

The bill also proposes a new section (Section 6) that more clearly defines adequate resources for Election Day polling places for primary or general elections in consolidated precincts or those without mail ballots.

SB 356 adds language (in section 24) to allow the Secretary of State more flexibility in deciding on the order of certain races and ballot questions on ballots, specifically for judicial offices in retention elections, local government ballot questions, and other issues prescribed by the SOS.

Section 29 of SB 356 amends Section 1-12-13 of the Election Code so that the process for providing aid or assistance to voters in marking ballots is explained in detail. A person who swears falsely in order to secure assistance will now be guilty of a misdemeanor.

In recount elections, SB 356 would now provide (Section 33) that county clerks would retain ballots and records related to voting in a precinct where a recount, judicial inquiry or inspection of contents is sought, for 45 days following the completion of such a process.

In addition, SB 356 proposes to: allow use of county employees as election clerks; require sufficient staff and equipment at polling locations; set, clarify and standardize processes, dates and deadlines and updates forms; provide new definitions for “election campaign purposes,” “governmental purposes,” “mailing labels,” “special voter list,” and “voter data;” allow access by county clerks to the driver's license database; permits party committee appointments according to party rules; exempts certain voting records from the inspection of public records act until after all recounts, contests and canvassing are completed; ensure that mistaken cancellation of registration will not void a provisional ballot; restrict the holding of other elections within fifty days of a general election; prescribe recount procedures; provide standards for consolidated precincts; permit local school boards to revert from 7 to 5 members, or from 5 to 7 members, and changes the terms of school board members from 6 to 4 years if the number of members are reduced; authorize school boards to set the times for alternate voting locations; and require elections for changing the number of school board members to be held during a regular school election.

FISCAL IMPLICATIONS

Those portions of the bill related to postage requirements, for example in Section 15B, that allow the Secretary of State (SOS) to use “mail with delivery confirmation” rather than “registered mail” at \$11.20 per piece will significantly reduce the cost of mailing notices to voters in affected precincts.

Likewise, Section 20 eliminates the requirement that the SOS send the governor’s election proclamation to all county clerks by certified mail and instead allow for electronic transmission, also resulting in some savings.

Portions of the bill will likely result in some savings to counties. Those that relate to consolidation of precincts may result in savings to counties by reducing the costs associated of conducting and staffing elections in individual precincts. Changing the requirements for the printing of sample ballots may also reduce costs.

SIGNIFICANT ISSUES

SB 356 makes substantive alterations to the Election Code.

Some of the most significant issues raised are:

- Section 17 addresses minor political parties. It deletes the reference to 1 percent of the votes cast in a presidential election; so that under 356/SJCS the 1 percent requirement for petition signatures is based on votes cast in gubernatorial election. It also adds language about a political party that is certified in the year of the election. The removal of the reference to a presidential election is likely to reduce the number of signatures needed. To provide comparison, the SOS estimates that a minor party would need 6077 signatures for the 2014 election, instead of the 7865 that would be required currently.
- Section 22 adds language regarding a sufficient number of voting systems in a polling location. This section is intended to address the issue of insufficient ballot printers at Voting Convenience Centers (VCC). The language on p. 32 lines 9-17 may not resolve the issue since 2012 voter turnout was likely lower than it would have been if more systems had been present. Under this language, Sandoval County (which experienced significant voter delays), for example, would base its projections in 2016 on the 2012 turnout.
- The figure of 500 voters per system (p. 32, line 15) assumes processing one voter every 1.44 minutes. The bill might be improved is amended to say "divided by the number of voters who can be processed by the system in one day, based on the manufacturer's specifications."
- Sections 36, 37 and 38 amend 1-13-14, 1-13-21 and 1-14-13.2 regarding the opening of ballot boxes after the election, or during the voting system check without a court order. SB 356/SJCS would allow county clerks to perform routine duties after the election without having to obtain a court order to open the ballot box. It also allows a county to delay commencing the voting system check in the event of a recount. A situation occurred in 2012 where counties were conducting automatic recounts, ballots were impounded, and they were unable to complete the post-election voting system check at the same time.

In addition to substantive changes to the Election Code, the bill makes changes to the Public School Code with regard to the conduct of school board elections.

Previous analysis by the PED raises the following issues:

- The single most significant item of this bill relating to public schools is the elimination of special elections for the purpose of electing members to the board. Elections to fill vacancies or to fill new positions if boards are changing from five members to seven can only be held on regular elections. Special elections can only be used to vote on questions put before the voters to include bond elections but cannot be used to elect members to office or to fill vacancies.

