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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/2006
LAST UPDATED 2/12/2006

SPONSOR Cisneros HB _____

SHORT TITLE Acequia Association Employee Tort Liability SB 326/aHAGC

ANALYST McOlash/Earp

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
\$0.0	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: HB 403

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance & Administration (DFA)

SUMMARY

Synopsis of HAGC Amendment

The House Agriculture and Water Resources Committee amendment to Senate Bill 326 clarifies that public employees of community ditches or acequias are to be covered under the Tort Claims Act if they are *lawfully* performing their duties.

Synopsis of Original Bill

Senate Bill 326 amends the N.M. Tort Claims Act, Section 41-4-13 NMSA 1978 to protect public employees of community ditches or acequias from tort claims (lawsuits filed by persons alleging damage to person or property) while acting within the scope of their duties.

Senate Bill 326 also amends the Ditches or Acequias Act, Section 73-2-1 NMSA 1978 by adding a section stating that officers, volunteers, and employees of acequias and community ditch associations are public employees under the Tort Claims Act. Acequia or community ditch associations may request insurance and self-insurance coverage from the Risk Management Division of the General Services Department.

SIGNIFICANT ISSUES

Current law (Section 41-4-3 NMSA 1978) only excludes the community ditch association and the acequia itself -- not the actual employee--from the waiver of immunity (i.e., if an employee is excluded from the waiver of sovereign immunity from liability, then the employee is immune from liability--when acting within the scope of your duties).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB 403

TECHNICAL ISSUES

A DFA attorney recommends including "and public officers" so that it is clear that appointed members of the acequia commission or other appointed public officers are covered and are also immune from liability (Line 21 after acequias,).

The New Mexico Acequia Association has correctly pointed out that the Tort Claims Act [41-4-3, F) already defines a public employee to include an "officer" and the above technical issue is redundant and unnecessary.

BMC/mt:nt