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## FISCAL IMPACT REPORT

SPONSOR	<u>Duhigg/Berghmans</u>	LAST UPDATED	<u>3/5/2025</u>
		ORIGINAL DATE	<u>2/10/2025</u>
SHORT TITLE	<u>Election Changes</u>	BILL	Senate Bill
		NUMBER	<u>218/aSRC</u>
		ANALYST	<u>Hilla</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS	No fiscal impact	\$60.0 to 100.0	No fiscal impact	\$60.0 to \$100.0	Nonrecurring	General Fund
SOS	No fiscal impact	No fiscal impact	\$20.0	\$20.0	Recurring	General Fund
Total	No fiscal impact	\$60.0 to \$100.0	\$20.0	\$80.0 to \$100.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 170 and 515 and Senate Bills 16, 85 and 515

### Sources of Information

LFC Files

#### Agency Analysis Received From

Secretary of State (SOS)

New Mexico Attorney General (NMAG)

New Mexico Municipal League (NMML)

#### Agency Analysis was Solicited but Not Received From

County Clerks Associate (CCA)

New Mexico Counties (NMC)

## SUMMARY

### Synopsis of Senate Rules Committee Amendments to Senate Bill 218

The Senate Rules Committee (SRC) amendments to Senate Bill 218 (SB218) add the following:

- Public officials and election staff may still have their home address be disclosed in the event a challenge or a judicial proceeding occurs, provided the requestor completed a motorized affidavit affirming the address will not be used for other purposes.
- County clerks must be certified within 12 months of their appointment, with the Secretary of State (SOS) to review the certification program every four years.
- Newly appointed election board members assigned to a polling place on Election Day are required to take oath before the presiding judge.
- Election security is removed under SOS and creates a new entity responsible for election

cybersecurity and monitoring voting systems.

- SOS must implement a secure system to collect electronic signatures for political party qualification by July 1, 2026.
- No replacement candidate can be named if a vacancy occurs after the filing deadline, with elimination of pre-primary convention designations.
- Vacancies on the general election ballot may only be filled if a candidate dies after filing, if a party fails to nominate a lieutenant governor while nominating a governor, or if an elected official resigns or dies after a deadline that prevents the office from being included in the general election proclamation.

The amendment also provides for a delayed repeal for certain municipal election procedures and clarifies emergency election procedures in the case of natural disasters, cyberattacks, or any other disruptions.

The amendment adds new language specifying that the term of an elected municipal officer set to expire in 2026 or 2028, pursuant to the municipal officer election in effect before the effective date of SB218, will actually end on December 31, 2027 or December 31, 2029 respectively. The bill sets a delayed repeal date of November 5, 2025 for Section 1-22-3.1 NMSA 1978.

## **Synopsis of Senate Bill 218**

Senate Bill 218 makes extension revisions to the Election Code throughout Section 1 NMSA 1978. SB218 makes the following amendments:

- Section 1 clarifies that addresses designated confidential by public officials may be disclosed as part of a challenge brought pursuant to the Election Code and upon completion if a notarized affidavit that affirms that the address will not to be used for any other purpose.
- Section 2 amends Section 1-2-5 NMSA 1978 to add a requirement that the Secretary of State create certification program for county clerks, that county clerks complete such certification within 12 months of initial appointment, election, or reelection, and requires all county clerks to complete certification by July 2026.
- Section 3 adds a provision that newly-appointed election board members who must report directly to a polling location on election day shall swear their oath to the presiding judge.
- Section 4 removes the Elections Security Program from the Bureau of Elections.
- Section 5 adds a requirement that, by July 2026, the Secretary of State implement a secure internet application to gather electronic signatures and verify that the signer is an eligible voter for the purposes of qualifying candidates.
- Sections 6 through 16 eliminate preprimary conventions in the state.
- Section 17 adds the randomization of listing names on ballots to federal and presidential elections in addition to statewide elections.
- Section 18 and 19 reduce the required labeling on ballots for write-in candidates amends from “Declared Write-In Candidate” to simply “Write-In.”
- Section 19 requires that the voter notification be sent to eligible voters only.
- Section 20 and 21 clarify that a provisional ballot shall be issued for the precinct for the address provided by the voter at the time of issuance and that the provisional ballot roster must be provided as soon as practicable when requested by a candidate or political party chair for a party represented in the election.
- Section 22 amends the automatic recount procedures such that the one-half percent margin of total votes cast now triggers an automatic recount in all elections other than

federal or statewide offices, judicial retention, and ballot questions.

