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FISCAL IMPACT REPORT

2/01/17

ORIGINAL DATE 3/06/17 174/HLELCS/aHF1#1/
SPONSOR HLELC **LAST UPDATED** 3/15/17 **HB** aSRC

SHORT TITLE Local Election Act **SB** _____

ANALYST Esquibel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
		\$47.7	Recurring	Local Election Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$100.0	\$300.0	Recurring	Local Election Fund

(Parenthesis () Indicate Expenditure Decreases)

House Bill 174 relates to HB104, Location Election Act; and HB40, Municipality Officer Recall Elections.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Office of the Attorney General's Office (OAG)
 Secretary of State's Office (SOS)
 New Mexico Municipal League (NMML)

SUMMARY

Synopsis of Senate Rules Committee Amendments

The Senate Rules Committee (SRC) amendments to the House Local Government, Elections, Land Grants and Cultural Affairs Committee substitute for House Bill 174 (HB174/HLELCS/aSRC) propose allowing municipalities to opt out of holding their elections at

the same time as the other nonpartisan districts rolled into HB174. The amendments would create a new section of the Local Elections Act allowing commission-manager municipalities to opt out of certain provisions of the Local Election Act by passing an ordinance and filing it with the SOS at least 180 days before the next regular local election. The provisions commission-manager municipalities may opt out of include holding their election on the date prescribed by the Local Elections Act for regular and run-off elections and the section that prescribes the terms of office. The amendment requires that those municipalities that are opting out must hold their elections the first Tuesday in March of even numbered years or at a date that doesn't conflict with Section 1-12-71 which requires that other elections be held at least 50 days before or after a statewide election.

The SRC amendments also set the term of office for municipalities who choose to opt out and allow these same municipalities to place ballot questions on elections held separately as well as on elections held pursuant to the Local Elections Act. The amendment requires the municipal clerk to fulfill the duties of the conduct of the elections held pursuant to this section and allows them to opt out of paying the assessment into the local election fund used to pay for consolidated elections under the Local Elections Act.

Finally, the SRC amendments add language from HB40 requiring district courts to determine whether there is probable cause to proceed with a recall election. This language aligns with current county recall election procedures.

The SRC amendments would add conditions to any petition for the recall of municipal officials in a commission-manager or home rule form of government. The petition would have to cite grounds of malfeasance or misfeasance in office or a violation of the oath of office by the official concerned. The cited grounds must be based upon acts, or failures to act, by the elected official occurring during the current term of the official sought to be recalled. As a condition of circulating a petition for recall, the factual allegations supporting the grounds for malfeasance or misfeasance in office or violation of the oath of office stated in the petition must be presented to the district court for the county in which the recall is proposed to be conducted. The petition shall not be circulated unless, after a hearing in which the proponents of the recall effort and the officer sought to be recalled are given an opportunity to present evidence and the district court determines that probable cause exists for the grounds for recall. After approval of probable cause by the district court, once the petition is verified by the municipal clerk as containing sufficient signatures, the commission shall call a special election unless the regular municipal election occurs within 60 days, in which case the qualified electors shall vote on the recall at the regular election.

Synopsis of House Floor Amendment #1

The House Floor amendments to the House Local Government, Elections, Land Grants and Cultural Affairs Committee substitute for House Bill 174 (HB174/HLELCS/aHFL#1) add watershed districts to the list of districts to be consolidated into the Local Election Act.

The floor amendments also provide for write-in candidates to file to run for districts consolidated under the Local Election Act. Unopposed write-ins must have at least 20 percent of the votes of the total number of ballots on which the office appears on the ballot that are cast in the local election, or two hundred in order to be elected. The write-in candidate must provide the proper filing officer a declaration of intent to be a write-in candidate 63 days preceding an election.

Section 23 part D allows for the procedure for counting write-in votes.

Section 157 requires that only landowners are eligible to vote for referenda or elections following formation of a watershed district, and that these qualified electors under the Watershed District Act be compiled and delivered to the appropriate county clerk before the election.

