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FISCAL IMPACT REPORT

SPONSOR Garcia Richard/Ivey-Soto **ORIGINAL DATE** 2/25/15
LAST UPDATED 3/20/15 **HB** 428/aHJC

SHORT TITLE County Officer Salaries **SB** _____

ANALYST Malone

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Attorney General's Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 428 replaces the specific statutory references, Section 4-44-4 NMSA 1978 and 4-44-14 NMSA 1978, with the more general and broadly encompassing Chapter 4, Article 44 NMSA 1978, which is inclusive of the specific sections.

The amendment also adds a county assessor to the list of required elected officers in each urban or incorporated county.

Synopsis of Bill

House Bill 428 adds a new section to Chapter 4, Article 44 NMSA 1978 to create exemptions from the salaries provided for in Section 4-44-4 NMSA 1978 for class A counties and the salaries provided for in Section 4-44-14 NMSA 1978 for class H counties. Incorporated or urban counties that have adopted a charter may by ordinance set the annual salary for some or all of its elected and appointed officers, not to exceed \$95 thousand.

The bill also would permit an incorporated or urban county to include in its charter a list of officers to be elected in that county. At a minimum the county must elect (1) a county

commission or county council with no fewer than five members; (2) a county clerk; and (3) a county sheriff.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

Section 4-44-4 NMSA 1978 classifies counties in the following manner:

1. those having a final, full assessed valuation of over seventy-five million dollars (\$75,000,000) and having a population of one hundred thousand persons or more as determined by the most current annual population data or estimate available from the United States census bureau, as class "A" counties;
2. those having a final, full assessed valuation in excess of seventy-five million dollars (\$75,000,000) with a population of less than one hundred thousand persons as determined by the most current annual population data or estimate available from the United States census bureau, as class "B" counties; and
3. those having a final, full assessed valuation equal to or less than seventy-five million dollars (\$75,000,000) with a population of less than one hundred thousand persons as determined by the most current annual population data or estimate available from the United States census bureau, as class "C" counties.

Section 4-44-14 NMSA 1978 classifies H counties as any county which covers an area of not more than 200 square miles shall be a county of the H class.

Section 4-44-4 provides mandatory maximum salaries for Class A county elected officials significantly less than the ninety-five thousand dollars cap proposed by this bill. Currently the maximum salaries are:

- A. county commissioners, \$34,005.
- B. treasurer \$75,327.
- C. assessor \$75,327.
- D. sheriff \$78,555.
- E. county clerk \$75,327.
- F. probate judge, \$33,143.

Similarly, Section 4-44-14 sets a maximum for salaries of certain listed elected or appointed county officers for H class as:

- A. county commissioners - \$13,777.
- B. treasurer - \$6,889.
- C. assessor - \$6,889.
- D. sheriff - \$6,889.
- E. county clerk - \$6,889.
- F. probate judge - \$4,031.

The New Mexico Constitution, Article 10, Section 4 allows a county of at least fifty thousand inhabitants to frame a charter for its own government. It further provides that the charter shall include the officers of the county and their compensation. N.M. Const. Art. 10, § 5 defines "incorporated counties" to include any county that "is less than one hundred forty-four square

miles” and has a population of ten thousand or more – a definition for which only Los Alamos County qualifies. N.M Const. Art. 10, § 10 defines “urban counties” to include any county that is “less than one thousand five hundred square miles” and has a population of three hundred thousand or more – presently that definition only applies to Bernalillo County.

Because the bill would apply to any county having a charter and qualifying as either an incorporated or urban county, the bill would, under current population levels, permit two counties – Los Alamos and Bernalillo – to increase their officers’ salaries up to \$95 thousand.

TECHNICAL ISSUES

AGO notes that as both Class A counties (Bernalillo) and Class H counties (Los Alamos) are currently subject to statutory limits on the salaries they may pay to their elected county officials which are far below the limits set forth in HB 428, the Legislature may wish to consider a more explicit amendment to Sections 4-44-4 and 4-44-14 (the existing, lower salary limits) rather than just relying on the “notwithstanding” language of the bill.

The agency also suggests explicitly identifying which officials are included in the grouping of “appointed officers.”

Subsection B allows counties with charters to designate in their charter the officials that are to be elected in that county, which at a minimum must include a county commission/county council, county clerk and a county sheriff. But, Section 4-44-36 NMSA 1978 allows certain categories of county to abolish the office of county clerk. If any of the counties within the coverage of Section 4-44-36 had a charter, subsection B would be in conflict with Section 4-44-36 as the county could determine not to provide for the office of county clerk under that statute. The Legislature may wish to consider a more explicit amendment to Section 4-44-36 to harmonize it with Section 1(B) of HB 428.

CEM/je/bb/je