

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

FISCAL IMPACT REPORT

SPONSOR <u>Duhigg/Jaramillo</u>	LAST UPDATED <u>1/31/23</u>	
	ORIGINAL DATE <u>1/26/23</u>	
	BILL <u>Senate Bill</u>	
SHORT TITLE <u>Election Changes</u>	NUMBER <u>180/aSRC</u>	
	ANALYST <u>Daly</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$0.0	\$1,820.0	\$1,820.0	\$3,640.0	Recurring	General Fund (statewide election)
	\$0.0	\$0	\$1,820.0	\$1,820.0	Recurring	General Fund(local election)
Total			\$3,640.0	\$5,460.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From
Secretary of State (SOS)
New Mexico Attorney General (NMAG)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SRC Amendments

The Senate Rules Committee amendments to Senate Bill 180:

- Add a new section to the Election Code allowing SOS to adopt rules allowing an elected or appointed public official to designate the official's home address as confidential in election and financial disclosures filed with SOS or a county clerk (and therefore not subject to release pursuant to the Inspection of Public Records Act nor available on a governmental website);
- Remove new language that would have required an election board member to be registered to vote;
- Require a replacement ballot be mailed not less than seven days before election day unless the voter's address is confidential under the Confidential Substitute Address Act;
- Authorizes SOS to adopt rules when the names of two or more candidates running for office in the same election are the same or so similar as to cause confusion (in place of

existing law which requires the occupation and if necessary year of birth of those candidates to be printed on the ballot); and

- In a local regular election, require each declaration of candidacy to be accompanied by a nominating petition containing the number of signatures required by law for the specific office.

Synopsis of Original Senate Bill 180

House Bill 180 updates the Election Code (Code) as follows:

Sections 1 – 4: The term “real time synchronization,” a term already utilized in the Code, is defined to mean an internet connection at a voting location that is able to synchronize voting data with the county clerk in real time. By January 1, 2024, SOS is required to create a secure internet application to gather electronic signatures for candidate nominating petitions in addition to the existing, traditional paper circulation process, which allows for verification that a signatory is an eligible registered voter.

Section 5 provides that where the Code provides for public record disclosure or nondisclosure, those provisions control over the provisions of the Inspection of Public Records Act (IPRA).

Section 6 requires an “election-related organization” register with SOS at specified times.

Section 7 requires SOS to maintain an election security program, outlining specific duties of the program including protecting elections-critical infrastructure, to protect the administration of elections, ballot secrecy, and efficient reporting of results.

Sections 8 – 13 require the use of forms approved by SOS and requires service of process in all court actions related to elections to include SOS. These sections also clarify the qualifications and composition of election boards and the duties of messengers, sets requirements concerning compensation of these seasonal employees, and increase the cap on Election Day to no more than \$400 per worker.

Section 14 establishes mandatory training for challengers and watchers and provides for a process by which the bipartisan judges on the election board may remove a challenger, watcher, or observer from service for disruption of the polling location.

Section 15 mandates counties establish voting convenience centers (VCCs) with real-time synchronization through consolidated precincts for statewide elections, which would require each voter within each county be allowed to vote on a regular ballot.

Section 16 requires the SOS to develop a program for county clerks to maintain clean voter rolls and remove individuals confirmed to have voted in another state, confirmed to be deceased, or have moved to another state.

Sections 17 – 20 change the date for county clerks to begin processing voter registrations after an election from 35 days after election day to the Monday after the election, clarify that a full social security number is required for registration, require in most instances all county boards of registration have five members, and require MVD, when a person registers to vote when applying for a driver’s license, to transmit all signature images (or paper forms) to SOS.

Section 21 authorizes electronic pollbooks as an alternative to precinct voters lists if approved by the voting system certification committee and certified by SOS.

