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FISCAL IMPACT REPORT

02/21/13
ORIGINAL DATE 02/27/13
LAST UPDATED 03/11/13 **HB** _____

SPONSOR Cervantes

SHORT TITLE Municipal Incorporation Requirements **SB** 438/aSJC/aHVEC

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0			None

(Parenthesis () Indicate Expenditure Decreases)

Companion to SB 434, Municipal Elected Officer Training; and SB 435, Municipal Disincorporation

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
 Attorney General’s Office (AGO)
 New Mexico Municipal League (NMML)

SUMMARY

Synopsis of HVEC Amendment

The HVEC amendment strikes “at least” to limit the county’s representation (county in which the proposed municipality would be located) on the proposed municipality’s incorporation review team to just one person.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 438 strikes language designating the DFA general counsel (or designee) as a member of the Municipal Incorporation Review Team and changes the New Mexico Municipal League representative to an “advisory member” only.

The amendment also specifies that the Board of County Commissioners will chose (at least) one representative of the county in which the proposed municipality would be located.

Finally, the amendment allows for a process whereby a petitioner with a deficient “municipal services and revenue plan” will receive a “notification of deficiencies” from the review team and be provided three months in which to respond with an amended plan for consideration by the team. If the revised plan is rejected by the team then the petitioner must wait one year to submit another petition.

Synopsis of Original Bill

Senate Bill 438 (SB 438) amends Section 3-2-1 NMSA 1978, relating to the incorporation of municipalities. The provisions of this legislation would be effective July 1, 2013.

This bill requires a petition for incorporation to be accompanied by a “municipal services and revenue plan” which describes the services the proposed municipality will provide and how the municipality will generate sufficient revenue to cover the associated costs of paying for those services. Further, the municipal services and revenue plan must demonstrate that the proposed municipality will have a tax base sufficient to provide at least three of a list of services (such as law enforcement) as provided on page 3 lines 1-25 and page 4 lines 1-4.

The bill also provides for a “municipal incorporation review team” whose members represent the Taxation and Revenue Department (TRD), the Department of Finance and Administration (DFA) Local Government Division, the New Mexico Municipal League (NMML) and at least one representative of the county proposing to be incorporated. The review team is charged with determining whether the petitioning municipality meets all requirements pursuant to Chapter 3 Article 2 and is directed to report its findings to the county commission. If the review finds a petition does not meet all requirements, the petition process is terminated and the petitioners are notified. A new petition to incorporate will not be allowed for at least one year after the date of the rejection.

FISCAL IMPLICATIONS

The DFA reports no fiscal impact to the Department. However, the bill could help ensure new municipalities have the financial resources to provide services to their residents—and lessen the likelihood of a new municipality becoming a struggling community that must depend on county or state support for vital functions. Recent developments, such as at the City of Sunland Park, have brought attention to the inability of some municipal governments to adequately provide services to constituents. This bill seeks to help ensure that future municipalities have the resources to properly govern themselves.

SIGNIFICANT ISSUES

This has been developed in collaboration with the DFA. The intent of this proposed legislation is to strengthen the organizational thresholds and requirements of incorporating new municipalities.

Newly incorporated municipalities within New Mexico have often struggled to provide the basic necessary services to its citizens due to the lack of financial resources and organizational experience. Serious problems often stem from a lack of understanding of how the tax revenue distribution, collection, and other timing processes work. This struggle is often coupled with inadequate revenues impacted by the desire not to impose ad valorem taxes upon properties

within the municipality and a small gross receipts tax base. In some cases, these municipalities continue to rely on the county in which they are located in order to provide the basic services through joint powers agreements, and often times at little or no cost to the newly incorporated municipality. Such troubled communities may be unable to keep up with financial reporting requirements (and end up on the State Auditor’s “At Risk” list) or find that they must approach the State Board of Finance for emergency funding when they cannot pay debt or provide vital services.

ADMINISTRATIVE IMPLICATIONS

The NMML notes that citizens determine that they wish to incorporate as a municipality for a variety of reasons that may not include those enumerated in the proposed legislation. Additionally, this bill makes reference to services provided by a municipality unlike SB 435 which allows for providing the service or contracting for the provision of the service. Perhaps both pieces of legislation should contain the same language.

The legislation calls for a representative of the NMML to serve on a “municipal incorporation review team.” **The NMML has expressed that it does not wish to serve in the capacity of a member of the team** “as among our core missions is the promotion of incorporated municipalities and their responsible formation.”

AMENDMENTS

The NMML notes that the bill gives the review team absolute authority to terminate the incorporation effort without review by any other authority. The NMML believes that there should be some mechanism by which those involved in the incorporation effort can appeal the determination of the review team.

CEB/svb:blm