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FISCAL IMPACT REPORT

SPONSOR Duhigg ORIGINAL DATE 01/29/22
 LAST UPDATED 02/16/22 HB _____

SHORT TITLE Intimidation of Election Workers SB 144/aSJC/aHJC

ANALYST Hitzman/Rees

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	\$3,266.0 - \$9,864.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to/Conflicts with SB8 & SB6

SOURCES OF INFORMATION

LFC Files

U.S. Department of Justice (justice.gov)

Responses Received From

Secretary of State (SOS)

No Response Received

County Clerk's Association

SUMMARY

Synopsis of HJC Amendments

The House Judiciary Committee amendments to Senate Bill 6 clarify elections-related processes and procedures, amends the election code, and clarifies provisions of other voting-related legislation.

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

The bill requires an election-related organization to register with SOS in advance of elections and to fill a vacancy in the U.S. House of Representatives. The bill specifies that election-related organizations must register with the SOS at least 70 days prior to an election or 42 days prior to a special election.

The bill clarifies references to paper ballots to include candidate contest or ballot questions more generally.

The bill amends Section 1-1-7.2 NMSA 1978 to require the SOS to implement a secure internet application, in addition to the paper circulation process, no later than January 1, 2023.

The bill clarifies the election code to include clerk-authorized members of the election board within the definition of registration officer.

The bill clarifies when the Inspection of Public Records Act should apply to public records relating to elections.

The bill 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 limits the use of forms to include only those forms issued and authorized by the SOS.

The bill requires service of process on the SOS for election-related litigation.

The bill clarifies election board qualifications and changes references of minors to “qualified residents.” The bill also requires that board appointments be eligible to vote and at least 16 or 17 years of age by the time of the election. Previously, this section limited appointment to two minors, whereas the amended bill removes the limitation and changes references to minors to instead reference “qualified residents.” As such, the bill removes other appointment requirements related to minor appointments, such as the requirement to receive parental approval.

The bill 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 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 the direct payment process.

The bill clarifies that persons may serve as messengers only if they would also meet requirements to be a challenger, watcher, or election observer and clarifies that the county clerk may appoint messengers to collect mailed ballots from polling places or secured containers.

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

The bill requires creation of voter convenience centers and removes language regarding prerequisites for consolidation of the centers.

The bill amends Section 1-3-8 NMSA 1978 to delete language concerning polling places on Indian nation, tribal, or pueblo lands to avoid conflict with the proposed Native American Voter Act.

The bill requires that elected members in political subdivisions with 10 thousand or more residents be a resident of the district, whereas members for subdivisions with fewer than 10 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. Specifically, this section requires the SOS to create a program for county clerks to investigate and reconcile information received from the SOS regarding voter information of those who may be eligible for cancellation of registration. SOS must also provide a procedure for cancelling certificates of registration for voters confirmed to have voted in another state and those confirmed to be on the social security master death index file.

The bill clarifies language relating to requests for voter data, mailing labels, or special voter lists.

The bill enacts new material concerning voter registration at a voting location prior to voting and relates 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 when a voter registers prior to voting, including identification issued by a state or federal government, a recognized Indian tribe, pueblo, or nation or a New Mexico-accredited educational institution. 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 bill provides that electors shall not be required to provide secondary information that is duplicative of what was provided during a driver's license transaction and shall receive written notification from the Motor Vehicle Division regarding any voter registration transactions. This section also requires the Human Services Department to develop procedures to ensure those receiving services are given the opportunity to register to vote or update existing registration information.

The bill clarifies duties of county clerks and other registration procedures to include references to qualified electors who register to vote or update voter registration information pursuant to the same-day registration provisions earlier in the bill. This section also 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 bill amends Section 1-4-11NMSA 1978 regarding the duties of a County Clerk when the Clerk's Office receives a completed voter certification of registration.

The bill clarifies when cancellation of registration shall take place, no longer to include felony convictions as a qualifying reason for cancellation.

The bill provides that inmates are not qualified to vote while imprisoned but allows for immediate reinstatement of voting rights upon release from custody. This section also requires the Correction's Department to provide data needed to carry out the provisions of this section.

The bill sets all county boards of registration to five members except in those counties with fewer than 5,000 residents, which may have three appointed members.

The bill provides for the automatic registration of qualified electors when applying for or renewing certain licenses at the Motor Vehicle Division, clarifies that a full SSN is required for registration and requires the Motor Vehicle Department to transmit all signature images to the SOS.

The bill allows for electronic poll books as an alternative to generating a precinct voter list and signature roster generated from the official state voter file.

