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FISCAL IMPACT REPORT

SPONSOR Sandoval DATE TYPED 2/28/05 HB 1064

SHORT TITLE Conduct of Elections SB _____

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to the Election Code

Duplicates in part provision in HB 361, SB 678, HB 362 and SB 680, SB 718

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)

Attorney General's Office (AGO)

Corrections Department (CD)

SUMMARY

Synopsis of Bill

House Bill 1064 amends sections of the Election Code, making the following provisions listed by section of the bill:

Section 1: Defines a "registration agent" as a state or federal employee who provides voter registration at a state agency or other individual who assists another person in completion of a voter registration application.

Section 2: Includes state employees performing registration duties as registration officers.

Section 3: Clarifies that county clerks shall cause to be held the public schools of instruction for presiding judges, precinct boards and others officially concerned with the conduct of elections.

Section 4: As it concerns precinct boundaries, it clarifies the name change of the Department of Transportation and mandates that a county commission shall not split a precinct into two or more districts for any elected office and that precincts shall be designated solely by whole numbers.

Section 5: Proposes new language with requirements and penalties in the Election Code relating to third party registration agents.

Requires third party registration agents to register with the Secretary of State and provide the following upon registration:

- the name and permanent address of the organization;
- the names, permanent addresses, temporary addresses, dates of birth and social security numbers of each person registering persons to vote in the state on behalf of the organization; and
- a sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters on a form that gives notice of the criminal penalties for false registration.

Section 5: Requires registration agents to deliver certificates of registration to the Secretary of State or county clerk within 24 hours of completion of the certificate or the next business day if offices are closed. Furthermore, the Secretary of State may issue rules to ensure the integrity of the registration process including rules requiring that organizations account for all registration forms used by their registration agents. Violators of these provisions will be guilty of a fourth degree felony.

Section 6: Allows a qualified elector to apply to a registration officer for a voter registration certificate.

Section 7: Clarifies the close of registration, removing the language allowing county clerks to accept certificates of registration the Friday immediately following the close of registration and now uniformly allows county clerks to close registration at 5:00 p.m. on the 28th day before the election.

Section 8: Provides for the conformance to the provisions of the federal National Voter Registration Act of 1993 and allows the Secretary of State to issue rules on inactive list maintenance in accordance with the Act, and removes the provision mandating voters who fail to vote in at least one statewide or local election in a two-year period to be placed on an inactive voter list.

Section 9: Removes the term “Automated” from the Voter Record Systems Act.

Section 10: Clarifies and adds definitions to the Voter Record System Act.

Section 11: Clarifies that the Voter Records System Act must be implemented in all counties by order of the Secretary of State in accordance with the Help America Vote Act of 2002 rather than the board of county commissioners.

Section 12: Clarifies that county clerks are to provide for preparation of precinct voter lists and signature rosters generated from the official state voter file.

Section 13: As it relates to precinct voter lists, this section allows for only the last four digits of a voter's social security number to be displayed on the precinct voter list and signature roster.

Section 14: As it relates to precinct voter lists and signature rosters, this section allows for two of the three copies of the precinct voter list to contain only the last four digits of the voter's social security number.

The Secretary of State notes that for purposes of clarification for this bill analysis, the remaining copy does not show a voter's social security number.

Section 15: Removes a redundant requirement that county clerks furnish a copy of the voter file to the Secretary of State at least one time each month beginning the first Monday of February of an election year.

Section 16: Changes the term "Program Records" to "Voter Registration System Software" as it relates to its use in controlling the process of information derived from the voter file.

Section 17: Allows the Secretary of State to provide the county clerk a means for the preparation of voter lists, and specifies that the Secretary of State is to procure and preserve sufficient duplicate voter registration system software, rather than the county clerk.

Section 18: Clarifies the duties of the designated data processor. The data processor will be the person responsible for preserving and safeguarding voter files and voter registration system software.

Further removes the responsibility of the data processor to provide county clerks with data processing services in the implementation and maintenance of the unofficial election canvassing system and relieves the Secretary of State of the duties of testing the unofficial election canvassing system.

Section 19: Clarifies that those with access to the voter file that are prohibited by law from disseminating its contents to those not authorized by the Voter Records System Act to have possession of the voter file.

Section 20: Adds recording media, the voter registration system software and other relevant software as inclusive components in the definition of items that are prohibited from being altered or destroyed.

Section 21: Adds the Secretary of State to the list of those who shall furnish or receive voter data, mailing labels or special voter lists for qualified written requests.

Removes language requiring a requestor to sign an affidavit stating that the data shall not be used for unlawful purposes as this language becomes redundant with the amendments with regard to unlawful use of voter data.

Section 22: Removes the term "unlawful use of statistical data" and clarifies the unlawful use of "voter data" pursuant to the Automated Voter System Act.

Section 23: Clarifies that the Secretary of State shall be the one to enter into a written contractual agreement with the data processor instead of each county.

Section 24: Clarifies that the statewide computerized registration system must comply with the federal Help America Vote Act of 2002.

Section 25: Removes the requirement that the Secretary of State provide for the update of voter files at each polling place as this will now be done by providing the computer software to county clerks.

Section 26: Allows for federal absentee voters to receive an absentee ballot for all elections within an election cycle.

Clarifies that the application form shall be provided to the county clerks on a form prescribed, printed and furnished by the Secretary of State to the county clerk of the county in which the voter resides, and that upon completion by the applicant, the application is to be delivered to the county clerk by the applicant in person or by mail.

