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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11  
 LAST UPDATED 03/13/11

SPONSOR HVEC HB 306/HVECS/a HJC

SHORT TITLE ESCAFCA District Authority & Elections SB \_\_\_\_\_

ANALYST Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)  
 Relates to SB 121

### SOURCES OF INFORMATION

LFC Files

#### Response Received From

Department of Finance & Administration (DFA)  
 Secretary of State (SOS)  
 State Engineer's Office (SEO)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Amendment to House Bill 306 states that nothing in this act affects property taxes levied by the authority on the excluded land for the 2011 tax year provided that the property tax levy for operational purposes on the excluded land for that tax year shall not exceed \$.50 for each \$1,000 of net taxable value.

The amendment further clarifies that for the 2012 and subsequent tax years, the Authority shall not certify a property tax on land excluded by this bill.

#### Synopsis of Original Bill

The House Voters and Elections Committee Substitute for House Bill 306 amends the Eastern Sandoval County Arroyo Flood Control Act to exclude certain land from the Eastern Sandoval County Arroyo Flood Control Authority (Authority).

On the first day of the first month immediately following the effective date of this 2011 act, all

land within Sandoval County precincts 5, 28, 55 and 56 and precinct 6 east of interstate 25 shall be excluded from the Authority (see attachment).

The governing body of the Authority is a board of directors that will consist of three qualified electors of the Authority provided that after single member districts are created and after the expiration of the terms of any directors-at-large who are serving at the time that single-member districts are created. Each director shall reside within and represent a specified district.

If a director no longer resides within the district the director represents the director's position will be deemed vacant. This will also apply to directors who are no longer residing in their district because of redistricting by this bill.

The bill sets out the rules for the board of the Authority to govern the procedure for converting to single-member districts and amends the procedures for the election of directors from single-member districts.

The bill declares an emergency.

### **FISCAL IMPLICATIONS**

On or after the effective date of this bill, no property taxes will be levied by the Authority on the excluded land except for taxes on the excluded land necessary to make debt service and other payments, including any amounts needed for required reserves on bonds of the Authority that were authorized in the 2008 general election including bonds that were authorized, but not yet issued.

Nothing in this act affects property taxes levied by the authority on the excluded land for the 2010 tax year. The provisions of the Eastern Sandoval County Arroyo Flood Control Act and other state statutes relating to the levying, collection and enforcement of property taxes shall continue to apply to the excluded land to the extent necessary to ensure payment of the property taxes authorized in this bill.

For the 2011 and subsequent tax years, the Authority shall not certify a property tax on the excluded land unless it is approved by the Local Government Division (LGD) of DFA.

### **SIGNIFICANT ISSUES**

According to the Albuquerque Journal, the flood authority was created by law in 2007 after three Sandoval County communities suffered flood damage. Governor Richardson initially appointed members to the five-person board. By law, the continued existence of the authority and the board depended on receiving voter approval for bonds to fund flood control projects. The bonds would be backed by property taxes.

In 2008, the authority received voter approval to issue up to \$6,000,000 in bonds by a 54 percent to 45 percent margin. However, the board was criticized for not providing full disclosure of all costs, including the operating costs that are funded through the bonds -- and property owners received larger tax bills than expected. There was much public comment, particularly from the residents in the Village of Placitas that the "election at large" process left that community without representation.

In addition, concern was expressed that the flooding potential in Placitas was different than in the rest of the area under the authority. Two Placitas residents were elected to the board in November 2004.

Also according to the Albuquerque Journal, “the ESCFCA’s board is concerned the flood authority could risk a legal challenge.” According to the newspaper account, “this occurred to the Albuquerque Metropolitan Arroyo Flood Control Authority, which switched to districted representation to settle a lawsuit that claimed at-large board representation violated the Voting Rights Act because it disenfranchised some voters.”

The Attorney General’s Office stated “that the ESCAFCA board voted on November 16, 2010 to change into single-member districts, but there has been legal controversy whether this change was permissible absent statutory change.”

The SOS and the Attorney General have received several formal complaints regarding the conduct of the election by ESCAFCA in 2008 and other issues regarding issuance of bonds, and publication of notice.

The authority will have to absorb the cost of the election as well as reimburse LGD for any costs they incur on behalf of the authority.

### **ADMINISTRATIVE IMPLICATIONS**

DFA, SOS and the Sandoval County Clerk can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

### **OTHER SUBSTANTIVE ISSUES**

DFA provided the following:

The formation of ESCAFCA was approved by the 2007 legislature to address watershed, drainage and flood control problems in Placitas, Algodones and the Town of Bernalillo. Voters approved bond issuance of \$6 million in 2008, of which \$3 million was issued in FY2009, resulting in a Debt Service rate of \$2.44 mills per thousand for landowners within the boundaries of ESCAFCA. Additionally, an operating rate of \$.66 mills per thousand is also imposed. Residents favoring dissolution of the Authority contend that although their property tax rates increased excessively, the potential capacity of \$6 million is not enough to complete a project without Sandoval County, state and federal governments contributing financial assistance.

DW/mew:bym