

THE TRANSITION OF GOVERNANCE IN THE NEW ELECTION CYCLES

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First, There was a Bill

"...Providing for a Single Election Day and Uniform Processes for Certain Local Government Elections; Providing that Certain Ballot Measure Elections That are Held at Times Other Than with Regular Local Elections Only be Conducted by Mailed Ballot...Repealing the School Election Law..."

HB 98, Local Election Act, Effective July 1, 2018



Highlights of the Law

- ❑ All regular local government elections – including votes on local ballot measures – will take place in state-wide general elections in November of odd-numbered years.
NMSA 1978, § 1-22-3.
- ❑ Board member terms that expired on or before June 30, 2020, now expire on December 31, 2019, and those expiring on or after July 1, 2020, but on or before June 30, 2022, now expire on December 31, 2021, when respective successors take office.
Section 172 “Temporary Provision.”



Highlights of the Law

- ❑ Costs of the elections are assessed twice annually at a rate of \$250 per \$1 million based on a “local government’s general fund expenditures for each fiscal year; provided that no assessment shall be made on federal funds received by a local government nor on capital expenditures.” No assessment for local governments with general fund expenditures of less than \$100,000. NMSA 1978 § 1-22-20
- ❑ The counties choose the polling places. NMSA 1978, § 1-3-2.
- ❑ Deadlines for filing campaign contributions reports is amended to track new election dates. NMSA 1978, § 1-22A-3.



Highlights of the Law

- ❑ Any special elections between those general elections must be conducted by mail ballot (and the costs of special election are borne by the district). NMSA 1978 § 1-24-3.
- ❑ No special local government election can be conducted within 70 days before or after any state-wide election. NMSA 1978 § 1-12-71.



In the News

School leaders don't like new election set-up

BY T. S. LAST / JOURNAL STAFF WRITER
Friday, August 24th, 2018 at 12:02am



There's a lot to like about the Local Election Act, a new law that went into effect

Special election to cost APS over \$1 million

BY SHELBY PEREA / JOURNAL STAFF WRITER

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Hobbs School District Superintendent TJ Parks said the rising costs were a surprise.

"I can't remember exactly, but I want to say we have budgeted in the past about \$12,000, but that was in election years," Parks said. "So now we're going to be assessed twice . that's \$17,500 (per year), that's \$35,000 (per election). That's about \$20,000 swing in the negative for us."

Santa Fe schools worried about tech vote after Albuquerque defeat

By Dillon Mullan | dmullan@sfnnewsmedian.com Feb 6, 2019 Updated Feb 7, 2019



Pros and Cons, According to Supporters and Critics

- ❑ Pros:
 - ❑ Higher voter participation in school elections
 - ❑ Greater clarity for voters about voting dates
 - ❑ Fewer elections
- ❑ Cons:
 - ❑ Potential higher election costs for districts, since costs are not actual but an annual assessment based on operational budget
 - ❑ Dilution of school issues on lengthy ballots that include other local entities
 - ❑ Counties, rather than school districts, choosing polling locations
 - ❑ Bond measures and mill levies from prior board election dates that expire before new election dates will require affected districts to either pay to hold special elections (by mail) on these measures, or wait to put such ballot questions on the November 2019 ballot, thereby creating a funding gap



“...a Big Victory for New Mexico voters.”

- ❑ Calling the bill’s passage a “big victory” for voters, the NM Secretary of State, Maggie Toulouse Oliver, supported the new law saying that:
 - ❑ “Holding multiple elections every year is both costly for local governments and exhausting for voters...”
 - ❑ “...we will see increased voter participation in nonpartisan local elections across the state and at significant savings to voters.”



HB 407: A Legislative Fix

- ❑ “Election Laws 50-Year Tune-Up” – Part II (in Committee this week)
 - ❑ Sponsors include the author of HB 98, Daniel Ivey-Soto
 - ❑ Among the many issues being proposed in this bill:
 - Removes of annual assessments on local governments for administration of regular local elections, including relieving districts of the second 2019 assessment payment.
 - Aims to remedy gap in existing bonds & mill levies by creating procedures to delay the mailing of property tax bills where a property tax levy is imposed or renewed in regular 2019 or 2021 election.
 - Clarifies the definition of biennial local government “regular elections,” and “special elections,” where only ballot measures are considered.
 - Clarifies procedures for special elections, conducted by mail ballot.
 - Expands the scope of elected official recall provisions to include elected officials other than school board members, but limits the legal bases for recall.
 - Creates process for voters to challenge an individual’s candidacy at a regular local election by filing a petition in district court after declarations of candidacy are filed.
 - Allows a local school board adjoining a community college district to petition the Higher Education Department to be added to that district.



Concerns About HB 407?

- ❑ With the 2018 being newly implemented, the NM Municipal League has expressed concern that passage of HB 407 will keep local elections unsettled.
- ❑ The NM Attorney General has stated that there could be legal challenges to some of HB 407’s provisions related to voter ID or verification.



Impact on Election of Officers

- ❑ In the past, when board elections were held on the first Tuesday in February, and newly elected members were sworn in on the first working day in March, most boards (pursuant to board policy) reorganized (elected their officers) during the first regular meeting in March.
- ❑ We recommend boards revise their Board Policy to align with the new election cycle, and call for the election of new officers at the first regular board meeting in January.
- ❑ If you have not already revised your policy and will be electing new officers in March 2019, before changing your policy, the 2019-2020 slate of officers' terms will be 10 months until January 2020.
- ❑ If you change the policy before electing new officers, then your existing slate of officers' terms will be extended to 22 months until January 2020.



