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## FISCAL IMPACT REPORT

**SPONSOR** HLELC **ORIGINAL DATE** 2/09/18 **98/HLELCS/aHJC/**  
**LAST UPDATED** 2/14/18 **HB** aSRC

**SHORT TITLE** Local Election Act **SB** \_\_\_\_\_

**ANALYST** Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
	>\$79.5	>\$79.5	Recurring	Local Election Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$65.0	\$65.0	\$130.0	Recurring	Local Election Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)  
 Administrative Office of the District Attorneys (AODA)  
 New Mexico Attorney General (NMAG)  
 New Mexico Municipal League (NMML)  
 Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of SRC Amendments

The Senate Rules Committee amendments to the House Local Government, Elections, Land Grants and Cultural Affairs Committee Substitute for House Bill 98, as amended by HJC:

1. Change the date of regular local elections from the first Tuesday after the first Monday in November of each odd-numbered year to the first Monday after the first Tuesday in

- June of each odd-numbered year.
2. Change the start date of a term of office of a candidate elected in a regular local election from January 1 to July 1 following that election, and revise the start date for the winner of a top-two runoff election to August 1.
  3. Provide that
    - a. elections of municipal officers for municipalities other than home-rule municipalities with a population over 95 thousand according to the 2010 federal decennial census occur on the first Tuesday in March of even-numbered years (“municipal election day”);
    - b. the exempted municipalities elect their officers on the date specified in their charters; and
    - c. except for home rule municipalities that by charter are implementing voter identification that supercedes Section 1-1-24, any municipality may by ordinance opt in to electing its officers on the local election day upon passing an ordinance to be filed with the SOS by January 30 of the year in which the next regular local election is held. The ordinance shall determine whether terms of office for current office holders will be lengthened or shortened to correspond with the new election date. A municipality may rescind such an ordinance under the procedure specified in Section 34(C)
  4. Strike now redundant language regarding the calendar date of municipal election day.
  5. Exempt certain home rule municipalities whose charters require candidates to file declaration of candidacy before qualifying for public financing from the general date for declarations of candidacy for municipal officer elections set in Section 34(F), and provide these publically financed candidates file declarations on the date set in the municipality’s charter.
  6. Reduce the term of appointed supervisors of soil and water and watershed conservation districts from two years to one year.
  7. Provide that Section 172, a temporary provision addressing terms of office of municipal officers, shall not apply to elections of those officers whose terms are lengthened or shortened pursuant to ordinance of a municipality opting into election of its officers at the regular local election.

#### Synopsis of HJC Amendments

The House Judiciary Committee amendments to House Bill 98 as substituted:

1. Insert language barring a municipal top two runoff election from occurring within 50 days prior to a statewide election;
2. Clarify that as to a municipality that opts out of the Local Election Act, it shall bear all costs of administering any municipal officers and special elections it holds; and
3. Require municipalities that has enacted provisions or provisions in an ordinance or its charter that are supplemental to those in the Election Code must adjust calendar dates implementing those provisions and procedures in accordance with the schedule for local or municipal officer elections in the Local Election Act, and authorize a municipality to make conforming changes.

#### Synopsis of Original Bill

The House Local Government, Elections, Land Grants and Cultural Affairs Committee Substitute for House Bill 98 enacts the Local Election Act (Sections 16-34) which amends the

election code to consolidate the conduct of local elections to be held on a single day: the first Tuesday after the first Monday in November of each odd-numbered year. The Act creates a uniform process for these elections. Consolidated elections will take place for school districts, community college districts, technical and vocational districts, learning center districts, flood control districts, Local Economic Development Act projects, special zoning districts, soil and water conservation districts, and water and sanitation districts. Starting in 2022, conservancy district elections will be included.

The Act creates the local election fund to cover state and county costs of elections held under the Act. Annual assessments of each local government subject to the Act shall be \$250 per \$1 million of the local government's general fund expenditures or minor fraction thereof. If a municipality has a top-two runoff election, the annual assessment shall be \$500 per \$1 million of the local government's general fund expenditures or minor fraction thereof. Local governments with general fund expenditures less than \$100 thousand shall pay no assessment. In the event the current year balances in the fund do not cover the cost of local elections, the SOS is authorized to apply for an emergency grant from the State Board of Finance.

Municipalities may opt-out of local elections under the Act, and if they do, their elections must be conducted pursuant to the Local Election Act and held on the first Tuesday in March of even numbered years. The Act sets the terms of office for these municipalities, allows ballot questions in elections held separately as well as in elections held under the Act, and requires the municipal clerk to conduct elections for opt-out municipalities.

The Act allows write-in candidates for local election offices, and provides procedures to be followed. No unopposed write-in candidate shall be certified as elected unless the candidate receives at least the number of votes equal to 10 percent of the total number of ballots on which the candidate's name appears, or two hundred. It also requires all special elections on a ballot question, including a recall election, to be mailed ballot elections. Mailed ballot elections shall not be used in connection with elections at which candidates are to be nominated for or elected to office.

