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FISCAL IMPACT REPORT

SPONSOR Ivey-Soto/Smith ORIGINAL DATE 02/26/15
 LAST UPDATED 03/15/15 HB _____

SHORT TITLE Election Code Changes SB 617/aSJC

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund and Consumer Settlement Fund
		Minimal	Minimal		Nonrecurring	MVD Operating and Public Election Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Amendment Agency Responses Requested at 3/14/15 6:12 pm; none received at time of writing

Office of the Attorney General (AGO)

Association of County Clerks (ACC)

Secretary of State (SOS)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Amendment of Senate Bill 617 adds new material and some changes to language in the original bill, as follows:

Title: the bill title now adds the words “ASSIGNING PROSECUTORIAL DUTIES” after the word Elections.

On page 2, a new section of the bill amends Section 1-1-1 NMSA 1978, the section that defines authority and duties of the Secretary of State, by deleting the words “ENFORCEMENT POWERS” from the title of the section, and strikes subsection 3, which in current statute states that the SOS, through the AGO or the district attorney (DA) having jurisdiction, may bring

actions related to enforcement of the Election Code.

SJC amendment then amends Section 1-2-1.1, mandating that the AGO will, upon request of the SOS, provide services to enforce provisions of not only the Election Code, but also, as amended, the Municipal Election Code.

SJC amendment goes on to stipulate, in this section, that in addition to the SOS, a county clerk may be the requestor of an investigation into the conduct of an election, no longer just on Election Day, but at any time.

Further, in a new subsection C adds this language:

C. Each DA shall assign a lawyer to be the elections prosecutor for the judicial district or for each county in the judicial district. The DA shall communicate and maintain current the name and contact information of the assigned elections prosecutor to the SOS and to each county clerk in the judicial district. The assigned elections prosecutor shall receive from the county clerk in the prosecutor's county or judicial district referral of suspected violations of the Election Code. The assigned elections prosecutor shall each month report in writing to the county clerk and the DA the status of each referral until the matter is concluded.

SJC on page 66 amends language to clarify that not all school board elections take place in the county clerk's office, but may, if the county clerk's office is located in the school district.

Lastly SB 617 as amended changes the language in the School Election Law, Section 1-22-12 NMSA 1978 which addresses the situation in which only one candidate is running for a school board election and there are no declared write-ins, questions or bond issues on the ballot. The amended language states that in this case, the county clerk may but is not required to perform the duties of the precinct board, and that such a precinct board may be appointed at the request of the school district.

Without agency analysis it is difficult to estimate the fiscal, administrative and performance implications of the SJC amendment. However, since election fraud is not common in the state, the implications are probably not significant to any of the agencies with new enforcement responsibilities, such as the AGO and DA's. However, any constitutional challenges to new voter ID or other election statutes that relate to municipal elections could result in more responsibilities for agencies affected.

Synopsis of Original Bill

Senate Bill 617 proposes to add new material and make amendments to the state Election Code (Sections 1-1-1-25 NMSA 1978) and to other provisions of law relating to local elections. A detailed analysis is found at attachment 1 (amendment changes are in boldface).

FISCAL IMPLICATIONS

SJC amendments would potentially increase operating costs for the AGO and DA's. Currently, the AGO operating budget is supported by the general fund and consumer settlement fund balances which are diminishing. The SJC reporting requirements to County Clerks may

negatively impact operating budgets.

SB 617 includes no appropriation. Fiscal impact is indeterminate, but probably minimal. SOS states that some of the changes have a positive fiscal impact, like the change to sample ballots, and that nothing in SB 617 will have a large negative fiscal impact.

As the bill relates to the TRD, a provision is added to require the Secretary of State (SOS) to provide access to the Motor Vehicle Division's (MVD) driver's license database to each County Clerk, for purposes of verifying voter registrations, processing absentee ballots and qualifying provisional ballots. The Secretary of State is to obtain this access through an agreement with MVD, and must also adopt rules to regulate use of the database by County Clerks.

TRD states that implementation of this bill will have minimal impact for the TRD's Information Technology Division (ITD). The bill does not address whether MVD or the SOS's public election fund would pay for the development and recurring access costs of the interface. Development costs for providing additional interface information for county clerks to verify voter registrant information are:

Estimated Tapestry Development Hours: 80
Estimated Tapestry Testing Hours: 100
Total 180 hours at \$50/hour = \$9,000

SIGNIFICANT ISSUES

Many of the suggested changes to the Election Code are to clean-up language, make it consistent with current practice and to create greater efficiencies in the election process. For a detailed section-by-section analysis of the bill and its implications, please see the table provided by the SOS in Attachment 1.

