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FISCAL IMPACT REPORT

ORIGINAL DATE 2/01/22

SPONSOR SFC LAST UPDATED 2/11/22 HB _____

SHORT TITLE Election Security and Administration SB CS/SB6/ec/aSFI#1

ANALYST Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Clerk Compensation		\$33.0 - \$132.0	\$33.0 - \$132.0	\$66.0 - \$264.0	Recurring	Counties
Board Compensation*		\$2,700.0	\$2,700.0 - \$5,400.0	\$2,700.0 - \$8,100.0	Recurring	General Fund
Prior Notice of Elections*		\$500.0	\$500.0 - \$1,000.0	\$500.0 - \$1,500.0	Recurring	General Fund
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		

(Parenthesis () Indicate Expenditure Decreases)

*These estimated additional operating budget impacts did not change /increase as a result of SFC bill substitutions and instead were added to the table to more accurately reflect the costs of the bill by incorporating additional per-election costs as noted by the SOS.

Relates to/Conflicts with SB8

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)
 Commission of Public Records (CPR)
 Attorney General's Office (NMAG)
 State Land Office (SLO)

No Response Received From

New Mexico Counties
 County Clerk's Association

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor amendment to the Senate Finance Committee substitute for Senate Bill 6 clarifies that persons may serve as messengers only if they would also meet requirements to be a challenger, watcher, or election observer.

The amendment notes a threshold of 16 thousand residents in a political subdivision, rather than 10 thousand, to determine residence requirements for elected members of that subdivision.

The amendment clarifies that, for county clerks performing verification of signature on mailing envelopes, the clerks must also meet requirements for becoming a watcher, challenger, or election observer as defined in the NMSA. Further, relating to mailing envelopes, the amendment clarifies that official mailing envelopes shall not be opened or separated from the inner envelopes until the absent voter election board completes the confirmation of the county clerk's verification process.

Relating to availability of law enforcement on election night, the amendment clarifies that a challenger or watcher, rather than a watcher or observer, may remain present with law enforcement after 11:00 p.m. on election night for overnight watch of ballots when the absent voter election board is not present.

As amended, the bill removes proposed amendments to the Conservancy Act, including amendments to the board of director's membership qualifications, declaration of candidacy requirements and designating of positions for purposes of elections. The amended bill renumbers subsequent sections to align with this removal.

The amendment also adds sections that amend the NMSA relating to special districts. The amendments specifies that a supervisor specifically appointed to fill a vacancy in an elected position, rather than any appointed interim supervisor, shall continue to serve until a successor is elected.

The bill as amended also extends the amount of time that the voter education and elections taskforce may operate and when they shall provide a report of findings, now through December 2023 instead of 2022.

Finally, the Senate Floor amendment removes proposed repeals for the following:

- Sections 73-14-20; 73-14-20.1; 73-14-22; Laws 1975, Chapter 262, Section 3; and Laws 1975, Chapter 262, Section 5 (all relating to the Conservancy Act)
- Laws 1990, Chapter 48, Section 1 (relating to the Uniform Federal Lien Registration Act)

The amendment also adds a repeal for Sections 73-20-23 and 73-20-39, Laws 1957, Chapter 210, Section 22 and Laws 1965, Chapter 137, Section 13 (relating to Soil and Water and Watershed Conservation Districts).

Synopsis of SFCS

The Senate Finance Committee substitute for Senate Bill 6 clarifies elections-related processes

and procedures, amends the election code, and clarifies provisions of other voting-related legislation.

The SFC substitute for SB6 clarifies when the Inspection of Public Records Act should apply to public records relating to elections.

The bill adds definitions related to real-time synchronization of data from voting locations to the office of the county clerk.

The SFC substitute for SB6 creates an election security program within the office of the SOS. The program shall advise on voting system and cybersecurity requirements, conduct assessments, inspections, and incident response related to elections-critical infrastructure, and monitor functionality of voting systems.

The bill requires an election-related organization to register with SOS in advance of elections to fill a vacancy in the U.S. House of Representatives.

