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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/08  
 LAST UPDATED 2/6/08      HB \_\_\_\_\_

SPONSOR Duran

SHORT TITLE Absentee Voting in Small Precincts      SB 256/aSRC

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB456, Relates to HB191

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Association of County Clerks (ACC)

Attorney General's Office (AGO)

#### No Responses Received From

Secretary of State (SOS)

#### SUMMARY

##### Synopsis of SRC Amendment

The Senate Rules Committee amendment strikes "loses or". In the original bill if a voter lost or did not receive an absentee ballot, the voter can vote on an absentee ballot in the office of the county clerk on election day in lieu of voting on the missing ballot. The amendment no longer specifically references a lost absentee ballot.

##### Synopsis of Original Bill

Senate Bill 256 enacts a new section of the Election Code to provide for the designation of an election precinct as a "mail ballot election precinct" by the Board of County Commissioners upon the request of the County Clerk if the board finds that the precinct has fewer than fifty voters and the nearest polling place for an adjoining precinct is more than thirty miles driving distance from the polling place designated for the precinct in question. The bill would require the County Clerk to notify voters in that precinct that they will be sent an absentee ballot twenty

eight days before the election and that there will be no polling place for the precinct on election day. The voter may “opt out” of receiving an absentee ballot by returning a card to the clerk notifying the clerk that they do not want to receive an absentee ballot.

The clerk must notify voters that a voting system equipped for persons with disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail.

The county clerk must keep a sufficient number of ballots for voters who lose or do not receive an absentee ballot before election day, so that the voter may vote on an absentee ballot in the office of the county clerk on election day in lieu of voting using the “missing” ballot.

The bill also amends current sections of the Election Code governing precinct polling places, to exempt mail ballot election precincts.

### **FISCAL IMPLICATIONS**

The Association of County Clerks expresses concern that this is an unfunded mandate and loss of ballots can become problematic and expensive, as there is potential to under-order ballots to be able to replace lost ballots.

### **SIGNIFICANT ISSUES**

The Attorney General’s Office identified several concerns with mail ballots in New Mexico. First, the legislature has limited its use. See NMSA 1978, Section 1-23-7 “Mail ballot elections shall be used exclusively for voting in those elections specified in Section 1-23-3 and shall not be used in connection with elections at which candidates are nominated for or elected to office.”

Second, the bill could be construed as only requiring the clerk to provide early and election day in-person voting via voting machine to persons with disabilities, and in-person voting via absentee ballot on election day for persons who have lost or who have not received their absentee ballots by mail, and whose ballots are therefore considered to be “missing”. In-person voting by machine on election day does not appear to be available to other voters who “opt-out” of mail-in voting. Not requiring that *all* voters cast their votes by mail, or failing to provide voting machines for *all* voters who do not wish to vote by mail, could result in confusion and litigation.

### **PERFORMANCE IMPLICATIONS**

The bill requires the County Clerks office send registered mail before each election. The Association of County Clerks notes that currently no forms in place to accomplish this and the bill offers no direction as to whose responsibility it is to create these forms ie: notification of no polling place/voter declining to receive mailed ballot. Usual process is SOS creates forms to meet statewide standards.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HB456. Relates to House Bill 191, which provides for automatic mailing of absentee ballots for those voters on a permanent early voting list.

**TECHNICAL ISSUES**

According to the AGO, the requirement that voters be notified that “there will be no polling place for the precinct on election day” is not technically accurate, as certain voters would in fact be allowed to vote in person at the County Clerk’s office on election day.

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

Current law will govern voting in all precincts in New Mexico.

EO/mt