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FISCAL IMPACT REPORT

SPONSOR Sandoval DATE TYPED 2/28/05 HB 1063

SHORT TITLE Omnibus Election Reform SB _____

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$1,500.0		Significant	Recurring	General Fund

Relates to HB 266, HB 361, HB 362, HB 1064, HB 1065, SB 678, SB 680 and SB 735

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Corrections Department (CD)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 1063 appropriates \$1.5 million from the general fund to the secretary of state to carry out the provisions of this omnibus election reform act.

The SOS provided the following synopsis:

Section 1: Proposes new material to compute time and deadlines for the purposes of the election code. Time periods of less than 11 days shall be computed as calendar days unless a deadline falls on a weekend or holiday in which the deadline will carry forward to the next business day.

Section 2: Defines the term "new registrant" to mean a person who was not registered to vote in the state at the time the person registered to vote.

Section 3: Defines "registration agent" as a state or federal employee who provides voter registration at a state agency or any other individual who assists another person in completion of a

voter registration application.

Section 4: Amends Section 1-1-16 NMSA 1978 to add state employees performing registration duties as qualified registration officers.

Section 5: Defines “unique identifier” to mean the last four digits of a voter’s social security number.

Section 6: Defines “required voter identification” to mean any of the following:

(A) a physical form of identification; which may be:

(1) an original copy of a current and valid photo identification with or without an address, which address is not required to “match” the voters certificate of registration;

(2) an original copy of a utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the person, which is not required to match the voter’s certificate of registration; or

(B) a verbal or written statement by the voter of the voter’s name, year of birth and unique identifier; provided, however, that the statement of the voter’s name need not contain the voter’s middle initial or suffix.

Section 7: Amends Section 1-2-2 NMSA 1978 to require the SOS to recruit and train poll workers and other election workers and certify presiding judges of the precinct boards.

Section 8: Amends Section 1-2-4 NMSA 1978 to require the SOS to provide a single training manual containing standard guidelines for the operations and processes of statewide elections, including pre-election day activities, election day activities and post election day activities and county and state canvassing processes.

Section 9: Amends Section 1-2-7 NMSA 1978 to require a person serving as a presiding judge of a precinct board to receive training in the duties of that position and be certified for the position by the SOS.

Section 10: Amends Section 1-2-17 NMSA 1978 to clarify the SOS shall supervise and the county clerk shall cause to be held a public school of instruction for all presiding judges, precinct boards and others who will be officially concerned with the conduct of elections and that all major details of the conduct of elections shall be covered by the SOS or an authorized representative and the county clerk or the clerk’s authorized representative.

Section 11: Amends Section 1-2-27 NMSA 1978 to allow a state chairman, in addition to a county chairman, of a political party to appoint precinct watchers.

Section 12: Allows a candidate for elected office or an election related organization to each appoint one county canvass observer per county. Requests for the observers must be made in writing to the SOS at least 10 days prior to the election and must specify the county canvass to be watched and the name of the appointee. A state or county political chair may appoint as many

observers as the chief election officer for that county determines is functional; provided that the state or county chair may appoint at least three observers and that the number of observers for each major political party is identical. The SOS shall notify the county clerk's of the qualified appointees at least five days before the election.

The bill further mandates county canvass observers shall be voters of a precinct located in that county to which they are appointed and that no members of law enforcement nor the spouse or child of a candidate being voted on at the election shall serve as a county canvass observer.

Observer's, upon presentation of written appointment to the county canvassing board, shall be permitted to be present from the time the county canvassing board begins until the completion of the canvass.

Only one county canvass observer for each candidate and each election-related organization in each county shall be permitted at one time in the room in which the canvass is being conducted and is strictly limited to observing and documenting and may not interrupt the canvassing process nor interfere with the orderly conduct of the canvass. Observers may be removed by the chief election officer if they do not comply with the law.

Section 13: Allow the use of a map indicating where a voter resides in lieu of a physical address if a voter lacks one. Voters shall be assigned to a precinct based on the geographic description of where the voter resides.

Section 14: Amends Section 1-4-5 NMSA 1978 to require a voter be given a copy, which may be a carbon copy, of the original certificate of registration. The registration agent shall receive a copy that omits the voter's social security number and date of birth. Qualified electors shall subscribe by signing the registration certificate using the elector's given name or mark.

The bill further states it is unlawful for the voter's date of birth or any portion of the voter's social security number to be copied, conveyed or used by anyone other than the person registering to vote except for election administrators for purposes of the registration and voting process.

Section 15: Amends Section 1-4-5.1 NMSA 1978 to allow a qualified elector to apply for registration by mail, in the office of the SOS or with a registration agent or officer in addition to the county clerk.