The bill also limits the use of forms to include only those forms issued and authorized by the SOS and requires service of process on the SOS for election-related litigation.

The bill changes references of minors to “qualified residents.” Previously, this section limited appointment to two minors, whereas the bill removes the limitation and changes references to minors to instead reference “qualified residents.” The SFC substitute for SB6 also requires that board appointments be eligible to vote, whereas previously up to two minors were allowed to be appointed to the election board by the county clerk. As such, the bill removes other appointment requirements related to minor appointments, such as the requirement to receive parental approval.

The SFC substitute for SB6 also changes how the county clerk may appoint teams of election judges and provides that each team shall have two election judges that shall not belong to the same political party. This section further provides that an election judge cannot have changed party registration in the previous two years if that change makes the judge ineligible to serve on the team.

The bill specifies that identification shown to register to vote must be issued by not just “a” government but a state or federal government and tribal government and removes references to identification issued by an education institution as an acceptable form of identification. The bill also provides that, to register to vote, the name of the qualified elector shall reasonably match the name provided on the certificate of registration.

The election board shall confirm the verification process using a sample of mailing envelopes equal to two percent of mailed ballots requested or twenty mailed ballots, whichever is greater. The bill also provides that the convening of the absent election board shall take place no earlier than 13 days prior to Election Day.

Relating to transmission of ballots, the bill notes that the ballot must be sealed either with a numbered seal or locking device before being transmitted.

The bill gives appropriative authority to the board of county commissioners from the county general fund all funds necessary for the administration of elections.

In the section regarding mayor-appointment of officers, the mayor shall submit names for confirmation and the governing body must confirm that persons are appointive officials of the municipality, no longer to include employees.

The bill adds to the definition of obstructing a polling place to include unlawful possession of alcoholic liquors by election board members while performing their duties on Election Day, which the bill notes would be a petty misdemeanor if committed.

The SFC substitute for SB6 revises election board and messenger compensation to be no less than twice the minimum hourly wage set by federal or state law and provides for board and messenger payment for training and per diem/mileage, to be paid by the SOS either through grant/reimbursement or direct payment process.

The bill also requires training for challengers, watchers, and election observers to be provided by the county clerk and clarifies limitations for appointment or service. In addition, the section includes additional prohibited activities for watchers, challengers, and observers, including photographing ballots or protected information.

The SFC substitute for SB6 requires creation of voter convenience centers and removes language regarding prerequisites for consolidation of the centers. The bill also requires that elected members in political subdivisions with 16 thousand or more residents be a resident of the district, whereas members for subdivisions with fewer than 16 thousand residents may reside at any location in the political subdivision and be elected at large. H class county members are not required to be districted and may reside at any location within the county and be elected at large by the voters of the county.

The bill requires the SOS to develop a program to maintain clean voter rolls and reconcile voter registration lists, effective July 2022. The bill also creates provisions related to same day registration, to be provided during early and Election Day voting at all statewide and special elections. The bill clarifies the documentation that may be used as identification when a voter registers prior to voting.

The SFC substitute for SB6 changes when county clerks shall begin processing voter registrations after an election from 35 days after Election Day to the Monday following an election.

The SFC substitute for SB6 clarifies that a full SSN is required for registration, sets all county board of registration to five members, and requires the Motor Vehicle Department to transmit all signature images to the SOS. Additionally, the bill requires county clerks to verify the last four digits of the registrants' SSN and signature prior to turning mailed ballot envelopes to the absentee election board and requires county clerks to update absentee voter identification requirements to include both the last four digits of the voter's SSN as well as a signature.

Further relating to absentee voting processes, The SFC substitute for SB6 prohibits absentee applications provided by third parties, establishes that applications must be received 14 days prior to election day, requires a notice to be sent to a voter's registration address if a ballot is

mailed to another address, requires a notice to be sent if a ballot is rejected in certain circumstances, requires that an informational notice be sent with all mailed ballots, provides for a violation under the election code for establishing a fax drop box, updates the definition of “immediate family” authorized to return an absentee ballot and clarifies replacement ballot provisions.