Temporary provisions of this bill address the terms of various offices to comply with the change in date of local elections under the Act, and provide for the first local election under the Act in November 2019, except for consolidated conservancy district elections, which would first occur in November 2023. It also amends other laws to eliminate inconsistencies between those laws and the Act, and to provide that the Act govern those proceedings to achieve the streamlined call, conduct and canvass of those elections.

The effective date of this bill is July 1, 2018, except for those sections related to consolidation of conservancy district elections, which become effective July 1, 2022.

SOS provides this additional description of particular provisions in this bill as substituted:

**Section 3.** Added Subsection B regarding use of polling places and precincts in U.S. representative special elections (moved from elsewhere in same section).

**Section 15.** Removed subsection requiring that local government ballot questions be submitted to voters by title only.

**Section 17.** Adds definition of municipal officers.

**Section 18.** Accommodates cities (Silver City) with a territorial charter to continue to have annual elections pursuant to authorization by the SOS in the proclamation for the regular local election. Essentially, Silver City may elect officials on both the local election ballot (odd year November) and the general election ballot (even year November).

**Section 19.** Clarified required notice to SOS of upcoming local government elections.

**Section 22.** Reduced minimum vote needed from 200 to 100 for write-in candidates to accord with alternate minimum of ten percent of ballot cast for that office.

**Section 27.** Clarifies procedures for selecting challengers and watchers at polling places in local elections and makes explicit that challengers are not permitted.

**Section 29.** Provides procedures for the conduct of runoff elections.

**Section 32.** Provides procedures for requesting alternate and mobile voting locations by a municipality.

**Section 33.** Changes "total operating expenses" to "general fund expenditures" to calculate how much local governments must pay to cover local election expenses.

**Section 34.** Establishes "municipal officer election day" in March of even-numbered years for municipalities that do not elect their officers at the regular November local election. Prohibits home rule municipalities that have voter id requirements in conflict with Section 1-1-24 NMSA 1978 from electing their officers at the regular local election in November. Allows all other municipalities to opt out of November election. Allows municipal clerk to run special mail-ballot elections in municipalities that otherwise run their own municipal officer elections.

**Section 35.** Requires municipal clerk to adjust calendar dates of election provisions affected by requirements of the Local Election Act.

**Section 40.** Requires that special elections for U.S. representative not be conducted by mail ballot.

Removed section 54 relating to recall elections for commissioner-manager municipalities.

**Section 81.** Clarifies that an officer must live in the area from which the officer was elected to represent.

**Sections 172, 173 & 177.** Adjusts transition dates to accommodate change of municipal officer election to March of even numbered years.

## **FISCAL IMPLICATIONS**

The bill creates the "local election fund" to be administered by the SOS to fund state and county costs of elections held pursuant to the proposed Local Election Act. The bill proposes each local government subject to the Local Election Act would be annually assessed by the SOS the greater

of \$250 per \$1 million of its general fund expenditures, or \$500 per \$1 million of its general fund expenditures if it has a top-two runoff election. Local governments with general fund expenditures less than \$100 thousand would not be assessed, along with those counties that opt-out. The Legislature could also appropriate funds to the local election fund. The bill appropriates money in the new local election fund to carry out its provisions. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds as earmarking reduces the ability of the Legislature to establish spending priorities.

SOS reports it does not maintain data on the current cost of conducting the special election districts in the current, unconsolidated manner for comparison, or to determine whether the proposed assessment would be sufficient to cover costs. However, for purposes of projecting a revenue estimate that would be generated by assessing the base \$250 annual fee to the districts in the bill, using a count of various districts the State Auditor maintains, the estimate would be as follows:

- Municipalities, 96
  - School districts, 92
  - Counties, 33
  - Regional education cooperatives, 10
  - Special districts, 33
  - Higher education districts, 14
  - Soil and water conservation districts, 11
  - Public improvement districts, 10
  - Mutual domestic water consumers associations, 10
  - Hospital/special hospital districts, 9
- DISTRICTS TOTAL 318 x \$250 = \$79,500

As this estimate does not recognize increased assessments based on each district's annual general fund expenditures over \$1 million, nor the other variables contained in the bill, the revenue table above contains a ">" sign to indicate revenue is predicted to be greater than the stated amount.

SOS previously reported that it anticipates an initial workload burden to identify each political subdivision being consolidated by the bill, and to correctly map each district to the correct precinct parts in each county. Once this data is identified and entered into SERVIS (explained in more detail under Significant Issues), it will ensure that ballot styles for each precinct are correct for each impacted voter. SOS asserts it will be difficult with current SOS staffing levels and all current work efforts being focused on the conduct of the 2018 primary and general to also complete the data collection and other required preparation in order to conduct the first consolidated election in November 2019. It anticipates it will need one additional elections staff member to aid in the oversight and support of the conduct of the local elections, and estimates the cost to be approximately \$65 thousand per year. That figure is reflected in the operating budget impact table above.

