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FISCAL IMPACT REPORT

SPONSOR Trujillo, L./Ivey-Soto ORIGINAL DATE 2/03/2020
 LAST UPDATED 2/17/2020 HB 229/aHSEIC/aHJC/ec
 SHORT TITLE Election Laws Cleanup SB _____
 ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$5.0		\$5.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HM8, SB134, HJR8

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Secretary of State (SOS)
 Office of the Attorney General (NMAG)
 Taxation and Revenue Department (TRD)

No Response Received

Administrative Office of the Courts (AOC)
 County Clerks Affiliate

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 229 amends the requirements for the form on the ballot mailing envelope by adding:

- a statement attesting that the person executing the form is the voter identified on the envelope; and
- a notice stating that the only people lawfully authorized to mail or deliver the ballot to the county clerk are the voter, voter's immediate family or voter's caregiver.

Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee amendment to House Bill 229 makes several nonsubstantive modifications that correct and clarify the bill's provisions, and:

- changes the time frame for redistricting by local public bodies whose officers are elected in a regular local election.
- changes the time for registering to vote at the county clerk's office during special elections to close of business on the day before the election.
- requires that government-issued identification or other acceptable documentation provided for same day voting contain an address that matches the address on the certificate of registration.
- reinstates the requirement that the form executed by a voter on the reverse of a ballot mailing envelope identify the voter;
- adds a temporary provision directing the Compilation Commission to rename tables of contents and headings in Chapter 2, Article 21 NMSA 1978 (relating to the Legislative Caucus Committee); and
- repeals a provision of the Watershed District Act that requires votes on the creation of a district to be counted in accordance with the Local Election Act.

Synopsis of Original Bill

House Bill 229 provides clarification and makes technical changes to the Election Code and related statutes governing elections in the state. Notable changes include:

Section 1 amends the Precinct Boundary Adjustment Act to require the Legislature to redistrict federal representative districts, each chamber of the Legislature, and other state districts between the first day of July and the last day in October of the calendar year in which the results of a federal decennial census are received. The bill imposes the same time frame for local public bodies subject to redistricting whose officers are elected at a time other than the regular local election and requires local public bodies whose officers are elected in the regular local election to create or redraw districts between May 1 and October 31 of the year in which the census results are received.

Section 2 amends the Election Code's requirements for same day voter registration to allow individuals to register to vote in special elections until 5:00 PM on Election Day and clarifies the requirements for voter registration identification necessary to vote or update a certificate of registration.

Section 3 allows a county clerk to begin processing certificates of registration and cancellations of voter registrations received but not previously processed the Monday after an election. Current law requires a county clerk to wait to begin processing until 35 days after an election.

Sections 4 and 5 clarify that a full social security number is required to process a new voter registration.

Section 6 makes clear that new voters who register by mail, were informed of the need to comply with federal identification requirements and failed to comply waive the right to secrecy in their mail-in ballots.

Sections 7 and 8 amend the requirements for mailing envelopes used to return mailed ballots to the county clerk. As amended, the mailing envelopes are no longer required to identify the voter, registration address and year of birth.

Section 9 deletes language generally permitting disqualification of a mailed ballot if “required voter identification” is missing, and provides procedures for rejecting a mailed ballot submitted by a voter who was notified of the need to comply with federal identification requirements and failed to comply.

Section 10 requires that a certified voting system count as a vote only the human-readable marks on the ballot made by or at the direction of a voter.

Section 12 removes alternating election cycles for the public regulation commission, the public education commission and county commission. Section 12 also clarifies the format for ballots containing multiple positions for the same nondistricted, nonjudicial office elected at large, and provides that when two or more positions for the same office are to be elected with terms of different lengths, candidates receiving the highest number of votes shall be elected for the longer terms. When the qualifications for one or more at large position is distinct from the others, Section 12 provides that the same statutory rules for districted, nonjudicial offices apply.

