


**CHANGES TO SCHOOL ELECTION LAW
MADE BY HOUSE BILL 98
RECOMMENDATIONS**

ARTHUR D. MELENDRES

 MODRALL SPERLING



- Section 1-22-3 NMSA is repealed.
 - A new Section 1-22-3 is enacted in HB 98 which defines regular local election, special local elections, ballot questions, and qualifications of candidates:
 - A regular local election shall be held on the first Tuesday after the first Monday in November of each odd-numbered year.
 - A local election shall be held to elect qualified persons to membership on a local governing body.
 - In addition to candidates in the election, a regular local election ballot may contain ballot questions proposed by a local government. An election on a ballot question held at any time other than the date for a regular local election shall be a special local election.

- Section 1-22-4 NMSA is repealed.
 - A new Section 1-22-4 NMSA is enacted which specifies how a regular local election will be conducted:
 - The Secretary of State shall issue a public proclamation in English and Spanish calling a regular local election on 1st Tuesday after the first Monday in November of odd numbered years.
 - The proclamation shall be filed by the secretary of state in the office of the secretary ninety (90) days preceding the election.
 - Between one hundred twenty (120) and one hundred fifty (150) days before the local election the district shall notify the secretary of state of the candidate positions to be filled.

New Section 1-22-4 NMSA also provides:

- The proclamation shall spell out details for the local election including date and positions to be filled and any ballot questions to be placed on the ballot.
- After receipt of the proclamation from the secretary of state the county clerk shall post the proclamation on the county website not less than seventy-five (75) days before the election.

- Section 1-22-7 NMSA is repealed.
 - A new Section 1-22-7NMSA is enacted:
 - Provides details for candidate declaration of candidacy.
 - Declaration of candidacy is to be filed (between 9 am and 5 pm) on the seventh (70) day before the election.

- Section 1-22-10 NMSA is repealed.
 - A new Section 1-22-10 NMSA is enacted:
 - Prescribes the procedure for preparing the election ballot.
 - Provides the local election shall be a nonpartisan election.

Section 1-22-10.1 NMSA is a new section of the election act.

It provides the ballot order for the election:

- School district candidates and ballot questions will be listed on the ballot after municipal candidates and judicial officers.

OFFICIAL GENERAL ELECTION BALLOT - BALOTA OFICIAL DE ELECCION GENERAL
November 6, 2012 - 6 de noviembre, 2012

SANTA FE COUNTY	CONDADO DE SANTA FE	PREDICT 0048
<p>INSTRUCTIONS: To vote complete the oval to the LEFT of your choice, like this (<input type="radio"/>).</p> <p>INSTRUCCIONES: Para votar complete el óvalo a la IZQUIERDA de su selección, como esto (<input type="radio"/>).</p> <p>PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES PRESIDENTE Y VICE PRESIDENTE DE LOS ESTADOS UNIDOS VOTE FOR ONE - VOTE POR UNO</p> <p><input type="radio"/> BARACK OBAMA JUL BOB</p> <p><input type="radio"/> MITT ROMNEY PAUL RYAN</p> <p><input type="radio"/> VIRGIL GOODE MICHAEL</p> <p><input type="radio"/> GARY JOHNSON JACOB P. SEAT</p> <p><input type="radio"/> ROSS C. STODOLY ANDERSON LUIS J. RODRIGUEZ</p> <p><input type="radio"/> JILL STEIN DIERO HERRERA</p> <p>UNITED STATES SENATOR SENADOR DE LOS ESTADOS UNIDOS VOTE FOR ONE - VOTE POR UNO</p> <p><input type="radio"/> MARTIN T. HEINRICH DANIELA PERRY, PATRICK OBAMA/US</p>	<p>PUBLIC EDUCATION COMMISSION COMISION DE EDUCACION DISTRICT 10 - DISTRITO 10 VOTE FOR ONE - VOTE POR UNO</p> <p><input type="radio"/> JEFF CARR DANIELA PERRY, PATRICK OBAMA/US</p> <p>COUNTY COMMISSIONER COMISIONADO DE CONDADO DISTRICT 4 - DISTRITO 4 VOTE FOR ONE - VOTE POR UNO</p> <p><input type="radio"/> KATHLEEN SUZANNE HOLMAN DANIELA PERRY, PATRICK OBAMA/US</p> <p>COUNTY CLERK ESCRIBANO DE CONDADO VOTE FOR ONE - VOTE POR UNO</p> <p><input type="radio"/> GERALDINE SALAZAR DANIELA PERRY, PATRICK OBAMA/US</p> <p>COUNTY TREASURER TESORERO DE CONDADO VOTE FOR ONE - VOTE POR UNO</p> <p><input type="radio"/> PATRICK J. VARELA DANIELA PERRY, PATRICK OBAMA/US</p> <p>ELECTION OF NON-PARTISAN JUDGES ELECCION DE JUECES NO PARTIDARIOS VOTE YES OR NO FOR EACH JUDGE - VOTE (SI O NO) POR CADA JUEZ</p> <p><input type="radio"/> YES / (SI)</p> <p><input type="radio"/> NO / (NO)</p> <p><input type="radio"/> YES / (SI)</p>	<p>GENERAL OBLIGATION BOND QUESTION NO. 3 Shall Santa Fe County issue up to \$5,000,000 in general obligation bonds payable from general (ad valorem) taxes, to acquire, design, construct, improve, equip and restore open space, trails and parks within the County?</p> <p>CUESTION NUMERO 3 BONOS DE OBLIGACION GENERAL ¿Deberá el Condado de Santa Fe emitir hasta \$5,000,000 en bonos de obligación general pagaderos de impuestos generales (ad valorem) para adquirir, diseñar, construir, mejorar, equipar y restaurar espacios al aire libre, senderos y parques dentro del Condado?</p> <p><input type="radio"/> FOR / (A FAVOR)</p> <p><input type="radio"/> AGAINST / (EN CONTRA)</p>