Sections 22 – 40 establish timeframes and publishing requirements for early voting. Absentee process improvements include: establishing that applications must be received 14 days prior to election day; requiring a notice to be sent to a voter's registration address if a ballot is mailed to another address; requiring a notice to be sent if a ballot is rejected with an opportunity to cure the error; updating what is required voter identification requirements to the last 4 of the SSN and a signature; requiring that an informational notice to be sent with all mailed ballot; providing for a violation under the election code for establishing a faux drop box, providing for county clerks to verify the last four of the SSN and signature prior to turning the mailed ballot envelopes to the absentee election board, also updating the definition of "immediate family member" authorized to return an absentee ballot. These sections also set specific hours of work for the absentee election board, and provide for law enforcement supervision for uncounted ballots if the board must reconvene after election day. They also clarify replacement ballot provisions, and provide that absentee application from a federal overseas voter is allowed up to three days prior to election day if the application requests secure electronic delivery of a ballot. They also provide a replacement ballot process that continues to protect a voter's identity who is enrolled in the confidential address program.

Sections 41 – 44 revise the nominating petition requirements for minor party candidates such that 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, and reduce the nominating petition signature requirement for public education commission (PEC) and judicial office are reduced to two-thirds of what otherwise would be required. They also clarify the required forms and time for filling a vacancy on a primary and general election ballot.

Sections 45 – 49 authorizes SOS to amend a proclamation between the time of issuance to the first Tuesday in March. (Current provisions require the Governor to do so). County candidates may no longer submit a pauper's statement in lieu of paying a \$50 filing fee, but may instead file a nominating petition. The nominating petition signature requirement for public education commission (PEC) and judicial candidates is reduced to 2 percent of the total vote of the candidate's party in the district. These sections also amend the primary write-in candidate provisions requiring these candidates to provide nominating petitions containing 1 percent of the total number of votes cast in the area sought to be represented as were cast for governor at the last preceding general election at which a governor was elected. They further establish the same qualification and challenge process for write-in candidates as is provided for non-write-in candidates.

Sections 50 – 52 reduce the number of signatures required on nominating petitions submitted by independent candidates for the PEC and judicial offices from 2 percent total votes cast in the district to 1/3 and 2/3 the number of signatures otherwise required, respectively, and establish a petition signature, qualification, and challenge process for write-in candidates filing to appear on the general election ballot.

Sections 53 – 56 adjust the maximum ballot size from 24" to 22" (the current maximum ballot length paper tabulation machines are capable of reading) and clarify that only human readable marks are tabulated (as opposed to QR codes or some other digitally-readable only mark).

Sections 57 – 59 adjust the time that a ballot shall be certified for the regular local election from 60 days to 56 which the SOS notes is expected to allow the candidate challenge process to be complete before the ballot is finalized). Further changes require that candidates for the same office be ordered on the ballot using a randomization method provided by rule and that positions for the same office on the same ballot with the same qualification requirements shall be elected at large from a single contest as a “vote for no more than X.”

Section 60 requires SOS mail voter notifications to voters 42 days prior to each statewide (and by county clerks 49 days prior to a special election) providing information about the date and purpose of an election and information about absentee, early, and election day voting as well as the location of drop boxes for returning ballots.

Section 61 clarifies that the voting system certification process for electronic voting machines is open to the public.

Section 62 expands the funding sources that shall be included in the State Election Fund to include federal funds designated for election and grant or capital funds for elections including funds when the county clerk has requested that the SOS act as fiscal agent.

Sections 63 – 65 clarify a voter may provide documentation to satisfy a rejected ballot (including a provisional or absentee ballot). Ballots not tabulated by an electronic voting machine, like write-in ballots, must be delivered in sealed or locked envelopes to an election board appointed to assist in the preparation of the county canvass. Current law related to the disposition of paper ballots and records related to voting is repealed and replaced by language increasing the retention of records for elections not containing a federal candidate from 45 days to 10 months in most cases, and clarifying destruction procedures, which may be observed by any interested party. The state records administrator is required to store records upon request by the county clerk and may enter into an MOU with the SOS to pay for storage costs from the State Election Fund. Records related to voting including ballots are exempt from public inspection until 60 days following a canvass, contest, or recount. After that time, inspection is only allowed pursuant to good cause shown and upon order by the district court.

