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FISCAL IMPACT REPORT

SPONSOR <u>HGEIC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>03/04/23</u>
SHORT TITLE <u>5 Member County Commissioner Boards</u>	BILL NUMBER <u>CS/House Bill 399/HGEICS</u>
	ANALYST <u>Hitzman</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS Voter Database Changes	No Fiscal Impact	Indeterminate but minimal	No Fiscal Impact			

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to HB410

Sources of Information

LFC Files

Department of Finance and Administration – *County Classifications 2022*
 Department of Finance and Administration – *2021 Final Valuations v2*

Response Received From
 Secretary of State (SOS)
 Attorney General (AG)

No Response Received
 County Clerks Affiliate (CCA)
 New Mexico Counties
 New Mexico Council of Governments (NMCOG)
 Municipal League (ML)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HGEIC Substitute of House Bill 399

The House Government, Elections and Indian Affairs Committee substitute for House Bill 399 (HB399) amends Section 4-38-2 NMSA 1978 related to boards of county commissioners to require five qualified electors for boards in counties with a population of more than 35 thousand as indicated by the most recent federal decennial census.

The bill adds new material: For counties with more than 35 thousand population as of the most recent census and whose board moves to a five-member board under this act, the board shall divide the county into five compact single-member county commission districts in accordance with the Precinct Boundary Adjustment Act by January 1 of the next succeeding year ending in the number two (2032), at which point county commissioners in the newly created districts and existing even-numbered districts shall be elected. The board shall provide a process to renumber the county commission districts to align with the offices listed for election. Lengths shall only be adjusted as required to align office positions to offices. If a precinct is added to an existing odd-numbered district, a commissioner shall be elected for that district at the next general election of the next succeeding year ending in the number two (2032).

For counties with populations over 35 thousand as of the 2020 census and whose board moves to a five-member board under this act, the board shall divide the county into five compact single-member districts in accordance with the Precinct Boundary Adjustment Act by November 1, 2023. The bill gives SOS the power to reject a precinct map if not in compliance and must provide a written statement of noncompliance to the board as soon as practicable. Adjustments shall be made by January 1, 2024, or else the SOS shall adjust the boundaries to the extent necessary to achieve compliance. At the 2024 general election and for new terms beginning January 1, 2025, commissioners for new districts and existing odd-numbered districts shall be elected and the board shall provide a process for renumbering the districts in alignment with the offices listed for election. Lengths shall only be adjusted as required to align office positions to offices. If a precinct is added to an existing odd-numbered district, a commissioner shall be elected for that district at the 2024 general election.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The bill requires counties with more than 35 thousand people to elect five members to its board of county commissioners. Therefore, there will be a cost associated with operating a five-member board in those counties where previously there only had to be three. However, this salary is paid by local governments, so there is no fiscal impact to the state. Salaries for county commissioners are dependent on the county's classification; commissioners in Class A counties make \$39,106, while commissioners in Class B counties with an assessed valuation of over \$300 million make \$30,196 per year, and commissioners in Class B counties with an assessed valuation between \$75 million and \$300 million make \$21,534 per year (Section 4-44-4 through Section 4-44-5 NMSA 1978).

According to data available from the Department of Finance and Administration's website, 13 of the state's 33 counties would fall under the population requirements of HB399, with a population of 35 thousand or more. Five of those counties are likely already operating a five-member board in accordance with other requirements in statute (Section 4-38-2 (B) NMSA 1978), which governs counties with a population of over 100 thousand and a valuation over \$75 million. However, eight counties—Chaves, Curry, Eddy, Lea, McKinley, Otero, Rio Arriba, and Valencia—fall below the 100 thousand population threshold required in those other parts of the statute but are above a population of 35 thousand, falling directly under the purview of this bill. Of those eight, only three—Otero, McKinley, and Rio Arriba—still operate a board of county

commissioners with just three members, so those would be the only counties affected directly by this bill. As such, because all three of those counties are Class B counties, using the current salary cap for commissioners in Class B counties, the cost of electing the additional two members for each board would cost \$30,196 per commissioner, or \$60,392 per year per board. The total cost for all boards would equal \$181,176 per year for salaries, not including other election administration costs or other related costs to be incurred by the counties. It is unlikely any board will be able to hold an election for these positions in FY23, so the counties would likely only incur costs from FY24 forward.