If the election board must convene after Election Day, the bill provides for law enforcement supervision for uncounted ballots. In addition, SB6 sets working hours for the board if counting is not complete on election night and provides that absentee application from a federal overseas voter is allowed up to three days prior to Election Day if requesting secure electronic delivery of a ballot.

The SFC substitute for SB6 updates the definition of voter-participant to include qualified residents and provides procedures for which a voter-participants may request a replacement ballot.

The SFC substitute for SB6 removes references to public regulation commissioners as elected officials. SB6 also clarifies the form requirements and timing for filling a vacancy on a primary and general election ballot. Further, SB6 adjusts the nominating petition requirements for minor party candidates; if there are fewer registered voters affiliated with the minor party than signatures required then the signature count shall be the same as for independent candidates.

The bill removes the ability to nominate candidates via a state preprimary convention. The bill creates a new short title, “Primary Election Law,” for Section 1-8-13 NMSA 1978 and removes references to the public regulation commissioners. Additional changes to this section include changing the authority to amend the proclamation to be the SOS rather than the governor and removes the option for county candidates from submitting a pauper’s statement in lieu of paying a \$50 filing fee and instead requires the candidate to gather nominating petitions.

The SFC substitute for SB6 reduces the nomination requirement in the following ways: 1 percent of the total vote of the candidate’s party in the district for the public education commission, 2 percent for judicial candidates, and 3 percent for all other primary candidates.

The bill amends the primary write-in candidate provisions to require nominating petitions containing the same number of signatures required for major party candidates and establishes the same qualification and challenge process for write-in candidates as is provided for non-write-in candidates.

The bill also reduces the amount of time before Election Day that the county clerk is required to certify in writing the ballot for each precinct or county, from 60 days to 56 days.

The SFC substitute for SB6 clarifies that the order of candidates for the same office shall be determined in a randomized way provided by rule. SB6 requires the Secretary of State to notify voters of an election 42 days prior to each election.

The SFC substitute for SB6 opens the process of preparing, inspecting, certifying and sealing electronic voting machines to observation by the public and requires reporting of serial numbers and product specifications of ballot tabulators to the county chairs of each political party on a ballot.

The bill changes the local election assessment fund to the state election fund and provides for deposit into the fund of any federal revenues, grants, and capital outlay funding intended for state executive elections. The bill gives SOS budget adjustment request authority to use money in the state election fund for purposes of conducting elections beyond a 5 percent variance from the approved elections budget that fiscal year.

The SFC substitute for SB6 creates the county election fund within the county treasury, subject to appropriation by the legislature, and provides for reporting requirements. Fund expenditures are determined by the county clerk and used for administration of elections. Remaining balances shall not revert to the county general fund.

The bill provides the contents of a county canvass report and requires that all ballots be tallied by an election board, including absentee ballots received after the board has adjourned. SB6 requires that, if a ballot box is required to be opened at any time during the county or state canvass process, a presiding judge and two election judges or a deputy clerk shall be present.

The bill provides that ballot impoundment costs are determined by the state canvassing board and inspection of such ballots shall occur in the presence of the county clerk or the clerk's agent. The bill also expands post-election voting system audits, to occur after each general election and after every statewide election, including special, local, primary, and general elections.

The SFC substitute for SB6 adds an automatic recount provision to require recounts in cases where there are five or fewer votes between the candidates. SB6 also expands the time for SOS to determine the sufficiency of a referendum petition from 15 to 30 days.

The bill amends the Campaign Reporting Act (CRA) to expand the legislative session prohibited period to include incumbents or candidates for a proscribed office, which includes the state Legislature, governor, lieutenant governor, SOS, attorney general, state auditor, and state treasurer. The section prohibits these and campaign committees or legislative caucus committees from accepting contributions except under defined circumstances. The bill amends the Lobbyist Regulation Act to conform with language related to the proposed amendment to the above CRA prohibited period. These provisions contain an effective date of July 2022.

