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F I S C A L I M P A C T R E P O R T

SPONSOR	Ivey-Soto/Ramos/ L. Trujillo/ Johnson	ORIGINAL DATE LAST UPDATED	6/19/2020 6/20/20	HB	4/aSRC/aSFl#1/aSFl#2 /aSFl#3
SHORT TITLE	Temporary Election Changes	SB			
					ANALYST Nichols

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$3,022.8		\$3,022.8	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Secretary of State (SOS)

SUMMARY

Synopsis of Senate Floor Amendment #1

Senate Floor amendment #1 modifies the notice that SOS must include on mailed ballots to clarify that voters can return a ballot to the office of a county clerk or polling location only in the county in which the voter resides.

Synopsis of Senate Floor Amendment #2

Senate Floor amendment #2 inserts an emergency clause so the bill will take effect immediately upon signature by the governor.

Synopsis of Senate Floor Amendment #3

Senate Floor amendment #3 allows voters that are not affiliated with a major political party to change their party registration at a voting location before voting. The amendment modifies the Election Code to specify that voters affiliated with a major political party are not allowed to change party affiliation when updating their voter registration or registering to vote at an early voting site or polling place. Voters not affiliated with a major political party (independent voters) would be allowed to change their party registration.

Synopsis of SRC Amendments

The Senate Rules Committee amendments remove the option for county clerks to automatically send out mailed ballots to voters. Clerks would still have the option to automatically send out applications for mailed ballots. The amendments also clarify that the signature on the privacy flap of the official mailing envelope for the ballot must be “the voter’s signature,” not merely “a signature.” The amendments also modify the makeup of the legislative electoral health and safety task force to specify that the President Pro Tempore of the Senate will serve as chair, and the Speaker of the House of Representatives will serve as vice chair. Updated cost estimates for the amended bill are below.

Cost	Estimated SB4 Costs	SB4 Section
Ballot mailing		<i>Amended out</i>
Increased absentee voting costs	\$1,297,878	§ 2(D), (E), (F), (I), (R)
PPE	\$1,500,000	§ 2 (N)
Additional absentee voting poll officials	\$125,000	§ 2 (K), (L)
Information campaign	\$100,000	§ 2 (G), (J), (S)
Total Estimated Costs	\$3,022,878	

Synopsis of Original Bill

Senate Bill 4 (SB4) enacts a new section of the Election Code (Section 1-12-72 NMSA 1978) including provisions related to conducting the general election on November 3, 2020, under a continuing COVID-19 pandemic. Key provisions include:

- The Secretary of State (SOS) may authorize an election day polling location (except those located on Indian Nation, Tribal, or Pueblo land) to operate as a mail ballot election precinct, rather than a voter convenience center, provided that the county clerk has requested a written waiver at least 90 days before the general election and the location is unable to meet data connectivity requirements for voter convenience centers or is located in a remote area of a county.
- A polling place on Indian Nation, Tribal, or Pueblo land will not be closed or consolidated with another polling location. Days and times of voting will not be modified. There will be at least one polling location within the boundaries of the Indian Nation, Tribe, or Pueblo.
- County clerks can automatically deliver a mailed ballot application or a mailed ballot to each “mailable voter,” provided the county clerk notifies SOS at least 90 days before the general election.
- Mailed ballots will contain the following notice: “This ballot may be returned to the office of the county clerk or any open polling location in the county at any time up to and including the day of the general election. If this ballot is returned by mail, to ensure timely postal delivery to the county clerk, the ballot should be mailed no later than Tuesday, October 27, 2020.”
- If a voter submits an application for a mailed ballot with an address other than the address

on their voter registration, the county clerk will send a notice to the voter indicating the address to which the ballot was mailed.

