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FISCAL IMPACT REPORT

SPONSOR Ivey-Soto/Baca/ ORIGINAL DATE 01/25/22
Diamond/Nibert/Lane LAST UPDATED _____ HB _____

SHORT TITLE Election Security & Administration SB 6/ec

ANALYST Hitzman

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
	\$300.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Impact	See Fiscal Impact			

(Parenthesis () Indicate Expenditure Decreases)

Relates/Companion to SB8

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Bill 6 appropriates \$300 thousand from the general fund to the Secretary of State's Office to support elections security. SB6 also clarifies elections-related processes and procedures, amends the election code, and clarifies provisions of other voting-related legislation.

SB6 clarifies when the Inspection of Public Records Act should apply to public records relating to elections.

SB6 adds definitions related to real-time synchronization of data from voting locations to the office of the county clerk.

SB6 creates an election security program within the office of the SOS. The program shall advise on voting system and cybersecurity requirements, conduct assessments, inspections, and incident response related to elections-critical infrastructure, and monitor functionality of voting systems.

The bill requires an election-related organization to register with SOS in advance of elections to fill a vacancy in the U.S. House of Representatives.

SB6 also limits the use of forms to include only those forms issued and authorized by the SOS and requires service of process on the SOS for election-related litigation.

SB6 changes references of minors to “qualified residents.” Previously, this section limited appointment to two minors, whereas SB6 removes the limitation and changes references to minors to instead reference “qualified residents.” SB6 also requires that board appointments be eligible to vote, whereas previously up to two minors were allowed to be appointed to the election board by the county clerk. As such, the bill removes other appointment requirements related to minor appointments, such as the requirement to receive parental approval.

SB6 also changes how the county clerk may appoint teams of election judges and provides that each team shall have two election judges that shall not belong to the same political party. This section further provides that an election judge cannot have changed party registration in the previous two years if that change makes the judge ineligible to serve on the team.

SB6 revises election board and messenger compensation to be no less than twice the minimum hourly wage set by federal or state law and provides for board and messenger payment for training and per diem/mileage, to be paid by the SOS either through grant/reimbursement or direct payment process.

SB6 also requires training for challengers, watchers, and election observers to be provided by the county clerk and clarifies limitations for appointment or service. In addition, the section includes additional prohibited activities for watchers, challengers, and observers, including photographing ballots or protected information.

SB6 requires creation of voter convenience centers and removes language regarding prerequisites for consolidation of the centers. The bill also requires that elected members in political subdivisions with 10 thousand or more residents be a resident of the district, whereas members for subdivisions with fewer than 10 thousand residents may reside at any location in the political subdivision and be elected at large. Under SB6, H class county members are not required to be districted and may reside at any location within the county and be elected at large by the voters of the county.

SB6 requires the SOS to develop a program to maintain clean voter rolls and reconcile voter registration lists, effective July 2022. The bill also creates provisions related to same day registration, to be provided during early and Election Day voting at all statewide and special elections. SB6 clarifies the documentation that may be used as identification when a voter registers prior to voting.

SB6 changes when county clerks shall begin processing voter registrations after an election from 35 days after Election Day to the Monday following an election.

SB6 clarifies that a full SSN is required for registration, sets all county board of registration to five members, and requires the Motor Vehicle Department to transmit all signature images to the SOS. Additionally, SB6 requires county clerks to verify the last four digits of the registrants' SSN and signature prior to turning mailed ballot envelopes to the absentee election board and requires county clerks to update absentee voter identification requirements to include both the last four digits of the voter's SSN as well as a signature.

Further relating to absentee voting processes, SB6 prohibits absentee applications provided by third parties, establishes that applications must be received 14 days prior to election day, requires a notice to be sent to a voter's registration address if a ballot is mailed to another address, requires a notice to be sent if a ballot is rejected in certain circumstances, requires that an informational notice be sent with all mailed ballots, provides for a violation under the election code for establishing a fax drop box, updates the definition of "immediate family" authorized to return an absentee ballot and clarifies replacement ballot provisions.

If the election board must convene after Election Day, SB6 provides for law enforcement supervision for uncounted ballots. In addition, SB6 sets working hours for the board if counting is not complete on election night, provides for a random sampling of the verification process completed by the county clerk and provides that absentee application from a federal overseas voter is allowed up to three days prior to election day if requesting secure electronic delivery of a ballot.

SB6 updates the definition of voter-participant to include qualified residents and provides procedures for which a voter-participants may request a replacement ballot.

SB6 removes references to public regulation commissioners as elected officials. SB6 also clarifies the form requirements and timing for filling a vacancy on a primary and general election ballot. Further, SB6 adjusts the nominating petition requirements for minor party candidates; if there are fewer registered voters affiliated with the minor party than signatures required then the signature count shall be the same as for independent candidates.