Sections 13 describes when paper ballots not tabulated by an electronic vote tabulator and ballots with write-in votes shall be transferred to and tallied by the absent voter election board or county canvass election board.

Section 14 requires the county clerk to appoint a county canvass election board to conduct a machine-tabulation or hand-tally of specified ballots.

Section 15 increases the time the secretary of state has to approve or disapprove a draft referendum petition from ten days to thirty days after the draft is submitted for review.

Section 16 increases the time the Secretary of State has to determine the sufficiency of a complete referendum petition from fifteen days to thirty days after it is filed with SOS.

Sections 18 and 19 delete provisions for staggering the terms of district court and metropolitan court judges.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

SOS states that the bill's changes to the voter identification requirements for registration will require SOS to update the voter registration applications in English and Spanish. SOS will need to redesign ballot mailing envelopes in response to the bill's changes. As a result, SOS anticipates it will incur \$5,000 in additional costs.

SIGNIFICANT ISSUES

SOS states that the requirement that a ballot mailing envelope identify the voter, which is in current law and was reinstated in the HGEIC amendments, will help county clerks and voters identify absentee ballots mailed and returned and is essential for uniform administration of elections.

SOS considers HB229's amendments to the Election Code to be mandatory and necessary to effect the efficient administration and conduct of elections. Each section of the bill contributes to the necessary clean-up that must be completed by the upcoming primary election on June 2, 2020. All the bill's amendments stem from actual experiences the county clerks and SOS navigated during the last election cycle or are currently litigating. The changes are non-partisan and provide the needed clarity for SOS to efficiently and uniformly administer all publicly funded elections held in New Mexico.

In particular, SOS notes:

- Section 3, which allows county clerks to finish processing new or updated voter registrations sooner after the election, will help timely process voter registrations received during applicable run-off elections, such the City of Albuquerque's regular local election run-off in November 2019.

- Section 6, which requires that certain voters who fail to meet federal requirements for identification be notified that they waive the right to secrecy in their mailed ballots, is necessary to ensure the affected voters are fully informed.

- Section 8, which removes the requirements that a voter's identity, registration address and year of birth be included on ballot mailing envelopes and that permit disqualification of a mailed ballot if required voter identification is missing, is intended to address an issue raised in the pending case of *Republican Party of New Mexico v. Oliver*, No. D-307-CV-2019-03001. With the amendments, a mailed ballot can be rejected only if the voter's signature is missing from the mailing envelope or the voter failed to comply with federal identification requirements.

- Section 10, which requires that only a "human-readable mark" on a ballot be counted as a vote, is intended to distinguish a mark made directly by a voter on a paper ballot from one made with technology enabling the voter to mark a ballot electronically.
- Section 12, which the requirement that positions on the public regulation commission, public education commission and county commissions appear on the ballot in alternating election cycles, is needed to comply with the New Mexico Supreme Court's decision in *State of New Mexico ex rel. Sugg v. Oliver*, No. S-1-SC-37723 (Dec. 19, 2019). The alternating election cycle requirement was added to the Election Code last year by HB407, and required that some officers' terms be lengthened to properly implement the requirement. The Supreme Court determined that the terms could not be extended

without violating the state constitution. Section 12 restores the affected positions to the ballots on which they appeared prior to HB407's enactment.

- Sections 13 and 14, which authorize county clerks to appoint county canvass election boards to tabulate votes on specified ballots, will ensure the uniform processing of uncounted ballots on or before election night.

- Sections 15 and 16, which provide SOS with more time to review referendum petitions, are necessary after the influx of referendum petition applications SOS received following the 2019 legislative session. Until then, the last time SOS had received a referendum petition application was 2016. In 2019, there were almost 60 referendum petitions filed between March and July 2019. Current law provides a response time of ten days. The SOS is required to research, analyze and consult with the attorney general on each referendum petition submitted during this extremely short time frame. HB229 increases the time for this process to thirty days, which is much more manageable.