SOS noted a need for some changes or upgrades to its voter database to accommodate the provisions in HB399 but did not provide an estimated cost, so it is assumed this cost could likely be absorbed by the agency's existing operating budget.

SIGNIFICANT ISSUES

SOS notes the HGEIC substitute for HB399 essentially provides “a process to renumber the board of county commissioners district numbers so that subsequent elections for the offices are aligned” with the Precinct Boundary Adjustment Act and “provides for the extension of terms in order to align with that section.”

SOS notes:

The election code already contemplates when county commission districts and positions will be on primary and general election ballots. In years in which U.S. presidents are elected, those ballots shall contain commission districts and positions with odd-numbered designations pursuant to Section 1-10-8 NMSA 1978. In gubernatorial election years, those ballots shall contain county commission districts and positions with even-numbered designations. If HB399 passes, the Secretary of State would be bound to follow the provisions of existing state statutes for the newly created county commissioner terms.

Other sections of this law already provide for a board to adopt an ordinance by unanimous vote to increase the size of the boards of county commissioners to five members. The section provides:

Upon creation of a five-member board, the county shall be divided by the incumbent board of county commissioners into five county commission districts that shall be compact, contiguous and as nearly equal in population as practicable. One county commissioner shall reside within and be elected from each county commission district. Change of residence to a place outside the district from which a county commissioner was elected shall automatically terminate the service of that commissioner and the office shall be declared vacant. (As added November 3, 1992.)

Further, by requiring five-member boards in counties of certain size thresholds, rather than allowing counties to decide, could be considered as limiting autonomy of counties. However, by requiring five members in counties of a certain larger size, HB399 may alternatively improve efficiency and transparency by having additional qualified electors participate in the board process, which could improve representation on the board and provide different perspectives than would be considered with a board of just three members. However, both the status quo as well as the proposed changes in HB399 align with national trends, showing most county commissions have either three or five members.

The HGEIC substitute for HB399 provides for this district renumbering explicitly for those boards who would move to a five-member board under this act similarly to the above existing section of law.

The Attorney General’s Office (NMAG) also notes concerns with having a termination date for existing commissioner as proposed in previous versions of the bill:

As this bill may change the composition of county commissioners and states that the term of a county commissioner elected prior to the effective date of the act shall end on December 31, 2024, it is possible that there may be a conflict with Article X, Section 2 of the New Mexico Constitution, which provides: “C. To provide for staggered county commission terms, in counties with three county commissioners, the terms of no more than two commissioners shall expire in the same year; and in counties with five county commissioners, the terms of no more than three commissioners shall expire in the same year.”

However, the HGEIC substitute for HB399 does not include this provision.

ADMINISTRATIVE IMPLICATIONS

Although the costs of which are unknown, electing additional board members in those eight counties applicable under HB399 would likely require some administrative right-sizing to ensure processes and procedures of the board are conducive to hosting five, rather than three, members. In addition, as more seats become open, there may be an increase in the number of candidates for board positions, which could result in increased costs for administering those elections. However, this cost is likely minimal.

SOS notes:

The redistricting aspects of the bill would require changes within the voter database and require that voter information cards be provided to voters within the impacted counties. Pursuant to state statute, the 2024 primary and general proclamation must be issued at the end of January. Candidates are qualified based on the districts in which they were registered at the time of its issuance. The original version of the bill included a proposed timeline allows for a month for county clerks in those counties to make the districting adjustments. However, the committee substitute extends that timeline to two months.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 410, which is proposing new salary caps for elected officials totaling \$44,895 for county commissioners in Class A counties, \$36,982 for county commissioners in Class B counties with an assessed valuation over \$300 million, \$26,373 for county commissioners in Class B counties with assessed valuations of between \$75 million and \$300 million, and \$19,405 for county commissioners in Class H counties. If passed, that bill will impact the fiscal implications of HB399 by increasing the salaries for those new additional commissioners, for an additional budget impact of \$6,786 per commissioner per year to counties.

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