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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/28/17  
**LAST UPDATED** 3/14/17      **HB** 98/aSRC

**SPONSOR** Salazar, T/Ivey-Soto

**SHORT TITLE** Paper Ballot Access for Blind Voters      **SB** \_\_\_\_\_

**ANALYST** Esquibel

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Up to \$190.0			Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

HB98/aSRC relates to HB 455, Election Code Changes; and SB 224, Register Voters 3 Days before Election.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Secretary of State’s Office (SOS)
- Commission for the Blind
- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)

### SUMMARY

#### Synopsis of SRC Amendments

The Senate Rules Committee (SRC) amendments to House Bill 98 (HB98/aSRC) propose changes to Section 1-6-4 of the Election Code establishing a process for online absentee ballot applications for all eligible voters, not just those voters that are blind or visually impaired. The amended bill now provides for an online application for absentee ballots, changes deadlines for ballot changes and making conforming amendments, changes registration closure times, changes requirements for invalidation of nominating petitions, provides for replacement ballots for absentee voters, and changes deadlines for testing new voting systems.

Specifically, HB98/aSRC proposes to move the deadlines associated with collecting and finalizing ballot content for statewide elections from 56 days to 63 days prior to Election Day including establishing:

- Section 1-2-1, a timeline for the Secretary of State’s Office (SOS) from adopting or amending rules prior to a primary or general election.

- Section 1-8-4, a timeline to resolve a candidate challenge to a minor party candidate.
- Section 1-8-8, a timeline relating to filling vacancies on the general election ballot.
- Section 1-10-4, a timeline for final ballot content to be submitted to the printer.
- Section 1-15-3, a timeline for the nomination of presidential electors.
- Section 1-15A-7, a timeline for withdraw of presidential candidates.
- Section 1-16-3, a timeline for the SOS to certification constitutional amendments.
- Section 1-24-2, a timeline to publish the proclamation for a special election.

The bill also proposes to remove the deadline of 5pm for close of registration on the 28<sup>th</sup> day prior to an election in Section 1-4-8 to the “end of” the 28<sup>th</sup> day, which accommodates those registrations that may come in online or electronically after 5pm.

The bill proposes to replace the use of ‘alternative’ or ‘replacement’ ballot with ‘provisional paper ballot’ in Section 1-6-16.2 and 1-6-22.1 which provides for uniformity in processing of emergency ballots.

The bill proposes an amendment to Section 1-8-7 and 1-8-8 such that appointments to fill ballot vacancies must be filed using a form approved by the SOS.

The bill also proposes amendments to Section 1-8-31 removing the requirement for a nominating petition signer to be a registered voter 10 days before signing a nominating petition. Additional changes remove the requirement for the candidate’s address and county to appear on the petition form header and add a petition for a judicial candidate must include the judicial division numbers when the position is within a judicial district. The amendments propose that alteration to the header of a nominating petition will cause a petition page to be deemed invalid.

Finally, sections of Article 9 are amended removing the requirement for independent tests of voting systems to be completed within six months of the call for certification of a voting system.

### Synopsis of Bill

House Bill 98 proposes to amend Section 1-9-7.1 of the election code requiring the Secretary of State to establish procedures allowing the blind or visually impaired to independently mark their ballots.

### **FISCAL IMPLICATIONS**

The bill does not include an appropriation.

The SOS reports it signed an MOU with the State of Maryland and has been granted a free copy of the source code of the system used in Maryland that aids the blind in unassisted absentee voting. The software will require some modifications to the code to customize it for use in New Mexico but it is anticipated this can be completed in house by SOS, although the number of hours to complete the required customizations has not been determined.

Initially, the Secretary of State’s Office (SOS) reported to address some of the technical issues faced when voting by the blind or visually impaired, the SOS voting system vendor is currently in the process of gaining federal certification on a new software version and the SOS is eligible to receive the new software version upgrade through the SOS’ current maintenance agreement.

However, the vendor reports the servers used in the counties to program the voting systems will require a SQL server software upgrade in order to use the new software version which is estimated to cost approximately \$190,000. The servers are owned by the SOS, so this is expected to be a state cost and has been included in the SOS' FY18 budget request; however, the Executive recommendation for the SOS budget does not include these additional funds and the Executive recommendation was adopted by the House Appropriations and Finance Committee (HAFC) on January 23rd.