Section 27: Adds a new definition "registering of absentee ballots" to mean inserting the paper absentee ballot into an electronic voting system for retention until votes may be counted and canvassed.

Section 28: Removes the ability to have absentee ballot register available for public inspection Monday through Friday during regular office hours, and establishes for availability for public inspection only from 8:00 a.m. to 5:00 p.m. on the Monday before Election Day and from 7:00 a.m. until 7:00 p.m. on Election Day.

Section 29: Removes the reference to Subsection H of Section 1-6-14 NMSA 1978 relating the allowable time frame the absentee voter precinct board may convene to alphabetize, enter on the roster and sort the absentee ballots.

Section 30: Allows 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 amendment 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 31: Provides that under the personal supervision of the presiding election judge, the election judges shall 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 amendment 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.

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 32: Removes the requirement that absent voter precincts be created according to state representative district.

Section 33: Clarifies that a board of county commissioners designates 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 34: Allows county clerks five days before Election Day to have absent voter precinct polling places be open for delivery and registration of ballots.

Section 35: Recompiles Section 1-5-10 NMSA 1978 as 1-12-7.1 NMSA 1978 then amends it relating to voter lists, signature rosters and their use during an election.

Clarifies that a judge assigned to the precinct voter list shall determine that each person offering to vote is registered and shall do so by confirming the voters name on the voter list, and removes the use of so-called "eligibility" certificates issued by the county clerk that are no longer in use.

Section 36: Allows a voter to be eligible for assistance in operating a voting machine.

Section 37: Allows a person to be assisted by two persons of a precinct board of different political parties, requiring that persons providing assistance record their names on the voter roster.

Section 38: Mandates a fourth degree felony penalty on anyone who willfully destroys, defaces, alters without authorization or improperly disposes of signature rosters.

Section 39: Removes all language in the Subsections dealing with "if" and "then" and establishes new language that the voter mark the ballot in accordance with the "instructions for that ballot type."

Section 40: Recompiles Section 1-5-12 NMSA 1978 as 1-12-7.2 NMSA 1978

Section 41: Repeal of Sections of the NMSA. 1-5-9; Signature Rosters; certificate, 1-5-13; Signature Roster; use by board of registration, 1-5-15; Voter File; duplicate voter file; use, 1-5-20; Registration; filing, 1-5-27 through 1-5-29; Automated Voter Record System Advisory Committee; creation, duties, compensation; meetings and 1-6-21; Consolidation of absent voter precincts.

Section 42: The effective date is July 1, 2005.

Significant Issues

The Secretary of State notes the following substantive issues:

"One of the major changes this bill attempts to fix is the amended language in Section 6 relating to third party registration agents. As several of these special interest groups pick up numerous registration packets from County Clerks and the Secretary of State, many of them are not being

turned in for various reasons including the reason that some are from the “wrong” political party. The language in Section 6 will alleviate this problem as the people representing such groups will be required to register with the Secretary of State and will further be required to turn in registration forms within 24 hours, or the next business day, after the forms are completed. Allowing the Secretary of State to adopt rules for third party registration and providing for a fourth degree felony penalty for violators should quell the problem of so many of these forms being provided to third party registrants that are never turned in.

This bill adds a new definition “registering of absentee ballots” to mean inserting the paper absentee ballot into an electronic voting system for retention until votes may be counted and canvassed. For the larger New Mexico counties, this proposal will mean greater efficiency and lead to a more timely count of absentee ballots on Election Day.

The bill removes the ability to have absentee ballot register available for public inspection Monday through Friday during regular office hours. It then establishes availability for public inspection only from 8:00 a.m. to 5:00 p.m. on the Monday before Election Day and from 7:00 a.m. until 7:00 p.m. on Election Day. Other states are adopting similar legislation to alleviate the ability of political parties to know who is being mailed absentee ballots and “wait by the mailbox” to offer the voter help in completing the ballot. Language is needed in the bill to allow for inspection of the register after an election.”

PERFORMANCE IMPLICATIONS

According to the Secretary of State, this bill would instill a greater level of confidence in the election process in New Mexico and make the State Election Code less prone to abuse.

ADMINISTRATIVE IMPLICATIONS

The Office of the Secretary of State would be required to develop a form for and train staff in the procedures related to the registration of third party registration agents.

FISCAL IMPLICATIONS

The cost of developing a new form for registering third party registration agents and training staff would be minimal.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB 361 and SB 678 which include provisions for third party registration groups being required to file with the Secretary of State.

Duplicates HB 362 and SB 680 which include provisions on election school, registration agents, carbon copy of registration, twenty-eight days to close of registration, National Voter Registration Act inactive list, and the Automated Voter Records System update.

Duplicates SB 718, which addresses carbon copies of certificates of registration

TECHNICAL ISSUES

The Attorney General notes that the requirement that third party registration groups file new registrations within twenty-four hours could be read to potentially punish a voter. It is unclear whether or not a voter's registration is still valid if the registration group misses the deadline for submission.

OTHER SUBSTANTIVE ISSUES

This bill clarifies in several sections that the Secretary of State shall provide for compliance with the Help America Vote Act of 2002, which is critical to any piece of election reform legislation.

ALTERNATIVES

Election reform legislation can be analyzed during the interim allowing for more input from voters and others concerned with election reform.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Numerous changes to the Election Code will have to be postponed, including some provisions related to compliance with the Help America Vote Act of 2002.

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