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FISCAL IMPACT REPORT

SPONSOR Moore DATE TYPED 3/8/05 HB 276/aHVEC
 SHORT TITLE Removal of Municipal Officers SB _____
 ANALYST Hadwiger

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HVEC Amendment

The amendment strikes the first option below which allows removal of a person elected or appointed to an elective office in a commission-manager municipality by the district court for malfeasance in office upon complaint of the governing body of the municipality.

Synopsis of Original Bill

House Bill 276 would establish two ways a person elected or appointed to an elective office in a commission-manager municipality may be removed from office:

1. by the district court for malfeasance in office upon complaint of the governing body of the municipality,
2. by the district court pursuant to a jury trial for the following reasons:
 - a. conviction of any felony or of any misdemeanor involving moral turpitude;
 - b. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;
 - c. knowingly demanding or receiving illegal fees as such officer;
 - d. failure to account for money coming into his hands as such officer;
 - e. gross incompetency or gross negligence in discharging the duties of the

- office; and
 - f. any other act or acts, which in the opinion of the court or jury amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.
3. The bill would eliminate use of recall elections to remove elective officers in commission-manager systems.

Significant Issues

According to the Department of Finance and Administration (DFA), there are eight commission-manager municipalities in New Mexico: Alamogordo, Aztec, Clovis, Hobbs, Lovington, Raton, Truth or Consequences and Tucumcari. For these eight municipalities, HB276 provides a new section of the Municipal Code allowing removal by the district court of a person elected or appointed to an elective office in a commission-manager municipality for malfeasance in office. Should this legislation fail enactment, the current statute, Section 3-4-16 NMSA 1978 will continue offering recall as a means of removing elected or appointed officers from a commission-manager form of municipal government. However, this statute requires procedures that must be satisfied before an officer can be removed including collection of signatures on a petition and a recall election. Should an elected or appointed local officer succeed in retaining his seat, an officer in question will not be subject to recall until six months have elapsed from the date the previous recall election was held.

OTHER SUBSTANTIVE ISSUES

The bill does not define malfeasance. There may not be a clear judicial standard for removing elected officials under this proposal. Also, it is not clear what constitutes a “complaint of the governing body of the municipality.” Would this require a majority vote or could a single city councilor file such a complaint? There is some potential that this means of removal could be manipulated for political purposes in intra-commission conflicts, regardless the outcome of the removal trial.

In general, voters have been reluctant to relinquish the ability to recall elected officials, regardless how infrequently this process is actually employed.

DH/sb:yr