ACC analysis states that it strongly supports SB 617: "Legislation will allow Clerks to perform duties more efficiently as well as provide clarity in sections of the law that may currently be read as vague."

Changes to recount procedures in Section 42 of the bill remove the responsibility for issuing rules, with regard to recounts, from the SOS. It also adds language to require that, to ensure the accuracy of Electronic Voting Tabulation Systems (EVTS), that a hand recount of random ballots will take place. For statewide and federal offices, the number of ballots will now be either two percent or, under SB 617, one hundred ballots, whichever is greater, of ballots cast. For other offices, the numbers will be the greater of one hundred or five per cents of ballots cast. Further, if more than one EVTS is used in a country, the ballots to be recounted by dividing the ballots among the systems to be used, and performed based on the number of votes to be recounted on each individual system.

Also in recounts, if the results of the hand tally and the EVTSs do not differ; remaining ballots will be recounted using that EVTS. If they do differ, the EVTS will not be used in the recount and the remaining ballots will be recounted by hand or on a difference ETVS in which the results did not differ. In new language, County Clerks would be permitted to provide a visual inspection of the ballots prior to tabulation by the optical scan tabulating system for the purpose of having a representative of a candidate identify individual ballots to be selected for hand tally by the

precinct board.

For automatic recounts, SB 617 would require that in primary or general elections for federal or statewide offices, or judicial offices in a county with more than 200.0 thousand registered voters, the trigger for an automatic recount would now be a margin (between the two candidates) of less than $\frac{1}{4}$ of one per cent (in current statute, $\frac{1}{2}$ of one per cent). For other offices, the margin would now be less than 1%.

Among SB 617s revisions to the electoral code, sections 44-53 relate to public education. Most of the changes in these sections are language clean up, but two changes have impacts on school board composition and elections:

- It limits special school district elections to ballot questions, not member elections
- It limits elected school board terms to four years from the prior limit of six years

PED analysis states that SB 617's changes to school board term limits may result in more turnover on school boards.

With respect to the provision allowing motor vehicle records to be provided to county clerks, this use of motor vehicle records is already within the statutory exception to confidentiality of Section 66-2-7.1A2 NMSA 1978.

PERFORMANCE IMPLICATIONS

TRD prior analysis states "The new Tapestry system will be in production beginning May 25, 2015. Since the effective date of this bill is June 19, 2015, there is a possibility that the changes cannot be implemented into production by the effective date."

AMENDMENTS

SB 617 does not give guidance as to what would occur when school board vacancies remain unfilled. Regular school district elections are held the first Tuesday in February of every odd-numbered year. Should there be amended language that would allow vacated seats to be filled in the period between regular school district elections?

POSSIBLE QUESTIONS

What will be the effect of "limiting" the consolidation of precincts to 20 (in current statute it is ten) in a school district? Will some voters in rural precincts have to travel further to vote in school board elections?

CAC/bb/je

SB 617 Election Code Changes—Section by Section after SJC Amendment (in bold)

Title	Adds the words “Assigning Prosecutorial Duties”
Section 1- New language A Power of attorney or other form of proxy may not be used for an elections transaction	This clarifies existing law. The SOS and the AG have advised voters that Powers of Attorney may not be used to cast a vote on behalf of another person
Section 2- computation of deadlines- If a deadline is expressed as a day of the week, the deadline does not roll over if it is a holiday.	A number of sections of the election code make reference to certain days of the week (i.e. the 3rd Saturday before an election, the first Monday after an election etc). This provision clarifies that those deadlines do <u>not</u> roll over to the next business day
Section 3 -deletes “Enforcement powers” from the title of the subsection	Deletes as a responsibility of the SOS bringing actions related to enforcement of Election Code; see Section 4 changes
Section 3- adds the term "recount precinct boards"	The SOS administrative rule currently provides that recounts shall be handled by the absent precinct board. That is not always feasible, as clerks are not always able to reconvene that board for recounts. Relates to changes in Chapter 1, Section 14 later in the bill.
Section 3- adds a provision that county employees may be appointed to assist the precinct board	This does not allow county employees to be members of a precinct board but provides that they may assist the board
Section 4 -adds a new subsection regarding responsibilities of the AGO and DAs to enforcement of the Election Code and adds Municipal Election Code to them	Requires each DA to assign an attorney to be the elections prosecutor for each judicial district or each county in the district. Requires reporting on progress of cases. Adds to AGO duties Municipal Election Code enforcement. Enables County Clerks also to request investigators or lawyers from the AGO or DAs, no longer just on Election Day, to ensure proper conduct of an election.
Section 4- adds "removable media storage devices"	This change allows the county clerk to have messengers pick up and deliver the voting machine cards to the county clerk. This facilitates election night reporting.
Section 5- Consolidated precincts - adds a provision for Voting Convenience Centers that requires that the VCC "have sufficient check-in stations to accommodate voters throughout the day as provided in Section 1-9-5"	The significant language change is in Section 1-9-5, later in the bill.
Section 6 – New Language Election Day Polling Places – Adequate Resources requires county clerks to ensure that there is adequate resources for voters	This adds the same provisions for election day polling places as currently exist for early voting sites.
Section 7- Deletes first sentence in Subsection E of 1-4-5	Almost identical language is found in 1-4-5.1H. The difference is that in the deleted language, the voter registration becomes a public record upon acceptance by the clerk. In the language that is retained in 1-4-5.1, the voter registration becomes

