



**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis: Section 1(A) of HB 428 would enact a new statute that would allow an incorporated or urban county, which has adopted a charter, to establish annual salaries “for some or all of its elected and appointed officers” not to exceed ninety-five thousand dollars per year. Section 1(B) of the bill would permit an incorporated or urban county to include in its charter a list of officers to be elected in that county. At a minimum the county must elect (1) a county commission or county council with no fewer than five members; (2) a county clerk; and (3) a county sheriff.

**FISCAL IMPLICATIONS**

None for this office.

**SIGNIFICANT ISSUES**

The New Mexico Constitution, Article 10, Section 4 allows a county of at least fifty thousand inhabitants to frame a charter for its own government. It further provides that the charter shall include the officers of the county and their compensation. N.M. Const. Art. 10, § 5 defines “incorporated counties” to include any county that “is less than one hundred forty-four square miles” and has a population of ten thousand or more – a definition for which only Los Alamos County qualifies. N.M Const. Art. 10, § 10 defines “urban counties” to include any county that is “less than one thousand five hundred square miles” and has a population of three hundred thousand or more – presently that definition only applies to Bernalillo County, but two other counties are small enough in geographical area to qualify at some point in the future, if their populations expand to the specified threshold. N.M Const. Art. 10, § 11 defines a “single urban government” to include a county that is less than one thousand five hundred square miles and has a population of three hundred thousand or more. Each of these sections of Article 10 provide for the county to have a charter which shall designate officers who shall be elected. Therefore if a county has at least 50,000 inhabitants, it can frame its charter.

HB 428, Section 1(A): The bill would apply to any county having a charter and qualifying as either an incorporated or urban county. Section 1(A) of the bill would, under current population levels, permit two counties – Los Alamos and Bernalillo – to increase their officers’ salaries up to \$95,000.00.

HB 428 appears to be intended to provide incorporated and urban counties the ability to attract more skilled, experienced county officials by offering annual salaries up to ninety-five thousand dollars. The first sentence of Section 1(A) acknowledges that salaries have been established for both Class A counties in NMSA 1978, § 4-44-4 and for Class H counties in NMSA § 4-44-14 (adjacent statutes designate counties by letter, e.g. “A” or “H,” based on factors such as population and real property valuation, *see* NMSA 1978, § 4-44-1, or geographic area, *id.* § 4-44-3).

There is no indication that those two statutes would be amended, although the bill makes clear that its provisions would apply “notwithstanding” Sections 4-44-4 and 4-44-14.

Section 4-44-4 provides mandatory maximum salaries for Class A county elected officials significantly less than the ninety-five thousand dollars cap proposed by this bill. The statute states: “The annual salaries of elected officers of class A counties **shall not exceed** [emphasis added]

- A. county commissioners, \$34,005. each
- B. treasurer \$75,327.
- C. assessor \$75,327.
- D. sheriff \$78,555.
- E. county clerk \$75,327.
- F. probate judge, \$33,143.

Similarly, Section 4-44-14 sets a maximum for salaries of certain listed elected or appointed county officers for H class stating in subsection A: “officers elected or appointed in a county of the H class **shall receive no more than** [emphasis added] the following annual salaries.” The designated salaries include:

- (1) county commissioners - \$13,777.
- (2) treasurer - \$6,889.
- (3) assessor - \$6,889.
- (4) sheriff - \$6,889.
- (5) county clerk - \$6,889.
- (6) probate judge - \$4,031.

As both Class A counties (Bernalillo) and Class H counties (Los Alamos) are currently subject to statutory limits on the salaries they may pay to their elected county officials which are far below the limits set forth in HB 428, the Legislature may wish to consider a more explicit amendment to Sections 4-44-4 and 4-44-14 (the existing, lower salary limits) rather than just relying on the “notwithstanding” language of the bill.

In addition, the bill provides no definition or explanation as to which officials are included in the grouping of “appointed officers”. It would be helpful to define which officers could be “appointed” when considering the \$95,000.00 potential allocation.

HB 428, Section 1(B): Subsection B allows counties with charters to designate in their charter the officials that are to be elected in that county, which at a minimum must include a county commission/county council, county clerk and a county sheriff. However, NMSA 1978, § 4-44-36 allows certain categories of county to abolish the office of county clerk. If any of the counties within the coverage of Section 4-44-36 had a charter, subsection B would be in conflict with

Section 4-44-36 as the county could determine not to provide for the office of county clerk under that statute. The Legislature may wish to consider a more explicit amendment to Section 4-44-36 to harmonize it with Section 1(B) of HB 428.

**PERFORMANCE IMPLICATIONS:**

None for this office.

**ADMINISTRATIVE IMPLICATIONS:**

None for this office.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:**

N/A

**TECHNICAL ISSUES:**

See above discussion.

**OTHER SUBSTANTIVE ISSUES:**

See above discussion.

**ALTERNATIVES:**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:**

Status quo.

**AMENDMENTS**

N/A