- Section 23 through 25 formalize the process and requirements for political parties to communicate presidential and vice-presidential candidates to the Secretary of State and fill vacancies on the ballot for presidential and vice president on the general election ballot.
- Section 27 adds the definition of “qualifying period” to mean the period between 24 and 60 days following a primary for candidates appointed in the event of a vacancy.
- Section 28 adds Subsection E that prohibits a candidate that has submitted a declaration of intent for an office from withdrawing that declaration and submitting one for a different office for that election cycle.
- Section 29 requires that certified candidates return all money to the public election fund following a primary election even if they prevail and are continuing to the general election within 30 days after the primary election.
- Section 30 would add a Section to the Election Code requiring the Legislature to notify the secretary in writing upon the creation of a new elected office.
- Section 31 eliminates the municipal officer election that occurs in March of even-numbered years and effectively adds those elections to the Regular Local Election in odd-numbered years.
- Section 32 requires that when a county or local public body calls a special election, or an automatic recount of said election is conducted, the county shall be canvassed in accordance with Article 13 of the Election Code and the results sent to the Secretary of State.
- Section 33 creates a new Section of the Election Code setting forth procedures for county clerks and the Secretary of State to follow in the event a state of emergency is declared that has the potential to negatively affect the normal election procedure.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

The Secretary of State (SOS) states that SB218’s amendments in Section 5 to require SOS to implement a secure internet application to gather electronic signatures and verify that the signer is an eligible voter for the purposes of qualifying candidates would pose costs for maintenance and enhancements to existing systems, which are included in this fiscal impact. The nonrecurring general fund impact to SOS’s operations includes the initial enhancement; SOS will face a recurring cost of \$20 thousand for continued maintenance of the system’s new enhancements.

Various statutory changes have resulted in the SOS assuming costs for elections with the exception of those conducted by municipalities that have opted out of the Regular Local Election (RLE). Laws 2024 Chapter 24 makes a new distribution from the tax administration suspense fund to SOS’s election fund, with the maximum transfer at \$15 million. The 2024 RLE cost \$11.4 million, with potential election costs to increase should all municipalities have to participate in the RLE per SB218’s amendments. However, SOS does not anticipate SB218 to result in huge cost increases, rather it should result in resource savings by condensing remaining municipalities under the RLE.

## **SIGNIFICANT ISSUES**

SRC's amendments to SB218 reduce SOS's direct oversight of election security by shifting responsibilities away from the Bureau of Elections. This change could create uncertainty regarding cybersecurity oversight and coordination with federal agencies, potentially jeopardizing New Mexico's eligibility for federal Help America Vote Act (HAVA) funds designated for election security and cybersecurity improvements. HAVA funding is tied to specific security oversight structures, and in FY24, SOS utilized \$4.2 million in HAVA funds, primarily for IT services and grants to local governments to support nonrecurring cybersecurity initiatives. Counties have relied on these federal funds to enhance security infrastructure, including camera systems, coded locks, physical barriers, IT firewalls, and licensing agreements.

By removing election security oversight from the direct authority of SOS, the amendments may lead to compliance issues with federal reporting and auditing requirements, which could put continued HAVA funding at risk. Additionally, changes to emergency election procedures without incorporating explicit cybersecurity safeguards further increase the likelihood of federal funding challenges.

SOS states that SB218's amendments to the Election Code are based on the real experiences of election administrators across the state during the past two years. SOS states that confidential address designations provisions would allow for meaningful protections for election administrators. Additionally, SOS states that while it is currently responsible for the education of county clerks regarding elections, the security, uniformity, and continuity of election administration in the state would be "greatly bolstered" by a standardized certification for newly elected county clerks and those re-elected.

SB218 consolidates all municipal officer elections under the RLE. SOS reports that less than ten municipalities used the municipal officer election to elect officers in 2023.

The New Mexico Municipal League (NMML) states that while SB218 could result in cost-savings for municipalities that currently run their own elections, SB218 preempts local decision-making by removing the option for municipalities to conduct their own local elections to elect municipal officers or pose ballot questions. Should SB218 pass, municipalities participating in their own elections would no longer be responsible for the cost of conducting an election, rather this would fall under the SOS's costs of administering the RLE out of its election fund.

NMML states that proposed amendments would decrease or increase the terms of office for municipal officers who have a current term expiration of March 2026. NMML notes that SB218 conflicts with Laws 2018 Chapter 79, which allows municipalities to participate in local elections and that SB218 "infringes upon the right of incorporated municipalities to self-govern and have local autonomy on matters expressed by law."

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB218 relates to House Bill 170 and Senate Bills 16 and 85, which all make various changes to Section 1 NMSA 1978 for either campaign finance changes or additional amendments to the Election Code. SB218 also relates to House Bill 308 and Senate Bill 515, which both remove conservancy districts from the Local Election Act.

## TECHNICAL ISSUES

The New Mexico Attorney General (NMAG) points out the following:

Section 1(B) currently extends privacy protections to “Nonelected and appointed employees.” From context, it appears that this section was meant to apply to non-elected and non-appointed employees. If so, “non” should be inserted into line 13 of page 3.

There is a potential timing issue in Section 25. When there are fewer than 90 but more than 70 days before the election, the party experiencing a candidate vacancy will be under no obligation to notify the secretary of state of the vacancy, but may still be able to provide an alternate nominee. It is unclear whether this result is intended.

Section 2, subsection D may require qualifying language, since “all county clerks” will include county clerks who will be elected or appointed after July 2026. Amending the language to read “all county clerks in office at the time this law is passed” or similar language would address this issue.

EH/sgs/SL2/rl