roughly (\$427.0)	Recurring	Traffic Safety Education and Enforcement Fund
(\$71.1)	Roughly (\$492.0)	Roughly (\$492.0)	Recurring	Judicial Education Fund
\$574.5	Roughly \$2,906.8	Roughly \$2,906.8	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Notice of Violations	<\$20.0	<\$20.0	<\$20.0	<\$60.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 139

Sources of Information

LFC Files

Responses Received From
Administrative Office of the Courts (AOC)

No Response Received
New Mexico Finance Authority (NMFA)

New Mexico Counties
Municipal League

SUMMARY

Synopsis of HJC Amendment to House Bill 462

The House Judiciary Committee amendment to House Bill 462 makes a technical adjustment. The content of the bill is identical to the HGEIC amended version of HB462.

Synopsis of HGEIC Amendment to House Bill 462

The House Government, Elections and Indian Affairs Committee amendment to House Bill 462 clarifies that a respondent to a fee or fine may opt-in to challenge a citation through a mail-in form.

Synopsis of Original House Bill 462

House Bill 462 (HB462) amends municipal penalties and procedures for nuisances. The bill prohibits a municipality from assessing and collecting fees and costs, changes the distribution of fines and costs, and changes the hearing options to contest a nuisance violation for failure to obey a traffic sign or signal, including a red light violation, or for a speeding offense.

Distribution of fines and penalties. The bill provides that the total amount of fines and penalties for traffic violations shall be equal to the sum of the setup, maintenance, support, and processes services fees charged to the municipality will be divided between the general fund and the municipality for traffic safety programs and to offset costs involved in administering the program. This is a change from current practice where fees, fines, and penalties are distributed, in part, to the Administrative Office of the Courts DWI drug court programs, court automation fund, the traffic education and enforcement fund, and the judicial education fund, and to the New Mexico Finance Authority (NMFA) for deposit into the metropolitan court bond guarantee fund.

Offense Violation Hearing Request Alternative. In municipalities with populations of 200 thousand or greater, a person who contests a nuisance ordinance offense or violation may request a hearing by a mail-in form. The bill also moves the burden of proof to the municipality to prove the evidence is more likely than not.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The bill changes how penalties and fines are distributed. Programs or funds that previously received distributions from municipality fines would no longer receive those distributions under HB462. For example, the Administrative Office of the Courts (AOC) receives funding from those penalties and fines from the municipality for its DWI drug court program. That program is “projected to lose approximately \$100,300 annually.” Funding is also distributed, under current statutes, to the court automation fund, the judicial education fund, the metropolitan court bond

guarantee fund, and the traffic safety education and enforcement fund.

However, the agency only provided an analysis on the amounts to be lost to those other funds for FY23 based on revenue collected to date. AOC noted it “is not comfortable estimating revenue beyond FY23 because we don't know who will have traffic enforcement after this fiscal year.” Currently, AOC believes there are only two municipalities with this kind of traffic enforcement: Rio Rancho and Albuquerque. For FY23, the general fund impact, then, would be equal to the impacts on the other funds, which AOC estimates will total \$574.5 thousand.

Due to a lack of information, the fiscal implications are extrapolated for FY24 and FY25 from existing data and trends. Below estimates of state court fines and fees to each fund may be overestimated, as it is unknown whether the fines and fees reported are just from the state courts or whether those totals fully exclude those fees and fines from municipalities.

The court automation fund had a balance of around \$3 million as of November 2022, a portion of which comes from an estimated \$950 thousand in fines from state courts and a portion of which comes from municipalities. However, the actual distribution from municipalities is not known. In HB462 and existing statute, those fines assessed by municipalities with populations less than 200 thousand are distributed to the fund, which includes all cities except Albuquerque. Albuquerque makes up about one-quarter of the state's population, so it could be reasonably assumed that Albuquerque also makes up at least one-quarter of the fines distributed to the fund by municipalities. Therefore, because HB462 moves fines from those 75 percent of other cities, the estimated impact on the court automation fund is equal to 75 percent of that municipal balance (\$2.1 million), or \$1.5 million.