The SFC substitute for SB6 clarifies the penalties section of the Election Code, making the possession of keys of a secured container by an unauthorized person, unauthorized establishment of a drop box, or unauthorized entering or altering of an absentee register a fourth-degree felony and clarifies "authorized individuals" who are allowed to be within 50 feet of a polling place.

The SFC substitute for SB6 amends sections of the Local Elections Act to change the time for when the regular local election proclamation is issued and the deadline by which it can be amended. Write-in candidates are proposed to have the same filing requirements as named candidates and the deadline to file candidate challenges is extended by a week. A regular local election candidate filling an unexpired term takes office at the same time as all other regular local election candidates on January 1st.

The bill allows the Secretary of State to establish in rule the qualification necessary for issuance of each grade of clerk's certificate, in keeping with standards of accredited educational programs. The bill establishes additional compensation for county clerks based on certification level as follows: Clerk 1 to receive an additional \$500 per year, Clerk 2 to receive an additional

\$1,000 per year, Clerk 3 to receive an additional \$1,000 per year, and Clerk 4 to receive an additional \$1,000 per year. The bill also provides for additional compensation for deputy clerks as follows: Clerk 1 to receive an additional \$500 per year, Clerk 2 to receive an additional \$1,500 per year, Clerk 3 to receive an additional \$2,500 per year, and Clerk 4 to receive an additional \$3,000 per year.

In the bill, amendments to the Special Elections Act clarify when a ballot should not be automatically mailed, including when a voter notification is returned undeliverable and the voter has not communicated an error or updated their registration address or if the voter is a confidential address program participant.

The SFC substitute for SB6 adds the SOS to the Tax Code authorizing the Taxation and Revenue Department to share taxpayer information for voter registration purposes.

The SFC substitute for SB6 removes the oath of office filing fee and limits the SOS from collecting fees for oath of office or notice of appointment to a vacancy in office.

The Confidential Substitute Address Act is amended to include members of an applicant's household and adds language that removes a participant from the confidential address program if the person does not comply with the provisions of the Intimate Partner Violence Survivor Suffrage Act.

The bill provides a temporary provision creating a voter education and elections task force. The task force shall study and provide recommendations on best practices to educate voters on electoral procedures, voter registration, and election safeguards. SB6 provides for reports from the task force be submitted to the governor and Legislature by December 31, 2023.

The bill does not require pre-primary convention designation on the general election proclamation and removes subsequent sections relating to preprimary convention designations and nominating petitions for declaration of candidacy.

The SFC substitute for SB6 provides for a delayed repeal date of July 1, 2023 for the designation of candidates by convention and declaration of pre-primary designation in the NMSA. However, the bill notes that elimination of references to pre-primary convention shall not apply to the 2022 primary election.

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

FISCAL IMPLICATIONS

Senate Floor amendments do not result in changes to the estimated fiscal impact of the bill.

The SOS notes a potential impact to the agency's elections' program following provisions of this bill. The administrative implications are discussed below, but the agency reports that \$300 thousand will be needed to fund the move of 3 current term FTE in the elections program to permanent status, which will help to support personnel functions of the agency.

In addition, the Election Code currently provides for a \$200 cap on election worker compensation on Election Day and bases compensation on federal minimum wage provisions. Proposed language under this bill, as noted by SOS, would create compensation expenses for messengers and increase pay to election workers to twice the minimum wage. The SOS will also be required to establish pay rates for election board members before the primary election. The increased compensation could contribute to retention of election workers, which is needed given national employment shortages, however poll worker costs would more than double if existing poll workers received twice their current rate of pay as well as adding new compensation expenses for messengers. Having reimbursed counties for almost \$1.4 million for election board member compensation in 2020, the SOS notes the potential for a large increase for supporting election personnel costs under this bill, with an estimated cost of paying the election board to be about \$2.7 million per statewide election.

The SOS also estimates a recurring budget impact of \$500 thousand per statewide election due to the prior notice of election required. As noted by SOS, by coordinating this mail out through the office, bulk mail and sorting discounts are expected in comparison to if counties conducted their own mailouts.

