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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/13

SPONSOR Garcia, M.H. LAST UPDATED _____ HB 517

SHORT TITLE Municipal Disincorporation SB _____

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	DFA Operating Funds

(Parenthesis () Indicate Expenditure Decreases)

Companion to SB434 Municipal Elected Officer Training and SB438 Municipal Incorporation Requirements.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Attorney General's Office (AGO)

NM Municipal League (NMML)

SUMMARY

Synopsis of Bill

This bill has been developed in collaboration with the DFA. The bill amends Section 3 Article 4 NMSA 1978 relating to the disincorporation of municipalities. The provisions of this legislation would be effective July 1, 2013.

The bill provides additional disincorporation avenues including automatic disincorporation under certain circumstances. Currently, municipalities can only be disincorporated if one-fourth of the registered voters of the municipality petition the board of county commissioners to disincorporate the municipality. The major sections of the legislation are highlighted below:

Section 3-4-1 NMSA 1978 would be amended to require the board of county commissioners to adopt a resolution calling for a special election on the question of disincorporating a municipality if the secretary of DFA and the secretary of the Taxation and Revenue Department (TRD) submit a written request to do so or if a governing body of a municipality adopts a resolution calling for a special election.

Section 3-4-4 NMSA 1978 would be expanded to allow for the provision of payment of debts and contracts to include a municipality that is automatically disincorporated.

A new section of Chapter 3, Article 4 is added that sets forth criteria for automatic disincorporation upon a finding of the State Board of Finance (BOF). No later than January 1 of each year, the Local Government Division of the DFA shall report to the BOF a list of all municipalities that fail to meet the criteria for continued incorporation contained in this new section. Upon review of that report, the BOF shall disincorporate the applicable municipalities. Any municipality shall be disincorporated if it fails to:

- Meet the minimum standards for incorporation as set forth in Section 3-2-2, NMSA 1978;
- Complete its annual financial audit within three years of the due date pursuant to the Audit Act;
- Maintain an active status by:
 - Providing, either directly or by contract, at least three of the services listed on page 5 lines 417 (for example, road construction or maintenance);
 - Holding at least six regular meetings in the immediately preceding fiscal year;
 - Qualifying for and holding a regular municipal election as provided by law; and
 - Having each required municipal office (clerk-treasurer and police officer) filled for at least three months during the immediately preceding fiscal year.

FISCAL IMPLICATIONS

The DFA explains that adding statutory provisions for automatic disincorporation could increase the number of municipalities that would be disincorporated. This could potentially increase the operating costs of counties that would have to provide services previously provided by the disincorporated municipality. However, if the disincorporated municipality was providing inadequate services while still collecting taxes and fees from constituents, municipal residents could determine that the county in which the municipality resides is better able to provide more efficient services. Basically, disincorporation would shift taxes and fees to the county, which would help the county cover all existing services, debt and other contractual relationships the county may need to provide.

The NMML notes that had this legislation been passed and signed by the governor prior to this year, eleven municipalities may currently be subject to automatic disincorporation. The population of these municipalities range from 56 to 10,224 according to the 2010 US census. Because the potential for automatic disincorporation falls disproportionately on small municipalities, it is possible that other municipalities with populations under 10,000 would see the amount of their small cities distribution increase. It should also be noted that disincorporation may result in an assessment being levied on the citizens of the disincorporated community to pay off any remaining outstanding debt of the municipality.

SIGNIFICANT ISSUES

Recent developments at the City of Sunland Park have brought attention to the inability of certain municipal governments to adequately provide services to constituents. This bill attempts to hold municipalities accountable for the use of public funds. When a municipality fails to demonstrate the ability to properly govern itself, the bill gives the state statutory authority to intervene. Intervention may be by the secretaries of the DFA and the TRD or by the BOF.

Independent audits are an important tool at all levels of government. They provide an objective assessment of the use of public funds, helping to ensure integrity and accountability. Failure to complete annual audits on time may signal a problem that should be addressed within the governmental entity, and failure to complete annual audits within three years of the deadline is a very serious breach of a governmental entity's duties.

SIGNIFICANT LEGAL ISSUES

The AGO provided the following comments regarding potential legal issues:

In Section 1A(3) of the bill is unclear regarding what grounds or criteria must have been violated before the secretaries of DFA and TRD may request a special election; it does not appear to be related to the BOF's "automatic" process.

Section 3B is unclear what "automatic" refers to in Section 4. Does it mean the BOF must "automatically" (i.e. no discretion to question parts of the DFA Local Government Division's report) vote a finding? Or does it mean once the BOF votes on the finding, then the municipality is "automatically" (i.e. no citizen vote on the issue) disincorporated?

Finally, Section 4 may be vulnerable to legal challenge on grounds that authorizing the BOF to have the power to disincorporate and eliminate an elected officer's position violates the officer's right to serve under Article XX, Section 2 of the State Constitution

PERFORMANCE IMPLICATIONS

By allowing additional avenues for municipal disincorporation, the bill will help ensure that municipalities that fail to meet minimum standards are disincorporated, thereby allowing their duties to be assumed, and their revenues collected by a county.

ADMINISTRATIVE IMPLICATIONS

The provisions of this bill will impact the workload of the DFA Local Government Division and the BOF. However, it is anticipated that the increased workload will be absorbed within the existing operating budget of these two organizations.

TECHNICAL ISSUES

It might be helpful to state in Section 1A(3) under what conditions the DFA, TRD or the BOF may request that the board of county commissioners adopt a resolution calling for a special election on the question of disincorporating a municipality.

On page 4, line 25 it seems that the word "or" should be "and." The use of the word "or" in the legislation would allow a municipality to provide three of the enumerated services and never file an audit report to avoid automatic disincorporation.

Regarding Section 2B—since this is timing issue—is the key date when the BOF votes at a public meeting or when the BOF issues a written finding document?

OTHER SUBSTANTIVE ISSUES

The NMML opposes this legislation as an infringement on the will of the citizens of municipalities across the state. The NMML argues that municipalities are incorporated as a result of the vote of the qualified electors within the municipality. Those same qualified electors should retain the right to determine whether the municipality should be disincorporated rather than leaving that determination to unelected state officials that base their determination on arbitrary criteria.

Finally, the NMML states that citizens, through their elected officials, determine the level of services that should be provided by the local government and may not include the services outlined in section 4 of the proposed legislation or may include fewer than 3 of those services.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted the only method for disincorporating a municipality will remain one-fourth of the registered voters of the municipality petitioning the board of county commissioners to disincorporate the municipality. Even in an inefficiently run municipal government, there may not be the local political will to disincorporate.

CEB/blm