Synopsis of Bill

The House Local Government, Elections, Land Grants and Cultural Affairs Committee substitute for House Bill 174 (HB174/HLELCS) proposes enactment of the Local Election Act which would amend the election code to consolidate the conduct of local elections to be held on a single day and create uniform processes for these elections. Elections that would be consolidated include those for school districts, special hospital districts, community college districts, technical and vocational institute districts, learning center districts, arroyo flood control districts, special zoning districts, soil and water conservation districts, water and sanitation districts, municipalities and starting in 2022, conservancy districts. The municipalities would include a home rule municipality governed pursuant to Article 10, Section 6 of the Constitution of New Mexico and a municipality operating pursuant to a territorial charter. Also included would be recall elections of county officers, school board members, and applicable municipal officers. The bill eliminates write-in candidates for offices in these districts. The consolidated local elections would be held on the first Tuesday after the first Monday in each odd numbered November.

The bill proposes to repeal the school election law, Mail Ballot Election Act, the municipal election code and other provisions in conflict with the newly proposed Local Elections Act. The bill also brings other sections of law related to the conduct of special elections into compliance with the proposed Local Elections Act.

The bill's effective date would be July 1, 2018.

Substantive amendments to the election code per SOS include:

The bill would amend Section 1-3-4 allowing for the consolidation of no more than 20 precincts for any local election. The current consolidation requirement for statewide elections is no more than 10 precincts. Additional amendments require all precinct consolidation to be conducted by the county commission and removes authority from any other local governing body. Section 1-3-7 is amended to allow for a precinct that lies partly within and partly without a district to be consolidated in a polling place for a local election.

The bill would amend Section 1-6B-2 of the Uniform Military Overseas Voter Act, to amend the definition for "appropriate clerk" to remove reference to a municipal clerk and assigns authority to the relevant county clerk where a voter is registered.

The bill would amend Section 1-12-71 to limit when special elections may be held in conjunction with a statewide election.

The bill would amend Section 1-16-8 to change the deadline to submit questions to appear on the ballot, clarify the form of appearance for questions on the ballot to include the question title and the option for additional analysis of the question to appear, and prohibit advisory and nonbinding questions from appearing on a ballot.

New material requires the Secretary of State (SOS) to issue an election proclamation for the consolidated local election.

The bill would repeal the current Article 22, School Election Law, and proposes new material for the Local Election Act that defines the uniform conduct of the new consolidated local elections.

New material requires the county clerk to prepare the ballots and establishes that local election ballots shall be non-partisan, as well as establishing the order of offices on the ballot. It requires local election ballot questions to be on the ballot provided there is enough space on the ballot. New material requires the county clerk to administer the local elections, the county commission to canvass the elections, and the SOS to issue certificates of election to candidates and to certify the passage or defeat of questions on the ballot.

New material allows for municipal runoff elections, which shall be called, conducted and canvassed by the county clerk in accordance with the provisions of the municipality's ordinance or charter.

New material establishes the “local election fund” which is administered by the SOS to cover state and county costs of elections held pursuant to the Local Election Act. Each local government subject to the Local Election Act shall be assessed annually by the SOS the greater of \$150 or an amount equal to twenty-five thousandths percent of the local government's general operating expenses. In the event that the fund does not have enough to cover the local elections, the SOS may apply for an emergency grant with the Board of Finance. Municipalities that have runoff elections would pay an extra 10 thousands of a percent into the local election fund.

The School District Campaign Reporting Act (Article 22A) would be amended such that the required single campaign finance report is moved from April and instead requires two reports due on the 21st day before the election and 30 days following the election.

The bill proposes that all special elections would be conducted by mail if they are held at a time other than when a regular statewide or local election is held, and only for voting on ballot questions and not for the election of candidates. New material in Article 24 clarifies the costs of conducting a special election shall be paid for by the state, local government, or special district calling for the election. Additionally, no individual, corporation, person, political action committee or other nongovernmental entity shall pay for or reimburse the state, a local government, or a special district for the costs associated with conducting a special election.