Section 16: Amends Section 1-5-7 NMSA 1978 to add the last 4 digits of the voter's social security number to the voter list and signature roster. This is in addition to the name, gender, place of residence, year of birth, party affiliation and precinct of residence of the voter.

Section 17: Amends Section 1-5-8 NMSA 1978 to require two of the three precinct voter lists to contain only the last 4 digits of the voter's social security number. The remaining list shall not include voter social security numbers.

Section 18: Allows early voting commencing on the third Saturday prior to an election at alternate locations established by the county clerk. Early voting may be done at an alternate location from 12:00 p.m. to 8:00 p.m. Tuesday through Friday and 10:00 a.m. to 6:00 p.m. Saturday through the Saturday immediately prior to the election as follows:

- Class A counties with more than 200,000 registered voters shall not have less than 12 voting locations;
- Class A counties with 200,000 or less registered voters shall not have less than 4 voting locations.
- Non-Class A counties with 10,000 registered voters or fewer; shall vote in the office of the county clerk or at an alternate location designated by the county clerk.

Early voters shall provide the required voter identification to the county clerk or the authorized representative. If not, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required identification, the voter shall be allowed to vote after subscribing an application to vote in accordance with SOS rules. The county clerk, or his authorized representative, shall mark the signature roster next to the voter's name indicating the voter has voted early.

Section 19: Third party agents shall collect absentee ballot applications shall submit the applications to the appropriate office for filing within 24 hours of their completion or the next business day if the office is closed. Persons who intentionally alter or fail to submit a completed application will be guilty of a fourth degree felony.

Section 20: Amends Section 1-6-4 NMSA 1978 and relates to absentee ballot applications by a federal qualified elector or overseas voter. The form shall allow the applicant to receive an absentee ballot for all elections within an election cycle. Each absentee ballot application shall require the applicant's printed name, year of birth and unique identifier to be supplied by the applicant, which shall constitute an acceptable form of identification, except for new registrants that have registered by mail and at that time did not provide acceptable identification.

Section 21: Amends Section 1-6-5 NMSA 1978 to require absentee voters to submit the required physical form of identification with their absentee ballot. The bill allows electronic transmission of absentee ballots if so requested by absentee voters. The bill further provides that the SOS and county clerks make reasonable efforts to publicize and inform voters of the times and locations for absentee voting at least 10 days before early voting begins.

Section 22: Amends Section 1-6-5.4 NMSA 1978 to define "registering of absentee ballots" to mean inserting the paper absentee ballot into an electronic voting system for recording and retention.

Section 23: Amends Section 1-6-8 NMSA 1978 to alter the official mailing envelopes of absentee ballots so they contain a space for the voter to record the voter's unique identifier, year of birth and name. The envelope shall have a security flap to cover this information.

Section 24: Amends Section 1-6-9 NMSA 1978 to require absentee voters to provide a copy of the required physical form of identification inside the official mailing envelope. The bill then requires the voter affirm on the reverse side of the official mailing envelope the voter's name, year of birth and unique identifier.

Section 25: Amends Section 1-6-10 NMSA 1978 to clarify absentee ballots must be delivered to the proper absent voter precinct board. The bill removes language requiring this to be performed

on election day.

Section 26: Amends Section 1-6-10.1 NMSA 1978 to allow caregivers or members of immediate family of a voter to deliver an absentee ballot provided the voter has subscribed the outer envelope of the absentee ballot.

Section 27: Amends Section 1-6-11 NMSA 1978 to allow county clerks, on the Thursday immediately preceding election day, to have special deputy county clerks deliver absentee ballots received prior to that day to the absent voter precinct board. Deputy clerks shall issue a receipt for all ballots delivered and shall observe the listing of the names on the official mailing envelopes in the signature rosters. Deputy clerks shall then obtain a receipt executed by the presiding judge and each election judge and shall return the receipt to the county clerk for filing. Receipts shall specify the number of envelopes received by the deputy clerk from county clerk for the absent voter precinct and the number of envelopes received by the absent voter precinct board from the deputy clerk. The bill then, due to the revised requirements stated above, removes language requiring deputy clerks to remain in the polling place of the absent voter precinct until observing the opening of the official mailing envelope and the deposit of the ballot in the locked ballot box.

Section 28: Amends Section 1-6-14 NMSA 1978 to require the election judges to open the official mailing envelope and the official inner envelope of the absentee ballot and insert it into an electronic voting system to be registered and retained until all votes are counted and canvassed following the close of the polls on election night. Due to the aforementioned revision, the bill then eliminates the requirement that inner envelopes be deposited in locked ballot boxes until election day for tallying and furthermore removes the requirement that prior to the closing of the polls on election day, election judges and presiding election judges remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting manually or count and tally the results electronically. The bill also removes the requirement that county clerks convene the absentee voter precinct board within three days before the election to alphabetize, enter on the roster and sort absentee ballots.

