

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

ORIGINAL DATE 3/14/21

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Election Changes SB CS/CS/48/SRCS/SJCS

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$500.0	\$1,000.0	\$1,500.0	Recurring	Election Fund/General Fund
		\$33.0	\$0	\$33.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to

HB74, HB79, HB231, HB351, SB4, SB14, SB100 SB160, SB235, SB254, SB266, SB298, SB304, SB336, SB412

Conflicts with

HB79, HB82, HB231, HB272, HB351, SB4, SB14, SB17, SB100, SB160, SB254, SB298,

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for the Senate Rules Committee substitute for Senate Bill 48 updates and clarifies provisions throughout the Election Code, including the Primary Election Law and Voter Action Act, to make them consistent with revisions to the election laws enacted in 2019 and 2020 (Laws 2019, Chapter 212, Laws 2020, Chapter 9, Laws 2020, Chapter 4 (1st Special Session)) and to reflect the amendments to Article XI of the New Mexico

Constitution approved by voters in the 2020 general election, which replace the current elected membership of the Public Regulation Commission with three members appointed by the governor with the consent of the Senate.

The bill also amends the Election Code to

- Require election-related organizations to register with SOS 90 days before a regular statewide election or 63 days before a special election or an election to fill a vacancy in the U.S. House of Representatives.
- With respect to SOS’s duty to approve forms used in elections, provide that if the Election Code requires and prescribes a form, SOS must issue or approve the prescribed form in the Election Code. If the Election Code simply requires a form, SOS must issue and approve the form consistent with the Election Code.
- Require SOS to maintain an election security program within the Bureau of Elections. The program is responsible for advising SOS, county clerks, and the Voting System Certification Committee regarding voting system and cybersecurity requirements and ensuring their implementation. Documents and communications related to election security are exempted from disclosure under the Inspection of Public Records Act.
- Amend provisions for the establishment of voter convenience centers to allow a board of county commissioners to exempt a mail ballot election precinct from operating as voter convenience center or being part of a consolidated precinct and to remove the current law’s requirement the county board of commissioners consider input from local public bodies in the county regarding voter convenience center locations.
- Amend the requirements for maintaining and reconciling a statewide voter registration list by requiring SOS to develop a program for county clerks to investigate and reconcile information received from SOS and, based on that information, identify voters who are eligible for cancellation from the voter registration list.
- Add to the existing reasons requiring the county clerk to cancel a certificate of registration a voter who voted in another state requiring residence in that state and a voter who obtained a driver’s license or identification card in another state requiring residence in that state.
- In Sections 8 and 9, repeal Section 1-4-5.7 NMSA 1978, which provides for registration and voting locations prior to voting, and enacts a new Section 1-4-5.7. In particular,
 - Section 9 enacts a new Section 1-4-5.7, which reorganizes the provisions of the existing section and adds provisions allowing a qualified electors to register or update their registrations at the county clerk’s office or an alternate voting location near the clerk’s office the day before an election and until 7 p.m. on election day; requiring a county clerk to post the location of election day voting locations where electors may register or update their registrations immediately before voting; requiring election boards at election day voting locations that do not allow registration prior to voting to inform voters of voting locations where election day registration is permitted; allowing voters to register or update their registrations at the county clerk’s office during a special election from 28 days before the election

through 7 p.m. on election day; and expands the existing forms of identification needed to register or update a registration prior to voting.

- Section 9 enacts a new Section 1-4-5.7, effective July 1, 2025, similar to the Section 1-4-5.7 enacted in Section 9, but allows voters to register or update their registrations at alternate voting locations open on election day and at the county clerk's office the day before election day. Section 10 also adds mobile alternative voting locations to locations where voters may register or update their registrations immediately before voting and removes the requirements for posting notice of alternate voting locations and informing voters of voting locations that allow registration on election day.
- Require SOS to notify the appropriate county clerk when a person applying for or renewing a driver's license provides an address different from the existing address on the person's voter registration and, depending on whether the change of residence is in the same county as the existing address, requires the county clerk to correct the official voter list or process the change as a transferred registration.
- Allow registration books to be re-opened and county clerks to begin processing voter registrations the Monday after an election and no later than the first business day following approval of the county canvass report.
- Require transmission of the certificate of registration electronically signed by a person at a Motor Vehicle Division (MVD) office, along with other available images of the voter's signature in MVD's records, to SOS for purposes of building a database of signatures.
- Require SOS and TRD to develop, by July 1, 2023, a procedure for importing lists of eligible unregistered persons with a driver's license or state-issued identification card into the voter registration electronic management system prior to an election.
- Revise the procedures for processing mailed ballot applications to provide an application is timely if received by the county clerk at least 14 days prior to election day, specific procedures to be followed by county clerks when an application indicates the mailed ballot is to be delivered to an address other than that listed on the voter's registration certificate and when a mailed ballot is rejected, and applications may be made only through SOS's official web portal or on the official paper form sent to the voter by the county clerk.
- Revise the requirements for official mailing envelopes used with absentee ballots, including information on the envelopes provided by the voter and procedures for returning the official mailing envelope in person to locations supervised by an election official or county employee or depositing the envelope in an unsupervised secured container.
- Detail the process for county clerks' review of absentee ballots mailed to their offices, including tabulating the number of late ballots and verifying that the official mailing envelope has been signed and the last four digits of the social security number match the voter record, and procedures for rejecting ballots with noncompliant official mailing envelopes, including notice to the voter allowing the voter to cure the missing information and providing that the voter may appeal a rejected ballot after the county canvass report has been approved.