Amendments to the municipal code conform with the Local Election Act for special elections related to bond elections as well as the incorporation, disincorporation, or abandonment of a commission-manager form of government for a municipality.

A temporary provision in the proposed legislation addresses the terms of the various impacted offices to comply with the proposed change in date of the elections specified in the Local Election Act. Terms of offices are set to begin January 1 following the election.

The remaining amendments in the bill eliminate inconsistencies with the conduct of elections in the various special district chapters of law and municipal code and refer these districts to the Local Elections Act for the streamlined call, conduct, and canvass of their elections.

The effective date of the bill is July 2018, which would result in the first regular local election occurring in 2019. The effective date for sections related to consolidation of conservancy districts is July 1, 2022 with the first consolidation of the conservancy district elections being conducted in 2023.

FISCAL IMPLICATIONS

The bill creates the “local election fund” to be administered by the SOS to fund state and county costs of elections held pursuant to the proposed Local Election Act. The bill proposes each local government subject to the Local Election Act would be annually assessed by the SOS the greater of \$150 or an amount equal to twenty-five thousandths percent of the local government's general operating expenses. The Legislature could also appropriate funds to the local election fund. If the local election fund does not have sufficient funds to cover the local elections, the SOS may apply for an emergency grant with the Board of Finance.

The SOS notes the Board of Finance follows guidelines that do not currently provide for it to make funding available to the Secretary of State for unanticipated costs, or costs that are not deemed an emergency, creating a conflict. It may, therefore, be necessary to amend the discretion of the Board of Finance within statute to grant these types of funding requests.

The bill appropriates money in the newly proposed “local election fund” to carry out the provisions of HB174/HLELCS. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds as earmarking reduces the ability of the Legislature to establish spending priorities.

The Secretary of State’s Office (SOS) indicates HB174/HLELCS proposes that each district contribute some portion of their annual operating budget to the local election fund to pay for their portion of the cost of conducting the consolidated election every odd-numbered year. The SOS notes it does not currently maintain data on the cost of conducting the special election districts in the current, unconsolidated manner for comparison. However, the types of costs that would be incurred are similar to those for the conduct of a statewide election including publication costs at the state and county level, labor costs for poll workers, costs for printing ballots, test decks and other print supplies, costs for check in stations, ballot-on-demand and associated vendor support, and costs for election programming and voting system support. Though there may be fewer polling locations in a consolidate local election compared to a statewide primary, thus lower costs in certain cost categories, a primary election is the best cost comparison available for the purposes of determining the fiscal impact of this bill. The cost of the 2014 gubernatorial primary was \$2.959 million.

Currently, special districts fund their elections every odd-numbered year; however, the proposed legislation would add additional election requirements necessitating additional funding for items such as increased publication costs, poll workers, printing and ballot-on-demand, election software programming and voting system support, and other items.

The Administrative Office of the Courts (AOC) notes 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 commenced prosecutions for violations of the election code, as the code’s penalty sections would be applicable to all local elections.

The SOS notes it would require an additional elections staff member to assist with the local elections' data requirements and related items included in the bill including assessing and collecting fees from all the various districts. In addition, contract yearly IT maintenance and support would likely be needed. These items are anticipated to cost approximately \$100 thousand to be funded by the local election fund.

The SOS does not have a roster of all the districts impacted under the provisions of the bill. However, for purposes of projecting a revenue estimate that would be generated by assessing the proposed \$150 annual fee to the districts in the bill, the State Auditor maintains a count of various districts as follows:

- Municipalities, 96
 - School districts, 92
 - Counties, 33
 - Regional education cooperatives, 10
 - Special districts, 33
 - Higher education districts, 14
 - Soil and water conservation districts, 11
 - Public improvement districts, 10
 - Mutual domestic water consumers associations, 10
 - Hospital/special hospital districts, 9
- DISTRICTS TOTAL 318 x \$150 = \$47,700

SIGNIFICANT ISSUES

The SOS and OAG note voters in conservancy district and watershed district elections held pursuant to the Local Elections Act are required to be deed holders rather than qualified electors in the district as proposed by HLELC and the House Floor amendments.

