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FISCAL IMPACT REPORT

SPONSOR SJC **ORIGINAL DATE** 2/9/22 **LAST UPDATED** 2/11/22 **HB** _____
SHORT TITLE Voters' Rights Provisions **SB** CS/CS/SB8/SRCS/SJCS
ANALYST Rees

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
		Minimal negative	(Up to \$1,182.0)	(Up to \$1,301.0)	Recurring	Early Childhood Education and Care Program Fund
	Up to (\$20,000.0)	Up to (\$21,191.0)	Up to (\$23,644.0)	Up to (\$26,062.0)	Recurring	Early Childhood Education and Care Trust Fund
	Up to \$20,000.0	Up to \$20,000.0	Up to \$20,000.0	Up to \$20,000.0	Recurring	State Election Fund

Parenthesis () indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB6, SB144 and HB139.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)
 Attorney General's Office (N MAG)
 State Land Office (SLO)
 State Investment Council (SIC)

No Response Received

Office of the Governor
 Taxation and Revenue Department
 CCA (County Clerk's Affiliate)

SUMMARY

Synopsis of Bill

In the Senate Judiciary Substitute for the Senate Rules Substitute for SB8, technical changes are made to the Title of the bill to conform to the changes within the bill that follow.

Other provisions include:

- Establishes a permanent absentee voter list, giving voters the option of signing up once to receive absentee ballots in the mail for future elections;
- Removes provisions requiring the Secretary of State to furnish a list of eligible but unregistered individuals in the state, a county or public office district only upon written request to the Secretary of State;
- Provides updated registration procedures for felons when they leave custody rather than after completing probation or parole;
- Outlines automatic voter registration opportunities at the Motor Vehicle Division of the Taxation and Revenue Department and at the Income Support Division of the Human Services Department;
- Allows 17 year olds to vote if voter will be 18 at the time of a local election;
- Allows for at least 2 monitored secured containers (drop boxes) per county;
- Enacts the Native American Voting Rights Act;
- Establishes that Election Day will not be a state holiday but general and local elections are school holidays;
- Creates a new distribution from the extraction taxes suspense fund to the election fund.

FISCAL IMPLICATIONS

SB8/CS/CS would first distribute up to \$20 million annually of oil and gas school tax revenue to the “state election fund” before transfers are made to the tax stabilization reserve or the early childhood trust fund. Using the most recent consensus revenue update from December 2021, SB8/CS/CS could reduce balances in the trust fund by over \$85.7 million by FY26 which both affects programmatic uses and investment earnings. Distributions for early childhood programming is likely to be reduced by over \$1 million a year and growing by FY26. In the year ending September 30, 2021, the State Investment Council (SIC) returned over 7.72 percent on trust fund balances. Only 4 percent returns were assumed for the fiscal impacts and larger returns would result in larger losses to the trust fund.

The Secretary of State (SOS) submits:

Section 22 provides that excess extraction taxes be utilized to ensure that the State Election Fund maintain a \$20 million balance. Maintaining a balance in the State Election Fund supports the decision of the legislature made in 2019 to ensure state funds are utilized to pay for state elections rather than passing costs to the counties, which was previously the practice. Maintaining a solvent fund will ensure the SOS has the necessary resources to pay for all statewide elections which expenses have been well documented with two statewide elections occurring in even numbered fiscal years and one occurring in odd numbered years.

The State Investment Council Submit (SIC) notes:

This analysis will focus narrowly on how SB8 might impact the State Investment Council's management of the Early Childhood Education & Care Fund (ECECF).

In 2021 the State Investment Council approved a new asset allocation study for the ECECF, raising its risk/return profile from what had been a capital preservation structure to a moderate "growth allocation".

