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FISCAL IMPACT REPORT

SPONSOR Ivey-Soto ORIGINAL DATE 01/25/21
LAST UPDATED 02/17/21 HB _____
SHORT TITLE Redistricting Precinct Boundaries SB 4/ec/aSJC
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 4 requires the Secretary of State to furnish each county clerk a map that includes, among other features, the boundaries of Indian nations, tribes and pueblos; strikes proposed notwithstanding other laws language when discussing local public body redistricting; and clarifies the proposed definition of “mean” which reflects the number of persons within a political subdivision divided by the number of districts from which governing body members are elected.

Synopsis of Original Bill

Senate Bill 4 amends portions of the Precinct Boundary Adjustment Act, Sections 1-3-10 to 1-3-14 NMSA 1978, to establish timelines for the creation or redrawing of election districts, and to allow for adjustments to the release of nominating petitions following the redistricting process.

In Section 1, the bill strikes language that established timelines for redistricting and consolidates them with language amending Section 1-3-13. With the revision, in Section 2, the legislature is authorized to redistrict in the same year results of the decennial census are released. If a county

fails to make adjustments required by the new federal census results within 30 days, SB4 requires SoS to issue a noncompliance notice within 90 days of receiving federal census results.

Section 2(D) requires the legislature, in the same calendar year census results are released, to redistrict federal congressional districts, each house of the legislature and any other state districts requiring redistricting; and requires local public bodies subject to districting and whose members are not elected at the regular local election, to create or redraw their districts in that same year.

Section 2(E) also requires that in the calendar year following the release of the federal decennial census results, each local public body that is subject to redistricting and whose governing body members are elected at the regular local election, shall create or redraw their districts.

Section 2(F) requires local public bodies to establish districts in which the number of persons in each district, as shown in the recent federal census, is as nearly equal in population as practical but within five percent of the “mean” – which is defined as “the total number of persons residing within a political subdivision of the state divided by the number of elected governing body members.” In addition, SB4 prohibits splitting a precinct into two or more districts for any elected office unless necessary to comply with federal law or preserve “communities of interest.”

Section 2(G) requires nominating petitions to not be made available while districts are redrawn.

Section 2(H) provides the definition for “local public body subject to redistricting” to mean “any political subdivision of the state with elected governing body members who must reside in designated areas of the political subdivision to qualify for election” or “are elected by a geographically defined subset of voters within the boundaries of the political subdivision.”

Finally, SB4 repeals Laws 2020, Chapter 9, Section 1.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

The New Mexico courts have assisted in redistricting efforts when redistricting bills introduced in the legislature have failed or been vetoed. Both the 2001 and 2011 redistricting plans were decided through litigation. A Legislative Council Service (LCS) report noted that litigation related to the 2001 redistricting efforts cost the state \$3.5 million. See LCS, A Guide to State and Congressional Redistricting in New Mexico, available at www.nmlegis.gov/Redistricting/.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any necessary participation of the courts in the redistricting process. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The SOS reported no additional fiscal impact is expected for its annual operating budget.

SIGNIFICANT ISSUES

The purpose of the Precinct Boundary Adjustment Act is to ensure the state complies with federal redistricting requirements, among them, the obligation to adjust boundaries of precincts to reflect decennial census results to ensure each person’s vote carries equal weight in elections.

SB4 adjusts the timeline so redistricting begins after receipt of the federal census data and after changes are made pursuant to the Precinct Boundary Adjustment Act with a deadline for SoS to adjust all precinct boundaries out of compliance no later than 90 days following receipt of census data. Furthermore, the proposed language instructs that after the precinct boundary changes are made that in the same calendar year when the census data is received: 1) the legislature shall redistrict the congressional, senate, house, and other state districts, and 2) each local public body subject to districting and not subject to the regular local election shall redistrict. The local public bodies that are elected during the regular local election shall redistrict the following year.

The bill provides redistricting criteria local public bodies must follow: 1) number of persons in each district, based on census data, must be nearly equal but within five percent of the mean, and 2) districts must not split a precinct into two or more districts unless necessary to comply with federal law or preserve a community of interest. Finally, the bill requires candidate nominating petitions to not be made available until the legislature has completed the redistricting process.

The NMAG commented that SB4 appears to repeal Laws 2020, Chapter 9, Section 1 only for the purpose of reducing the possibilities of conflicts between the provisions being consolidated in SB4 and those repeated in the law passed during the most recent regular legislative session.

PERFORMANCE IMPLICATIONS

SOS believes this bill is necessary to conform the redistricting deadlines currently in statute to the anticipated delay in receiving the federal census data. Federal law indicates that the deadline for the federal government to send census data to the states is April 1. However, due to Covid-19 and potentially other issues, the federal government has informed states they anticipate a delay in issuing the data that is anticipated to be one to three months. This bill conforms the deadlines to anticipate this delay. Furthermore, the bill adjusts the deadlines such that municipalities that may have elections in March 2022 should have redistricting completed prior to this election.

The bill stipulates that nominating petitions used to qualify to appear on the primary ballot – usually issued by the SOS in October of the odd year - would not be issued until the legislature completes its duty to redistrict. According to the SoS, this provision is important so candidates desiring to appear on the primary ballot gather signatures from voters in the proper district.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB79 Primary Election Participation Changes

TECHNICAL ISSUES

SB4 requires preservation of “communities of interest” as a factor in redistricting, repeating language in the existing Precinct Boundary Adjustment Act. According to the NMAG, this term

is well-established and well-understood but is nowhere defined in New Mexico state law.

OTHER SUBSTANTIVE ISSUES

SB4 makes explicit the timing requirements for adjusting boundaries of precincts, the smallest representational geographic units in the State’s voting laws.

AOC further noted that SB4 does not prohibit plans that favor a political party or incumbent, or include other prohibitions or prescriptions favored by advocates of redistricting reform. The Brennan Center is “working with states to make sure the redistricting process is guided by transparency, bipartisanship and public input – so that maps reflect the will of voters, allow for competitive races, and fairly represent communities of color.” See <https://www.brennancenter.org/issues/gerrymandering-fair-representation/redistricting>, and see <https://www.brennancenter.org/issues/gerrymandering-fair-representation/redistricting/redistricting-reform> for thoughts on redistricting reform.

See also the National Conference of State Legislatures’ materials on redistricting at <https://www.ncsl.org/research/redistricting.aspx>.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

SOS is concerned current deadlines in Article 3 are likely to be missed due to the known delays at the federal level in providing census data. Additionally, current law provides that all local public bodies would redistrict in 2022 which would cause municipalities to miss the opportunity to have new and more accurate district lines drawn prior to the municipal election occurring in 2022.

AHO/al/rl/sb