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FISCAL IMPACT REPORT

SPONSOR Roch ORIGINAL DATE 1/29/18
 LAST UPDATED 2/2/18 HB 49/aHLELC

SHORT TITLE Municipality Recall Elections SB

ANALYST Romero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		No Fiscal Impact				

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 98

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Secretary of State (SOS)
- Attorney General (NMAG)
- Administrative Office of the Courts (AOC)
- New Mexico Municipal League

SUMMARY

Synopsis of HLELC Amendment

The House Local Government, Elections, Land Grants and Cultural Affairs Committee amendment strikes on page 3 “upon verification by the municipal clerk of the signatures on the petition” and inserts in lieu thereof, “the municipal clerk shall verify that the persons who signed the petition are qualified electors in the district and that the petition contains the proper number of signatures. If the municipal clerk has so verified the petition.”

Synopsis of Bill

House Bill 49 amends the conditions for the recall election of elective officers in commission-manager municipalities. This bill makes clear that any commission-manager municipality is subject to a recall election for malfeasance or misfeasance in office, or a violation of the oath of office. As outlined in this bill, prior to the circulation of a recall petition, a determination of probable cause for the recall by the district court must be made.

A determination of probable cause for the recall by the district court must be made prior to the circulation of a recall petition. A compliant must be filed with the district court for the county in which the recall is to be conducted outlining factual allegations that support the grounds for recall. If the district court determines probable cause for the recall exists, the recall petition may then be circulated. The proposed amendments require the petition for a recall election cite grounds of malfeasance or misfeasance in office or violation of the oath of office by the official concerned. Such actions must have occurred during the official's current term.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

The AOC notes:

Currently, under Section 3-14-16 NMSA 1978, in a commission-manager municipality, the commission is required to call a special election upon petition seeking the recall of an elective officer, signed by more than 20 percent of voters belonging to a special group of voters. As HB49 is currently drafted, a petition for recall may be circulated for any reason, without the filing a complaint alleging recall grounds describing malfeasance or misfeasance in office or a violation of the oath of office based upon acts or failures to act occurring during the current term of the official sought to be recalled. Under current law, the court is not required to hold a hearing to determine if probable cause exists for the grounds for recall, and to receive evidence from the proponents of the recall and the officer sought to be recalled. The additional steps required under HB 49 protect elected officials from frivolous and/or malicious recall efforts.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with Section 57 of HB 98, which also amends NMSA 1978, Section 3-14-16. The proposed changes in HB 98 that affect Section 3-14-16 are very similar to HB 49, but do differ slightly, and would create a conflict if both passed during the session.

TECHNICAL ISSUES

The NMAG notes that HB 49 does not articulate the legal standard the court would use to determine probable cause.

The SOS suggests an amendment on page 3, line 3-4 to remove ambiguity regarding what the municipal clerk is required to verify on the petition. Suggested amendment is as follows:

D. Upon verification by the municipal clerk that the person who signed the petition is a qualified elector in the district subject to the recall election of the signatures on the petition,