- Voters must provide a signature and the last four digits of their social security number on the official mailing envelope in order to return a mailed ballot. The county clerk will verify that the voter signed the envelope and confirm that the social security number matches the voter's certificate of registration. If the signature is missing and/or the social security number is not provided or does not match, the clerk will reject the ballot and transfer the ballot to the special deputy for delivery to the absent voter election board, and also send the voter a notice of rejection.
- County clerks may appoint an election board to conduct a machine-tabulation or hand-tally if the clerk has received any paper ballots not previously tabulated, mailed ballots not previously tabulated, provisional paper ballots, or ballots with write-in votes.
- Certificates of registration and cancellations of existing voter registrations not processed until after the election may be processed by the county clerk beginning the first Monday following the election. Current law requires a county clerk to wait to begin processing until 35 days after an election.
- SOS will, in consultation with the Department of Health (DOH), procure sufficient personal protective equipment (PPE) and sanitizing supplies to distribute to county clerks and to early, mobile, and election day polling locations.
- The Secretary of Health may issue public health orders relating to the general election, specifying areas of the state where the order applies and the severity of the public health issues, and also make recommendations to mitigate health issues. Recommendations should follow guidelines issued by the federal Centers for Disease Control and Prevention, or be evidence-based. If a health order is issued on or before 60 days prior to the election, SOS will work with county clerks to implement changes necessary for the health and safety of clerks, staff, election board members, and voters. If a health order is issued within 60 days of the election, SOS will provide guidance to county clerks on best practices, and may call a meeting of the legislative electoral health and safety task force (composed of the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the majority floor leaders and minority floor leaders of each house). The task force may authorize SOS to implement procedures to ensure the health and safety of clerks, staff, election board members, and voters.
- SOS will reimburse county clerks for “necessary and reasonable” expenses incurred as a result of necessary health and safety actions, and will deposit funds for county clerks to ensure delivery of certificates of voter registration, mailed ballot applications, and returned mail ballots.
- SOS will conduct a public information campaign to educate voters of the benefits of ensuring that their registration address is accurate.
- The Board of Finance (BOF) will authorize funding for SOS and DOH for “necessary and reasonable expenses” required as part of the proposed law.

The delayed repeal date of this bill is December 31, 2020.

FISCAL IMPLICATIONS

There is no appropriation contained in this bill. However, SOS indicates that there would be additional costs associated with provisions in the bill. The 2020 primary election saw a significant rise in costs as the New Mexico Supreme Court ordered the SOS to mail an absentee

ballot application to all registered majority party voters. This resulted in an unprecedented number of absentee ballots mailed out, additional returned postage paid, the operation of 381 polling locations, and purchasing personal protective equipment (PPE) for election staff. The general election would likely incur similar costs in addition to possible additional costs if county clerks choose to automatically mail ballots to voters.

Estimated costs are:

Cost	Projected Costs from SB4
Ballot mailing	\$1,960,028
Increased absentee voting costs	\$1,297,878
PPE	\$1,500,000
Additional absentee voting poll officials	\$125,000
Information campaign	\$100,000
Total Projected Election Costs	\$4,982,906

SOS spent \$2.1 million on PPE for the primary election in June. While PPE needs for the general election will be similar, county clerks may be able to reuse some PPE from the primary election, and may also be able to find lower cost PPE with more lead time. It is also possible that other CARES Act funding, through the Department of Finance and Administration, could fund PPE for the election.

Costs to counties associated with SB4 would be reimbursed by SOS.

There could also be some additional costs to SOS associated with SB4's provision related to the requirement that SOS work with county clerks, and with a legislative electoral health and safety task force, to implement health and safety measures.

SIGNIFICANT ISSUES

While SOS supports the provisions in the bill, the agency has concerns about the fiscal implications of the bill. A number of provisions in the bill would increase election costs, with some costs difficult to anticipate.

The bill indicates that Board of Finance (BOF) shall “authorize sufficient funds to be timely distributed to the Secretary of state and the Department of Health (DOH) for necessary and reasonable expenses incurred.” As of June 16, 2020, BOF reported \$995.6 thousand remaining of its \$2 million operating reserve fund.

ADMINISTRATIVE IMPLICATIONS

SB4 is likely to create additional administrative requirements for SOS to implement new election provisions, including working with DOH and county clerks to ensure county clerks have sufficient personal protective equipment (PPE), and coordinating a public information campaign.

OTHER SUBSTANTIVE ISSUES

The number of absentee ballots for the upcoming general election is likely to be much higher than in previous general elections. In the June 2 primary election, county clerks received more than 246 thousand absentee ballots as of the end of election day, compared to just over 23 thousand in the 2016 primary election.

In April, the New Mexico Supreme Court denied a request from county clerks to conduct the upcoming primary election by mail. County clerks had petitioned the court to allow voting by mail, under a plan that would have sent ballots automatically to all eligible voters. However, while the Supreme Court agreed that voting by mail would be the safest option, given the COVID-19 pandemic, justices ruled unanimously that state law does not allow ballots to be automatically sent to voters for a primary election. Instead, justices ordered SOS to send applications for absentee ballots to every registered primary voter, while keeping in-person polling locations open.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, county clerks may not be able to automatically deliver mailed ballot applications or mailed ballots to voters, potentially increasing the number of voters who will go to physical polling locations on election day. Voters could apply for absentee ballots, but would not automatically receive a mailed ballot.

POSSIBLE QUESTIONS

- How would the provisions in this bill be funded, given that the bill does not contain an appropriation and the Board of Finance may not approve an emergency operating grant or an emergency loan?

AN/rl/al