

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/17

SPONSOR Bandy LAST UPDATED \_\_\_\_\_ HB 104

SHORT TITLE Local Election Act SB \_\_\_\_\_

ANALYST Esquibel

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
		\$47.3	Recurring	Local Election Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			\$100.0	\$300.0	Recurring	Local Election Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

House Bill 104 relates to House Bill 174, Local Election Act.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Secretary of State's Office (SOS)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 104 (HB104) proposes enactment of the Local Election Act which would amend the election code to consolidate the conduct of local elections to be held on a single day and create uniform processes for these elections. Elections that would be consolidated include those for school districts, special hospital districts, community college districts, technical and vocational institute districts, learning center districts, conservancy districts with ad valorem taxing authority

## House Bill 104 – Page 2

governed pursuant to Chapter 73, Article 14 or 18 NMSA 1978, special zoning districts, soil and water conservation districts, and water and sanitation districts. The bill eliminates write-in candidates for offices in these districts. The consolidated local elections would be held on the first Tuesday after the first Monday in each odd numbered November.

The bill's effective date would be July 1, 2018.

Substantive amendments to the election code per SOS include:

The bill would amend Section 1-3-4 allowing for the consolidation of no more than 20 precincts for any local election. The current consolidation requirement for statewide elections is no more than 10 precincts. Additional amendments would require all precinct consolidation to be conducted by the county commission and removes authority from any other local governing body.

The bill would amend Section 1-16-8 changing the deadline to submit questions to appear on the ballot, clarifying the form of appearance for questions on the ballot to include the question title and the option for additional analysis of the question to appear, and prohibiting advisory and nonbinding questions from appearing on a ballot.

New material would require the Secretary of State (SOS) to issue an election proclamation for the consolidated local election.

HB104 would repeal Section 22-7-13 (school board recalls), Section 22-18-2-4 (school bond elections), Section 22-25-5 (Public School Capital Improvements Act taxes), Section 22-26-5 (Public School Buildings Act taxes), and Section 22-26A-11 (lease purchase taxes), and create new material for the Local Election Act that defines the uniform conduct of the new consolidated local elections.

New provisions in the bill would require county clerks to prepare the ballots and establish that local election ballots shall be non-partisan and establish the order of offices on the ballot. It requires local election ballot questions to be on the ballot provided there is enough space on the ballot.

New provisions in the bill would require county clerks to administer the local elections, the county commission to canvass the elections, and the SOS to issue certificates of election to candidates and to certify the passage or defeat of questions on the ballot.

New provisions in the bill would establish the "local election fund" which would be administered by the SOS to cover state and county costs of elections held pursuant to the proposed Local Election Act. Each local government subject to the Local Election Act would be annually assessed by the SOS the greater of two hundred fifty dollars (\$250) or an amount equal to twenty-five thousandths percent of the local government's general operating expenses. In the event that the fund does not have sufficient funds to cover the local elections, the SOS may apply for a grant with the Board of Finance.

Article 24 would be amended such that all special elections would be conducted by mail if they are held at a time other than when a regular statewide or local election is held. New provisions contained in Article 24 of the bill clarify that the costs of conducting a special election shall be

paid for by the state, local government or special district calling for the election. Additionally, no individual, corporation, person, political action committee or other nongovernmental entity would pay for or reimburse the state, a local government or a special district for the costs associated with conducting a special election.

Voters in conservancy district elections held pursuant to the Local Elections Act would continue to be required to be deed holders rather than qualified electors in the district.

A temporary provision in the proposed legislation requires the various impacted offices to comply with the change in date of the elections affected by the Local Election Act.

The remaining amendments in the bill eliminate inconsistencies with the conduct of elections in the various special districts' chapters of law and refer these districts to the Local Elections Act for the streamlined call, conduct, and canvass of their elections.

### **FISCAL IMPLICATIONS**

The bill creates the “local election fund” to be administered by the SOS to fund state and county costs of elections held pursuant to the proposed Local Election Act. The bill proposes each local government subject to the Local Election Act would be annually assessed by the SOS the greater of \$250 or an amount equal to twenty-five thousandths percent of the local government's general operating expenses. The Legislature could also appropriate funds to the local election fund. If the local election fund does not have sufficient funds to cover the local elections, the SOS may apply for a grant with the Board of Finance.

The bill appropriates money in the newly proposed “local election fund” to carry out the provisions of HB104. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds as earmarking reduces the ability of the Legislature to establish spending priorities.

The Secretary of State’s Office (SOS) indicates HB104 proposes that each district contribute some portion of their annual operating budget to the local election fund to pay for their portion of the cost of conducting the consolidated election every odd-numbered year. The SOS notes it does not currently maintain data on the cost of conducting the special election districts in the current, unconsolidated manner for comparison. However, the types of costs that would be incurred are similar to those for the conduct of a statewide election including publication costs at the state and county level, labor costs for poll workers, costs for printing ballots, test decks and other print supplies, costs for check in stations, ballot-on-demand and associated vendor support, and costs for election programming and voting system support. Though there may be fewer polling locations in a consolidate local election compared to a statewide primary, thus lower costs in certain cost categories, a primary election is the best cost comparison available for the purposes of determining the fiscal impact of this bill. The cost of the 2014 gubernatorial primary was \$2.959 million.

