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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number *HB407 **Sponsor** Trujillo, L./Ivey-Soto/Gonzales/ Anderson
Tracking Number .211327.3 **Committee Referrals** HSEIC/HJC
Short Title Election Laws 50-Year Tune-Up
Analyst Force **Original Date** 2/14/19
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BILL SUMMARY

Synopsis of Bill

*This LESC analysis focuses only on the portions of the bill affecting elections related to public education.

House Bill 407 (*HB407) proposes multiple amendments to a number of New Mexico’s various election laws as part of a “50-year tune-up,” many of which are minor technical and clarifying changes. Many of the remaining amendments address procedural matters pertaining to the conduct of elections, including consolidation of election procedures. Additional procedural amendments that touch on elections related to public education include:

- Procedures for the county clerks for administration of the mailed ballot register.
- The proper order of offices and ballot questions listed on election ballots.
- Appropriate matters to be placed on local government ballot questions, including tax authorization for bond sales, mill levies, or gross receipts, and the recall of school board members.
- The timing and certification of resolutions and proclamations proposing ballot questions for local elections.
- A prohibition on advisory and nonbinding ballot questions.
- Procedures for the proper printing of ballot questions on ballots.
- Prohibitions on the timing of special elections, which may not be held between 70 days prior to and 120 days following a general election or regular local election, or between 70 days prior and 70 days after a major primary election or election to fill a vacancy for a United States Representative.
- Procedures for filing declarations of candidacy under the Local Election Act.
- Procedures for the filing and publication of proclamations for special elections.
- Procedures for conducting special elections, which are to be held by mail.
- Procedures governing payment of costs for special elections.
- Procedures to delay the mailing of property tax bills for counties for which a property tax levy is imposed at the November 2019 election or the 2021 regular election.

- Requiring the resolution on the imposition of taxes indicates the regular election or date of the special election for which the ballot question will be submitted.

*HB407 proposes to repeal a number of sections of law, including:

- Section 1-12-71 NMSA 1978, regarding limitations on when certain local government elections may be held.
- Section 1-22-9 NMSA 1978, on the withdrawal of candidates from local elections.
- Section 1-22-10 NMSA 1978, on the filing and preparation of ballots under the Local Election Act.
- Section 1-22-11 NMSA 1978, regarding the publication of proclamations of local elections.
- Section 1-22-13 NMSA 1978, regarding poll watchers, election observers, and challengers under the Local Election Act.
- Section 1-22-15 NMSA 1978, on the duties of the canvassing board under the Local Election Act.
- Sections 6-15-23 through 6-15-28 NMSA 1978, the Bond Election Act.
- Section 22-7-2 NMSA 1978, the purpose of the Local School Board Member Recall Act.
- Section 22-7-15 NMSA 1978, regarding writs of mandamus against county clerks and local school boards for failure to perform required duties under the Local School Board Member Recall Act.
- Section 22-7-16 NMSA 1978, making violations of the Local School Board Member Election Act a petty misdemeanor.

The effective date for *HB407, Section 141, proposing new definitions for the Local Election Act, would be July 1, 2022. The rest of the bill, which carries an emergency clause, would become effective upon the governor’s signature.

Finally, for discussion of the more substantive amendments affecting public education, please see “Substantive Issues,” below.

FISCAL IMPACT

*HB407 does not contain an appropriation.

The fiscal impact of the bill would be widely varied, but appears to be limited to those parties on whom the new or amended procedural duties would fall, in most cases, the county clerks, the Secretary of State, or the pertinent political subdivisions, including local school boards. Most of these costs could likely be absorbed by the existing resources of the implicated parties, as few entirely new duties are imposed by *HB407; rather, most of the requirements proposed by the bill are refinements or changes to already existing duties.

SUBSTANTIVE ISSUES

*HB407 includes several newly defined terms. In the general provisions of the Election Code, there is a new definition for “special elections,” which would mean an election at which only ballot questions are considered – including general obligation bonds and mill levies for school improvements – and that is held at a time other than a statewide election. Two definitions have been added to the Local Election Act: “regular elections,” which would mean the biennial local election of members of boards, councils, and commissions; and “special local election, which

would mean local elections conducted at a time other than a statewide election at which only ballot questions are considered.