The NMML notes the House Floor amendments change to allowing write-in candidates to declare 63 days preceding an election is one week after the regular candidate filing date and is the same date that candidates may withdraw their candidacy, which could cause confusion for the filing officer. This is also the date on which the filing officer certifies and notifies each candidate that their name has been placed on the ballot. However, this may not give the filing officer sufficient time to verify a write-in candidate meets the required qualifications, since the filing officer is given a week to verify other declared candidates prior to placing their names on the ballot. The House Floor amendments also do not define what constitutes a qualified write-in candidate.

The NMML also notes the House Floor amendments are inconsistent as Section 1-22-8.1.E states write-in candidates “shall be considered a candidate for all purposes and provisions relating to the candidates in the Local Election Act,” but then sets a higher standard for write-in candidates to be certified as the winner of the election as Section G provides that a write-in candidate shall not have an election certified unless that candidate receives at least the number of write-in votes equal to 20 percent of the total number of ballots cast for the office or 200. This standard is inconsistent with declared candidates as well being unclear if write-in candidates need 20 percent or 200 votes. NMML notes this provision also appears to conflict with Article VII, Section 5 of the New Mexico constitution that provides “if the legislature does not provide for runoff

elections, the person who receives the highest number of votes for any office, except as provided in this section, and except in the cases of the offices of governor and lieutenant governor, shall be declared elected to that office,” and may also conflict with the equal protection clause in Article II, Section 18.

The AOC notes unlike statutory sections pertaining to conservancy districts, the Watershed District Act does not contain penalty and enforcement provisions independent of those contained in the Local Election Act and the Election Code.

The SOS is currently in the development phase of a project to implement a consolidated election management system that will aid the SOS and county clerks in efficiently administering elections included in HB174/HLELCS. This project is expected to be completed in the fourth quarter of 2017. In order to ensure accurate ballot content in all of the districts and precincts, it is imperative that a centralized system be used to ensure political subdivisions are mapped to the correct precincts and that contests, office terms, and candidates are tracked centrally in order to anticipate ballot content and length for each election in each county and district. In order to use the current election management system for the proposed Local Election Act, the SOS would be required to identify and map the additional data elements and jurisdictional relationships and add them to the system. The SOS would likely assign a lead staff member to assist with the data collection efforts and to work on adding the data to the system. Minor vendor support may be required but will likely be minimal once the new system is online and most likely will fall within the scope of a yearly maintenance contract. The SOS anticipates that it will need one additional elections staff member to aid in the oversight and support of the conduct of the local elections.

The SOS would need to amend or adopt new administrative rules to ensure uniformity of the conduct of the local elections. This may also include rules on the use of the local election fund.

The proposed legislation calls for the SOS to publish an election proclamation, issue the certificates of elections to all winning candidates, and to certify each ballot question after the election. These are similar activities the office already performs for statewide elections and these activities would be extended in support of the consolidated local elections.

PERFORMANCE IMPLICATIONS

The SOS indicates while having some municipal elections held separately from other nonpartisan elections is not ideal, the bill as amended by SRC still requires these elections are conducted in the same manner outlined by the Local Election Act. This ensures that consistent rules and procedures are used for all elections and would allow for easier administration and oversight by the county clerks and the SOS. Current statute has a separate municipal election code and clerks must refer to the state election code when the municipal election code is silent or in conflict in order to determine the proper conduct of municipal elections.

The Secretary of State’s Office (SOS) notes the current conduct of the special district elections throughout the year typically have little publicity and low voter turnout. Consolidation of these elections, as proposed in this bill, to occur on a single day at the same time each year, is expected to increase voter turnout.

