Local Election Act Update (HB 407)

Presented by

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* Introduced on January 29, 2019; current (as of 2/22/19) location: **House Judiciary Committee**
* Amends Regular Local Election Act and affects Board Member Elections in 2019
* Amends other laws
  * School District Campaign Reporting Act
  * Special Elections Act
  * School Board Member Recall Act
HB 407

* General Obligation Bonds of School Districts
* Public School Capital Improvements Act
* Public School Buildings Act
* Property Tax Act
* Effective date – immediately upon signing by Governor
Regular Local Elections

- “biennial local election at which local governing body members are elected”
- Held on first Tuesday in November of each odd-numbered year -- November 5, 2019
School District notifies County Clerk of board positions to be filled between 150 days (June 8, 2019) and 120 days (July 8, 2019) of election

School board may propose ballot question (bond or mill levy) to appear on ballot at regular local election by a resolution:
  * Filed with County Clerk of each county in which votes may be cast
  * Not less than 70 days before the election (Tuesday August 27, 2019)
    * Last day to adopt a resolution is Monday August 26, 2019
Regular Local Elections

- County clerk must notify Secretary of State of all positions to be filled no later than 112 days before the election (July 16, 2019)
- Secretary of State issues and files (with the Secretary of State’s Office) the election proclamation (in English and Spanish) 90 days before the election (August 7, 2019) and posts and certifies proclamation with County Clerks
Regular Local Election

* Secretary of State Proclamation specifies:
  * Date of election
  * Positions to be filled on each governing body
  * Executive and judicial positions to be filled
  * Date for filing declarations of candidacy
Regular Local Elections

* **County Clerk** shall:
  * Post entire proclamation on County Clerk’s website after receipt of Secretary of State’s proclamation
  * Publish portions of proclamation relevant to the county on the website and **not less than 75 days (August 22, 2019)** before the election publishes **at least once** in a newspaper of general circulation in the county
Candidates

On the date the election proclamation is filed with the Secretary of State’s office, a candidate for membership on a local school board must be:

- A qualified elector of the state
- Physically residing in the board member district or School District
- Registered to vote in the School District
Regular Local Elections

* Declaration of Candidacy:
  * Must be filed with County Clerk (of county in which candidate resides) **between 9 a.m. and 5 p.m. on 70th day before election** (**August 27, 2019**)
  * Must be delivered for filing with County Clerk (of county in which candidate resides) by eligible candidate or by person acting with written authorization
Declaration of Candidacy, (cont.)

Cannot be amended once filed

False statements in declaration are a 4th degree felony

County Clerk cannot accept for filing from any one individual more than one declaration of candidacy

Can file for a position in more than one local government, but for only one position in the same local government
Write-In Candidates

* Must meet same qualifications as regular candidate
* File declaration with County Clerk between 9 a.m. and 5 p.m. on the 63rd day before the election (September 3, 2019)
* Withdrawal of candidacy must be made in writing no later than 5:00 p.m. on the 60th day before election (September 6, 2019)
* Candidate Qualifications, Challenges
  * Any voter may challenge a candidate's qualifications because the candidate does not meet the requirements for the office by filing a petition in the District Court **not less than 7 days** after date for filing declaration
Regular Local Elections

* Candidate Qualifications, Challenges (cont.)
  * District Court hears within 10 days after filing
  * Appeal to Supreme Court within 5 days after District Court Decision is entered
  * Supreme Court hears “forthwith”
Ballots

- County Clerk determines ballot eligibility and whether candidate is registered to vote in area to be elected to represent; if so,
  - Places candidate on ballot
  - Notifies candidate by 5 p.m. on 60th day before election (September 6, 2019), except write-in candidates
- Ballots include candidates’ names, positions sought, and questions
Regular Local Elections

* Ballots (cont.)
  * Non-partisan
  * Order of names determined by lot or randomization rule
  * Space provided for voter to write in name of one candidate for each position if there is a write-in candidate (name of write-in candidate does not appear on pre-printed ballot)
Regular Local Elections

* Ballot Order:
  * Municipal elections
  * School board elections
  * Community college district elections
  * Special district elections
Ballot Order (cont.)

