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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/10

SPONSOR Madalena LAST UPDATED 02/02/10 HB 156/aHHGAC

SHORT TITLE County Recording Fees & Disposition SB \_\_\_\_\_

ANALYST Escudero

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
NFI	NFI*		

(Parenthesis ( ) Indicate Expenditure Decreases)

\* See Fiscal Impact

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Transportation (DOT)  
 Association of County Clerks (ACC)  
 Department of Finance and Administration (DFA)  
 Taxation and Revenue Department (TRD)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HHGAC Amendment

Your House Health and Government Affairs Committee, to who has been referred House Bill 156 has had it under consideration and reports same with recommendation that it DO Pass, amended as follows:

1. On page 2, line 8, strike "equipment" and insert in lieu thereof "county clerk., and thence referred to the Taxation and Revenue Committee.

#### Synopsis of Original Bill

House Bill 156 would restructure county recording fees and provide for the disposition of fees collected. The bill would replace a long list of fees specified for County Clerk recording with a single \$25.00 fee applicable to recording transactions performed by the County Clerk. If a document being recorded assigns, releases or transfers the interest of more than five persons, an additional \$25.00 fee is imposed for each additional block of ten or fewer assignments, releases of transfers in the document.

Of the \$25.00 fee, \$18.00 is allocated to the County General Fund and \$7.00 to the County Equipment Recording and Filing Fund.

HB 156 would also facilitate the electronic recording of plats. Using the appropriate technology also allows the County Clerk to return the original plat to the submitter, instead of storing same in the county clerk's office. This process affords an electronic copy of the plat to the County Assessor and to the County Clerk.

## **FISCAL IMPLICATIONS**

Association of County Clerks indicates as follows:

State HB 156 has no fiscal implications for the State of New Mexico, but could provide savings and efficiency for County Clerks and taxpayers.

Department of Finance and Administration indicates as follows:

There are no fiscal implications to DFA.

The County Clerks Affiliate Chair of the New Mexico Association of Counties favors this legislation. This bill removes the current confusing recording fee charges and replaces them with a fee structure that is as "revenue neutral as possible".

HB 156 removes the recording fees from Section 14-8-12.2 NMSA 1978, which charges a \$5.00 recording fee for the first page of each document and a \$2.00 fee "for each additional page or portion thereof of the same instrument." It also charges a \$4.00 equipment recording fee "in addition to any other fees authorized by law" including the recording fees previously referenced in this narrative.

Section 14-8-16 NMSA 1978 is amended to remove the filing and recording fees to record descriptions and plats. These fees include \$2.50 "for filing and recording each description or plat". However, a \$5.00 fee is charged to file and record "each unit of a plat that is eighteen inches by twenty-four inches per part thereof" if the plats are protected by a post binder with transparent protective pages. An "equipment recording fee" of \$4.00 can be charged in addition to any other fees authorized by law, including the previously referenced fees in this narrative.

HB 156 replaces the current fee structure by amending Section 14-8-13 NMSA 1978 to create a new \$25.00 fee for each recorded document. It also creates an additional \$25.00 charge "for each additional block of ten or fewer assignments, releases, or transfers contained in the document." For each \$25.00 fee collected, \$18.00 would be deposited into the County General Fund and \$7.00 would be deposited in the Equipment Recording and Filing Fund.

Bernalillo County officials also favor passage of HB 156 because more money from the proposed fees would be earned for the county general fund.

Taxation and Revenue Department indicates as follows:

This bill has no impact on the revenues collected or administered by the Taxation and Revenue Department. It will have a positive impact on County General Funds and Equipment Recording and Filing Fund.

### **SIGNIFICANT ISSUES**

Association of County Clerks indicated as follows:

HB 156 amends and repeals sections of the NMSA 1978 that has language first inserted in 1865 under the Kearney Code when County Clerks also functioned as Court Clerks. Recording fees as they have been charged have started with a \$5.00 recording fee for the first page and \$4.00 for each additional page or portion thereof, along with an additional \$5.00 for each additional grantor or grantee named in the document. Documents filed today range from a low of \$9.00 to several hundred dollars, depending on the particularities of the document and the county in which it is filed. This bill would simplify the process and standardize the fees.

HB 156 adopts a flat fee of \$25.00 to cover the first five interests discussed in a documents, regardless of the number of pages. The first \$25.00 will usually cover 95% of the documents filed. An additional \$25.00 would be charged for each block of ten additional interests named beginning with the sixth interest.

The existing recording fee is cumbersome in that it is hard to understand, unevenly assessed throughout the state and confusing to submitters. In this process currently filings can be rejected, thereby delaying recording, requiring documents to be resubmitted with the correct fee.

Department of Transportation indicates as follows:

This bill would increase recording fees for conveyance documents (e.g. warranty deeds and easements) used in NMDOT right-of-way acquisition. Currently, NMDOT spends approximately \$4,000.00 to \$5,000.00 in recording fees annually. This amount would double if this bill is passed.

Department of Finance and Administration indicated as follows:

No impact to Department of Finance and Administration. According to the County Clerks Affiliate Chair, this bill creates a recording fee system that makes it easier for the persons filing documents to know how much to pay in filing fees. For example, when documents are mailed in to a County Clerks Office to be recorded, the recording fee amount often has to be guessed by the filer and if the amount sent in is wrong, the county clerk will send back a rejection notice to the filer along with the check previously submitted. The filer must then send in another payment check in the amount of the county clerk's corrected fee charge.

## **PERFORMANCE IMPLICATIONS**

As indicated by Department of Finance and Administration, none to DFA. HB 156 will provide better responsiveness by the County Clerks to their clientele.

## **ADMINISTRATIVE IMPLICATIONS**

As indicated by Department of Finance and Administration, the administrative implications of House Bill 156 would provide savings and efficiency improvements for County Clerks and taxpayers.

## **TECHNICAL ISSUES**

Taxation and Revenue Department indicates as follows:

The bill defines “acknowledged” in a manner inconsistent with the form acknowledgments established in NMSA 1978, § 14-14-8. These forms are commonly used in commercial practices

Attorney General Office indicates as follows:

The new section enacted is 14-8-13, which replaces the old. It provides that “unless otherwise provided by law,” the recording fee for each document recorded is \$25. Presumably, although it is unclear, this language preserves the fee structure of 14-8-12, which sets recording fees in ranges of \$1.25 to \$3.25 for deeds, mortgages of various descriptions, transcripts of judgments and many other instruments.

The new section 14-8-13 also provides that from each \$25, there shall be deposited in the “county general fund” the amount of \$18, and in the “equipment recording and filing fund” the amount of \$7. It is unclear how money is spent from the “equipment recording and filing fund.” The amendments to 14-8-12.2 address how money is spent from the “county clerk recording and filing fund,” but it is unclear how the two funds, the “equipment recording” and the “county clerk recording,” interact, if at all. It is also unclear how much of the fees collected under 14-8-12 are to be deposited into one or more funds.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

As indicated by Department of Finance and Administration, not enacting House Bill 156 would keep in existence for County Clerks a tedious and cumbersome recording process relating to the confirmation of applicable fees.

PME/mew:mt