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FISCAL IMPACT REPORT

SPONSOR	<u>Smith</u>	ORIGINAL DATE	<u>1/29/08</u>	HB	<u></u>
		LAST UPDATED	<u></u>		
SHORT TITLE	<u>Study Municipal & County Franchise Fees</u>	SJM	<u>38</u>		
		ANALYST	<u>Cox</u>		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

New Mexico Association of Counties (NMAC)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 38 requests the New Mexico Legislative Council to direct the Revenue Stabilization and Tax Policy Committee (RSTPC) to study municipal and county franchise fees. This Bill relates to charging monies to public utility companies for use of streets, roads and 'right of way'. Presently both fees and taxes are charged in relation to linked administrative costs. This Bill contemplates a study advising whether such fees (and taxes) charged should be 'related or unrelated' to administrative costs.

Copies of this memorial are to be transmitted to the co-chairs of the New Mexico Legislative Council, the Public Regulation Commission, the New Mexico Association of Counties and the New Mexico Municipal League.

SIGNIFICANT ISSUES

PRC states.

Presently, municipalities and counties may charge unspecified franchise fees and not taxes. NMSA 1978 §62-1-3 states that the boards of county commissioners are authorized to impose charges for reasonable and actual expenses incurred for the granting of any franchise. The fees charged are negotiated and related to the costs incurred as a result of a public utility using public right of ways. The memorial directs the LFC to direct its Tax Policy Committee to study whether the state should either impose a set franchise fee or allow municipalities to impose franchise taxes on public utilities using public right of ways. The significant issue is whether the legislature is to direct a study to determine whether municipalities and counties should be allowed to impose fees or taxes unrelated to costs.

This Joint Resolution re-iterates the following:

- Sections 3-42-1 and 3-42-2 NMSA 1978 authorize municipalities in New Mexico to enter into franchise agreements for the purpose of construction and operation of a public utility.
- Section 62-1-3 NMSA 1978 authorizes counties in New Mexico to enter into franchise agreements to permit public utilities to use public highways and streets to locate various fixtures, appliances and structures.
- Municipalities are permitted to charge a reasonable franchise fee as compensation for the use of the public streets and rights of way by public utilities; and
- Counties have been prohibited by opinions of the attorney general of New Mexico and a court decision from charging a reasonable franchise fee as compensation for the use of public streets and rights of way by public utilities; and
- Article 9, Section 14 of the constitution of New Mexico, known as the anti-donation clause, provides in part that counties and other governmental units and entities shall not directly or indirectly make any donation to or in aid of any person, association or public or private corporation
- The New Mexico Court of Appeals recently issued its opinion in *State of New Mexico ex rel Madrid v. UU Bar Ranch Ltd Partnership*, 137 N.M. 719, 114 P.3d 399, in which the court ruled that public rights of way are interests in real property and thus subject to the provisions of New Mexico statutes preventing disposition of public rights of way without first complying with statutory requirements for the disposition of interests in real property.
- The use of public rights of way by public utility companies without the payment of a reasonable fee constitutes a disposition of an interest in real property and violates the anti-donation clause of the constitution of New Mexico.
- The public utility companies of New Mexico have embarked on a tactic to delay the negotiation and implementation of new franchise agreements with various counties and municipalities.
- The appropriate resolution of the issues surrounding the negotiation of franchise fees may be replacement of the negotiation process with the granting of statutory authority for municipalities and counties to impose reasonable franchise fees or a franchise tax.

The New Mexico Association of Counties supports this Senate Joint Memorial, and lists this Senate Joint Memorial as a ‘priority’ item.

TECHNICAL ISSUES

PRC notes:

If after study, there were a decision to allow municipalities and counties to charge a set franchise fee or an unspecified franchise tax NMSA 1978 §3-42-1 and §62-1-3 would need to be amended.

PRC/nt