- SB 356 also provides that school district elections cannot be held within 50 days of a statewide election. Arguments have been made that perhaps school district elections should be held in conjunction with statewide elections to ensure a greater number of electors would participate. This bill prohibits that.
- The bill contains provisions for school boards to change membership from five members to seven members or from 7 members to 5. Petitions may be submitted to the voter in a special election as to whether the changes should take place but elections to fill new positions may not be done in a special election, only in a regular election.
- Adopting the amendments to the “School District Elections—Qualifications of Candidates” will provide increased compliance with the requirements of the Election Code. This amendment limits the special election to ballot questions.
- In addition, adopting the amendments to the “Local School Boards—Reversion to Five Members” limits the school board member term to 4 years.
- Further, adopting the amendments to the “Precincts—Consolidation—Polling Places” will provide increased manageability of the number of polling places required for a school district election.
- Adopting the amendments to the “Absentee Voting” increases the alternate voting location by one day which will provide greater access to absentee voting locations by absentee voters.

The Attorney General’s Office (AGO) in previous analysis suggests some substantive legal issues that should be taken into consideration:

- SB 356 would amend NMSA 1978, Section 1-2-12 to allow county employees to be appointed to serve as election clerks on a precinct board. The proposed change raises a question as to whether this appointment is in furtherance of a county employee’s regular duties. As such, this section may require further clarification as to whether or not such an appointment would be independent of an employee’s regular employment.
- SB 356 also proposes that during an audit on the accuracy of electronic vote tabulators, “the auditor shall direct the appropriate county clerks to *open the locked ballot boxes, remove ballots from the selected precincts and compare...*” See Pages 51, Line 25 and Page 52, Line 1. We note that, throughout the Election Code, the oft repeated and emphasized standard is that no ballot box shall be opened once locked. Moreover, the few exceptions allowing for opening of the ballot box include the presence of others during the opening, i.e. District Court Judge. See NMSA 1978, §§ 1-12-68(D), 1-13-8, 1-13-14, 1-14-16(C). Because of the current standard, it may be sensible to require the presence of another appropriate person during the opening to promote the integrity of the ballot process.

The SOS in previous analysis points out that Section 11 C (p. 20, lines 3-5) deletes the language in 1-4-12 that states that “the contents of certificates of registration, except the Social Security number and date of birth, are public records.” But Section 8 H (p. 14, line 3) continues to refer to

voter registrations as "public records." Is the deletion p. 20 made because the language is extraneous? Or is it intended to make a substantive change to the nature of voter registrations as public record?

The AGO in previous analysis also references the question of public records. As noted above, p. 20, lines 3-5 would eliminate language that makes the non-excludable contents of a certification of registration a public record. The Inspection of Public Records Act, NMSA 1978, § 14-2-6(E) states that a public record means all documents maintained or held by a public body. As such, there is concern with removing language which may exclude certificates of registration from public record inspection.

There may be no need for additional statutory language to allow the county clerks to have access to MVD's driver's license data as currently Section 66-2-7.1 allows for the disclosure of Motor Vehicle Department (MVD) information for use by any governmental agency in carrying out its functions. Taxation and Revenue (TRD) states that County clerks can currently access the appropriate information by signing an agreement with MVD's third-party data vendor. SOS states that MVD is currently providing access to counties as the request of the SOS.

TECHNICAL ISSUES

AGO states in previous analysis there is also a concern with language on page 21, line 11 stipulating the SOS will provide "manipulable" data to the county chair of each qualified political party. The term "manipulable" is not sufficiently precise to provide meaningful guidance.

The TRD in previous analysis recommends that on page 22, line 6 "database" be deleted and replaced by "work records." The bill also requires that the SOS adopt rules necessary to regulate the use of the driver's license database by county clerks. The TRD recommends that on page 21 line 13, the word "database" should be changed to "data," and suggests adding that any such regulation should be developed in conjunction with the TRD. The TRD points out that the same section of bill is unclear as to what information would be used to verify voter registration. They point out that if it is a person's address, that individual's current address will be in MVD records only if the person has actually updated that information with MVD.

Section 51 (p. 69 pp 17-18) refers to an "electronic voting machine" as a provision for absentee voting. Does this reference reflect currently used technology in the State?

QUESTIONS

Section 8 of the bill would change the qualification question regarding age of voter for registration purposes, asking "Will you be at least eighteen years of age on or before the next general election?" It is unclear whether this anticipates the possibility that voters eighteen or under may vote in primary, school board and municipal elections or for some other reason.

CAC/svb:blm