For the Metropolitan court bond guarantee fund, the estimate assumes a total of \$1.4 million in the fund from all court fines (this estimate was provided by AOC in an analysis of a similar bill, House Bill 139). HB462 moves those fee revenues from cities over 200 thousand, which is only Albuquerque, to the general fund. Therefore, Albuquerque's share of those funds is likely at least 25 percent, because Albuquerque makes up about 25 percent of the state's population, as stated above. Therefore, the estimated impact on the funds should total around \$350 thousand annually or more.

Regarding this fund, it is unclear how this bill will impact the court facilities fee, which provides revenue to pay off bonds issued to construct the Bernalillo county metropolitan court in Albuquerque and its adjacent parking facility. Statute requires that the fee must continue to be assessed as long as the bond debt is outstanding, so it is unclear if moving that fee distribution to the general fund will impact this obligation or would result in other impacts on the state's payments toward that debt. The estimated annual revenue generated by the court facilities fee is \$1.5 million.

For the traffic safety education and enforcement fund, the total amount in the fund that comes from assessed fines totals \$857 thousand (as provided by the Department of Transportation in its analysis of House Bill 139), of which \$430 thousand is from (presumably) state courts. Therefore, the remainder of \$427 thousand is likely the amount distributed from municipalities to the fund. Therefore, the bill will move that \$427 thousand from the traffic safety fund into the general fund.

For the judicial education fund, the total amount of fines in that fund was \$692.4 thousand

(according to the data provided by the University of New Mexico for House Bill 139), of which around \$200 thousand were from (presumably) state court fines. Therefore, this analysis assumes the remaining roughly \$492 thousand is from municipalities and would be distributed to the general fund under HB462.

The general fund impact of HB462 is equal to those amounts above that would no longer be distributed into individual funds—around \$3 million combined in the above estimates. However, without additional data on the total amounts of municipal fines that would be lost to these funds, any estimate beyond FY23 is speculative.

There may be an administrative cost associated with providing notices of violations in alignment with requirements in HB462, which would now include an explanation of the process for requesting a hearing, the hearing options, and other information. However, the impact is likely minimal and likely less than \$20 thousand annually.

SIGNIFICANT ISSUES

In its analysis of HB462, AOC notes:

Bernalillo County Metropolitan Court...qualifies as a municipality with a population of greater than 200,000 and has jurisdiction within Bernalillo County over all:

- (1) Offenses and complaints pursuant to ordinances of Bernalillo County and the City of Albuquerque;
- (2) Civil action in which the debt or sum claimed does not exceed ten thousand dollars (\$10,000) exclusive of interests and costs;
- (3) Contested violations of parking or operation of vehicle rules of a state educational institution.

Because of this determination, Bernalillo County Metropolitan Court acts as both a municipal and magistrate court, but it is unclear if the court would be required to meet the provisions of HB462.

It is unclear how shifting the burden of proof to a municipality will impact the municipality's likelihood of succeeding in civil procedures.

By providing more information on the notices of violation, there is a likelihood for increased transparency and an increase in civil proceedings because recipients might be more educated on their options and necessary procedures for for contesting a violation.

PERFORMANCE IMPLICATIONS

HB462 moves fee revenue from several funds to the general fund. Therefore, any programs or operations funded by those individual funds would likely experience performance limitations once that funding is no longer received. For example, AOC noted the DWI drug court program would lose out on over \$100 thousand per year, which will likely have an impact on that program's effectiveness unless otherwise subsidized with state or other funding.

The sections of the bill removing the language regarding "annual" audits might pose transparency concerns if the audits are not performed on a regular basis.

ADMINISTRATIVE IMPLICATIONS

Because the bill moves funding from AOC and NMFA managed funds to the general fund, the administration, and oversight of those funds moves from AOC and NMFA to the State Treasurer's Office, resulting in an increased administrative burden on the agency. However, the estimated cost of this increase administrative load is not currently known.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 139, which proposes to eliminate court fines and replace revenue with general fund appropriations. AOC notes "penalties, such as fines, incarceration or civil penalty will remain in place as "[t]he power to define crimes and provide the punishment is a legislative function." *State v. Allen*, 1967-NMSC-029."

Courts use fines to support their operations, so if HB139 is passed along with HB462, the courts will likely see a substantial decrease in the level of funding received, as they would no longer receive court fines or the traffic fines retained by the state or a municipality as previously required. That bill is expected to reduce the revenues associated with court fines by over \$6 million.

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