



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated April 13, 2022)

Drafting Number: LLS 22-0414 Date: April 24, 2022
Prime Sponsors: Sen. Fenberg; Priola Rep. Lontine Bill Status: House Appropriations
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Bill Topic: INTERNAL ELECTION SECURITY MEASURES

- Summary of Fiscal Impact: [x] State Revenue [x] TABOR Refund [x] State Expenditure [x] Local Government [] State Transfer [] Statutory Public Entity

This bill makes several changes to state law regarding elections and election security, including clarifying and expanding the authority of the Secretary of State in overseeing elections, establishing security requirements for voting equipment, requiring that county clerks and certain staff receive training prior to conducting elections, and creating a grant program to provide funding to local governments to meet the new security requirements.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$1,117,000 to the Department of State.

Fiscal Note Status: The revised fiscal note reflects the preamended bill.

Table 1 State Fiscal Impacts Under SB 22-153

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (General Fund, Cash Funds, Total Expenditures), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill creates the Colorado Election Security Act, making numerous changes to laws concerning elections and election security. Specifically, the bill:

- requires the courts to act within specified time frames when the Attorney General files for an injunctive action to enforce the provisions of the Uniform Elections Code of 1992 (state election code);
- requires additional county and state election staff and the Secretary of State to obtain mandated election training and certification, and expands the topics covered under the training;
- prohibits a person from serving as an election official if the person has been convicted of committing or conspiracy to commit certain offenses against the government;
- changes the way the Secretary of State calculates the share of costs owed by a county to the Secretary of State in the case that a county that uses the voting system in an instant runoff voting election;
- expands prohibitions on access to voting equipment by candidates for elective office, election officials, and the Secretary of State, except under certain circumstances;
- allows the use of electronic voting systems and requires elections governed by the state election code to adopt the use of electronic voting systems to tabulate votes, except under certain circumstances;
- authorizes the Secretary of State, after consultation with the board of county commissioners, to certify election results using available information if a local canvassing board does not take action necessary to certify the election results;
- prohibits a county from creating or disclosing a voting system hard drive image without permission from the Secretary of State;
- requires that counties use key card access and video surveillance for voting system access by June 30, 2023, except under certain circumstances including an inability to procure the necessary equipment within the specified timeframe, and allows rule promulgation to implement these requirements;
- creates a new grant program to cover local government costs to implement the bill's requirements, and requires that \$1,000,000 from the General Fund be appropriated for this purpose; and
- directs the Secretary of State to assist the state and counties with an election administration risk assessment, and requires that \$117,000 from the Department of State Cash Fund be appropriated for this purpose

In addition, the bill makes several changes relating to election-related criminal offenses, including:

- expanding an existing misdemeanor for noncompliance with rules of the Secretary of State to include noncompliance with an order of the Secretary of State or the acceptable use policy for the statewide voter registration system, and reclassifies this offense as a class 1 misdemeanor rather than a class 2 misdemeanor;
- creating a new class 2 misdemeanor for willfully interfering or obstructing a person from notifying the Secretary of State of violations of an order, rule, or use policy of the Secretary of State;
- expanding the existing offense of tampering with voting equipment to include unauthorized access or facilitating unauthorized access to voting equipment, as well as to the election-night reporting system, and reclassifies this offense as a class 5 felony, rather than a class 1 misdemeanor; and

- creating a new class 5 felony offense for knowingly publishing passwords or other confidential information relating to a voting system, and requiring that a person's authorized access be immediately revoked for such conduct.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. This bill creates new offenses and modifies and reclassifies other offenses, as described in the bill summary above and discussed below. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Failure to comply with the order, rule or policy of the Secretary of State. This bill expands the elements of this offense to include additional behavior and reclassifies this existing offense as a class 1 misdemeanor, rather than a class 2 misdemeanor, which increases the maximum potential jail sentence for this offense. It also creates a new class 2 misdemeanor for interfering or obstructing an individual attempting to report a failure to comply.

Tampering with voting equipment. This bill creates the elements of this offense to include additional behaviors, and reclassifies this existing offense as a class 5 felony, rather than a class 1 misdemeanor. It also creates a new class 5 felony for knowingly publishing passwords or other confidential voting system information.

Prior conviction data and assumptions. From FY 2018-19 to FY 2020-21, zero offenders have been sentenced and convicted for the existing offenses of failure to comply with a rule of the Secretary of State or tampering with voting equipment. While the bill adds new offenses and expands the scope of these existing offenses, it is likely that some or all of these new offenses can potentially be charged under current law. Therefore, the fiscal note assumes that there will be a minimal increase in criminal case filings or convictions for this offense under the bill.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Criminal fines and penalties. Based on the assumptions above, this analysis estimates there will be a minimal increase in state revenue from fines. Criminal fines and court fee revenue is subject to TABOR.