- Revise the absent voter election board’s procedures for handling mailed ballots after verification by the county clerk, including rejection of ballots that fail to comply with federal identification requirements, prescribe the working hours for the board, and add procedures for securing the room or facility where uncounted ballots are locked overnight if the absent voter election board does not complete its work by 11 p.m. on election night. Those procedures require a law enforcement officer to be present for the overnight watch until the return of the board. If a law enforcement officer is not available, the county clerk or chief deputy clerk is required to remain on site and allow any challenger or observer to remain until the return of the board.
- Prescribe deadlines for submitting applications for military-overseas ballots depending on whether a voter provides information permitting secured electronic delivery of the ballot.
- Add procedures to the Intimate Partner Violence Survivor Suffrage Act for obtaining a replacement ballot.
- Change the time when a vacancy occurs before a general election for purposes of the procedures for filling vacancies on the ballot from 70 or more days before the general election to 90 or more days and require that appointments to fill vacancies be made no later than the 70th day before a general election.
- Revise provisions specifying the ballots on which elected county offices and the office of district attorney appear and establish ballot procedures applicable when officers are elected at large.
- Add a new section to Article 11 of the Election Code, which governs notices, preparation for elections and election supplies, requiring SOS, 50 days before each statewide election, to mail each voter a notice of election that includes information listed in the section.
- Specify procedures for handling paper ballots that have not been tabulated by the electronic vote tabulator and machine-tabulated ballots with write-in votes transmitted by the election judges to the county clerk.
- Require the county clerk to appoint an election board to conduct a machine-tabulation or hand-tally of paper and absentee ballots not previously tabulated, qualified provisional ballots, and ballots with write-in votes not previously counted.
- Specify the information to be included in a county canvass report prepared by the county clerk and reviewed by the county canvassing board.
- Modify the requirements for a court order granting a candidate’s petition to impound ballots to require a finding that good cause exists to conduct an investigation to determine fraudulent or false voting and a cash deposit or surety bond sufficient to cover the costs of each precinct for which impoundment is requested.
- Increase the time within which county clerks must report the results of voting system checks conducted during an audit of vote tabulators from 10 days to 14 days.
- Amend the process for reviewing petitions to order a referendum vote on laws enacted in

the preceding legislative session by increasing the time SOS has to approve or disapprove a draft petition from 10 days to 30 days and to declare the sufficiency or insufficiency of each complete referendum petition from 15 to 30 days.

SB48 also amends the Tax Administration Act to add an exception to the confidentiality afforded information in tax returns, which allows TRD to reveal to SOS taxpayer information required to maintain voter registration records and as otherwise provided in the Election Code.

SB48 states it applies to the procedures for conducting any election occurring on or after the bill's effective date.

Except for Section 9, there is no effective date for SB48 and it is assumed the effective date is 90 days following adjournment of the Legislature. The effective date of Section 9 is July 1, 2025.

FISCAL IMPLICATIONS

SOS anticipates the bill will have the following fiscal impacts:

1. The notice of election required prior to each statewide election. This is expected to have a recurring impact of about \$500,000 for each regular local election, primary election, and general election. By coordinating this effort through SOS, the election fund can be used for this mailer and discounts can be achieved by using a single vendor and bulk mail discounts.
2. Staffing for the election security program. At this time, the program is being funded through 2023 with federal grant money with one FTE and plans to grow to two FTE. After the grant funding runs out, SOS will request an expansion of two permanent FTE from the state budget to continue this critical program.

TRD notes SB48 requires MVD and SOS to work together to create a list of eligible but unregistered voters who have been issued a driver's license or identification card and to have that list imported into the voter registration electronic management system. This will create increased accessibility and convenience for individuals who wish to register to vote at a polling location. TRD states creating an electronic process by which MVD can submit the list of eligible but unregistered voters to SOS will require TRD's Information Technology Division to develop and implement system and interface changes. The estimated time to develop, test and implement these changes is approximately 640 hours, or four months, at an estimate cost of \$33 thousand. TRD believes the implementation date of July 1, 2023, specified in the bill is feasible.

