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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/13

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Municipal Elected Officer Training SB 434

ANALYST Boerner

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

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 435, Municipal Disincorporation

Relates to SB 438, Additional Requirements for Incorporation

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

New Mexico Municipal League (NMML)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

This bill imposes additional training requirements on certain public officials.

Section 1 amends Section 3-10-2 to require a municipal officer, elected or appointed to elective office, to successfully complete a training course (approved by the State Department of Finance and Administration (DFA) "within six months" of being elected or appointed. If the officer fails to do so, the DFA Secretary may summarily suspend the officer, which may last until the officer provides proof that the officer has successfully completed the course.

Section 2 amends Section 10-1-13 to require a county officer to successfully complete a training course (approved by the State DFA) "before assuming the duties of office."

Section 3 amends Section 10-4-2 and states that failure to attend training required pursuant to Section 3-10-2 (C) completed the training "with one year of being elected or appointed" is subject to a court proceeding for removal from office.

## FISCAL IMPLICATIONS

The New Mexico Municipal League (NMML) notes that many small municipalities do not have the financial resources to fund travel for any municipal officials. If this legislation is successful, some newly elected officials may be required to fund this training out of their own pockets which in turn may be a block to a qualified elector seeking elective office in the qualified elector's community. It may be incumbent on the state to provide some sort of funding for those elected officials whose municipalities cannot afford to send them to the required training.

## SIGNIFICANT LEGAL ISSUES

Section 1 may be vulnerable to legal challenge on grounds that authorizing the DFA Secretary to have the power to suspend an elected officer violates the officer's right to serve under Article XX, Section 2 of the State Constitution. However, the NM State Supreme Court has written: "Therefore, there being no constitutional inhibition against legislative action in the matter of suspension of public officers...we are of the opinion that the provisions [in statute to suspend an elected official] do not constitute a violation of the constitutional provisions of Sec. 2 of Article XX." *State ex rel Harvey v. Medler*, 19 N.M. 252, 262 (1914).

Section 1 may be vulnerable to legal challenge on grounds that authorizing the DFA Secretary to have the power to "summarily" suspend an elected officer violates general principles of due process. However, the NM State Supreme Court has upheld the DFA's Secretary's authority to summarily suspend officials. See *Mata v. Montoya*, 91 N.M. 20 (1977). That case dealt with State Law 10-5-2 (submittal of fraudulent audit). State Law 10-5-2 does have a mechanism where the officer can request a hearing in front of the DFA Secretary within five days of the summary suspension.

Section 2 may be vulnerable to legal challenge for creating an additional "qualification" to hold county office under Article VII, Section 2 of the State Constitution. See N.M. Att'y Gen. Op. No. 62-106 (1962). The Opinion stated: "**It has long been the rule in this jurisdiction that Article VII, Section 2 of the New Mexico Constitution prohibits the legislature from adding restrictions upon the right to hold office beyond those provided in the Constitution itself. *Gibbany v. Ford*, 29 N.M. 621.** This Section provides as follows: 'Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any public office in the state except as otherwise provided in this Constitution.'"

## SIGNIFICANT ISSUES

The bill as written may allow for confusion regarding suspension or removal of a county officer for failure to attend the DFA-approved training as prescribed in Section 10-1-13 (B). Section 10-4-2 addresses causes for removal for any officer belonging to the classes mentioned in Section 10-4-1 (any county, precinct, district, city, town or village elected or appointed officer). However, while Section 10-4-2(F) lists as grounds for removal, "failure to attend training required pursuant to Subsection C of Section 3-10-2 within one year of being elected or appointed," Subsection C of Section 3-10-2 refers specifically to an elected official of a *municipality*.

## **PERFORMANCE IMPLICATIONS**

The DFA would partner with the New Mexico Association of Counties (NMAC) and the NMML to determine the appropriate course subject matter for the various officers affected by this legislation. As the NMAC and NMML currently provide courses for the benefit of their respective officers, they are a natural option to provide the DFA-approved training.

## **AMENDMENTS**

Suggest adding subsections to Section 10-1-13 commensurate to Subsections C and E found in Section 3-10-2; then strike on page 3, lines 8-10, “successfully complete a training course that is approved by the DFA,” then amend lines 14-16 on page 5 to refer to the requirements for education for both municipal and county officials.

## **ALTERNATIVES**

The bill does not indicate what type of training the elected officials should have. Among the greatest concerns is the incidence of a municipality or county that does not have staff with expertise or training sufficient to allow for preparation of necessary financial documents for conducting daily business, for audits, or required reporting to the DFA and others. A suggested remedy for this concern would be an appropriation directly to the DFA or to the NMAC and NMML to allow for more robust financial training than is currently provided.

Rather than requiring the Secretary to summarily suspend a local elected official for failure to complete the training requirement within the stated period of time, perhaps it would be better to allow the secretary to inquire as to the circumstances surrounding the failure to complete the training and to grant extensions of time where circumstance warrant.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If this legislation is not enacted, officers elected or appointed to elective county and municipal offices would continue to attend any available training courses through the DFA, NMAC, or NMML on a voluntary basis and opportunities to upgrade their knowledge and skills to serve in their elected offices will continue to be missed.

CEB/svb