Sections 66 - 68 provide the contents of a county canvass report and requires that all ballots be tallied by an election board. Furthermore, if a ballot box is required to be opened at any time during the county or state canvass process it shall be done in the presence of a presiding judge and two election judges or a deputy clerk.

Sections 69 – 71 amend requirements for ballot impoundment and voting system checks such that costs for impoundment and checks are determined by the state canvassing board. Impoundment provisions are further amended in that the inspection of impounded ballots shall occur between in the conclusion of the county canvass and the last day to contest an election and in the presence of the county clerk or the clerk’s agent. Post-election voting system audits, which under existing law must occur after each general election, must additionally occur after every statewide election including the regular local, primary, general, and special congressional elections.

Sections 72 – 74 add to the automatic recount provision requiring a recount if there are five or fewer votes between two candidates in a regular local or municipal officer election.

Sections 75 – 77 expand the time for the SOS to approve an original draft of a referendum petition from 10 to 30 days and the time to determine the sufficiency of a referendum petition from 15 to 30 days. They also clarify requirements for publishing and posting constitutional ballot questions.

Section 78 expands the prohibition of using campaign funds for personal living expenses or compensation to include a domestic partner.

Sections 79 – 82 makes the possession of keys of a secured container by an unauthorized person, unauthorized establishment of a drop box, or unauthorized entering or altering of a mail ballot register a fourth-degree felony. Further amendments clarify “authorized individuals” who are allowed to be within 50 feet of a polling place and clarify obstruction related to monitored secure containers, and remove the 200 foot boundary prohibition of alcohol at a polling place (leaving prohibition of use of alcohol by poll workers intact).

Sections 83 – 86 amend the Local Election Act to allow a regular local election (RLE) proclamation to be amended up to 11 days before the filing date for such an election. The requirements for filing as a regular local election candidate are amended such that all candidates are either required to submit nominating petitions as required by law, or if not specified the candidate has the option to file nominating petitions with at least 10 signatures or pay a \$50 filing fee. Write-in candidates have the same filing requirements. The deadline to file candidate challenges is amended from 60 days to 67 days prior to election day.

Section 87 amends the Special Elections Act adding new provisions to not automatically mail a ballot including: 1) if a voter notification is returned undeliverable and the voter has not communicated an error or updated their registration address; or 2) if the voter is a confidential address program participant.

Section 88 prohibits lobbyists from serving as campaign chair, treasurer or fundraising chair for a candidate for the legislature or statewide office.

Sections 89 – 90 allow SOS to gain needed information from state agencies to maintain voter registration records and prohibit filing fees by SOS for oaths of office and notices of vacancy.

Sections 91 – 95 amend the Confidential Substitute Address Program to include members of an applicant’s household and provide for decertification of participant from the confidential address program if the person does not comply with the provisions of the Intimate Partner Violence Survivor Suffrage Act.

Section 98 is a temporary provision that requires that polling places approved in 2021 via county polling place resolutions be utilized for elections in 2023.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

According to SOS, existing law requires election workers be paid based upon the federal minimum wage with a cap of \$200 on election day, but is silent as to pay for messengers. SB180 significantly increases the pay rate for election workers and messengers by doubling the existing

wage cap to \$400. SOS believes increasing pay rates provide an incentive to serve on an election board at a time when there are reported challenges in recruiting and retaining election workers in certain parts of the state (and nationally). During the 2020 general election, the SOS reimbursed counties \$1.38 million for election board members pay. SOS estimates that poll worker costs could nearly double if SB180 is enacted, with an estimated cost of \$2.7 million per statewide election. The SOS has anticipated this additional cost within the content of its annual budget request

Additionally, SB180's new requirement for notice of election prior to each statewide election is expected to have a recurring impact of about \$500 thousand for each statewide election -- regular local, primary, and general election. SOS expects that coordinating this mail out through SOS rather than the counties, will result in bulk mail and sorting discounts.