In combination, sending prior notices (\$500 thousand) and paying the election board (\$2.7 million) result in an increased recurring cost of \$3.2 million per election, to be absorbed by the Secretary of State's office. This would result in double the cost in even-numbered fiscal years as a result of running more elections than in odd-numbered fiscal years. However, it should be noted that these estimated additional operating budget impacts did not change or increase as a result of SFC bill substitutions and instead were added to the above impact table to more accurately reflect total costs of the provisions of SB6 and incorporate the per-election costs as estimated by the SOS.

The SOS will also be tasked with developing and implementing training activities for challengers, watchers and poll observers, the cost of which is currently unknown.

The bill gives the board of county commissioners the authority to appropriate from the county general fund all funds necessary for the administration of elections. This cost is considered recurring as it provides the board with appropriative authority for elections that occur on an annual or semi-annual basis, so there is an expectation that the authority would result in recurring expenses to the fund. However, actual impacts on the fund are indeterminate at this time.

This bill also requires the Secretary of State and the Legislative Council Service to provide administrative support for the voter education and elections taskforce that will operate through December 31, 2022. The four public members provided for in the bill will be eligible for per-diem and mileage reimbursement in accordance with Sections 10-8-1 through 10-8-8 NMSA 1978 (the Per Diem and Mileage Act). Mileage costs would vary widely and are impossible to estimate. However, based on the rate of \$95 per meeting day for non-salaried public officers, per diem would have a minimal fiscal impact, likely less than \$10 thousand annually. However, the bill does not allocate responsibility of paying this per diem disbursements for appropriate members of the council.

The bill would provide additional compensation to the county and deputy clerks in New Mexico's 33 counties. Compensation depends on the level of certification, but the bill proposes to compensate clerks an additional \$500 per year at the lower end of certification for both county

and deputy clerks, up to \$1,000 for county clerks at the highest certification level and up to \$3,000 to deputy clerks at the highest certification level. These rates result in an increase in recurring personnel costs for county and deputy clerks in the range of \$33 thousand to \$132 thousand per year. The cost of the increases would be absorbed by counties, as clerks are not funded via state funding. These estimates are based off of information provided in the bill and assumes one county and deputy clerk per county. However, New Mexico counties and the County Clerks Association did not provide additional data regarding personnel in each county nor any additional data related to estimated costs for this compensation increase.

SIGNIFICANT ISSUES

The bill gives the SOS additional budget adjustment request authority beyond the 5 percent variance of the approved election budget. The agency's elections program budget in FY22 totaled \$14.5 million. Additional budget adjustment request authority would allow the agency additional flexibility with spending election administration funding, but improper utilization of budget adjustments can result in funding being used for purposes other than what was originally intended as appropriated by the state Legislature.

Related to destruction of records, as noted by the Commission of Public Records:

Passage of this legislation would require that any interested person shall be permitted to be present during the destruction of paper ballots marked by a voter and records related to voting by the county clerk. The State Records Center and Archives does not have the ability to comply with this provision, as the agency does not have the ability to destroy records on-site. State Records and Archives currently contracts with a private company in Albuquerque for the destruction of records and any such destruction takes place at that location. It is unclear whether interested persons would be able observe the destruction.

Further, as noted by the Attorney General's Office, section 2 appears to target federal elections as applied to statewide races, which would include races for the United States Senate, vacancies in the United States House of Representatives, but not races for the state legislature or local government. To the extent the SOS is trying to regulate federal election activity, the section may be subject to challenge as being preempted by federal law.

PERFORMANCE IMPLICATIONS

SOS noted that provisions and amendments to the Election Code proposed in SB6 "stem from actual experiences election administrators navigated either during the last election cycle or are currently navigating in preparation for a Special Election or the Regular Local Election," such as the express need for clarified absentee ballot procedures or improved security practices.

SOS reports that the provisions in SB6, as implemented in the 2020 General Election and special congressional election held in 2021, improved the administration of elections by: 1) allowing for voter registrations to be processed at the conclusion of the election, rather than 35 days later, 2) by requiring the last four digits of the voter's SSN for added security, and 3) by setting hours for the absent voter election board, which should help prevent election workers from becoming overworked.