Section 29: Amends Section 1-6-20 NMSA 1978 to require the creation of absent voter precincts. The bill removes the requirement that absent voter precincts be created according to state representative district.

Section 30: Amends Section 1-6-22 NMSA 1978 to clarify a board of county commissioners designate a polling place in each absent voter precinct at the time the precinct is created and removes language allowing such a precinct to be consolidated.

Section 31: Amends Section 1-6-23 NMSA 1978 to allow county clerks five days preceding election day for absent voter precinct polling places to be open for delivery and registration of ballots.

Section 32: Amends Section 1-8-52 NMSA 1978 to change the date of filing for independent candidacy from the 2nd Tuesday in July to the day following the primary election. For office of the president, the bill changes the date of filing for independent candidacy from the 56th day prior to the general election to the day following the primary election.

Section 33: Require all voting machines used in elections covered by the election code to have a verifiable and auditable paper trail. Voting systems owned or used by a county on the effective

date of this act that do not have an auditable paper trail may be used until the first occurrence of:

- (1) Sufficient federal, state or local funds are appropriated to replace those voting systems
- 2) December 31, 2006.

No voting system shall be used that has not been certified by the SOS.

“Auditable paper trail” means a record that may be used by the state or its contractor to check either the veracity of a machine count or the count itself.

Section 34: Amends Section 1-9-4.2 NMSA 1978 to allow a voter to circle the name of the preferred candidate in addition to using a “check mark” or an “X.”

Section 35: Allow election day voting by absentee voters if the ballot is not voted on. An election judge shall note on the signature roster that the voter voted in person, record the number of the absentee ballot and mark the absentee ballot “rejected.” Rejected absentee ballots collected at the polling place shall be handled as are other rejected absentee ballots.

If the absentee ballot is voted on, the election judge shall accept the valid absentee ballot and have it delivered to the absent voter precinct board for counting and tallying upon the closing of the polls.

Section 36: Proposes new material relating to qualifying provisional, absentee and other paper ballots. The SOS shall issue rules to create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted.

When qualifying provisional, absentee and other paper ballots, middle initials, suffixes and addresses shall not be dispositive as to whether that person’s ballot is qualified and counted in the vote totals, provided that the county clerk can otherwise verify the person is a voter based on the information provided on the outer envelope of the paper ballot or affidavit.

Section 37: Amends Section 1-5-10 NMSA 1978 to require the judge to announce to the election clerks the list number and the name of the voter if a person’s registration is confirmed by the presence of the person’s name on the voter list and the voter provides the required voter identification

If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot and shall provide the required voter identification to the county clerk’s office or precinct board before the polls close, or the voter’s provisional ballot shall not be qualified. If the required voter identification is provided, the voter’s provisional ballot shall be qualified and the voter shall not vote on any other type of ballot.

If the voter brings acceptable proof of identification to the polling place after casting a provisional ballot, that ballot shall be spoiled and the voter shall vote on the voting system for that precinct.

Section 38: Amends Section 1-12-8 NMSA 1978 to specify that a voter shall vote on a provisional ballot if the voter does not provide the required voter identification to the election judge.

Section 39: Amends Section 1-12-10 NMSA 1978 to require an election judge to ask the voter to provide the required voter identification. If a voter fails to provide the required voter identification, the voter shall be allowed to vote on a provisional ballot.

Section 40: Amends Section 1-12-10.1 NMSA 1978 to require each polling place to post a map of the precincts represented in that polling place and an alphabetical list of the voters in each precinct represented in that polling place.

Section 41: Amends Section 1-12-19.1 NMSA 1978 to require a person desiring to be a write-in candidate in a general election to file the declaration of intent between 9:00 a.m. and 5:00 p.m. on the day after the primary election.

Section 42: Amends Section 1-12-25.3 NMSA 1978 to clarify that a provisional paper ballot shall not be rejected as long as the voter provides a valid signature and sufficient information for the clerk to determine the voter is a qualified elector.

Section 43: Amends Section 1-12-25.4 NMSA 1978 to clarify the SOS shall issue rules to ensure securing the secrecy of the provisional paper ballots, especially during canvassing, reviewing or recounting.

Section 44: Amends Section 1-5-11 NMSA 1978 to clarify that whoever willfully destroys, defaces, alters without authorization or improperly disposes of signature rosters used in an election is guilty of a 4th degree felony.

Section 45: Amends Section 1-12-53 NMSA 1978 to simplify the rules for the marking of an emergency paper ballot. The bill removes instructional text in this Section of law and simply rewrites it to state a voter shall mark the ballot in accordance with the instructions for that ballot type.

Section 46: The SOS shall issue rules governing and allowing procedures for reviewing the qualification of provisional, absentee and other paper ballots in the case of a contest, recount or recheck of election results, and a review of the qualification of provisional ballots shall occur in a recount.