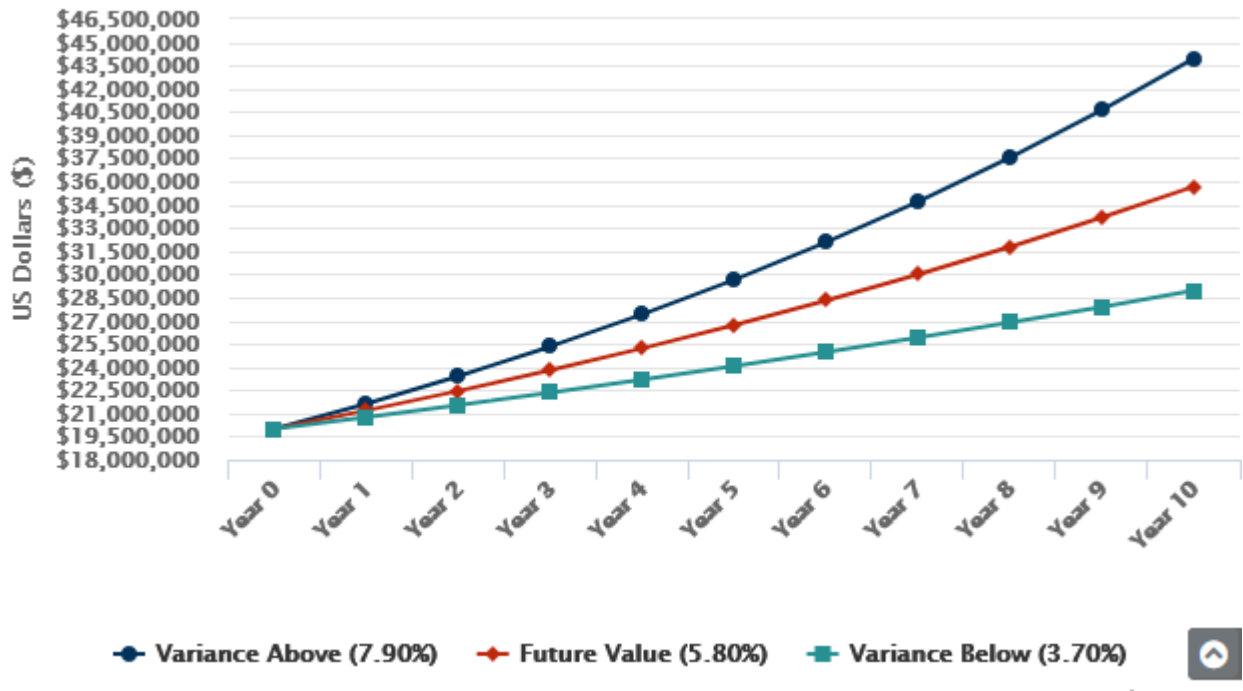
The new allocation includes targets of 8 percent for broad US equity, 8percent for broad international equity, 24 percent US core fixed income, 25 percent non-core fixed income, 10 percent real assets, 12percent real estate and 12 percent private equity. The allocation, based on forward-looking return projections from SIC advisor RVK, is expected medium-term (7-10 years), to produce an arithmetic return of 5.8 percent, a standard deviation (risk) of 9.5 percent, and a compound return of 5.4percent.

As a point of reference, the Land Grant Permanent Fund's highly diversified portfolio is expected to achieve a 6.7 percent arithmetic return and has a 12.4 percent standard deviation with its current allocation.

SB 8 calls for up to \$20 million per year of potential transfer from the "Excess Extraction Taxes Suspense Fund" (NMSA Section 6-4-27) to the State Election fund. This would intercept or redirect dollars that would otherwise flow to the Early Childhood Education and Care Fund.

Over time, the costs of lost investment earnings could be substantial to the ECECF, which in turn will reduce distributions it makes to early childhood education and care programs statewide. The total impact to the ECECF would potentially be \$20 million initially, with lost earnings expected to be ~\$1.19 million during its first year, assuming average returns. Should market investment returns underperform at the lowest quartile level, the expected impact would be reduced to ~\$753 thousand, while higher than expected returns near the top quartile would raise the annual opportunity cost to ~\$1.64 million in the first year alone.

The following chart shows an estimated impact of \$20 million redirected away from the ECECF over one-year only, and the subsequent impact over the first 10-years. The red line in the middle represents the base case with median expected investment returns, while the other two lines represent the likely range of outcomes should investment returns come in at the 25th or 75th quartile of expected returns. The baseline impact over the first ten years of \$20 million opportunity cost would be approximately \$15.67 million in lost earnings, with a likely range between \$8.94 million and \$23.95 million.



Years	Variance Above (7.90 percent)	Future Value (5.80 percent)	Variance Below (3.70 percent)
Year 0	\$20,000,000.00	\$20,000,000.00	\$20,000,000.00
Year 1	\$21,638,483.38	\$21,191,338.92	\$20,752,679.04
Year 2	\$23,411,198.16	\$22,453,642.27	\$21,533,684.37
Year 3	\$25,329,141.11	\$23,791,137.17	\$22,344,082.02
Year 4	\$27,404,209.96	\$25,208,302.56	\$23,184,978.14
Year 5	\$29,649,277.09	\$26,709,884.16	\$24,057,520.49
Year 6	\$32,078,269.48	\$28,300,910.40	\$24,962,900.07
Year 7	\$34,706,255.06	\$29,986,709.21	\$25,902,352.66
Year 8	\$37,549,536.17	\$31,772,925.90	\$26,877,160.56
Year 9	\$40,625,750.72	\$33,665,542.07	\$27,888,654.33
Year 10	\$43,953,981.60	\$35,670,895.60	\$28,938,214.62

While this chart focuses on 10-year impact of one-time \$20-million diversion from the ECECF, SB8 calls for a recurring expense of up to \$20 million annually, meaning these estimates are only a fraction of what the potential impact could be in just a few years.

SIGNIFICANT ISSUES

The Senate Judiciary Committee Substitute for the Senate Rules Committee Substitute for Senate Bill 8 proposes to amend and repeal sections of New Mexico's election code and other laws and adds new language aimed at protecting and preserving voting rights.

The Secretary of State notes that this legislation contains a number of pro-voter mechanisms to reduce the bureaucracy surrounding registering and voting that may frustrate or prevent the ability for certain qualified electors to participate in the voting process, without compromising sensible security and administration practices.