SB6 removes the ability to nominate candidates via a state preprimary convention. SB6 creates a new short title, "Primary Election Law," for Section 1-8-13 NMSA 1978 and removes references to the public regulation commissioners. Additional changes to this section include changing the authority to amend the proclamation to be the SOS rather than the governor and removes the option for county candidates from submitting a pauper's statement in lieu of paying a \$50 filing fee and instead requires the candidate to gather nominating petitions.

SB6 reduces the nomination requirement in the following ways: 1 percent of the total vote of the candidate's party in the district for the public education commission, 2 percent for judicial candidates, and 3 percent for all other primary candidates.

SB6 amends the primary write-in candidate provisions to require nominating petitions containing the same number of signatures required for major party candidates and establishes the same qualification and challenge process for write-in candidates as is provided for non-write-in candidates.

SB6 also reduces the amount of time before Election Day that the county clerk is required to certify in writing the ballot for each precinct or county, from 60 days to 56 days.

SB6 clarifies that the order of candidates for the same office shall be determined in a randomized way provided by rule. SB6 requires the Secretary of State to notify voters of an election 42 days prior to each election.

SB6 opens the process of preparing, inspecting, certifying and sealing electronic voting machines to observation by the public and requires reporting of serial numbers and product specifications of ballot tabulators to the county chairs of each political party on a ballot.

SB6 changes the local election assessment fund to the state election fund and provides for deposit into the fund of any federal revenues, grants, and capital outlay funding intended for state executive elections. SB6 gives SOS budget adjustment request authority to use money in the state election fund for purposes of conducting elections beyond a 5 percent variance from the approved elections budget that fiscal year.

SB6 creates the county election fund within the county treasury, subject to appropriation by the legislature, and provides for reporting requirements. Fund expenditures are determined by the county clerk and used for administration of elections. Remaining balances shall not revert to the county general fund.

SB6 provides the contents of a county canvass report and requires that all ballots be tallied by an election board, including absentee ballots received after the board has adjourned. SB6 requires that, if a ballot box is required to be opened at any time during the county or state canvass process, a presiding judge and two election judges or a deputy clerk shall be present.

SB6 provides that ballot impoundment costs are determined by the state canvassing board and inspection of such ballots shall occur in the presence of the county clerk or the clerk's agent. The bill also expands post-election voting system audits, to occur after each general election and after every statewide election, including special, local, primary, and general elections.

SB6 adds an automatic recount provision to require recounts in cases where there are five or fewer votes between the candidates. SB6 also expands the time for SOS to determine the sufficiency of a referendum petition from 15 to 30 days.

The bill amends the Campaign Reporting Act (CRA) to expand the legislative session prohibited period to include incumbents or candidates for a proscribed office, which includes the state Legislature, governor, lieutenant governor, SOS, attorney general, state auditor, and state treasurer. The section prohibits these and political committees from accepting contributions except under defined circumstances. SB6 amends the Lobbyist Regulation Act to conform with language related to the proposed amendment to the above CRA prohibited period. These provisions contain an effective date of July 2022.

SB6 clarifies the penalties section of the Election Code, making the possession of keys of a secured container by an unauthorized person, unauthorized establishment of a drop box, or unauthorized entering or altering of an absentee register a fourth-degree felony and clarifies "authorized individuals" who are allowed to be within 50 feet of a polling place.

SB6 amends sections of the Local Elections Act to change the time for when the regular local election proclamation is issued and the deadline by which it can be amended. Write-in candidates

are proposed to have the same filing requirements as named candidates and the deadline to file candidate challenges is extended by a week. A regular local election candidate filling an unexpired term takes office at the same time as all other regular local election candidates on January 1st.

Amendments to the Special Elections Act clarify when a ballot should not be automatically mailed, including when a voter notification is returned undeliverable and the voter has not communicated an error or updated their registration address or if the voter is a confidential address program participant.

SB6 adds the SOS to the Tax Code authorizing the Taxation and Revenue Department to share taxpayer information for voter registration purposes.

SB6 removes the oath of office filing fee and limits the SOS from collecting fees for oath of office or notice of appointment to a vacancy in office.

The Confidential Substitute Address Act is amended to include members of an applicant's household and adds language that removes a participant from the confidential address program if the person does not comply with the provisions of the Intimate Partner Violence Survivor Suffrage Act.

SB6 revises election procedures and board of director's requirements for artesian conservancy districts, conservancy districts, and soil and water conservation districts

SB6 provides a temporary provision creating a voter education and elections task force. The task force shall study and provide recommendations on best practices to educate voters on electoral procedures, voter registration, and election safeguards. SB6 provides for reports from the task force be submitted to the governor and Legislature by December 31, 2022.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

The appropriation of \$300 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY23 shall not revert to the general fund. The bill also creates the county elections fund but does not make an appropriation to the fund.