Currently, special districts fund their elections every odd-numbered year; however, the proposed legislation would add additional election requirements necessitating additional funding for items such as increased publication costs, poll workers, printing and ballot-on-demand, and election software programming and voting system support.

The SOS notes it would require an additional elections staff member to assist with the local elections' data requirements and related items included in the bill including assessing and collecting fees from all the various districts. In addition, contract yearly IT maintenance and support would likely be needed. These items are anticipated to cost approximately \$100 thousand to be funded by the local election fund.

The SOS does not have a roster of all the districts impacted under the provisions of the bill. However, for purposes of projecting a revenue estimate that would be generated by assessing the proposed \$250 annual fee to the districts in the bill, the State Auditor maintains a count of various districts as follows:

- School districts, 92
  - Regional education cooperatives, 10
  - Special districts, 33
  - Higher education districts, 14
  - Soil and water conservation districts, 11
  - Public improvement districts, 10
  - Mutual domestic water consumers associations, 10
  - Hospital/special hospital districts, 9
- DISTRICTS TOTAL 189 x \$250 = \$47,250

## **SIGNIFICANT ISSUES**

The Attorney General's Office notes Section 48 amends Section 73-14-20.1 but would continue to restrict voting to "deed holders," which may be an unconstitutional restriction on voting. A qualified elector is further defined as a land owner in Section 57 of the bill.

The SOS also notes the continued practice of 'deed holders' being the only individuals allowed to vote in a conservancy district election may be unconstitutional. Issuing ballots to deed holders instead of qualified electors in the district would require a separate list and separate ballots. If ballot-on-demand systems are being used, system customizations would be required to identify deed holders and to issue a separate ballot to the appropriate individuals in addition to their regular precinct ballot.

The SOS is currently in the development phase of a project to implement a consolidated election management system that will aid the SOS and county clerks in efficiently administering elections included in HB104. This project is expected to be completed in the fourth quarter of 2017. In order to ensure accurate ballot content in all of the districts and precincts, it is imperative that a centralized system be used to ensure political subdivisions are mapped to the correct precincts and that contests, office terms, and candidates are tracked centrally in order to anticipate ballot content and length for each election in each county and district. In order to use the current election management system for the proposed Local Election Act, the SOS would be required to identify and map the additional data elements and jurisdictional relationships and add them to the system. The SOS would likely assign a lead staff member to assist with the data collection efforts and to work on adding the data to the system. Minor vendor support may be required but will likely be minimal once the new system is online and most likely will fall within the scope of a yearly maintenance contract. The SOS anticipates that it will need one additional elections staff member to aid in the oversight and support of the conduct of the local elections.

The SOS would need to amend or adopt new administrative rules to ensure uniformity of the conduct of the local elections. This may also include rules on the use of the local election fund.

The proposed legislation calls for the SOS to publish an election proclamation, issue the certificates of elections to all winning candidates, and to certify each ballot question after the election. These are similar activities the office already performs for statewide elections and these activities would be extended in support of the consolidated local elections.

### **PERFORMANCE IMPLICATIONS**

The SOS notes the current conduct of the special district elections throughout the year typically have little publicity and low voter turnout. Consolidation of these elections, as proposed in this bill, to occur on a single day at the same time each year, is expected to increase voter turnout.

The legislation proposes for the uniform call, conduct, and canvass of the local elections similar to the current conduct of statewide elections. The streamlined and consistent conduct of these elections will help to ensure that they are run fairly and accurately with the proper administrative control and oversight by the county clerks.

### **ADMINISTRATIVE IMPLICATIONS**

HB104 would place an additional administrative burden on the SOS to administer the proposed Local Election Act. Under the bill's provisions, the SOS would need to ensure that all political subdivisions and local districts are zoned according to the election code, and that they have on file all applicable governments and conservancies. They would also have to accurately file the election proclamations and declarations of candidates to all qualified candidates, collect funds, and promulgate rules.

### **TECHNICAL ISSUES**

The SOS suggests moving the candidate filing day back from 63 days in the new material in Section 1-22-7 to allow enough time to prepare and test ballots in time to begin ballot delivery for military and overseas individuals which is required 45 days prior to election day. This change also applies to the candidate withdraw deadline of 56 days in the new material in Section 1-22-9.

### **OTHER SUBSTANTIVE ISSUES**

The Public Education Department (PED) indicates HB104 changes the election code for local governments and eliminates write-in candidates in local elections. Currently Section 1-22-18 permits write-in candidates for the office board member in school district elections. The elimination of write-in candidates in school elections may restrict local control and could potentially impact voter turnout. Additionally, under the provisions of the bill, recall elections of school board members would be included under the Local Election Act; whereas, recall elections of school board members were previously separate from school district elections.