And in the order prescribed by the Secretary of State:

- County questions
- Local government questions (Bond and Mill Levy Questions)
- Other ballot questions
Regular Local Elections

* Board Member Positions
* At-Large Positions
  * Same Length of Time
    * “Position One”, “Position Two”, etc.
  * Different Lengths of time
    * Shorter length of time first
    * Each listed with “for a term expiring”
Bond and Mill Levy Questions

School Board files with County Clerk(s) a resolution proposing a ballot question not less than 70 days before the regular local election (August 27, 2019)

County Clerk certifies the ballot question to the Secretary of State not less than 67 days before the regular local election (August 30, 2019)
Bond and Mill Levy Questions (cont.)

- Permitted if sufficient space on a single page ballot
- If not, questions included in order received by County Clerk
- Exclusion of question from one county’s ballot excludes question from ballot in other counties
Bond and Mill Levy Questions (cont.)

- Local government question requiring second ballot page permitted if local government pays additional cost of second page
- If more than one local government question included in or on second page, then cost split among them in multi-county jurisdictions
Regular Local Elections

* Publication of Proclamation
  * Listing name of candidates for each office and questions appearing on ballot in that county issued and published by County Clerk
  * Made in newspaper of general circulation in county once each week for two successive weeks, with last publication being made within 12 (October 24, 2019) days but not later than 5 days (October 31, 2019) before election
  * Shall conform to provisions of federal Voting Rights Act of 1965, as amended
Regular Local Elections

* Absentee Voting
  * County Clerk responsible
  * Procedures per statute
Regular Local Elections

* Canvassing
  * Canvassing board is **Board of County Commissioners, which:**
    * Canvasses returns within 10 days after election, canvassing board, and
    * Issues canvass and sends copy of certified results to: each local governing body receiving votes; Secretary of State; County Clerk; and State canvassing board, if results are for candidates or questions of more than one county
Terms of Office

- Begin **January 1, 2020** following election
- Oath of office must be taken before entering upon duties
- Continue to serve until successor is elected and qualified
Costs of Election

- Election fund created to:
  - Pay costs of conducting and administering required statewide elections
  - Reimburse counties for costs of conducting and administering required statewide elections
  - Pay administrative costs of Secretary of State for administering required elections and administering the election fund
  - Carry out all other specified provisions of the Election Code not otherwise covered by another fund
Costs of Election (cont.)

Source of fund:

- Money appropriated by the legislature
- Grants received by the Secretary of State

If fund balance insufficient to cover election costs, Secretary of State may apply to State Board of Finance for emergency grant
After July 1, 2019, statutes requiring annual assessment no longer apply

* Assessment based on general fund expenditures for each fiscal year
* Annual assessment equal to $250 per $1,000,000 of general fund expenditures

* January 2019 assessment (first 1/2 of annual assessment) past due
School District Campaign Reporting Act

- Definition of “covered office” includes school board member
- Receipt of contributions or expenditures of more than $1,000 must be reported
School Board Member Recall Elections

- “Local School Board Member Recall Act” is now “Recall Act”
- Recall election shall be **no later than 90 days after** County Clerk’s determination that sufficient signatures have been submitted (but not within time prohibited)
- Recall elections conducted and canvassed pursuant to Local Election Act
School Board Member Recall Elections

- Person collecting petition signatures (a Canvasser) need not be registered voter in the School District
- Petitions must be filed with each County Clerk in multi-county Districts and include specific charge which constitutes misfeasance, malfeasance or violation of oath of office
- District Court determines if sufficient facts alleged to support recall after County Clerk verifies signatures and that number is 33.3% of all voters who voted for all candidates for position occupied by named official at last election where official elected.
Limitations on Recall Elections