Impact on Superintendent Evaluation Cycle

- ❑ The Board must evaluate the superintendent at least annually.
- ❑ The law does not prescribe the evaluation cycle.
- ❑ Superintendents have traditionally been evaluated in January and their contracts considered for extension in February.
- ❑ This allowed the veteran board to evaluate the superintendent and vote on the contract extension.
- ❑ If your policy provides for evaluation of the superintendent in January and vote on contract extension in February, newly elected board members will be participating in both.
- ❑ We recommend you review your superintendent evaluation policy and cycle in light of the new election cycle.



Superintendent Evaluation Cycle Considerations

- The evaluation cycle has traditionally not aligned with the fiscal year (contract year) or school year.
- When boards evaluate in January and decide whether to extend the superintendent's contract in February, they do so:
 - Before newly elected board members have had an opportunity to work with the superintendent;
 - Before the superintendent prepares the budget for review and approval by the Board;
 - Before collective bargaining is completed;
 - Before the school year is over;
 - Before graduation; and
 - Before graduation rates are known.



Superintendent Evaluation Cycle Considerations (continued)

- Superintendents are exempt from the reemployment (renewal) and termination (nonrenewal) provisions of the School Personnel Act, which means:
 - The Board does not have to give notice of nonrenewal at least 14 days before the last day of school; and
 - No action is needed to non-renew a Superintendent's contract;
 - If no action is taken, a Superintendent's contract will expire on its own; and
 - If the Board does not renew the Superintendent's contract, no due process is owed.
- As licensed administrators, superintendents are entitled to a contract for a period of one school year, not to exceed three years. NMSA 1978, § 22-10A-21.
- A contract for a period of one school year means it starts July 1, and ends June 30.



Other Practical Considerations for the Board

- ❑ Review and Possibly Revise Policies and Schedules for:
 - ❑ Bond and Tax Levy Election Policies
 - Are they up-to-date? Will you have local criteria for special bond/tax levy elections?
 - ❑ When do your bonds/tax levies expire?



Increasing Voter Participation and Knowledge

- ❑ The state Governmental Conduct Act has provided district officials (including board members) with guidance on the permissible limits of involvement in district ballot measures and board member campaigns.
- ❑ These new local election laws do not change that law.
- ❑ But given the renewed interest in increasing voter participation and knowledge of school ballot measures, what might board members want to consider?



A Refresher: The Governmental Conduct Act and Elections

- ❑ With respect to elections, board members and other district officials must remember that while they retain their First Amendment rights to advocate for candidates or political measures, on their own time with their own resources, the GCA:
 - ❑ Prohibits the use of “publicly funded resources” or other public assets in political campaigns, or for any use other than that authorized by law.
 - ❑ Guarantees that public employees and resources will not be used “to benefit political parties, candidates or officeholders.”
 - ❑ Ensures that public employees are treated fairly, regardless of their support of or opposition to candidates.
 - ❑ Protects public employees from coercion to support any candidate or “cause.”



A Refresher: The Governmental Conduct Act and Elections

- ❑ NMSA 1978, § 10-16-3.1. Prohibited political activities.
- ❑ A public officer or employee is prohibited from:
 - A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose...



A Refresher: The Governmental Conduct Act and Elections

- ❑ NMSA 1978, § 10-16-3.1. Prohibited political activities.
- ❑ A public officer or employee is prohibited from:
 - B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities...



A Refresher: The Governmental Conduct Act and Elections

- ❑ NMSA 1978, § 10-16-3.1. Prohibited political activities.
- ❑ A public officer or employee is prohibited from:
 - C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.



Recent Amendment to Article 5 of the NM Constitution

- ❑ A new State ethics commission was created by constitutional amendment in the 2018 election.
- ❑ The constitutional amendment (New Mexico Amendment 2) passed overwhelmingly (75.18%).
- ❑ Constitutional Amendment 2 read as follows on the ballot:
- ❑ "PROPOSING AN AMENDMENT TO ARTICLE 5 OF THE CONSTITUTION OF NEW MEXICO TO CREATE AN INDEPENDENT STATE ETHICS COMMISSION WITH JURISDICTION TO INVESTIGATE, ADJUDICATE AND ISSUE ADVISORY OPINIONS CONCERNING CIVIL VIOLATIONS OF LAWS GOVERNING ETHICS, STANDARDS OF CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW."
- ❑ Implementation details are being proposed through various 2019 bills.



Is it Time to Be Thinking about the November 2019 Election?

- ❑ Between June 8, 2019 and July 8, 2019 – the Board must approve and provide to the Secretary of State a proclamation that includes: the election date, positions to be filled at the election, date when declarations of candidacy must be filed, and date when declaration of intent to be a write-in candidate must be filed.
- ❑ August 27, 2019 – date to file declaration of candidacy, between 9:00am and 5:00pm.
- ❑ September 3, 2019 - date to file declaration of write-in candidacy, between 9:00am and 5:00pm.
- ❑ November 5, 2019 – Regular Local Election Day.
- ❑ November 15, 2019 – last date for canvassing of election results.



Discussion and Questions



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