The legislation proposes for the uniform call, conduct, and canvass of the local elections similar to the current conduct of statewide elections. The streamlined and consistent conduct of these

elections will help to ensure that they are run fairly and accurately with the proper administrative control and oversight by the county clerks.

ADMINISTRATIVE IMPLICATIONS

HB174/HLELCS would place an additional administrative burden on the SOS to administer the proposed Local Election Act. Under the bill's provisions, the SOS would need to ensure that all political subdivisions and local districts are zoned according to the election code, and that they have on file all applicable governments and conservancies. They would also have to accurately file the election proclamations and declarations of candidates to all qualified candidates, collect funds, and promulgate rules. This may also include rules on the use of the local election fund and others.

The AOC reports HB174/HLELCS provisions have an impact upon the courts as follows:

- **Section 21(C):** Enacts a statutory section within the Local Election Act to provide a fourth degree felony penalty for knowingly making a false statement in a declaration of candidacy. (Current Section 1-22-7 NMSA 1978, within the School Election Law, provides a fourth degree felony penalty for knowingly making a false statement in a declaration of candidacy.)
- **Section 39:** Enacts a statutory section requiring the state, local government or special district calling for a special election to pay for the election, and prohibits any nongovernmental entity from paying for or reimbursing the government entity for the costs associated with conducting a special election. Provides that if finding of violation, district court required to nullify the votes cast in the special election and void the result of the special election.

RELATIONSHIP

House Bill 174/HLELCS relates to HB104, Location Election Act, in that both bills propose consolidating local elections; however, HB174 includes more local entities.

The SRC amendments also include language from HB40, Municipality Officer Recall Elections.

TECHNICAL ISSUES

The AOC writes the House Floor amendments in amending Section 1-1-19 NMSA 1978 to provide that the Election Code, Chapter 1 NMSA 1978, applies to local elections included in the Local Election Act, the Election Code, including Section 1-12-19.1 NMSA 1978, governing write-in candidates, is now applicable to local elections. Provisions in the House Floor Amendment's new Section 23/Section 1-22-8.1 NMSA 1978 are in conflict with provisions in the existing Section 1-12-19.1 NMSA 1978. If the intent is to have the provisions of Section 1-22-8.1 govern in local elections rather than the provisions of Section 1-12-19.1 pertaining to write-in candidates, language needs to be added to the new Section 1-22-8.1 as guidance, such as the introductory statement, "Notwithstanding the provisions in Section 1-12-19.1 NMSA 1978 governing write-in candidates..." or something similar to convey that intent.

The SOS writes the continued practice of 'deed holders' being the only individuals allowed to vote in a conservancy district election may be unconstitutional. Issuing ballots to deed holders instead of qualified electors in the district would require a separate list and separate ballots. If

ballot on demand systems are being used, system customizations would be required to identify deed holders and to issue a separate ballot to the appropriate individuals in addition to their regular precinct ballot. Maintaining separate ballots and separate voter lists is likely to increase election costs.

The SOS suggests moving the candidate filing day back from 63 days to allow enough time to prepare and test ballots in time to begin ballot delivery for military and overseas individuals which is required 45 days prior to election day. This change also applies to the candidate withdraw deadline of 63 days.

OTHER SUBSTANTIVE ISSUES

The AOC notes HB174/HLELCS differs from the original bill as follows:

