

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/15

SPONSOR Smith/Ivey-Soto LAST UPDATED 02/27/15 HB 62/aHJC

SHORT TITLE Voter Registration Info Verification SB \_\_\_\_\_

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY15 | FY16   | FY17      | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|--------|-----------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | \$75.0 | \$20-30.9 | \$95.0-105.9         | Recurring*                   | Election<br>Fund |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)  
 Administrative Office of the Courts (AOC)  
 Attorney General’s Office (AGO)  
 Taxation & Revenue Department (TRD)  
 New Mexico County Clerks Affiliate (NMCCA)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 62 limits the information—from all to necessary--that SOS provides to a county clerk, which information SOS has received from other sources identified in the bill that raises questions about information on a voter’s registration, the status of a registered voter, or that suggests a voter may have voted in two states during the same election.

#### Synopsis of Original Bill

House Bill 62 adds a new provision to the Election Code that authorizes SOS to exchange information deemed necessary “to maintain the statewide voter registration list” with the chief election officer of another state or a consortium of those officers. It authorizes SOS to enter into written agreements with an agency or political subdivision of New Mexico or with a department of the federal government by which the local or federal agency provides information in its possession that SOS deems necessary to maintain the statewide voter registration list.

The bill also directs SOS to forward to the appropriate county clerk information received from any of those sources that 1) calls into question the information provided on a voter's certificate of registration; 2) raises questions regarding the status of a person registered to vote in this state; or 3) suggests that a voter may have voted in two states during the same election. The county clerk is authorized to investigate or reconcile the information received from SOS. SOS is required to develop and maintain a manual for county clerks that describes best practices for investigating and reconciling information that is derived from comparisons of different databases, including safeguards to ensure that eligible voters are not removed in error from the official list of voters.

Additionally, HB 62 permits SOS to enter into a written agreement with the Secretary of TRD to match information in the voter registration electronic management system database with information in the Motor Vehicle Division (MVD) database. Upon executing that agreement, the Secretary of TRD is required to enter into an agreement with the federal commissioner of social security (SSA) for the purpose of verifying applicable information.

The effective date of this bill is July 1, 2015.

### **FISCAL IMPLICATIONS**

SOS reads this bill as allowing New Mexico to join the Electronic Registration Information Center (ERIC). SOS reports the initial one-time membership fee for all members joining ERIC is \$25 thousand. If the State joins immediately it would become the thirteenth state to join. The annual costs would be \$30,898. SOS notes that David Becker of the Pew Foundation advises that the current annual cost is on the high end of annual dues for ERIC. Several other states are going to join in 2015, and Illinois has passed legislation requiring it to join no later than 2016. He estimates that the annual costs would drop to about \$20 thousand (if California and Florida do not join), and well below \$20 thousand if either or both those states join.

This bill also allows SOS to enter into an agreement with MVD to match data in the voter file to data in the MVD file. Currently, there is no validation of a voter's information against any other database, including MVD or SSA. Based on the costs of developing the existing MVD interface for voter registration, SOS estimates the cost of developing a new specification for exchange of information between MVD and SOS databases to be \$50 thousand.

The figures in the operating impact table above reflect the estimated costs for joining and maintaining membership in ERIC, as well the development costs necessary to allow the exchange of information with MVD.

### **SIGNIFICANT ISSUES**

SOS strongly supports the purpose of this bill--to validate and exchange information in the voter file against the databases maintained by other state agencies, other states, and the federal government. It explains that ERIC is a nonprofit corporation governed by the chief election officials of several states (or their designees). ERIC also allows local governments to join if the state is not a member and the local governments within a state elect a representative. The ERIC project requires a state to submit the state's MVD file, as well as the voter file, for matching against the other states' MVD and voter files, as well as other databases. To the extent the current language of the bill does not clearly authorize these activities, SOS suggests clarifying

the applicable provisions as described in the Amendment section below.

According to SOS, one of the key matches that is made by the ERIC system is address matching. As the ERIC project has been implemented over the past few years in other states, their data has shown that the largest categories of mismatched data involves voters who have moved within their own state but do not have an updated address in the voter file. For New Mexico, the majority of those voters could be identified by matching the voter file against the MVD file.

In addition, the bill requires SOS to share with the state's county clerks all information received from data matching to allow the county clerks to conduct investigations and reconcile the information. SOS warns that removing voters from the voter file is a process that must be conducted with the appropriate (or even greater) level of due process set forth in the National Voter Registration Act (NVRA), also known as The Motor Voter Act. Currently, county boards of registration review lists of voters who may be purged from the voter file after receiving the appropriate notices under NVRA. SOS recommends that reviews of the information received from the data matching should be reviewed by those local boards prior to the removal of any voter from the voter list, and suggests an amendment as set forth below addressing this process.

AGO echoes the concern about disenfranchising voters. It points out HB 62 does not expressly state what actions SOS or county clerks are to take after an investigation; whether as a result of an investigation, an otherwise eligible voter will or will not be allowed to vote, although the bill seems to suggest that an eligible voter may be removed from the official list of voters. Such an action could potentially violate the Help America Vote Act if the otherwise eligible voter is not permitted to cast a regular or provisional ballot. See 52 U.S.C.A. § 21082.

AOC notes that the thresholds for transfer of voter identification information to county clerks, and thus imposition of a duty to investigate, are subject to broad interpretation. Because documentation need only call into question the accuracy of a certificates, or raises questions about the status of a voter, or suggests a voter may have voted twice, SOS may end up referring names to county clerks based on very minimal information. As a result, a high number of voter records might be turned over to county clerks, who would have to investigate them all.

## **ADMINISTRATIVE IMPLICATIONS**

As TRD reports, the impact for MVD is unclear, pending discussions with SOS and SSA. As has been discussed with SOS, under MVD's current contract with SSA, MVD can provide driver data that exists within the agency's Tapestry system (a systems' reengineering project that completely revises and replaces MVD's drivers and vehicles computer systems), but is not able to run additional social security number verification checks on individuals who are not in the database. The impact on TRD's Information Technology Division is also uncertain and depends on the methods used. Discussions with SOS will be required to determine how it will request and receive the required information.

## **AMENDMENTS**

SOS suggests that Section 1(A) (1) might be amended to authorize the exchange of information with a "corporation or organization under the direction of a consortium of election directors." Additionally, it recommends language clarifying SOS's authority to share the MVD data with such an organization. SOS also recommends amending the existing Section 1-4-28, NMSA 1978

(or adding a new section within Article 4 of the Election Code) to expand the duties of the county boards of registration to address the review of discrepancies founds in database matching.

MD/bb/je