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FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 1/29/04 HB _____
 SHORT TITLE Incorporation or Withdrawal of Municipalities SB 195
 ANALYST Collard

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 150

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Secretary of State
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 195 sets forth a procedure for municipalities to incorporate or withdraw within another territory. This can be done either by (1) petitioning the county to become unincorporated or (2) petitioning the city council to secede. If the second option is used, after a petition is presented with 500 valid signatures of voters who live in the territory, an election is then held by voters in the territory.

Significant Issues

DFA indicates this bill allows a way for the west side of Albuquerque to unincorporate. The bill seeks to redress the perceptions by many west side residents who feel they are not getting their fair share of infrastructure spending. It seeks redress through fractionalizing the state's largest city instead of seeking regional solutions to regional problems. Further, it puts portions of Albuquerque into unincorporated status, which, given the state's tax structure, may mean higher taxes and less services, the opposite of the intended effect.

FISCAL IMPLICATIONS

There is no immediate fiscal impact associated with this bill. However, according to DFA, if a territory decides to secede, there are fiscal implications regarding the original municipality, the remaining municipality and the new municipality. Furthermore, the fiscal changes would ripple through the state. If the seceded area does not form a new municipality, there would be another set of fiscal considerations. The county would inherit the major responsibility for the unincorporated area.

Additionally, DFA states the city of Albuquerque currently has outstanding general obligation indebtedness of \$126.8 million. It is the only city in the state that finances a substantial amount of its infrastructure with general obligation bonds and, to a lesser extent, revenue bonds. These bonds were based on certain pledges that might not be able to be met if population decreases. At the same time, Bernalillo County could inherit enormous fiscal obligations from the seceded territory, given its reliance on property tax instead of gross receipts tax under the state's tax structure.

ADMINISTRATIVE ISSUES

DFA notes the bill requires the department to determine the level of indebtedness a new local government created out of the secession will have to Albuquerque. Such a thorough study will be complex and may require substantial staff time to complete.

The administrative burden on Bernalillo County of an area currently part of Albuquerque becoming part of county is significant. The county's chief expertise is not in administering urban areas like the west side. Hence, secession of the west side would impose a major urban management staff need, and in an expedited framework.

DUPLICATION

This bill duplicates House Bill 150.

TECHNICAL ISSUES

The Secretary of State's Office indicates a "qualified elector" is a person over 18 who is eligible to register to vote, but may or may not be registered. A "registered voter" is both a qualified elector and registered under the provisions of the elections code. The office indicates these terms need to be defined and standard throughout the legislation.

DFA indicates SB 195 is intended to allow a part of Albuquerque to secede and that territory can join with surrounding, previously unincorporated land to form a new municipality; however, a reading of the bill does not allow for this. Section 1 (A) (1) it states that the new municipality would include "that" territory (which means the land seceded from the municipality) and "unincorporated areas within the territory." "That" territory refers back to the "contiguous territory within a municipality with [a certain population]." Thus, "unincorporated areas within the territory" would mean areas that were formerly in the municipality and would not include other land. If the bill meant to include only territory coterminous with the boundary of the existing municipi-

pality, then it should incorporate that territory into a new municipality with boundaries coterminous with the existing municipality. And if the bill meant to include areas not incorporated in the original municipality, then it should say so and distinguish that land from the “that” territory.

There are two methods by which secession can take place. Under number 1 (A) (1) the residents of the territory within the municipality can bypass the city altogether and just become a new city by petitioning the county. The first method 1(A) (1) requires certain assurances not provided in the second method 1(A) (2).

In 1(A) (1) the residents can become incorporated but only the voters incorporate.

Reference to the laws governing municipalities is not cited.

OTHER SUBSTANTIVE ISSUES

DFA indicates there is no 50 thousand population minimum on Section 1(A) (1) method. This would allow an area with a population of less than 50 thousand to split off from the city and become the responsibility of the county. Could an area of 5 thousand or even 500 persons decide they want to secede but not form a new city? The county would have no say in whether this responsibility would be desired.

Additionally, DFA notes this bill allows for the balkanization of Albuquerque. There might not be just one or two splits. As long as the original municipality has 200 thousand persons, an area of any population can split off. Even if this statute is modified to have a minimum of 50 thousand split off, there could still be about five splits from Albuquerque at the present time. If a group is upset with the current government, it can easily split off. The first few groups that want to secede could do so, but that area next in line could not secede if the population of Albuquerque falls below 200 thousand.

There are two methods of unincorporation listed in the bill: one allows the area to go to the county and not the city; the other method allows the area to go to the city and not the county in order to secede. This allows secession and incorporation without interacting at all with the original municipality because the seceding area can proceed to break away from the original municipality under the current laws governing the incorporation of municipalities by going to the county and not the city. City Council has no discretion under 1(A) (2) whether to put the issue on a ballot under second method, since it is not even part of the process.

Secession should be based on a community’s willingness and desire to become a total functioning unit, not when the area would still like to be part of a municipality but has a few issues with their management.

Allowing for areas to secede promotes a pattern of physical growth inimical to husbanding scarce financial, infrastructure, water and civic resources.

POSSIBLE QUESTIONS

DFA indicates, at this time, the City of Albuquerque and Bernalillo County are contemplating merger, with the next unification vote as part of the ballot on the November general election. How would a west side split from Albuquerque affect unification? If there is unification, would

secession be from the county—because there would no longer be a municipality? If the seceded area were splitting from a county, would it want to create a county within a county? What if the secession and unification are on the same ballot? How will people know the effect of their votes? If the area secedes and then the unification vote comes up, can it opt out of the unification?

Finally, DFA states perhaps, given the general tendency toward regionalization, there should be new ways to address these issues without causing a totally new municipality to be created. For instance, a memorial could call for a legislative interim committee to consider such issues as regionalization, boundaries, annexation, withdrawal and incorporation. It should also address the need to effectuate a major overhaul of land use planning framework based on statutes originally written in the 1920's but now suffer from contradictions, inconsistency, ineffectiveness, duplication, and lack of clarity. A separate interim committee could address the fiscal disparities caused by a taxation system that makes municipalities rely on cyclical but significant gross receipt taxes, while counties must rely on stable but undervalued property taxes.

KBC/lg:njw