*HB407 would rename the Local School Board Member Recall Act, the “Recall Act,” the scope of which would include elected officials other than school board members, including county officials and town commissioners and managers. Newly defined terms in the Recall Act would include “county clerks,” “filing date,” “initiation date,” “malfeasance,” “misfeasance,” and “violation of oath of office,” which means to “refuse or neglect to perform, without any just cause, any of the duties that are or shall be required by law of the named official.” Recall elections would be limited to allegations of malfeasance, misfeasance, or violations of oaths of office, and may only be proposed once during the named official’s term in office. Vacancies arising as a result of a recall election are to be filled as provided by law for vacancies in the office in question, but a recalled official may not be appointed to fill any vacancy for the remainder of the term of office from which the official was recalled. Finally, an elected official’s acceptance of employment with the political subdivision in which the official serves would be a circumstance creating a vacancy in that office.

Procedures for declarations of candidacy under the Local Election Act, which includes school board elections, have been updated to permit voter challenges to a person’s candidacy at a regular local election. The reason for such challenges would be allegations that the candidate does not meet the requirements of the office they are seeking. Challengers would have to file a petition in the district court within seven days after the day for filing declarations of candidacy. The district court would be required to hear and decide on the matter within 10 days after the challenging petition is filed. Appeals from the district court’s decision would be made directly to the Supreme Court of New Mexico within five days of the district court’s decision, and the Supreme Court is to render a decision “forthwith.” *HB407 would strike the requirement that local elections be nonpartisan.

Finally, *HB407 proposes to amend the Community College Act to permit the local school board, rather than the “qualified electors,” of a school district adjoining a community college district to petition HED to be added to the district. The petition may either be initiated by the school board or by a petition presented to the school board by at least 10 percent of the qualified electors in the district.

The New Mexico Municipal League (NMML) suggests the enactment of *HB407 would create difficulty for election officials throughout the state, as the bill proposes many amendments to several election laws that were widely amended last year with the enactment of Laws 2017, Chapter 79 (HB98, the Local Election Act). NMML indicates those changes to election laws are still being addressed, and the enactment of *HB407 would keep elections in the state unsettled.

The New Mexico Attorney General’s office (AG) notes that changes to voting rights implicate constitutional protections, invoking strict judicial scrutiny. A number of provisions in the bill include requirements for voter identification or verification, which in the past have been problematic, and may be subject to challenge:

- Section 49 would require new voters to include a driver’s license, state identification number, social security number, or the last four digits of their social security number for a certificate of voter registration.
- Section 60, amending the Absent Voter Act, would require applicants for mail-in ballots to present a driver’s license, if applying online.

- Section 64, also amending the Absent Voter Act, would require voter identification when voting in person at a county clerk's office.
- Sections 183 and 184 appear to prevent nonresident municipal electors from voting in bond elections in the implicated municipality.

ADMINISTRATIVE IMPLICATIONS

Administrative implications, like fiscal impact, for *HB407 would be imposed upon the parties on whom the new or amended procedural duties would fall, in most cases, the county clerks, the Secretary of State, or the pertinent political subdivisions, including local school boards.

RELATED BILLS

HB55, Agreement to Elect President by Popular Vote, amends the Election Code regarding the selection of presidential electors.

HB57, Restore Felon Voting Rights, would end the cancellation of felons' voting registration.

HB84, Auto Voter Registration at MVD and Elsewhere, would provide for automatic voter registration at the Motor Vehicle Department (MVD), and is identical to SB50.

HB93, Primary Election Participation by DTS Voters, would allow unaffiliated voters to vote in a primary election.

HB211, County and Municipal Gas Tax Changes, addresses municipal bond elections for the taxation of gasoline.

*HB249, Native American Voting Task Force, appropriates \$40 thousand from the general fund to the Secretary of State for expenditure in FY20 to convene a Native American voting information task force.

HB292, Early Voting Voter Privacy, limits the time the absent ballot register is available for public review.

HB468, Signatures Required on Nominating Petitions, addresses the number of signatures required to nominate candidates for various political offices.

SB50, State Agency Automatic Voter Registration, would provide for automatic voter registration at MVD and elsewhere, and is identical to HB84.

SB52, Register to Vote Three Days Prior to Election, would permit qualified electors to register to vote or update their registration up to three days before an election.

SB320, Voter Assistant Registration, would permit only certain individuals to be voter registration agents.

SB410, School Counselor Vote Registration Agents, would require high school guidance counsellors to act as voter registration agents.

SB416, Redistricting Act, provides for redrawing congressional, legislative, Public Regulation Commission, and Public Education Commission districts based on the federal decennial census.

SB 418, Non-Affiliated Voters in Primary Elections, would allow unaffiliated voters to vote in certain primary elections

SOURCES OF INFORMATION

- LESC files
- New Mexico Attorney General (AG)
- New Mexico Municipal League (NMML)

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