- Section 1-22-19 NMSA is repealed and a new Section 1-22-19 NMSA is enacted providing for absentee voting and early voting.

- A new section of the Local Election Act is enacted.
 - Provides for paying the costs of the election with a local assessment.
 - Creation of a local election fund for reimbursing the counties for the costs of conducting regular local elections.
 - The annual assessment shall be equal to two hundred fifty dollars (\$250) per one million dollars (\$1,000,000) or minor fraction thereof of the local government's general fund expenditures.

- Section 1-12-1 NMSA was amended:
 - No local election shall be held within seventy (70) days prior to or following any state wide election (previously it was 56 days).
 - This amended section does not prohibit a local government ballot question from appearing on the regular local election ballot (November of odd numbered years).

- Section 1-16-8 NMSA was amended to provide that a ballot question must be submitted by county clerk to the secretary of state not less than seventy (70) days prior to the election.
- Section 1-24-1 NMSA was amended to create the Special Election Act which governs the conduct of all special elections for school districts.

- Section 1-24-2 NMSA is amended to specify the procedures for adopting a Resolution to issue a Proclamation calling the special election.
- The procedures require that the Proclamation specify:
 - The date of the special election
 - The purpose for the special election
 - The text of any ballot questions to be voted on
 - The date and time of closing the registration books by the county clerk
 - The proclamation must be published beginning not less than sixty-three days before the date of the election once each week for two consecutive weeks.

- Section 1-24-3 NMSA is amended to provide for special election procedures:
 - Require the county clerk to conduct any special election, including voting on a ballot question by mailed ballot.
 - Mailing each voter an absentee ballot.
 - Mailing the ballot to each voter twenty-eight days before the election.
 - Having a return envelope which is postage-paid.

- The costs of conducting a special election shall be paid for by the local government calling for the election.

- Section 22-5-8 NMSA is amended to provide for 4 year terms beginning at a regular local election beginning November 2019.
 - ✓ School board members whose terms expire in February of 2019 will continue to serve until December 2019.
 - ✓ Similarly, school board member terms ending in February of 2021 are extended to December 2021.
 - ✓ The term of office for the school board members elected in November of 2019 begins January 1, 2020.
 - ✓ The term of office for school board members elected in November 2021 begins January 1, 2022.

- Section 10-3-1 NMSA is amended to specify the conditions which cause a vacancy in office:
 - death,
 - removal from office,
 - failure to qualify,
 - expiration of the term of office when no successor has been chosen,
 - when the officer moves from the area from which the officer was elected,
 - absence from the political subdivision for six consecutive months,
 - resignation, or
 - accepting and undertaking to discharge the duties of another incompatible office.

- Section 1-22A-2 NMSA is amended to require campaign reporting of all contributions or expenditures of \$500 or more to the Secretary of State.
- Section 22-18-2 NMSA is amended to provide Bond Election Procedures which include that the election will be held in accordance with the Local Election Act being November of odd numbered years unless a special election is held.

- Section 22-25-5 NMSA is amended to require that the question of imposing a tax under the Public School Capital Improvements Act (SB 9) be held in accordance with the Local Election Act.
- ✓ Means that election will be held in November of odd numbered years, unless held at a special election.

- Section 22-26-5 NMSA is amended to require that the question of imposing a tax under the Public School Buildings Act (HB 33) be held in accordance with the Local Election Act.
- ✓ Means the election will be held in November of odd numbered years, unless held at a special election.