State Expenditures

The bill increases state expenditures in the Department of State (DOS) in FY 2022-23 by \$1.1 million in FY 2022-23, including \$1.0 million from the General Fund and \$117,000 from the Department of State Cash Fund. Costs in FY 2023-24 and future years are estimated to be \$156,000 per year, paid from the General Fund, unless other sources of funding are identified. It also increases ongoing workload in the DOS and the Judicial Department. These impacts are described in Table 2 and below.

**Table 2
 Expenditures Under SB 22-153**

	FY 2022-23	FY 2023-24
Department of State		
Grants to Local Governments	\$1,000,000	-
Risk Assessment	\$117,000	\$156,000
Total Cost	\$1,117,000	\$156,000

Grant program. The DOS must administer a grant program to assist local governments in complying with the new election security measures. The bill specifies that \$1,000,000 must be appropriated to fund the grant program. Given that the DOS has existing relationships with county clerks to disburse election-related funding, it is assumed that any workload increase to administer the grant program, including developing forms, processing grant agreements and payments, and tasks can be accomplished within existing resources and that no additional appropriation is required for this purpose.

Risk assessment. Beginning in FY 2022-23 and future years, the DOS is required to assist the state and counties in assessing risks to the administration of elections, and will engage a contractor at \$13,000 per month to perform a threat analysis and review relevant processes and procedures. The fiscal note assumes that costs in FY 2022-23 will be paid from the Department of State Cash Fund using an available federal grant; in future fiscal years, costs are assumed to be paid from the General Fund if grant or other funding is not received in the future for this purpose.

Training for election officials. The DOS is required to expand the content of the required training for election official certification, and training must be provided within expedited timelines and to additional state and county employees. Given that training already occurs on a regular basis, it is assumed that accommodating additional attendees and working with counties to ensure that training is provided on time can be accomplished within existing resources and appropriations.

Legal services. The DOS may require additional legal services, provided by the Department of Law, for rulemaking and other matters under the bill. It is assumed that any legal services required will be less than 100 hours per year and adjusted as necessary through the annual budget process.

Expedited consideration of injunctive actions. Workload in the Judicial Department will increase to comply with expedited trial timelines when considering injunctive actions related to elections. In addition, by expanding the authority to file these measures to include the Secretary of State, in addition to the Attorney General, these types of filings may increase.

Criminal justice costs. This bill will increase workload and costs for the trial courts in the Judicial Department to process additional criminal case filings, as well as to potentially consider some cases as a felony rather than a misdemeanor. To the extent that offenders are sentenced to probation, workload and costs in the Division of Probation will increase. Workload and costs may increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Counsel. To the extent additional offenders are convicted of a new or reclassified felony offense under the bill, costs to the Department of Corrections

will increase. Overall, it is assumed these impacts can be accomplished within existing appropriations and will be addressed through the annual budget process, if necessary.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by \$150,000 in FY 2022-23, and \$23,400 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Local Government

Election security measures. To the extent that local governments are not in compliance with the election security requirements, expenditures will increase to purchase key card access systems, additional video storage and cameras, as well as for additional staff to attend the required training. It is assumed that very large counties already have key card access systems, and that some small counties are exempt from the requirements though the waiver for historical buildings.

Key card access. By county size, costs for key card access systems are estimated to be:

- \$8,000 for a large county;
- \$4,000 for a medium county; and
- \$4,000 for a small county.

Additional cameras. By county size, costs for additional cameras are estimated to be:

- \$25,000 for a very large county;
- \$15,000 for a large county;
- \$10,000 for a medium county; and
- \$4,500 for a small county.

Additional video storage. By county size, costs for additional video storage are estimated to be:

- \$100,000 for a very large county;
- \$20,000 for a large county;
- \$8,000 for a medium county; and
- \$4,000 for a small county.

This fiscal note assumes that 20 small counties, 7 medium counties, 5 large counties and 4 very large counties will have costs as listed above, resulting in a total cost of \$1,119,000. These expenditures will be partially offset by grant funds available from the DOS.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature

State Appropriations

For FY 2022-23, the bill requires an appropriation of \$1,117,000 to the Department of State, of which \$1,000,000 is from the General Fund, and \$117,000 is from the Department of State Cash Fund. Currently, the bill includes an appropriation of \$500,000 from the General Fund.

State and Local Government Contacts

Department of State

County Clerks