SOS notes a potential impact to the agency's elections' program following provisions of this bill. The administrative implications are discussed below, but the agency reports that the \$300 thousand appropriation will fund the move of 3 current term FTE in the elections program to permanent status, which will help to support personnel functions of the agency.

The Election Code currently provides for a \$200 cap on election worker compensation on Election Day and bases compensation on federal minimum wage provisions. Proposed language under SB6, as noted by SOS, would create compensation expenses for messengers and increase pay to election workers to twice the minimum wage. The SOS will also be required to establish pay rates for election board members before the primary election. The increased compensation

could contribute to retention of election workers, which is needed given national employment shortages, however poll worker costs would more than double if existing poll workers received twice their current rate of pay as well as adding new compensation expenses for messengers. Having reimbursed counties for almost \$1.4 million for election board member compensation in 2020, the SOS notes the potential for a large increase for supporting election personnel costs under SB6, with an estimated cost of paying the election board to be about \$2.7 million per statewide election.

The SOS also estimates a recurring budget impact of \$500 thousand per statewide election due to the prior notice of election required. As noted by SOS, by coordinating this mail out through the office, bulk mail and sorting discounts are expected in comparison to if counties conducted their own mailouts.

The SOS will also be tasked with developing and implementing training activities for challengers, watchers and poll observers, the cost of which is currently unknown.

SIGNIFICANT ISSUES

The bill gives the SOS additional budget adjustment request authority beyond the 5 percent variance of the approved election budget. The agency's elections program budget in FY22 totaled \$14.5 million. Additional budget adjustment request authority would allow the agency additional flexibility with spending election administration funding, but improper utilization of budget adjustment requests can result in funding being used for purposes other than what was originally intended and appropriated by the state Legislature.

PERFORMANCE IMPLICATIONS

SOS noted that all amendments proposed in SB6 “stem from actual experiences election administrators navigated either during the last election cycle or are currently navigating in preparation for a Special Election or the Regular Local Election,” such as the express need for clarified absentee ballot procedures or improved security practices.

SOS reports that the provisions in SB6, as implemented in the 2020 General Election and special congressional election held in 2021, improved the administration of elections by: 1) allowing for voter registrations to be processed at the conclusion of the election, rather than 35 days later, 2) by requiring the last four digits of the voter's SSN for added security, and 3) by setting hours for the absent voter election board, which should help prevent election workers from becoming overworked.

The agency also reports that updates and amendments to the Election Code proposed in SB6 will allow for standardization of voter convenience centers and will abolish third-party absentee ballot forms, which the agency believes will limit confusion and prevent duplication of work for poll workers receiving duplicate or conflicting forms.

In regard to referendum petitions, SOS expressed support for extending the timeframe for review. The agency reported an influx of referendum petitions following the 2019 Legislative Session. SOS had not received a single referendum petition since 2016. Current response time is 15 days. SB6 proposes to double that to 30 days, allowing the agency “a more manageable timeline to approve and certify submitted referendum petitions for circulation.” SOS does not

believe that this additional time request will affect the ability of referendum petitions to be submitted or considered for their constitutional purpose or to be put into effect timely for an election.

ADMINISTRATIVE IMPLICATIONS

SOS would be required to implement changes to the Election Code as proposed in SB6, including creating training curriculum for watchers, challengers, and observers, implementing an elections security program, and participating in the voter education and elections taskforce. Though the bill provides \$300 thousand to support these initiatives, the agency estimates the amount to be adequate to cover the costs of moving only 3 of the 5 term FTE in the elections program to permanent. It is likely that additional administrative support will be required by the SOS to implement provisions of the bill related to notification of voters, elections security management, and voter education.

There will also be a need for administrative support for the county clerk's offices, as the bill creates a county election fund that will need to be managed and administered for the intended purposes.

The SOS will also be tasked with developing and implementing training activities for challengers and watchers, a curriculum that is not currently standardized on a national level. The U.S. Elections Assistance Commission provides tips for educating poll watchers that include knowing the existing law before participating, knowing guidelines or rules for poll watcher conduct, having central contact numbers for information on early voting, absentee vote counting and Election Day inquiries, and having a sign-in/out roster to document the presence of all individuals during post-election activities. However, there was no current standardized or widely accepted training that is provided for watchers and challengers in other states currently, so SOS would be required to develop and implement a brand new training curriculum in the absence of proven best practices under SB6. To avoid potential conflicts of interest or undue influence on watchers and challengers, the trainings should be nonpartisan in nature and should be continuously evaluated for effectiveness to ensure the trainings are achieving the intended results.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Companion to SB8.

OTHER SUBSTANTIVE ISSUES

SOS recommends “changing the date the draft and final report is due from the voter education and elections taskforce from December 2022 to December 2023 to allow the SOS and the taskforce more time to meet, evaluate, and prepare a report of recommendations.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Several election security and administration changes that were put in place during the 2020 general election will not be enacted into permanent law.