**THE NEW ELECTION LAW, THE PROPERTY
TAX CODE, AND THE SCHOOL DISTRICT
MILL LEVY DATES DO NOT ALIGN**



- The newly passed HB 98 Election Law requirements do not align with the Property Tax Code and School District mill levy dates for imposing and collecting taxes.
- To receive mill levy money in January of 2020 a special election in 2019 will have to be held.
- ✓ Implication: Holding the mill levy election in November, as required by the new election law, rather than February, creates problems for receiving tax money.

BACKGROUND DATES FOR SETTING TAX RATES



- PED must certify the tax rates for school districts to DFA by August 15. (7-37-8)
- DFA includes the school mill levy with other mill levies and ad valorem taxes of other governmental entities and must have a rate setting order to county commissions by September 1 (7-38-33)

- The County Commission then has five days to “issue its written order imposing the tax at the rates set on the net taxable value of property allocated to the appropriate governmental units. (The tax is “imposed” by that order.)
- A copy of this order is then delivered to the county assessor so that the tax can be imposed on the property to be taxed. (7-38-34)

- By October 1 the county assessor prepares a tax schedule showing the amount that will be owed by all taxable property in the County (7-38-35).
- Prior to November 1, the County Treasurer takes the schedule and prepares the individual tax bills. Individual tax bills must be mailed no later than November 1 (7-38-36).

- Taxes are due November 10, with a grace period built in until December 10 (7-38-38), with the time to file for a refund expiring on January 9 (60 days from November 10.)
- Distribution to the governmental entities by the treasurer occurs in January and February.
- For the tax to be collected in November/December and distributed in January or February, the mill levy election has to be held in sufficient time to allow the results to be provided to PED prior to the August 15 deadline, so that it can be included as part of the September County Commission order imposing the tax.

A NOVEMBER MILL LEVY ELECTION CONFLICTS WITH THE PROPERTY TAX CALENDAR

November

December 2015
 S M T W T F S
 1 2 3 4 5
 6 7 8 9 10 11 12
 13 14 15 16 17 18 19
 20 21 22 23 24 25 26
 27 28 29 30 31

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11 Veterans Day	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26 Thanksgiving Day	27	28
29	30	1	2	3	4	5

- Sections 22-25-8 (SB 9) and 22-26-8 (HB 33) were not amended and these sections require that the mill levy “shall be imposed for a specified number of property tax years not exceeding six years *commencing with the property tax year in which the election was held.*”
- The tax is “imposed” in September, so a November election is too late for that property tax year.
- Sections 22-25-4 (SB9) and 22-26-4 (HB33) were not amended, and require that the resolution calling for a mill levy election shall be adopted no later than May 15 *in the year in which the tax is proposed to be imposed.*” The proclamation would need to be 6 months prior to a November election (even assuming that the tax could be imposed in the same year as the November election.)

- A February 2019 election would have to be a special election with the mail in ballot requirement. July 1, 2019 appears to be the de facto final date for a mill election that could result in money being received in 2020.
- A November election will not permit receipt of tax revenue the following year, unlike the situation when the mill levy election occurs in February. An election in February 2019 (if the voters approve) will result in property tax revenue coming to the schools in January or February of 2020. An election in November 2019 will result in the school district not receiving that mill levy revenue until January 2021 leaving a one year gap in revenue for the school district.
- The Election Code should be amended in January 2019 to correct these date problems.

RECOMMENDATIONS

- Eliminate the May 15 deadline for mill levy election proclamations from NMSA § 22-25-4 and 22-26-4
- That date does not work well with a November election— the Proclamation is forgotten months before a November election even takes place.

- Delete the requirement that bond or mill levy elections be held prior to July 1 of the year in which the tax is to be imposed (NMSA §§ 22-25-5, 22-26-5)
- The Property Tax Year is defined as the calendar year. Property tax bills are required to be sent by November 1 of every property tax year. A November election cannot result in property tax being imposed for the year in which the election was held, because tax bills have already gone out. Whether an election could be held in November 2019 to impose a property tax beginning in 2020 is unclear, but because the six year period for a mill levy must begin in the year in which the election was held (NMSA §§22-25-8, 22-26-8), holding the election a year early results in the loss of an entire year's tax revenue. That problem could be eliminated by deleting this requirement.

- Provide a one year period to get elections in cycle without having to pay extra fees.
- School Districts are assessed a fee for the local election fund, and are also responsible for paying all costs of a special election. At least for the first year of the new local election system, a special election will be needed to keep property tax/mill levy revenue flowing for the next year. To avoid penalizing school districts for complying with this new statutory structure, either the “local election fund” assessment should be suspended for the first year or the cost of the special election should be borne by the local election fund.