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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-11-09  
 LAST UPDATED 3-11-09      HB 647/aHJC

SPONSOR Campos

SHORT TITLE Municipal Election Code Changes      SB \_\_\_\_\_

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 Secretary of State (SOS)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee's amendment to House Bill 647 adds a subsection to NMSA 1978, § 3-8-49 dealing with municipal elections. The amendment borrows language from NMSA 1978, § 1-9-4.2(B)(4) in determining what marks placed on a ballot in a municipal election will count as a vote. The amendment provides four categories: (1) a ballot marked in accordance with the instructions for marking the ballot; (2) a ballot on which the preferred candidate's name is circled; (3) a ballot on which there is a cross or check within the voting response area for the preferred candidate; and (4) a ballot on which a mark has been made that the presiding judge and the precinct election judges unanimously agree clearly evidences the voter's intent.

#### Synopsis of Original Bill

The proposed legislation modifies and updates procedures in the municipal election code, removes references to emergency paper ballots and reconciles conflicting sections of election law.

## SIGNIFICANT ISSUES

According to the Attorney General’s Office, the language in the Municipal Election Code (NMSA 1978, § 3-8-1, *et seq.*) regarding the conduct of elections is different than the language used in the Election Code (NMSA 1978, § 1-1-1 to 1-24-4). Specifically, Section 3-8-38 describes the personnel on hand for a municipal election as a “presiding judge” and “precinct board members.” There are thus no “election judges for the precinct” in municipal elections. There are, instead, “precinct board members.” In order to ensure consistency, it would be advisable to amend subsection (D)(4) of this amendment to reflect the differing language used in the Municipal Election Code.

Thus, “the presiding judge and election judges for the precinct unanimously agree that the voter’s intent is clearly discernable” should be amended to read “the presiding judge and the precinct board members unanimously agree that the voter’s intent is clearly discernable.”

The AGO adds that this bill moves to “paper ballots” in its nomenclature and removes the definition and all references in the Municipal Election Code to “emergency paper ballots”, which are currently defined as “the paper ballot used when a voting machine becomes disabled so that a voter is unable to cast a vote for all of the candidates and questions of the voter's choice and have such vote correctly recorded by the voting machine and when no substitute voting machine is available”.

The AGO also adds that Section 31 of the bill enacts a new section of the Municipal Election Code which appears to allow early voting in municipal elections and to require an “early voter” to apply for an absentee ballot prior to voting. However, that section does not clearly state that requirement, even though the phrase “Use of Absentee Voting Procedures” is included in the title of that section.

Finally, the AGO notes that the bill deletes references to “marksense” ballots in the Municipal Code, although it specifically defines “electronic voting machine”. See Section 1, amendments to NMSA Section 3-8-2. The Secretary of State defines “marksense ballot” as “a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high speed central count marksense vote tabulator.” NMAC 1.10.12.7 P. The Election Code provides for the use of marksense voting machines. See NMSA Section 1-12-25.1. Since Election Code procedures apply to municipal elections if those procedures are not specified by other laws, the use of marksense ballots and voting machines will presumably be governed by the Election Code.

### **TECHNICAL ISSUES**

The amendments to NMSA Sections 3-8-47 and 3-8-52 delete certain references to “the signature roster” and replace them with “the voter checklist”. However, the terms “signature roster” and “voter registration list” remain in other provisions which are not amended by this bill, or are used in other amendments contained in this bill. It is unclear whether the bill intends to use those terms interchangeably, or whether different requirements are intended to apply to each of those documents. See for example NMSA Section 3-8-47 which, if amended in accordance with this bill, would contain references to “the voter checklist”, “the signature roster”, and “one voter registration list”.

### **OTHER SUBSTANTIVE ISSUES**

Section 40(A) repeals law 1995, Chapter 98, Section 3 which is Section 3-9-11, but Section 36 reinstates Section 3-9-11. The AGO explains that confusion stems from two bills regarding 3-9-11 passed in 1995, but it appears that laws 1995, Chapter 98, Section 3 was memorialized into law and laws 1995, Chapter 200 Section 10 was not memorialized.

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

If HB 647 is not enacted DFA contends that the State's law will continue to lag existing municipalities' laws thus continuing to create conflict confusion between state and local voting laws.

EO/mt