SB 617 Election Code Changes—Section by Section after SJC Amendment (in bold)

	a public record after acceptance <u>and</u> "when notice has been received by the registrant." *** see below- quoted language deleted in Section 7
Section 8-Adds a provision requiring the SOS or a county clerk to send a registration to a county (or another county) within one day of receipt;	This addresses an issue where a voter registration has been sent to the wrong county, and then takes 10 days to two weeks to reach the correct county. With regard to the SOS, all voter registrations received are sent to the counties within one day of receipt already.
Section 8- Deletes the language in 1-4-5.1 that a voter registration becomes a public record "when notice has been received by the registrant"	The deleted language means that a voter registration becomes a public record upon acceptance by a county clerk.
Section 8 - adds a provision that "a qualified elector complies with a voter registration deadline when a properly filled-out voter registration is received by a county clerk or SOS regardless of when it is processed	This addresses the situation where a voter registration is received by the SOS or the wrong county clerk- such as when a form is delivered to the wrong county by a 3rd party registration agent. If it is received by <u>any</u> filing officer (SOS or any county clerk) before the close of registration, it is to be accepted.
Section 8 - changes the question on the voter registration form from "will you be at least 18 before election day" to "will you be at least 18 before the next general election"	This language appears to be intended to address to HB 151 allowing 17 years olds to vote in a primary election.
Section 9 Adds definitions of "election campaign purposes"; "governmental purposes"; "mailing labels"; "special voter list" and "voter data".	Voter lists may only be used for certain purposes. This amendment provides definitions for the purposes described in the existing statute.
Section 10 - adds a provision to Section 1-4-11 - "The county clerk shall reject any certificate of registration that does not contain the qualified elector's name, address, social security number and date of birth, along with a signature or usual mark. The county clerk shall reject any certificate of registration in which the question regarding citizenship is not answered or is answered in the negative. "	This additional language clarifies the statute requiring that certificates of registration must be complete to be accepted. This conforms to existing guidelines from the SOS to county clerks.
Section 11 - changes the term "voter identification card" to "voter information document"	It has been noted that reference to the voter information card as a "voter ID card" causes confusion among voters.
Section 11- Adds language providing that county clerks shall not process certificates of registration when the books are closed, during the county canvass or following county canvass when voting credit is being entered, provided voter credit is entered no later than 45 days after the election.	Currently County clerks continue processing voter registrations that have been received before the books close- during the period after the books close.

SB 617 Election Code Changes—Section by Section after SJC Amendment (in bold)

Section 11- deletes the language that states that "the contents of certificates of registration, except the SSN and date of birth, are public records"	1-4-5.1(H) continues to refer to voter registrations as "public records". The deleted language was duplicative.
Section 13- removes the requirement for file maintenance lists to be made by county clerks and shifts the responsibility for maintaining those lists to the SOS. Requires the SOS to provide updates voter files to the state chair of all political parties upon request.	Currently county clerks are required to prepare and provide copies of file maintenance lists for the voter file once a month to the chairs of the major political parties. This section deletes that requirement. It provides that the list and voter file will be made available upon request.
Section 14 - Adds a provision requiring the SOS to provide access to the MVD database to county clerks for the purpose of verifying voter registrations, processing absentee ballots and qualifying provisional ballots.	MVD is currently providing access to counties at the request of the SOS. This section codifies current practice and clarifies the use of the MVD database by clerks. It provides for the SOS to adopt rules governing the use of MVD data.
Section 15- This section deletes the requirement that notice be sent by "registered mail" for all mail ballot elections and replaces it with "mail with delivery confirmation". It also adds a provision to the notice to inform the voter that he or she can vote at a voting convenience center on election day (if a county is using VCCs)	Registered mail costs \$10.60 per piece. This change significantly reduces the cost of mailing the notices to voters for all mail ballot precincts. It also updates that section to provide information about voting convenience centers to the voter.
Section 16 - amends the section regarding vacancies on the general election ballot.	Under existing law, there is no provision for filling a vacancy that occurs after the last date for the Governor's Proclamation (1st Tues in March) and filing day (2nd Tues in March). This section corrects that one week gap.
Section 17 - amends the section regarding political parties filling vacancies on the general election ballot.	This section clarifies the composition of the county or state central committee members who may participate in the selection process for vacancies.
Section 18 - Amends section 1-8-14 regarding the Governor's election proclamation.	Eliminates the requirement that the SOS send the proclamation to county clerks by certified mail. This will provide a small cost savings and update the statute to accommodate electronic transmission. Provides for electronic transmission in an editable format (conforms to current practice).
Section 19 - Amends section 1-8-16 to conform to the change in Section 17	This makes 1-8-16 conform to the change in 1-8-7.
Section 20 – Amends section 1-8-26 regarding the date in which judicial retention offices file.	Changes the filing date for judicial retention offices from the second Tuesday in March to the twenty-third day after the Primary. This conforms with a constitutional amendment passed in 2014
Section 21- This adds language regarding a sufficient number of check in systems and voting booths in a polling location.	This section is intended to address the issue of insufficient ballot printers at VCCs. This section also provides that a county must

