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## FISCAL IMPACT REPORT

**SPONSOR**     Louis/Johnson/Lente/ Allison/Shendo     **ORIGINAL DATE**     02/05/21     **LAST UPDATED**     03/19/21     **HB**     231/aHSEIC/HF1#1/a SRC/ec/aSIRC

**SHORT TITLE**     Native American Polling Place Protection     **SB**     \_\_\_\_\_

**ANALYST**     Nichols

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>SOS reimbursements to county clerks</b>	Indeterminate but likely minimal	Indeterminate but likely minimal	Indeterminate but likely minimal			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act of 2021

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)

Indian Affairs Department (IAD)

### SUMMARY

#### Synopsis of SIRC Amendment

The Senate Indian, Rural and Cultural Affairs Committee amendment to House Bill 231 strikes provisions from earlier amendments and inserts new material stating, if the president, governor, or governing body of the Indian nation, tribe, or pueblo has declared an emergency or invoked emergency powers, a polling place on Indian nation, tribal, or pueblo land shall not be eliminated or consolidated nor shall the days and times of voting be changed without the written agreement of the Indian nation, tribe, or pueblo where the polling place is located.

The amendment also provides, no later than 98 days before a statewide election without a court order or 49 days with a court order, a county clerk must provide an alternate voting or mobile voting location for an Indian nation, tribe, or pueblo. Alternatively, 84 days before a statewide election without a court order or 35 days with a court order, the county clerk must provide an election day polling place to an Indian nation, tribe, or pueblo that does not already have an election day polling place within its boundaries if voters are unable to leave the Indian nation, tribe, or pueblo during the time when voting occurs for a statewide election.

The new material also states the requirement that a polling place be available to all voters in the county is waived if an Indian nation, tribe, or pueblo is inaccessible or the borders are closed.

Synopsis of SRC Amendment

The Senate Rules Committee amendment to House Bill 231 strikes earlier bill provisions and inserts new provisions.

Section 1 adds a new Section 1-3-7.2 to the Election Code which would allow that if a leader of an Indian nation, tribe, or pueblo declares an emergency, a polling place located on an Indian nation, tribal or pueblo land shall not be closed or consolidated with other polling locations without the written agreement of the Indian nation, tribe or pueblo where the polling location is located. It also provides language for an Indian nation, tribe, or pueblo that has not previously requested an early or Election Day polling location to do so in the event of a declared emergency.

Section 2 amends Section 1-3-8 of the Election Code, prohibiting a polling location located on Indian nation, tribal, or pueblo lands without a written agreement from the Indian nation, tribal or pueblo.

Section 3 amends Section 1-6-5.8 of the Election Code, changing the dates when an Indian nation, tribal or pueblo must submit a request to the county clerk for an early voting location from no later than the first Monday in November to “between the second Tuesday in March and the second Tuesday in April” of each odd numbered year.

This bill has an emergency clause which would make it applicable for the anticipated special election in the state’s first congressional district.

SOS notes that if an Indian nation, tribal or pueblo declares an emergency and requests an early or Election Day voting location that had not previously been prepared for, the costs would be reimbursable to county clerks by SOS. While this could increase costs if an emergency is declared, other sections in the Election Code already require reimbursement for costs of polling locations on Indian nation, tribal, or pueblo lands.

Synopsis of HF1 #1 Amendment

House floor #1 amendment to House Bill 231 updates the bill’s summary language to align with the HSEIC amendment, specifying that a polling place on an Indian nation, tribal or pueblo land shall not be “eliminated” or consolidated, rather than shall not be “closed” or consolidated.

The amendment also adds an emergency clause. The bill would become effective immediately upon signature by the governor.

Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee amendment to House Bill 231 changes bill language to specify that a polling place on an Indian nation, tribal or pueblo land shall not be “eliminated” or consolidated, rather than shall not be “closed” or consolidated.

Synopsis of Original Bill

House Bill 231 amends the Election Code to provide protections for Native American voters by specifying that a polling place located on an Indian nation, tribal, or pueblo land cannot be closed or consolidated with other polling locations without the written agreement of the Indian nation, tribe, or pueblo. The bill also requires at least one polling location within an Indian nation, tribe, or pueblo to operate in the event that registered voters are unable to leave the Indian nation, tribe, or pueblo due to public health concerns, regardless of whether voters residing outside the boundaries of the Indian nation, tribe, or pueblo are able to access such polling locations.

The bill also amends the deadline for when an Indian nation, tribe, or pueblo may request an alternative voting site within their boundaries to 100 days before each statewide election.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

**FISCAL IMPLICATIONS**

HB 231 does not contain an appropriation.

The Secretary of State (SOS) does not anticipate any additional costs to carry out the provisions of HB231.

**SIGNIFICANT ISSUES**

SOS notes that HB231 would help to ensure voting protections for Native Americans and encourage voter turnout on Indian nation, tribal, or pueblo lands. The Indian Affairs Department indicates that “requiring tribal polling locations within the [...] boundaries of Indian tribes, nations, and pueblos is the first step to ensuring adequate voting access for tribal community members.”

The bill allows tribal governments to request additional voting locations up to 100 days before a statewide election. Currently, a tribal government must request an alternative polling location no later than the first Monday in November of each odd-numbered year. The bill also requires a polling location to remain open on tribal lands, even if nonresidents from neighboring areas cannot access the polling location. The bill does not provide conditions under which this would happen, but presumably nonresidents could be unable to access a tribal polling location if the tribal government closed its tribal borders to nonresidents, as happened during the Covid-19 pandemic.

Changes to the Election Code in HB231 were also included in Senate Bill 4 from the first special session of 2020. SB4 was a temporary provision that sunset on December 31, 2020.

**ADMINISTRATIVE IMPLICATIONS**

SOS notes that if HB231 passed, providing education on Election Code changes would be essential for county clerks and Native American communities. SOS would use its Native American Voting Task Force to provide education and training on voting changes, as well as to work with tribal governments to carry out new provisions of the Election Code.

## OTHER SUBSTANTIVE ISSUES

Native Americans face many obstacles to voting, both historically and today. A 2020 report by the Native American Rights Fund identified a number of obstacles that Native Americans face in registering to vote and casting their vote, including a lack of traditional mailing addresses, difficulty in meeting voter identification requirements, unequal access to online and in-person registration, denial of voter registration due to previous criminal convictions, physical distance from polling locations, and a lack of registration opportunities at polling places.

Native American voter turnout is often low, in part due to the obstacles mentioned in the Native American Rights Fund report. For example, the *Albuquerque Journal* reported that voter turnout in Native precincts fell by 1 percent in the June 2020 primary election, compared with four years earlier, while overall turnout in the state increased by 8 percent, and turnout in some Native precincts fell by almost 30 percent.

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