Section 47: Amends Section 1-14-15 NMSA 1978 to allow the state canvassing board to condition the issuance of the summons on a receipt of a portion of or the full estimated costs of the recount or recheck to ensure sufficient security.

Section 46: The SOS shall issue rules governing and allowing procedures for reviewing the qualification of provisional, absentee and other paper ballots in the case of a contest, recount or recheck of election results, and a review of the qualification of provisional ballots shall occur in a recount.

Significant Issues

Sections 2 and 21: All voters should have to present identification for voting not just new registrants.

Section 14: The SOS prescribes the voter registration form. This form is being updated to in-

clude a perforated receipt for both the voter and the third party with matching numbers and a line for the third party registration agent to sign for tracking purposes.

Section 19: The SOS and county clerks prefer only the applicant be allowed to deliver, either by mail or in person, the absentee ballot application to the county clerk. There have been allegations of third party groups not turning in applications to the clerk if they were not of the "correct" party. These applications are not numbered or dated until they arrive at the county clerk's office. The 24-hour delivery after completion cannot be monitored.

Section 22: If this bill defines "registering of absentee ballots" to mean inserting the paper absentee ballot into an electronic voting system for recording and retention, then language earlier in this bill will need to be amended. This language states that "machines and ballot containers remain locked and the ballots may not be removed prior to election day."

Section 24: The SOS proposes to have an absentee voter send in their copy of identification with the absentee application. With the concern of identity theft, the Secretary feels that the application for an absentee ballot is a better place to include the ID. This will limit the exposure of the ID to the county clerk's office. The SOS is also concerned that some voters will continue to put ID in the Secrecy Envelope and not inside the official mailing envelope, thus causing the voters ballot from being counted.

Section 31: The language in this section stating the county clerk or statutorily appointed supervisor of the election shall determine the hours during which the absent voter precinct polling place shall be open conflicts with the language in section 28, page 36, line 13 stating that "only between the hours of 8:00 a.m. and 5:00 p.m. on the five days preceding election day..."

Section 34: The definition of a ballot was added to the election code based on court cases and recounts held during the 2000 Gore/Bush presidential election. Section 1-9-4.2 NMSA 1978 clearly defines what constitutes a vote on all paper ballots. The SOS firmly believes that if circles or other marks, other than what is currently in statute, are allowed on a ballot, poll officials will try to determine voter intent. No one other than the voter can determine what the voter intended on the ballot.

Section 35: This section, with respect to "voted" absentee ballots, is flawed in that an absent voter precinct board will not receive ballots from polling locations until after 7:00 p.m. on election night, making those ballots invalid. Because of this, the SOS recommends that "voted" absentee ballots should be marked "spoiled" and allow the voter to proceed to a voting machine.

Section 37: Since provisional ballots are not qualified until the canvass board meets to begin canvassing the election, the SOS feels strongly that the provisional voter should be able to provide the required voter identification to the county clerk up to the time county canvassing begins.

FISCAL IMPLICATIONS

The appropriation of \$1.5 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

The SOS states the \$1.5 million appropriation will not be sufficient to carry out the provisions of

this act.

ADMINISTRATIVE IMPLICATIONS

This act will place significant additional responsibilities and duties on the existing staff.

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP:

Relates to HB 266, HB 361, HB 362, HB 1064, HB 1065, SB 678, SB 680 and SB 735

TECHNICAL ISSUES

Page 12, Line 3, remove the first occurrence of the word “voter” and insert in lieu thereof the word “vote.”

Page 20, Line 18, remove the word “twenty-fours” and insert in lieu thereof the word “twenty-four.”

Page 56, Line 14, after the word “provisional” and before the comma, insert the word “envelopes.”

Page 56, Line 16, after the word “all” and before the word “provisional” insert the word “rejected.”

Page 56, Line 19, strike the word “ballots” and insert in lieu thereof “envelopes.”

OTHER SUBSTANTIVE ISSUES

The AGO provided the following:

The definition of “new registrant” should track with the Help America Vote Act definition.

Deleting the requirement that all information on a registration card cannot be copied may jeopardize a voter’s privacy and provide incentive for third party registration groups to take the cards to their HQs and copy names and addresses for internal use instead of delivering the cards directly to the county clerk.

Deleting the requirement “nonpartisan” from election organizations may lead to all sorts of groups claiming to have the right to have observers. The polling may get overly crowded, duplicative, and intimidating.

POSSIBLE QUESTIONS

The AGO raised the following issues:

The requirement that registration groups file new registrations within 24 hours could be read to punish a voter. If the registration group misses the deadline, is the registration still valid?

Does the registration form still have a “carbon copy” attachment?

DW/yr