SB 617 Election Code Changes—Section by Section after SJC Amendment (in bold)

	provide the SOS with the number of systems requested and allows counties to add additional check-in stations at county expense.
Section 22- amends section 1-9-7 regarding acquisition of ballot tabulators	This amendment addresses an issue that arose in 2011. A state-owned tabulator was damaged and the county's insurance paid for a replacement system. The existing statute did not have a mechanism for the county to purchase the new tabulator.
Section 23- Amends 1-10-8 regarding the order of races and questions appearing on the ballot	The amendment clarifies the order of down ballot items.
Section 24 -Amends the section regarding sample ballots to eliminate the 10% requirement and allow sample ballots to be made available to voters in electronic format.	For voting convenience centers, particularly in large counties, it is not cost effective or practically feasible to have printed sample ballots for every precinct. This allows counties to use stand-alone computers for voters to find their sample ballot. It should result in cost savings for the counties.
Section 25- Amends 1-12-7.1 regarding the use of signature rosters and the posting of paper voter lists at polling locations.	This section was not previously amended to accommodate the use of electronic poll books rather than printed signature rosters. Electronic poll books are used with the ballot printers in early voting and in voting convenience centers.
Section 26 - amends 1-12-10.1 regarding the Voting Rights posters displayed in polling places	This is clean up language. No significant issues.
Section 27 amends 1-12-13 making a violation of this section a misdemeanor offense instead of “perjury”.	No significant issues.
Section 28 - amends 1-12-15 – removes primary, general or statewide special and the reference to entering a voting machine; adds a provision that a person who provides assistance to someone who does not require it is guilty of a misdemeanor.	Would apply to all elections and not just the primary general or statewide special. The reference to entering a voting machine is outdated. Voters now mark their paper ballots in a voting booth.
Section 29 - amends 1-12-25.4 to allow a county clerk to county a provisional ballot if a voter was placed on a purge list in error.	This is clean up language
Section 30- amends 1-12-31 to specify that the data card from the ballot tabulator shall not be locked inside a ballot box.	This conforms with the previous amendment to allow the data card from the ballot tabulators to be transmitted to the county clerk by a messenger
Section 31 - amends 1-12-69 to provide that paper ballots and election records are exempt from the Inspection of Public Records Act until 45 days	This would prevent IPRA requests for ballots and election materials until after the canvassing, a judicial inquiry or inspection of ballot is completed.

SB 617 Election Code Changes—Section by Section after SJC Amendment (in bold)