The bill creates a permanent absentee voter list that voters can request to be placed upon in order to request an automatic mailed ballot for each statewide election.

The bill clarifies that mailed ballot applications must be on official paper forms approved by the SOS or its online equivalent and clarifies that the ballot shall be provided to a voter only by the county clerk. The bill clarifies that the county clerk shall not accept third-party forms. Further, this section specifies that new registrants who do not follow instructions for returning documentary identification shall waive their right to secrecy in that mailed ballot.

The bill 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 and requires that an informational notice be sent with all mailed ballots.

The bill provides that the county clerk's office be open on the Saturday immediately prior to the election from 7:00 am to 9:00 pm.

The bill specifies what parties may request copies of the ballot register, to include candidates, political committees, or the state or county chair of a political party represented on the ballot.

The bill provides that the reverse of each official mailing envelope include statements to be affirmed by voters relating to the certification of information on the ballot and to inform voters of the parties who may submit or deliver a ballot on behalf of the elector.

The bill further clarifies what information is provided to voters on mailed ballots.

The bill clarifies that voters shall enter information underneath the privacy flap and clarifies locations for delivery of mailed ballots to include other locations where receipt is supervised by

an election official or county employee. The section clarifies the frequency for collection ballots from monitored secured containers to at least every three days and on Election Day after polls close. Lastly, this section clarifies the penalties section of the Election Code, making the possession of keys of a secured container by an unauthorized person a violation under the Election Code.

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. This section provides for additional procedures for dealing with rejected and absentee ballots with missing information. The section also 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.

The bill expands the definition of who is considered an immediate family member to include domestic partners, grandchildren, grandparents, or a person with whom the voter has a continuing personal relationship.

The bill clarifies the processes for handling mailed ballots. The section provides for the absent voter election board to convene to process mailing envelopes that have been returned, clarifies that the verification process is subject to interposition of a challenge, and notes that the board may qualify a rejected vote under certain circumstances.

The bill also sets working hours for the board if counting is not complete on election night, provides for law enforcement supervision for uncounted ballots and continues to allow watchers and observers, rather than challengers, to be present until the return of the board.

The bill clarifies that a replacement ballot is not subject to the deadline for issuing a mailed ballot.

The bill allows individuals to void any previously mailed ballots and shall be permitted to vote if the mailed ballot has not been received by the county clerk as of the date of election.

The bill clarifies the information that must be contained in a notice to voters in mail ballot election precincts.

The bill clarifies that a federal qualified elector who registers for the first time in the state is not required to provide documentary identification.

The bill provides that an 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 bill clarifies language relating to federal write-in absentee ballot qualifications, changing the reference to a canvassing board to instead reference a county canvas.

The bill amends definitions in the Intimate Partner Violence Survivor Suffrage Act to include references to qualified residents, not just voters.

Also relating to the Intimate Partner Violence Survivor Suffrage Act, the bill provides for additional procedures for requesting a replacement ballot for voter-participants, allows for a random identifier in place of the voter's name and cleans up language relating to notations for participants with undeliverable election mail.

The bill removes references to public regulation commissioners as elected officials in the Election Code. This section also 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 also removes references to public regulation commissioners as elected officials relating to nomination by a minor political party.

The bill clarifies that no vacancy on a primary election ballot can be filled after the period for filing candidacy. The bill also clarifies processes for filling vacancies.

The bill clarifies the form requirements and timing for filling a vacancy on a primary and general election ballot, extended from 70 to 90 days.

The bill creates a new short title, "Primary Election Law," for Section 1-8-13 NMSA 1978. The bill removes references to the public regulation commissioners from the Primary Election Law section of the NMSA.

The bill amends the Election Code to change the authority to amend the proclamation to be the SOS rather than the governor.

The bill also removes language from the Primary Election Law relating to statements of candidacy for convention designation.

The bill removes the option for county candidates to submit a pauper's statement in lieu of paying a \$50 filing fee and instead allows the option of gathering nominating petitions.

The bill eliminates preprimary convention designations and removes references to preprimary convention designations accordingly.

The bill removes references to public regulation commissioners as elected officials relating to write-in candidates and reduces the nomination requirement in the following ways: for public education commissioners, nominating petitions shall be signed by at least one-third of the required signatures otherwise required and two-thirds for judicial officers. This section also provides for challenge of write-in qualification determinations.

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 clarifies language relating to voter system certifications, requiring only those certified for use and approved by the SOS office to be used in elections.

The bill changes the required length of a ballot to be accepted from 22 to 24 inches and clarifies that the voter systems shall tabulate only the human-readable marks on a response area of a ballot.

The bill shortens 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 bill clarifies that the order of candidates for the same office shall be determined in a randomized way provided by rule.