- Grounds for recall must have occurred during current term of office
- No more than one petition may be submitted during same term of office to which board member was elected
- Election cannot be conducted later than 180 days (July 4) from end of board member’s term
- Only Petitioner or board member can appeal District Court’s decision on sufficiency of petition
If recall proceeds, election is held **not later than 90 days** after County Clerk determines sufficiency of number of verified signatures (which could result in recall election being held on same day as a statewide election or a regular local election)

School District must pre-pay or make arrangements with County Clerk to pay estimated costs of election
An election at which only ballot questions are considered and held at a time other than a statewide election

All special local elections conducted absentee – mail only

May not be held within 70 days prior to (Tuesday August 27, 2019) or following (Tuesday January 14, 2020) a statewide election (primary, general, special statewide or regular local election)
Board adopts, by resolution, public proclamation calling special election, which specifies:

- Date of special election
- Purpose of special election
- Text of any questions to be voted on
- Date and time of closing of registration books by County Clerk
Special Local Elections

- **Board** files proclamation with County Clerk in each county within boundaries of School District **no later than 70 days prior to date for special election**

- **County Clerk** certifies the ballot question to the Secretary of State **not less than 67 days before the special election**

- **County Clerk** posts and publishes proclamation once each week for two consecutive weeks in a newspaper of general circulation within School District boundaries beginning **no later than 67 days and no less than 63 days before election**

- If boundaries include more than one county, County Clerks may jointly publish proclamation
Special Local Elections

- Posting and publication shall also inform public
- Special election conducted by mailed ballot
- Date ballots will be mailed
- Last date to register to vote or to update an existing registration
* **Publication**
  
  * **County Clerk** shall publish proclamation once each week for 2 consecutive weeks in newspaper of general circulation in School District not less than 63 days before election
Special Local Elections

* Conduct
  * **County Clerk** conducts special election by mailed ballot
  * **County Clerk** sends each voter an absentee ballot and statement that there will be no polling place for election
    * Ballots mailed on 28\textsuperscript{th} day before election or as soon as practicable thereafter
    * Mailed ballots used exclusively for voting in special elections on ballot question(s), including a recall election
Special Local Elections

* Completed official mailing envelopes accepted until 7:00 p.m. on election day
County Clerk appoints election boards for special elections to:

- Tally votes (in presence of County Clerk and any other person who may desire to be present)
- Replace ballots in ballot boxes or containers
- Certify results of special election for county canvassing report
Costs

* When Secretary of State issues proclamation, state pays costs of special election
* When School District issues proclamation, School District must deposit estimated actual costs associated with election no later than 49 days before special election, unless School District made appropriate arrangements with County Clerk by means of written MOU
Special Local Elections

Costs

- Multiple local public bodies jointly conducting special local election may post pro rata share of estimated actual cost
- County Clerk may refuse to print or mail ballots if estimated actual cost not deposited no later than 49 days before special election and no appropriate arrangement by MOU
Special Local Elections

* County Clerk sends bill and accounting of expenses to School District **within 60 days** of special election
* Any balance must be paid **within 90 days** of special election
* Bond questions can be submitted to voters at a regular local election or at a special election
* Voters no longer permitted to petition for same bond question six months after failed election
Bond Elections

* May have more than one bond question on a ballot
* If at a special election, will be conducted by mail ballot
No later than July 15, 2019, School District files resolution with County Clerk and local government division of DFA calling for imposition or renewal of a mill levy and stating intent to place property tax question on November regular local election ballot

DFA sets 2 property tax rates – one assuming levy is approved and another assuming it is not approved

After regular local election, County Treasurer sends tax bills with appropriate rate; property taxes are due on December 6
Board adopts resolution to impose an SB9 or HB33 tax
Resolution must indicate whether question will appear on regular local election ballot or specify date of special election
Eliminated May 15 resolution deadline
Eliminated “commencing with the property tax year in which the election was held”
Cuddy & McCarthy, LLP and NMSBA Websites

* Declaration of Candidacy Form
* 2019 Regular Local Election Calendar
* 2019 Special Local Election Calendar
Questions?

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