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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/07

SPONSOR Barela LAST UPDATED _____ HB 1272

SHORT TITLE Place of Residence for Candidates and Voters SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Attorney General's Office (AGO)
 Secretary of State

SUMMARY

Synopsis of Bill

House Bill 1272 amends NMSA Section 1-1-7 of the Election Code to require that a person actually return to their place of habitation from a temporary absence in order for that place to be considered their "residence". It also states that the place a married person's spouse and children reside is presumed to be that person's residence. The bill eliminates language providing that a change of residence is made only by the act of removal joined with the intent to remain in another place. The bill also provides that a parent's residence shall not be presumed to be the residence of a person who has reached the age of majority unless the parent's residence is the only place the person physically resides.

The bill also imposes new residence requirements on candidates and officeholders. A candidate running for public office, except for United States Senator, United States Representative or Public Regulation Commissioner must have physically resided within the district to be represented for a minimum of one hundred eighty-three days of the immediately preceding three hundred sixty-five days.

An officeholder must have physically resided within the district represented for a minimum of

one hundred eighty-three days of the immediately preceding three hundred sixty-five days. If an officeholder fails to physically reside within the district represented for a minimum of one hundred eighty-three days of the immediately preceding three hundred sixty-five days, the officeholder shall be deemed to have resigned. Officeholders failing to meet those requirements due to active duty requirements of the United States armed forces or the New Mexico national guard are exempted from those provisions.

SIGNIFICANT ISSUES

The bill adds the requirement that a candidate running for public office, physically reside within the district to be represented. It excludes candidates running for U.S. senator, U.S. representative or public regulation commission.

According to the AGO, the bill adds a new section to the Election Code governing the residence of office holders. However, it does not define “officeholder”. It refers to those representing districts. Other provisions in state law govern abandonment of public office and vacancies in local offices which may include removal from the jurisdiction from which they were elected. See NMSA Section 10-3-1, 10-6-3. See also Article V Section 1 of the New Mexico Constitution providing that the officers of the executive department, except the Lieutenant Governor, shall during their terms of office reside at the seat of government (Santa Fe). Article V Section 13 of the New Mexico Constitution also provides that all district and municipal officers, county commissioners, school board members and municipal governing body members shall be residents of the political subdivision or district from which they are elected or for which they are appointed. The provisions of this bill appear to be inconsistent with those sections of current constitutional and statutory law.

ADMINISTRATIVE IMPLICATIONS

The Secretary of State indicates that the bill would not impact her office.

TECHNICAL ISSUES

Define officeholder.

POSSIBLE QUESTIONS

Is it necessary for candidates to reside in the district for every office, aside from those already excluded? For example, a candidate who resides in Santa Fe county, bordering on Santa Fe city limits, is prevented from running for offices with in Santa Fe city government. Shouldn't the voters decide if they want that candidate to represent them?

EO/mt