following any recount or adjournment of the last canvassing board. Any inspection must protect the secrecy of the ballot	Ballots would still be subject to impoundment under 1-14-9. Beginning in 2014, the removable media cards contain ballot images, which have been the subject of IPRA requests.
Section 32- amends 1-12-71 to provide that local governments, including counties, may not hold local elections within 50 days (before or after) a statewide election. Does not prohibit a local question from appearing on the ballot	Under federal law, overseas and military voting begins 45 days before the election, so the extension of the blackout period to 50 days is appropriate.
Section 33 - Amends 1-13-9 to remove references to voting machine counter dials.	This language is outdated. It refers to voting machines that are no longer used in New Mexico.
Section 34- Adds a provision allowing a county with a population of 250k to complete its canvass within 13 days, not 10.	In 2012, some counties did not fully complete their canvassing within 10 days.
Sections 35, 36 and 37 - amends 1-13-14, 1-13-21 and 1-14-6 regarding the opening of ballot boxes after the election, or during the voting system check without a court order	This allows county clerks to perform routine duties after the election without having to obtain a court order to open the ballot box. It also allows a county to delay commencing the voting system check in the event of a recount. This occurred in 2012 and 2014 where counties were conducting automatic recounts, ballots were impounded, and they were unable to complete the post election voting system check at the same time.
Section 38 – amends 1-14-13.2 to waive the voting system check for offices that are subject to recount, allows for the auditor to order the opening of ballot boxes for the voting system check and extends the deadline for counties reporting voting system check results in the case of a recount.	In 2014 counties were required to conduct a statewide recount that conflicted with the voting system check. This will give clarify that a race is not subject to both a voting system check and a full recount.
Sections 39 and 40- amends 1-14-16 and 1-14-18 to provide for a "recount board"	By rule, recounts are currently handled by the absentee board. However, some counties were not able to reconvene all members of their absentee precinct boards and had to appoint new members. This changes the statute to conform to that practice.
Section 41 - amends 1-14-19 regarding a recount or recheck involving a district judge. The judge would not be required to be replaced if it is not a partisan election	A district judge would not be required to be replaced unless he or she was involves in a partisan race.
Section 42- amends 1-14-23 to put recount procedures to remove the allowance of a ¼ of 1% margin of error, requiring zero error in order to continue on the voting systems.	In 2014, a statewide recount has a smaller margin of victory than ¼ of 1%. This change resolves that issue.

SB 617 Election Code Changes—Section by Section after SJC Amendment (in bold)

Section 43 - amends 1-14-24 to clarify the timelines for automatic recounts. Adds language providing that for an automatic recount involving only one county, the SOS shall notify the state canvassing board within 7 days of notification from the county	This clarifies timelines for automatic recounts. It also provides that recounts for magistrate court races shall only occur in counties with a population over 200,000
Section 44- amends 1-22-2 of the school election code to delete the term "local"	This is clean up language.
Section 45 - amends 1-22-3 of the school election code to conform residency language for school board candidates to the residency statute for other candidates. Also clarifies that a special school district election can be held on a bond question only.	This is clean up language.
Section 46 amends 1-22-5 regarding special school election proclamations to clarify that they do not involve candidates	This conforms 1-22-5 to the change in 1-22-3, above. Schools districts would not be able to hold a special election for candidates.
Section 47 (As amended, now section 50) clarifies that not all school board elections take place in the county clerk's office, but may, if the county clerk's office is located in the school district.	Also amends language so that, in special cases, the county clerk "may" but is not required to perform the duties of the precinct board, and that such a precinct board may be appointed at the request of the school district.
Section 47-amends 1-22-6 to provide that a consolidated precinct in a school district election may have up to 20 precincts	Consolidated precincts under the Election Code are limited to 10 precincts. This would allow school elections to consolidate up to 20 precincts in one polling location.
Section 48 - amends 1-22-7 to conform to the change above in 1-22-3 - no candidates in a special school district election -only ballot questions	This conforms 1-22-7 to the change in 1-22-3 above.
Section 49- amends the declaration of candidacy for school election candidates. changes "resident" to "registered to vote"	This change amends the school declaration of candidacy to more closely conform to the declaration of candidacy for other candidates.
Section 50- amends 1-22-19 to allow early voting in school board elections to run through the Saturday before the election, rather than ending on Friday.	Early voting in statewide elections occurs through the Saturday before the election. This would conform the school election code to that same provision.
Section 51 -amends 22-5-3 to conform to the change in 1-22-3 above.	This conforms the statute to the requirement above that school board members may not be elected in a special election.
Section 52 - amends 22-5-3.1 regarding a 7 member school board reverting to 5 members. Changes 6 year term to 4 year term.	No impact on SOS.

SB 617 Election Code Changes—Section by Section after SJC Amendment (in bold)

<p>Section 53-amends 22-5-9 to conform to the change above in 1-22-3- no school board members elected in a special election</p>	
<p>Section 54 - amend 22-7-13 regarding the time for holding a special recall election for school boards. Provides that a special recall election may not be held during the 42 days before or after a statewide election</p>	<p>Resolves a conflict in the statutes regarding the timing of a recall election for school board members so that a clerk is not required to conduct a recall election during the time that a statewide election is being conducted or canvassed.</p>
<p>Section 55- amends 27-5-9 to provide that an election on a special indigent hospital levy may not be held within 50 days before or after a statewide election</p>	<p>This resolves a conflict in statutory language regarding the time of such elections.</p>