The bill clarifies the order of offices on a ballot question and clarifies procedures for when multiple positions for the same office are to be elected on the same ballot.

The bill requires the SOS to notify voters of an election 42 days prior to each election and 49 days prior to each special election.

The bill clarifies that the process of preparing, inspecting, certifying, and sealing electronic voting machines shall be open to public observation and that the county clerk shall certify the type and serial number of each machine.

The bill establishes 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 bill adds a section requiring each county to have at least two monitored secured containers and provides for other instances where a written request can be submitted to obtain additional containers.

The bill 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 clarifies that a voter may provide documentation to satisfy the conditions of a rejected ballot.

The bill notes that the ballot must be sealed either with a numbered seal or locking device before being transmitted.

The bill adds new material related to disposition of paper ballots and records related to voting, noting the length of time that paper ballots shall be retained in different circumstances and provides for the destruction of those records after the specified timeframe.

The bill provides for the contents of a county canvass report and processes by which an election board can conduct a machine-tabulation or hand-tally.

The bill notes when a ballot box may be opened on election night to ascertain if missing election

returns are contained in the box, requiring the presence of a presiding judge and two election judges.

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 waives voting system checks for offices for which an automatic recount is triggered and specifies allowable recount provisions. This section provides for random sampling procedures and extends the amount of time for reporting results to the auditor to 14 days.

The bill cleans up language relating to recounts and rechecks.

The bill adds an automatic recount provision to require recounts in cases where there are five or fewer votes between the candidates.

The bill clarifies that if a vacancy of a U.S. representative occurs for an expiring term after the last day to amend a general election proclamation, no election shall be held.

The bill shortens what is required to be submitted to the credentials committee regarding completion of a state canvass to only include the name of all candidates and the total vote in that party's presidential primary and the percentage of the total vote the candidates received.

The bill extends the period of time for approving and certifying a referendum petition from 10 days to 30 days.

The bill extends the time for declaring sufficiency or insufficiency of a petition from 15 to 30 days.

The bill amends the Campaign Reporting Act (CRA) to eliminate references to preprimary conventions.

The bill provides for report filing the day following a holiday for expenditures and contributions. This section also eliminates a provision that exempted political committees from submitting these reports if the committee had not received or made any contributions in the past year.

The bill expands the legislative session fundraising prohibition period to include incumbents or candidates for a proscribed office, replacing explicit references to the state Legislature, governor, lieutenant governor, SOS, attorney general, state auditor, and state treasurer. This section also provides for new limits on contribution amounts.

The bill clarifies the guidelines and restrictions for contributions to include domestic partners of candidates.

The bill clarifies further the unlawful possession of keys of a secured container by an unauthorized person.

The bill amends the unlawful possession of an absentee ballot to include the establishment, designation or operation of any container or receptacle to receive voted ballots by unauthorized persons.

The bill amends the crime of obstructing a polling place to include persons blocking entry within 50 feet of a polling place or those willfully blocking access to monitored secured containers.

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 bill creates a new short title, “Native American Voting Rights Act” and provides for definitions to be used in the Native American Voting Rights Act.

The bill requires the SOS to issue a proclamation in both English and Spanish prior to an election at least 21 days prior to the filing date for the election. The section also removes the requirement that the SOS designate position 1 and position 2 for candidates in certain circumstances and requires county clerks to communicate with local governments to inquire which positions are to be filled in the next cycle.

The bill requires a candidate to submit a nominating petition containing 10 signatures or pay a \$50 filing fee for declarations of candidacy and further clarifies nominating petition requirements for write-in candidates.

The bill provides an additional 7 days for notifying candidates of determinations of candidacy.

The bill clarifies that a candidate shall take the oath of office prior to entering into duties of the office and specifies a date of January 1 for candidates in regular elections to enter into the duties of the office.

The bill clarifies special election procedures and amends the Special Elections Act to 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. This section also requires notice be sent to include the recommended deadline for depositing the mailed ballot with the U.S. postal service for timely delivery.

The bill clarifies restrictions on campaign activities to state that no lobbyist shall serve as a campaign treasurer or fundraising chair.

Regarding mayor-appointment of officers, the bill notes that 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 meeting shall be held within 30 days of the commencement.

The bill changes references to councilmen to instead reference council members and eliminates provisions allowing redistricting by a governing body of a municipality.

The bill notes the mayor as the head of a municipality and specifies that the new commission shall meet twice monthly.

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

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 also establish 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.

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

The bill 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 bill amends the county clerk recording and filing fund uses provision to broaden allowable expenditures by the county clerk and notes that the county clerk is subject to audit.