## **SIGNIFICANT ISSUES**

SOS reports the current conduct of small special district elections throughout the year typically results in little publicity and low voter turnout. It expects that consolidation of these elections on a single day at the same time each year will increase voter turnout. It reports that the uniform

call, conduct, and canvass of all local, non-partisan elections in this bill is very similar to the current conduct of statewide elections. SOS believes the streamlined and consistent conduct of these elections will help ensure they are run fairly and accurately with the proper administrative control and oversight by the county clerks. Although SOS notes allowing municipalities to opt-out of the consolidated election is not ideal as it increases the administrative burden on the county clerks and adds an extra election in those jurisdictions, imposing an additional burden on voters, SOS recognizes that the requirement that these elections be conducted consistent with the Local Election Act is an improvement over existing law. It points out that currently there is a separate municipal election code and clerks must refer to the state election code when the municipal election code is silent or in conflict in order to determine the proper conduct of municipal elections. Similarly, there are inconsistencies between the state election code and the municipal election code that cause confusion regarding consistent administration and voting which would be eliminated under this bill.

SOS reports that it successfully implemented a statewide election management system referred to as SERVIS in December 2017. This system is used by all county clerks' offices to set up elections and establish ballot content, polling locations, and establish eligible voters in each district. Upon enactment of this bill, SERVIS will be utilized to ensure that all political subdivisions impacted by the Local Elections Act are mapped to the correct precincts, and that contests, office terms, candidates, and ballot questions are entered into the centralized system in order to prepare all ballot styles in each county and district in a streamlined and automatic manner, which will reduce the opportunity for error. SOS also notes that having this system already in place will provide a mechanism to ensure that ballot content is accurate for each voter in each precinct in each of the districts consolidated under this bill. Additionally, SOS anticipates amending and adopting new administrative rules to ensure uniformity of the conduct of the local elections, including rules governing the use of the local election fund and others. Under this bill, SOS publishes an election proclamation, issues the certificates of elections to all winning candidates, and certifies each ballot question after an election, which are activities similar to those it already performs for statewide elections and activities.

Some issues arise, however, as to particular provisions of this bill. As to unopposed write-in candidates, Section 22(G) requires that, in order to be certified as a winner, an unopposed write-in candidate must receive a number of write-in votes equal to 10 percent of the total number of ballots cast on which the office appears on the ballot, or "one hundred". Adding a phrase like "at least a minimum" or "whichever is greater" or "whichever is lesser" following "one hundred" at the end of Section 22(G) might clarify which number governs. Additionally, in its analysis of similar language in a bill that was considered during the 2017 session (HB 174), the New Mexico Municipal League (NMML) noted this provision appears to conflict with Article VII, Section 5 of the New Mexico constitution which provides "if the legislature does not provide for runoff elections, the person who receives the highest number of votes for any office, except as provided in this section, and except in the cases of the offices of governor and lieutenant governor, shall be declared elected to that office." Additionally, NMML suggested this provision might also conflict with the equal protection clause in Article II, Section 18.

Both SOS and NMAG called attention to the continuation of existing law in the provisions of this bill governing conservancy and watershed district elections that limit voting to deed holders rather than qualified electors. Further, NMAG advised that if the term of any current serving member of a local government is altered before the end of that officeholder's term under the provisions of Section 172, that action must not run afoul of the ban on increased compensation

contained in Article IV, section 27 of the New Mexico Constitution.

NMML called attention to language that provides a person may only declare for one position in the same local government, but may file for a position in more than one local government. This sets up a scenario where one individual might be a declared candidate for several positions, all to be voted on the same day. This could lead to significant confusion. Further, NMML noted that this bill specifically states that the declaration of candidacy cannot be amended after it has been filed. Does this mean it is irrevocable? Can one declaration be withdrawn and another substituted?

NMML pointed out other provisions of this bill that:

- reduce the time in which a person may declare candidacy for an office;
- limit declarations of candidacy to persons registered to vote at the time of filing the declaration of candidacy;
- require the local government requesting a proposed ballot question that results in a second ballot page to pay the costs of that second page; and
- extend the deadline for canvassing the returns from six to 10 days.

A staff member of the City of Albuquerque reported that under the opt-out provisions, the City would need to conduct a special election to amend the charter dates establishing the process for a candidate to participate in public financing for an election at the time set in this bill. It estimated the cost of a special election to cost approximately \$800 thousand.

## **PERFORMANCE IMPLICATIONS**

Both district attorneys and NMAG may have responsibilities in ensuring the proper functioning of local elections under this substitute bill.

MD/jle/al