Because both pay increases for election workers and voter notification mailers are new expenses that apply to both statewide and local elections, the estimates provided by SOS are reflected in the Operating Budget Impact Table.

SIGNIFICANT ISSUES

The SOS considers this bill mandatory and necessary for the efficient administration and conduct of elections. All amendments proposed 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. These changes are non-partisan and provide the needed clarity for election administrators to efficiently and uniformly administer all publicly funded elections held in New Mexico.

According to SOS, Section 5, which addresses disclosure and nondisclosure of records relating to elections codifies the importance of distinguishing the procedures to request voter data or election information/records which contains information about our national critical infrastructure and voters most personal information that is constitutionally protected through the secrecy of the ballot. The county clerks were inundated with requests under IPRA for data and other information that are contained on voting machines, and other sources, that they do not use for administering the election. In addition, requests for certain data implicates the secrecy of the ballot as the data requested could be reverse engineered or combined with other data to see how people voted or to reproduce their own ballot. In addition, SOS asserts this provision seeks to make clear that other records, like voter data, that are available through the election code have a different procedure for their production and the specific provisions of the election code must be followed.

Similarly, SOS advises the new language governing the absentee voting process streamline that process and provide significant improvements.

The bill requires standardized use of voter convenience centers (VCCs) in all counties. SOS comments that since the adoption of VCCs in 2012, most counties have already moved away from traditional precincts and have gone to VCCs. During the 2020 General Election, SB4 required their use in all counties statewide, which was successful and paved the path towards doing this in the future.

SOS also advises that the changes concerning referendum petitions are necessary due to the influx of referendum petition applications the SOS received following the 2019 Legislative Session. No person had filed a referendum petition application with the SOS since 2016. After the 2019 Legislative Session, there were almost 60 referendum petitions filed between March and July 2019. The current response time is 15 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. The proposed increase to 30 days sets out a more manageable timeline to approve and certify submitted referendum petitions for circulation. SOS also notes that this additional time request will not 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

NMAG notes that SB180 expands the definitions of certain election-related felonies, and advises SOS refers matters concerning potential criminal activity to NMAG. As currently drafted, SB180 could increase the number of referrals NMAG receives for investigation and potential prosecution.

CONFLICT

NMAG points out that SB180's provisions concerning voter identification conflict with those set out in HB110.

TECHNICAL ISSUES

NMAG notes that although Section 5's provisions concerning disclosure of election-related public records control over IPRA, the bill does not provide for an amendment to IPRA reflecting this new exception.

OTHER SUBSTANTIVE ISSUES

SOS advises SB180 makes permanent several temporary provisions passed during the 2020 special session that have since sunset. These provisions, utilized during the 2020 General Election and the special congressional election held in 2021, were deemed effective at improving performance from an administrative standpoint and should be made permanent. Improvements to the administration of elections include:

- Voter registration books opening the Monday after election day rather than the current timeline of 35 days after. Existing system technology has been improved to allow for voter registrations to be processed at the conclusion of the election with no need for the long post-election books close date currently in statute. This change will allow county clerks to avoid significant registration back logs while maintaining the voter roll.
- Absentee voter identification, voter curing, and processing changes – For added security, voting by absentee not only requires a voter's signature, but would also require the voter provide the last four digits of their SSN. This information is then reviewed by the county clerk to determine whether a ballot shall be accepted or rejected. Voters whose ballots are rejected are sent a notice allowing them an opportunity to submit the required information to change the disposition of the ballot. This validation of the voter

identification information by the county clerk prior to turning ballots over for counting by the absent voter precinct board was efficient and worked well during the 2020 General Election to ensure security as well as efficient handling when absentee turnout was high as a result of Covid-19 stay at home recommendations.

- Setting hours for the absent voter election board – This change allows for absent voter election boards to wrap up at a reasonable time on election day, get some rest, and continue working reasonable hours days after the election until all absentee ballots are processed and counted. This change helps to avoid election workers from becoming overworked and provides consistent ballot processing across all counties in the state.

MD/al/ne