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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/09

SPONSOR Martinez, R. LAST UPDATED _____ HB 819

SHORT TITLE Municipal Office Nomination & Confirmation SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

New Mexico Municipal League

SUMMARY

Synopsis of Bill

House Bill 819 amends section 3-11-5 NMSA 1978 to change the nature of appointments made by the mayor of a municipality following a general municipal election. The bill changes the timing of mayoral appointments of appointed and exempt officials from following every municipal election, to those elections at which a mayor is elected. The bill removes the requirement that a mayor appoint all persons to be employed by a municipality following each municipal election. The bill also removes the provision that permits an appointed official who is not confirmed by the governing body to remain in office until that person's successor has been appointed and qualified as well as the requirement that upon the failure to confirm a nominee, the mayor must continue to make different nominations at each successive meeting until a nominee is confirmed.

House Bill 819 also adds a new subsection B that states that at the governing body's organizational meeting it may (1) organize itself into committees, (2) elect a mayor pro tempore, and (3) otherwise act within its powers to organize itself.

FISCAL IMPLICATIONS

House Bill 819 makes no appropriations.

SIGNIFICANT ISSUES

The DFA reports that HB-319 provides clean-up language to Section 3-11-5 NMSA 1978.

The following comments were contributed by the New Mexico Municipal League.

Current law requires a Mayor, following each regular municipal election, to name the people who will fill the appointive positions of the municipality as well as to name those employees who will be employed by the municipality. If a mayor either neglects to name an appointive official or employee or consciously chooses to name another person to the position, the incumbent employee is deemed to have been dismissed from employment. In other words, following each municipal a mayor could replace an appointive official or employee by simply naming someone else to fill that position or by declining to name anyone to fill the position. This rule resulted in unintended consequences in the event that a mayor forgot or neglected to name a person to continue in employment because the law was clear that if a person was not named at this meeting, they were effectively dismissed from employment, The existing law was also confusing because it spoke in terms of a requirement to name all employees to be employed by a municipality. Many cities have people under contract or under collective bargaining agreements, and the strict application of this law to those individuals could result in clear breaches of contract or violations of the collective bargaining agreement, subjecting the municipality to claims for wrongful discharge and other damages for breach of employment contracts. This bill makes it clear that only appointive officials or those “exempt” management level people designated by the municipality are subject to being replaced at this meeting.

Another problem with the existing law that is remedied by this bill involves holdover employees. Once a person is replaced under existing law, that person continues to serve until their successor is appointed and qualified. This places management in the undesirable position of having to work with an individual who has effectively been dismissed by the mayor. This creates a very strained work environment. Additionally that person will continue to receive salary and benefits until a successor is appointed. If a governing body disagreed with the mayor’s decision to replace an individual, it could effectively block the mayor’s decision to replace that person by declining to confirm anyone else, thus thwarting the intent of the law to permit the mayor to make appointments.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the New Mexico Municipal League, the current archaic system of making appointments following each municipal election will continue.