The bill amends Section 22-2-8.1 NMSA 1978 to change the Public School Code to provide that every "general election and regular local election shall be a school holiday for students and staff at each public school in this state."

The bill amends Section 31-13-1 NMSA 1978 retaining language that a convicted felon not be permitted to hold an "office of trust" in New Mexico unless the person has presented a certificate presented by the governor with a certificate verifying the completion of the sentence and was granted a pardon or a certificate by the governor restoring the person's full rights of citizenship.

The bill creates the new short title, "Confidential Substitute Address Act" and creates the confidential substitute address program within the office of the SOS to provide a process for victims of domestic violence to protect their confidentiality. The sections require notice be submitted to the SOS if new persons entering into the program within a 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 that Election Day polling places in 2021 will be established for operation as a voter convenience center.

The bill changes titles related to repeals and recom compilations.

Further amendments to the bill clarify automatic address updates at the Motor Vehicle Division and provides that a notice be sent to the existing address when an address change is requested.

Section 137 repeals Sections 1-6-9.2, 1-8-41, 1-10-8.1, 1-15A-8, 1-15A-10, 1-15A-11, 3-12-1.1, 3-14-11, 4-38-3 and 22-5-1.1 NMSA 1978 (being Laws 1999, Chapter 267, Section 1; Laws 1973, Chapter 228, Section 11; Laws 1981, Chapter 166, Section 1; Laws 1977, Chapter 230, Section 7; Laws 1977, Chapter 230, Section 9; Laws 1977, Chapter 230, Section 11; Laws 1985,

Chapter 203, Section 1; Laws 1965, Chapter 300, Section 14-13-11; Laws 1876, Chapter 1, Section 10; and Laws 1985, Chapter 202, Section 1, as amended), Laws 2020, Chapter 9, Sections 1 through 9 and Laws 2018, Chapter 79, Sections 139, 140, 142, 144, 145, 147, 149, 154, 155, 156 and 158.

This section provides a delayed repeal for -Sections 1-3-7.2, 1-6-5.8, 1-8-21.1 and 1-8-39.1 NMSA 1978 (being Laws 2021, Chapter 107, Section 1; Laws 2009, Chapter 251, Section 2; and Laws 1993, Chapter 55, Sections 11 and 10, as amended), effective July 1, 2022.

Sections 139 and 140 provide for applicability and an effective date for Sections 4, 17-21, 24, 24, 75, 93, 100-109, 116, 128 and 138 of July 1, 2022. The effective date of Section 1 is January 1, 2023. The provisions of Sections 29 and 127 of this act is effective January 1, 2023. The effective date of the provisions of Sections 27 and 62 of this act is July 1, 2023.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendments to Senate Bill 144 add references to election workers within the bill description and adds acts against the Secretary of State, Municipal Clerk, and County Clerk, not just employees or agents thereof, to the definition of intimidation.

Synopsis of Original Bill

Senate Bill 144 amends the Election Code relating to the crime of intimidation to include acts against employees and agents of the Secretary of State, County Clerks', and Municipal Clerks' offices. The bill maintains that intimidation against the aforementioned parties constitutes a fourth degree felony.

FISCAL IMPLICATIONS

Crime of Intimidation: There is no appropriation in this bill. Expanding the scope of crime of intimidation to include election workers and election officials should result in only minimal fiscal impacts to the state, if any. It is unclear how many arrests or convictions have been made for this crime in New Mexico nor how many additional convictions would result from the provisions in SB144. Enforcement would be a potential cost for implementing this bill, however the actual estimated costs are indeterminate.

Elections Administration: 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. The SOS would also receive additional budget adjustment authority beyond the current 5 percent provision, which would have fiscal impacts to the agency's operating budget and therefore the general fund, though currently indeterminate.

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.

Compensation: 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 board 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. The election board members are also eligible for per-diem and mileage reimbursement, to be paid by the SOS, 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.

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.

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.

Further, 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.

Training: 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.

Appropriative Authority: 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.

The bill also 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.

SIGNIFICANT ISSUES

The HJC amendments to Senate Bill 144 proposes to amend and repeal sections of New Mexico’s election code and other laws and adds new language aimed at protecting and preserving voting rights.

The Secretary of State notes that this legislation contains a number of pro-voter mechanisms to reduce the bureaucracy surrounding registering and voting that may frustrate or prevent the ability for certain qualified electors to participate in the voting process, without compromising sensible security and administration practices.

The bill gives the SOS additional budget adjustment authority to 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 in previous analyses by the Attorney General’s Office, the provisions relating to registration of organizations 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.

