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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/13
 SPONSOR Wooley LAST UPDATED 02/25/13 HB 334/aHHGAC
 SHORT TITLE County Classes & Officer Salaries SB _____
 ANALYST Boerner

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0	\$0.0		None

(Parenthesis () Indicate Expenditure Decreases)

** The bill could potentially increase personnel costs for counties.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Attorney General’s Office (AGO)

SUMMARY

Synopsis of HHGAC Amendment

The HHGAC amendment reinstates the language regarding the intent of equitability for salary increases. It deletes new language which stipulated treasurers, assessors, and clerks shall earn the same salary, and sheriffs shall earn no less than (but not more than 5%) of treasurers, assessors, and clerks.

Synopsis of Original Bill

The bill removes 5 classifications of counties: 1st, 2nd, 3rd, 4th and 5th classes, respectively. It furthermore increases the class “C” counties valuation criteria from \$45,000,000 to equal to or less than \$75,000,000. Additionally, the bill increases the maximum salary allowance for commissioners, treasurers, assessors, sheriffs, county clerks, and probate judges by 15 percent for all classes except class “H” counties. The bill amends salaries within the class “H” counties to increase from \$1 to \$13,777 for commissioners; \$6,889 for treasurers, assessors, sheriffs, and county clerks; and \$4,031 for probate judges. [All of the above amendments will become effective on January 1, 2014.]

The bill removes language regarding the intent of equitability regarding salary increases. It further stipulates treasurers, assessors, and clerks shall earn the same salary, and sheriffs shall earn no less than, but not more than, 5 percent of treasurers, assessors, and clerks. [Effective date of this amendment is July 1, 2013 despite the fact that language revision states new stipulations are applicable to elected officials beginning their terms January 1, 2014.]

The bill also repeals Sections 4-44-7, 4-44-8, 4-44-12.1, 4-44-12.2, 4-44-13, and 4-44-17 NMSA 1978.

FISCAL IMPLICATIONS

None noted for the DFA although any county choosing to enact higher salaries for applicable elected officials could increase current salary costs, which could potentially be sizable.

SIGNIFICANT LEGAL ISSUES

The HHGAC amendment reinstates the original language to Sec 4-44-12.3 and deletes new language; the legislative intent of uniform salary changes for county elected officials remains as it previously was. The effort in trying to clarify the existing law by basing equitability of county salary increases on policy could have potentially caused unintended consequences of increasing county personnel costs further.

Furthermore, per the NM Attorney General's opinion, HB334, as it was originally written, was in conflict with Article IV, Section 27 of the New Mexico Constitution.

[Previously noted by the AGO: the new language in Section 6(B) needs to be read to be consistent with Article IV, Section 27 of the New Mexico Constitution. This constitutional provision reads: "[N]or shall the compensation of any officer be increased or diminished during his term of office...." The New Mexico Attorney General's Office has written: "**An interpretation of Section 4-44-12.3(B) permitting an increase of county commissioner [and other county officers] salaries during their terms of office would violate Article IV, Section 27's restriction on salary changes during a public officer's term.**" N.M. Att'y Gen. Op. No. 94-09 (1994).]

OTHER ISSUES

The DFA provided the following assumed intent of and background for the bill:

The intent of this proposed legislation is two-fold. First: Allow for an increase to the maximum salary cap for most county elected officials by 15 percent to help compensate qualified individuals to serve in an elected official's capacity. Such action still is at the discretion of the county commission. Second: Clarify and clean up the existing law regarding these sections by removing 1st, 2nd, 3rd, 4th, and 5th classes' stipulations that are no longer applicable because all NM counties' current valuations have exceeded the parameters set in these classes; bringing class "H" counties salary stipulations in line with all other classes of counties; basing equitability of county salary increases on policy by stipulating the exact parameters for elected county officials; and repealing sections to help clarify stipulations of the new language.

Despite the intent of clarifying the existing law by basing equitability of county salary increases

on policy, the proposed amendment to Sec 4-44-12.3 could potentially cause unintended consequences by requiring counties to increase all applicable salaries within that section to the same level which would increase county costs further.

HB334 was introduced in the 2012 legislative session (HB188) and passed both houses [House 68-0 and Senate 33-5]. The bill was pocket vetoed by the governor. HB 188 was endorsed by the NM Association of Counties (NMAC) as well as the county clerks, treasurers, assessors, and sheriffs.

Historically, legislation to raise county elected officials' salaries occurred every four years (1994, 1998, 2002, and 2006). The last increase was in 2006 and increased salaries by 15 percent.

PERFORMANCE IMPLICATIONS

The bill could potentially increase personnel costs for counties.

CEB/blm