The agency also reports that updates and amendments to the Election Code proposed in the bill will allow for standardization of voter convenience centers and will abolish third-party absentee ballot forms, which the agency believes will limit confusion and prevent duplication of work for poll workers receiving duplicate or conflicting forms.

In regard to referendum petitions, SOS expressed support for extending the timeframe for review. The agency reported an influx of referendum petitions following the 2019 Legislative Session. SOS had not received a single referendum petition since 2016. Current response time is 15 days. SB6 proposes to double that to 30 days, allowing the agency “a more manageable timeline to approve and certify submitted referendum petitions for circulation.” SOS does not believe that this additional time request will affect the ability of referendum petitions to be submitted or considered for their constitutional purpose or to be put into effect timely for an election.

ADMINISTRATIVE IMPLICATIONS

SOS would be required to implement changes to the Election Code as proposed in SB6, including creating training curriculum for watchers, challengers, and observers, implementing an elections security program, and participating in the voter education and elections taskforce. The agency estimates \$300 thousand to be adequate to cover the costs of moving 3 of the 5 term FTE in the elections program to permanent. It is likely that additional administrative support will be required by the SOS to implement provisions of the bill related to notification of voters, elections security management, and voter education.

There will also be a need for administrative support for the county clerk’s offices, as the bill creates a county election fund that will need to be managed and administered for the intended purposes.

The SOS will also be tasked with developing and implementing training activities for challengers and watchers, a curriculum that is not currently standardized on a national level. The U.S. Elections Assistance Commission provides tips for educating poll watchers that include knowing the existing law before participating, knowing guidelines or rules for poll watcher conduct, having central contact numbers for information on early voting, absentee vote counting and election day inquiries, and having a sign-in/out roster to document the presence of all individuals during post-election activities. However, there was no current standardized or widely accepted training that is provided for watchers and challengers in other states currently, so SOS would be required to develop and implement a brand new training curriculum in the absence of proven best practices under this bill. To avoid potential conflicts of interest or undue influence on watchers and challengers, the trainings should be nonpartisan in nature and should be continuously evaluated for effectiveness to ensure the trainings are achieving intended results.

This bill also requires the Secretary of State and the Legislative Council Service to provide administrative support for the voter education and elections taskforce that will operate through December 31, 2023. The extent of the needed assistance is currently unknown, however.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Companion to SB8. As noted by the State Land Office, both bills amend statutory provisions regarding voter registration at polling places and voter registration at the motor vehicle division

but SB8 provides for the automatic registration of qualified electors when applying for or renewing certain licenses at the motor vehicle division, while SB6 bill does not.

Conflicts with HB139; HJR5; HJR12; SB8; SB77; SJR1; SJR4; SJR5.

TECHNICAL ISSUES

The Attorney General’s Office provided the following analysis:

As drafted, Section 9(D) the removal of the word “minor,” and the use of the conjunctive “and” in the list of qualifications limits the “qualified residents” to only persons who are “sixteen or seventeen years of age” but does not include persons of any other age.

The “state election fund” does not exist in statute. Reference should be made to Section 1-11-19 NMSA or the “election fund” for appropriate distributions. However, the bill proposes to change the local election assessment fund to the state election fund and provides for deposit into the fund of any federal revenues, grants, and capital outlay funding intended for state executive elections. If created, it is unclear if the “state election fund” in this bill would be intended to replace the “election fund” in Section 1-11-19 or whether it would be created in conflict or duplication of an already existing election fund.

OTHER SUBSTANTIVE ISSUES

SOS recommends “changing the date the draft and final report is due from the voter education and elections taskforce from December 2022 to December 2023 to allow the SOS and the taskforce more time to meet, evaluate, and prepare a report of recommendations.” Senate floor amendments to SB6 address this concern by extending the date to 2023.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Several election security and administration changes that were put in place during the 2020 general election will not be enacted into permanent law.

JH/rl/acv/JH/acv/al