Like SOS, NMAG notes that HB229 would resolve the dispute pending in *Republican Party of New Mexico. v. Oliver*. NMAG explains that the case concerns a dispute over whether the Election Code requires absentee ballots to be automatically rejected if they are missing correct voter identification information on the outside mailing envelope. Section 9 of the bill would clarify that an absentee ballot should only be automatically rejected when it lacks voter identification required by federal law when that voter ID was not provided at registration. Sections 6-8 of the bill amend the Election Code to clarify related provisions and align those provisions with SOS's position asserted in *Republican Party of New Mexico. v. Oliver*.

ADMINISTRATIVE IMPLICATIONS

SOS states that the HGEIC amendments to HB229's provisions for identification produced by voters seeking to register immediately before voting will require significant voter outreach and education to ensure understanding of requirements and avoid confusion and the possibility of delay at the polling place. Registration and voting will be prohibited without required physical identification.

TRD refers to Section 5 of the bill, which requires that certificates of registration completed electronically through the Motor Vehicle Division (MVD) include the applicant's full social security number and be transmitted by a secured electronic submission to SOS for delivery to the appropriate county clerk. TRD states that MVD is already collecting and transmitting this data to SOS and, for Real ID compliant licenses, has been sending full social security numbers since the beginning. For standard licenses, MVD started capturing and sending full social security numbers in December 2019.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

- HM 8 - Redistricting Task Force

- SB 134 - Study Independent Redistricting Commission

- HJR 8 - Terms of Non-Statewide Elected Officers, CA

OTHER SUBSTANTIVE ISSUES

Section 4's amendment to Section 1-4-11(E) NMSA 1978 is confusing. Section 1-4-11(C), (D) currently requires the county clerk to reject a certificate of registration that does not contain (1) certain specified information or (2) a social security number *and the county clerk is unable to ascertain the social security number from other sources*. Subsection E, as amended, provides that if a county clerk rejects a certificate because the required information is not provided or the county clerk cannot ascertain the voter's social security number, the county clerk will include a "notation in the voter file, indicating that the voter *shall provide the full social security number prior to receiving a ballot and, if not*, may only vote on a provisional ballot" (language added by HB 229 in italics). The language added by the bill may cause confusion in light of Section 1-4-11's requirement that the county clerk attempt to ascertain a missing social security number from the specified sources. In particular, the added language conflicts with the last sentence of Subsection E, which provides that the provisional ballot shall be counted "once the required information is provided or the voter's social security number is ascertained." One way to address this issue would be to remove the language in Subsections D and E requiring the county clerk to ascertain the social security number, remove the language italicized above, and change the last sentence of Subsection E so that it states "The provisional ballot shall be counted once the required information or voter's full social security number is provided."

Section 12 adds Section 1-10-8(E)(3) addressing two or more positions for the same office to be elected at large with terms of different lengths of time. It provides that the "candidates receiving the highest number of votes shall be elected for the greater length of time" and the "candidates receiving the next highest number of votes shall be elected for the shorter period of time." As drafted, the intent of this provision is clear when there are two positions for the same office, but is less clear when there is a tie vote, there are three or more positions for the same office, or if, for some reason, two or more of the positions have terms with the same length.

NMAG refers to Section 10's requirement that a voting system count only "human-readable" marks on a ballot. It is not clear what the term "human-readable" is intended to mean. Presumably, a human could read any mark on a ballot, whether it was made by a person using a pen or electronically. NMAG suggests the term be clarified to avoid any disputes over its meaning.

NMAG also notes that Section 13 and 14, which require county clerks to appoint a county canvass election board, present issues regarding the composition and role of the boards, such as the minimum or maximum size, political party affiliations and other membership conditions or restrictions, and whether the board is purely advisory or is overseen or accountable to anyone other than the county clerk.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

SOS is concerned that, without guidance from the Legislature, SOS will need to make policy decisions regarding the issues addressed by HB229 for the upcoming primary and general election, which may result in litigation by those who disagree with SOS's decisions.