- **Section 17:** includes, beginning July 1, 2022, a conservancy district governed pursuant to Chapter 73, Article 14 or 18 NMSA 1978, within the definition of “local government” holding a “local election.”
- **Section 18(C):** provides that a regular local election ballot may contain ballot questions “as otherwise provided by law.”
- **Section 219A):** local election candidate to file declaration of candidacy commencing at 9 a.m. on the 70th day before the date of the local election, rather than the 63rd day.
- **Section 25(C):** new subsection governing when a local government question requiring a second ballot page permitted.
- **Section 32:** provides term office begins on January 1 rather than December 1.
- **Section 34(F):** assessment amount decreased to \$150 from \$250.
- **Section 36(B):** reporting on the thirtieth day rather than “thirty days” following the election.
- **Section 83:** amendment to Section 22-5-8 NMSA 1978, governing term of office for school board members.
- **Sections 134 through 153:** amends statutory sections related to conservancy districts.
- Removes HB 174, Section 133 amendment to Section 73-20-1 NMSA 1978.
- **Section 154(A):** retains rather than removes language re: four elected supervisor positions and one elected supervisor position.
- **Section 160:** adds a temporary provision related to conservancy district board members.

The Administrative Office of the Courts (AOC) indicates in amending Section 1-1-19 NMSA 1978 to provide that the Election Code, Section 1-1-1 NMSA 1978 *et seq.*, applies to local elections included in the Local Election Act, the penalties for violations, specific and general, of the election code, Chapter 1, Article 20, are now applicable to violations arising during local elections.

While numerous specific offenses and penalties are set out in Chapter 1, Article 20, Section 1-10-22 NMSA 1978 provides that if the election code does not impose a specific penalty for the violation of a provision prohibiting a specific act, a knowing violation is a petty misdemeanor. HB174, Section 141(B), repeals the Municipal Election Code, Sections 3-8-1 through 3-8-80 and Sections 3-9-1 through 3-9-16 NMSA 1978. Section 3-8-79(C) NMSA 1978 currently provides that if the Municipal Election Code does not impose a specific penalty for the violation of a specific act, a knowing violation is a misdemeanor. HB174 reduces the penalty for a violation of election laws during a municipal election from a misdemeanor to a petty misdemeanor.

In addition to repealing the School Election Law (Section 1-22-1 NMSA 1978 *et seq.*), the Mail Ballot Election Act (Section 1-23-1 NMSA 1978 *et seq.*), and the Municipal Code (Sections 3-8-1 through 3-8-80 and Sections 3-9-1 through 3-9-16 NMSA 1978), HB174 also repeals election-related statutory sections within the following Acts, none of which contain penalty provisions:

- Arroyo Flood Control Act, Section 72-16-1 NMSA 1978 *et seq.*
- Las Cruces Arroyo Flood Control Act, Section 72-17-1 NMSA 1978 *et seq.*
- Flood Control District Act, Section 72-18-1 NMSA 1978 *et seq.*
- Southern Sandoval County Arroyo Flood Control Act, Section 72-19-1 NMSA 1978 *et seq.*
- Eastern Sandoval County Arroyo Flood Control Act, Section 72-20-1 NMSA 1978 *et seq.*

The following additional HB174/HLELCS provisions have an impact upon the courts:

- Section 21: Enacts a statutory section within the Local Election Act to provide a fourth degree felony penalty for knowingly making a false statement in a declaration of candidacy. (Current Section 1-22-7 NMSA 1978, within the School Election Law, provides a fourth degree felony penalty for knowingly making a false statement in a declaration of candidacy.)
- Section 39: Enacts a statutory section requiring the state, local government or special district calling for a special election to pay for the election, and prohibits any nongovernmental entity from paying for or reimbursing the local governmental entity for the costs associated with conducting a special election; and provides if there is a finding of violation, a district court is required to nullify the votes cast in the special election and void the result of the special election.

POSSIBLE QUESTIONS

The New Mexico Municipal League indicates the SRC amendments provide that district court is to find “probable cause” for a recall prior to a petition being circulated; however, there is no definition of probable cause in the amendment. Will the court rely on the definition of probable cause in criminal law statutes or will some other standard apply?

The New Mexico Municipal League writes HB174/HLELCS in Section 159 provides that local government officials’ terms can be cut short. It would appear this provision might conflict with Art. IV Sec. 27 of the New Mexico constitution.

RAE/jle/sb/al