Third-Party Ballots: The agency 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.

Referendum Petitions: 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. SB6 proposes to extend that timeframe 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.

Crime of Intimidation: In 2021, the federal Department of Justice cites a recent rise in threats to election workers and, as a result, launched a taskforce to combat intimidation of election workers nationwide. According to the U.S. Department of Justice’s [webpage](#):

“The task force is leading the Justice Department’s efforts to address threats of violence against election workers, and to ensure that all election workers—whether they be elected, appointed, or those who volunteer—be permitted to do their jobs free from threats and intimidation. The task force will receive and assess allegations and reports of threats against election workers and will partner with and support U.S. Attorneys’ Offices and FBI field offices throughout the country to investigate and prosecute these offenses where appropriate.”

Similarly, under SB144 the Secretary of State’s office, the office of the County Clerk, and the County District Attorneys’ offices will continue to be the recipient of complaints from individuals who witness voter intimidation. Further, the Secretary of State’s office will continue to be charged with investigating complaints related to elections. By expanding the scope of the crime of intimidation, the Secretary of State’s office may experience an increase in complaints that would need to be investigated and dealt with as appropriate. While the extent of complaints is unknown at this time and is difficult to determine, the expansion may serve as a deterrent and may reduce instances of intimidation in New Mexico.

Reinstatement of Rights: Relating to reinstatement of rights, the bill proposes to maintain the registration of individuals who are incarcerated, rather than cancelling their registration upon entering into custody, and propose to reinstate voting rights of felons upon release from custody. The immediate reinstatement of voting rights when a convicted felon is released from incarceration is expected to simplify the administrative burden on the SOS and county clerks to register these individuals. Current law provides that a felon who is not only incarcerated but is also on probation or parole is ineligible to register or vote. While the voter registration system does maintain some records provided by the courts regarding probation and parole status of some individuals it is often outdated or missing records. This issue places the county clerk and the qualified elector in a position of having to research and dig up release paper to re-register to vote. This cumbersome process has led to individuals who are eligible to vote to be denied their right.

Automatic Voter Registration: The updates to automatic voter registration (AVR) are expected to increase the efficiency of registering to vote, increase voter registration of new voters, and improve the accuracy of the voter rolls since address changes at the MVD will automatically result in an address update in the voter registration database.

Absentee Voter Lists: By implementing a permanent absentee voter list, the SOS anticipates that this will make voting by mail easier for those voters who choose to vote in this manner in every election, particularly those individuals who are home bound or who otherwise just prefer this manner of voting. By applying to be placed on a permanent absentee voter list, a voter will not be required to apply for an absentee ballot for every election and will be automatically

mailed one which also reduces the administrative burden on county clerks. There are also sufficient mechanisms in place to remove a voter from the list if they no longer live at the address in which they are registered to minimize ballots being sent out to old addresses.

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 and implementing an elections security program. 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 and elections security management.

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.

The SOS will be required to implement a solution for candidates to collect electronic signatures for nominating petitions. The SOS has already worked with the City of Albuquerque on such a solution and, if this legislation passes, the SOS intends to leverage the piloted work already completed to provide the option of collecting electronic signatures for applicable candidates in statewide elections. Collecting electronic signatures is expected to reduce the number of candidate challenges prior to the primary election.

The SOS and MVD would be required to work on an upgrade to the current motor voter registration system utilized in MVD office to register voters to comply with the proposed improvements in this section of law. The delayed implementation of this section is expected to be sufficient time to implement the changes.

The SOS would be required to update its administrative rules on secured containers to reflect the proposed change in law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Companion to SB8 and SB6.

Conflicts with HB139; HJR5; HJR12; SB8; SB6; SB77; SJR1; SJR4; SJR5.

TECHNICAL ISSUES

The Attorney General’s Office also noted that 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 create 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 NMSA 1978 or whether it would be created in conflict or duplication of an already existing election fund.

The issue was raised during the February 15, 2022 HJC debate on the amendments to combine portions of SB6 and SB8 into SB144 whether such amendments would violate Article IV, Section 16 of the New Mexico Constitution, which generally prohibits the practice of a bill “embracing more than one subject”, commonly known as “logrolling”. It was noted by proponents of the SB144 as amended, that all three bills have “RELATING TO ELECTIONS” in their titles and thus believe SB144, as amended, is constitutional.

Further, the bill expands the definition of immediate family member but does not define “caregiver.” In the Absent Voter Act, a voter, caregiver or member of the voter’s immediate family may deliver that person’s ballot. The bill as amended provides for further clarity on the “immediate family member” provision but does not clarify the caregiver aspect.

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/acv/JH/al