SIGNIFICANT ISSUES

SOS states SB48 represents a unified consensus between SOS and New Mexico Counties' county clerk affiliate regarding the changes needed at this time to modernize and strengthen the Election Code. SOS considers this bill mandatory and necessary for the efficient administration and conduct of elections. The bill's amendments stem from actual experiences election administrators navigated either during the last election cycle or are currently navigating in preparation for upcoming elections. The changes are nonpartisan and provide the needed clarity for election administrators to efficiently and uniformly administer all publicly funded elections held in New Mexico.

In particular, SOS makes the following points regarding SB48:

Same Day Registration

SOS believes, now that same day registration (SDR) has been in practice for a few elections and the county clerks have gained some experience, it is good policy to allow county clerks the discretion to expand the availability of SDR to additional early and election day voting locations, based on their capacity to staff them, while continuing to plan for a full deployment in all voting locations across the state by 2025. These modifications to current law will set the county clerks up for success in terms of the continued rollout of SDR.

Standardized Use of Voter Convenience Centers (VCCs) in All Counties

Since the adoption of VCCs in 2012, a majority of counties have moved away from traditional precincts and have gone to VCCs. SB4, passed during the first emergency legislative session in 2020 to address voting issues identified during the Covid-19 public health emergency, required the use of VCCs in all counties statewide. This proved successful and paved the way toward more widespread use of VCCs. SOS also notes SB48 allows for changing precincts that do not have Internet to all-mail precincts.

Abolishment of Third-Party Absentee Ballot Application Forms

By allowing mailed ballot applications to be made only through SOS's official web portal or on official paper forms provided by the county clerk, SB48 precludes the use of third-party application forms. According to SOS, absentee applications sent from third-party advocacy groups have caused voter confusion and controversy in general elections over the last several years. Third parties have sent applications out based on outdated voter lists and to the same individuals multiple times, and the mailings have included inaccurate or incomplete information. In addition to being confusing to voters, the use of third-party application forms often resulted in county clerks receiving and processing duplicate applications.

Automatic Update of Voter Registration Address from MVD

Under the bill, updated address information provided by a voter to MVD will be transmitted to the SOS, which will notify the county clerk to update the voter registration record. This automated process is expected to streamline voter registration updates completed by the clerk and also improve the accuracy of the voter rolls.

Registration Cancellation Program

The bill's requirement that procedures be implemented for canceling voter registrations county is expected to improve efforts related to voter roll maintenance. The changes allow for data from other states and other agencies to be used to identify voters who have voted in another state, who have obtained a driver's license or ID card in another state or who have taken other action to establish residency in another state.

Referendum Petitions

According to SOS, the bill's provisions giving SOS more time to review referendum petitions are necessary after the influx of referendum petition applications SOS received following the 2019 legislative session. Prior to 2019, 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 10 days. SOS is required to research, analyze and consult with the attorney general on each referendum petition submitted during this extremely short time frame. SB48 increases the time for this process to 30 days, which is more manageable and does

not adversely affect the petitioning process or timely publication of the notice of election on any law subject to a legally sufficient referendum petition.

ADMINISTRATIVE IMPLICATIONS

SOS notes SB48 makes permanent several temporary provisions of SB4, passed in the first special legislative session in 2020 that SOS views as effective from a performance and administrative standpoint. These include allowing clerks to update voter registrations the Monday following an election; absentee voter identification, voter curing, and processing changes; and hours for the absent voter election board and to establish an election board to count provisional ballots, write-in ballots, and other ballots that may not have already been included in the county canvass.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB48 conflicts with:

HB79, which also amends Sections 1-6-4, 1-6-22.1 & 1-15A-8 NMSA 1978

HB82, which also amends Section 7-1-8.8

HB231, which also amends Section 1-3-4

HB272, which also amends Section 7-1-8.8

HB351, which also amends Section 1-9-1

SB4, which also amends Section 1-3-12

SB14, which also amends Sections 1-4-5.8, 1-4-8 & 1-4-47

SB17, which also amends Section 7-1-8.8

SB100, which also amends Section 1-8-2

SB160, which also amends Sections 1-19A-2, 1-19A-4, 1-19A-10 & 1-19A-13

SB254, which also amends Sections 1-8-33 & 1-8-51

SB298, which also amends Sections 1-19A-2, 1-19A-4 & 1-19A-13

TECHNICAL ISSUES

Section 8(B)(3), p. 14, line 15, and Section 9(B), p. 18, line 20, refer to an additional “alternative” voting location. The word “alternative” might be changed to “alternate” to be consistent with other references in those sections and elsewhere in the bill.

BG/al