The SIC notes:

In FY2023 and future years, the ECECF will begin distributing the greater of \$30 million or 5 percent of the three-year average value of the ECECF. FY23 distributions will be \$30 million and will remain at \$30 million for future fiscal years until the three-year average value of the ECECF grows above \$600 million. The average is determined as of 12/31 of each year, and as of the end of calendar year 2021, the two-year rolling average is about \$309 million.

While the latest forecasts in the General Fund Consensus Revenue Estimate project substantial inflows to the ECECF in coming years, achieving the threshold average of greater than \$600 million may not occur as quickly as previously projected by CREG.

Assuming the CREG estimates for inflows and returns to the ECECF hold true for CY22 and the fund grows to \$1.585 billion (~\$923 million more than the current balance as of February 2022), its three-year fund average would only be \$734 million*, resulting in a FY24 distribution of \$36.7 million, which is about \$5.5 less than the current CREG estimates.

*(CY20 end value: \$303 million, CY21: \$314 million, CY22 est: \$1585 million; 3-year avg: \$734 million)

Should the ECECF achieve lower returns or losses, and if the inflows to the ECECF are less than projected (or are delayed beyond CY22) due to SB8 or other reasons, there is a strong possibility that distributions from the ECECF will fall short of the CREG projections of \$42.2 million for FY24, and face similar shortfalls in subsequent years.

PERFORMANCE IMPLICATIONS

The changes to online voter registration will allow for individuals to utilize the online system if they do not have a state ID. The SOS will be required to amend administrative rules to reflect this change and to provide for a mechanism for a voter to provide a copy of their signature and to otherwise provide evidence of their residency in New Mexico.

The immediate reinstatement of voting rights when a convicted felon is released from incarceration is expected to simplify the administrative burden on the SOS and county clerks to register these individuals. Current law provides that a felon who is not only incarcerated but is also on probation or parole is ineligible to register or vote. While the voter registration system

does maintain some records provided by the courts regarding probation and parole status of some individuals it is often outdated or missing records. This issue places the county clerk and the qualified elector in a position of having to research and dig up release paper to re-register to vote. This cumbersome process has led to individuals who are eligible to vote to be denied their right.

The updates to automatic voter registration (AVR) are expected to increase the efficiency of registering to vote, increase voter registration of new voters, and improve the accuracy of the voter rolls since address changes at the MVD will automatically result in an address update in the voter registration database.

By implementing a permanent absentee voter list, the SOS anticipates that this will make voting by mail easier for those voters who choose to vote in this manner in every election, particularly those individuals who are home bound or who otherwise just prefer this manner of voting. By applying to be placed on a permanent absentee voter list, a voter will not be required to apply for an absentee ballot for every election and will be automatically mailed one which also reduces the administrative burden on county clerks. There are also sufficient mechanisms in place to remove a voter from the list if they no longer live at the address in which they are registered to minimize ballots being sent out to old addresses.

ADMINISTRATIVE IMPLICATIONS

The SOS will be required to implement a solution for candidates to collect electronic signatures for nominating petitions. The SOS has already worked with the City of Albuquerque on such a solution and, if this legislation passes, the SOS intends to leverage the piloted work already completed to provide the option of collecting electronic signatures for applicable candidates in statewide elections. Collecting electronic signatures is expected to reduce the number of candidate challenges prior to the primary election.

The SOS will be required to develop an API (Application Programming Interface) to allow 3rd party organizations to interface with the online voter registration system and to adopt rules to securely provide for this. This is a new requirement of the SOS and will likely require IT contract expertise to accomplish by the proposed deadline of December 31, 2023. The SOS is also required to promulgate rules to implement this section.

The SOS and MVD would be required to work on an upgrade to the current motor voter registration system utilized in MVD office to register voters to comply with the proposed improvements in this section of law. The delayed implementation of this section is expected to be sufficient time to implement the changes.

The SOS would be required to update its administrative rules on secured containers to reflect the proposed change in law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Secretary of State notes the following conflicts between SB6 –Election Security and Administration and SB8 as follows:

SB6 – Provisions in Section 8 and 9 are in both SB 6 and SB 8 but have a conflicting effective date. The SOS prefers the effective dates listed in SB 6.

SB6 – there is a conflicting version of automatic voter registration (AVR).

TECHNICAL ISSUES

The “Election Fund” (aka “state election fund”) is created by Section 1-11-19, NMSA 1978 of the Election Code.

Further, SB6, a related bill, proposes to change 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 also 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. If created, it is unclear if the “state election fund” in SB6 would be intended to replace the “election fund” in Section 1-11-19, NMSA 1978 or whether it would be created in conflict or duplication of this already existing fund.

ALTERNATIVES

The SIC notes that while recognizing that appropriate election laws and oversight deserve to be fully funded and should be a public policy priority, the method of paying for these efforts with investment dollars that would otherwise be grown for early childhood education and care programs is a very expensive approach, at least relative to general fund appropriations. A general fund appropriation to secure these efforts in FY23 and potentially beyond would be far less costly from a financial perspective.

CR/JF/al