### **SIGNIFICANT ISSUES**

The Secretary of State's Office (SOS) notes Section 1-3-4(G)(3) and Section 1-3-19(B) of the Election Code currently require each polling location have at least one voting system available to assist disabled voters, including the visually impaired, to cast and record their votes. The voting system equipment purchased in 2014 and currently being used in local and state elections meets this requirement for voting in polling places. However, the Secretary of State (SOS) has received complaints about this technology from members of the blind and low vision community. Complaints received include poll workers not being familiar with assisting in the setup and use of the technology, the sound quality of the automated ballot reading component being inadequate, and the user interface to navigate through the ballot being cumbersome and slow.

The SOS has already evaluated software designed by the Maryland Secretary of State in which a blind voter is able to independently mark their ballot electronically after being granted access to a software application, print it, and mail it to the county clerk. The Maryland Secretary of State has agreed to grant use of their software to New Mexico and an MOU has already been signed by the two agencies. The software would require some modifications to the computer code in order to customize it for use in New Mexico, but it is anticipated this can be completed by in-house development staff at the SOS. The number of hours to complete the required customizations has not yet been fully assessed.

### **PERFORMANCE IMPLICATIONS**

The Commission for the Blind indicates HB98 will result in voters who are blind or visually impaired having access to an accessible and secret absentee ballot. According to the most recent U.S. Census Bureau, there are currently 65,562 persons of voting age in New Mexico who are blind or who have serious difficulty seeing. Adoption of HB 98 will also result in reduction in lines and delays at polling stations because blind or visually impaired voters will have the ability to independently use an absentee ballot. Having the ability to independently vote by absentee ballot will also give voters who are blind or visually impaired an alternative to the currently used Dominion ICE voting machines which have been criticized as being difficult and slow for blind voters to use.

At least one other state has already successfully developed and adopted a voting system of the type that is proposed in HB98.

### **ADMINISTRATIVE IMPLICATIONS**

Under HB98/aSRC, the SOS would be required to amend or publish new administrative rules for a technical solution for unassisted absentee voting for the blind, and uniform processes for accepting and fulfilling absentee ballot applications received electronically.

Additionally, the SOS would be required to update the petition forms used by candidates, update the election calendar used by the SOS and county clerks, develop a nomination form for filling ballot vacancies, and update other educational materials to conform with new requirements and processes.

The proposed legislation would require the SOS to write and publish a new administrative rule and implement a technical solution for unassisted absentee voting for the blind.

## **COMPANIONSHIP**

HB98 will improve voting access for persons who are blind or visually impaired as provided for in the federal Help America Vote Act of 2002 (Public Law 107-252).

## **OTHER SUBSTANTIVE ISSUES**

The SOS reports the current deadline of 56 days prior to a statewide election for finalizing ballot content makes the timeline for the SOS and county clerks extremely tight to ensure all of the proofing, programming, printing, and testing are completed in time to meet the federal and state law for issuing military and overseas ballots, which is 45 days prior to an election. HB98/aSRC proposed change to 63 days prior will make ensuring all of the required activities leading up to the 45 day deadline easier to comply with by providing sufficient time for counties and the SOS to ensure ballot content is accurate and voting systems are programmed and tested in time to meet all subsequent election deadlines.

The SOS expects the proposed changes to Section 1-8-7 and 1-8-8, requiring a prescribed form to be used to fill ballot vacancies, would streamline the administrative nomination process. Currently, there is no standard for how the SOS and county clerks receive the nomination information which often leads to vagueness regarding the identity of the candidate, how to contact the candidate, and who the person is that is submitting the nomination.

The SOS expects that the proposed changes to Section 1-8-31 will clear up current confusion amongst filing officers regarding vagueness when a candidate's address listed in the petition header does not exactly match the candidate's registration address when determining whether to qualify a candidate. The candidate address is listed on other candidacy documents and is not necessary for petition signature collection. Additionally, the proposed changes clearly indicate that the alteration of the petition header will invalidate the petition page which creates a clearer guideline for what disqualifies a petition page.

Changes proposed to Article 9 will streamline the certification and re-certification process of voting systems such that as long as independent testing has been conducted and the system has not changed since the testing was conducted, it can be evaluated for certification purposes. The current requirement for test results to be no older than 6 months is arbitrary when the real intent should be that the test reports accurately reflect the version of the software that is being certified or re-certified.