



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 23-0520 Date: September 5, 2023
Prime Sponsors: Sen. Fenberg Bill Status: Signed into Law
Rep. Sirota Fiscal Analyst: Kristine McLaughlin | 303-866-4776
kristine.mclaughlin@coleg.gov

Bill Topic: MODIFICATIONS TO LAWS REGARDING ELECTIONS

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

The bill makes multiple changes to the uniform election code and the conduct of elections, including changing the method for the state to reimburse counties for a portion of the cost to conduct elections. The bill increases state revenue and expenditures beginning FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$469,201 to the Department of State.

Fiscal Note Status: This fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under SB 23-276

Table with 5 columns: Category, Sub-category, Budget Year FY 2023-24, Out Year FY 2024-25, Out Year FY 2025-26. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund, General Fund Reserve).

## **Summary of Legislation**

**County reimbursement for election costs.** Under current law, for elections with statewide ballot measures, the Department of State (DOS) reimburses counties between \$0.80 and \$0.90 for each active, registered voter for election expenses. Beginning July 1, 2024, this bill requires that the Department of State (DOS) pay 45 percent of the cost that a county incurs in conducting any election with state-certified ballot content. The DOS may adopt rules to determine which costs are necessary and reasonable for reimbursement to counties. It also aligns reimbursement to counties from other jurisdictions participating in coordinated election with this new funding methodology. The bill allows the General Assembly to appropriate funds for this requirement from DOS Cash Fund or the General fund, expect that the bill requires the General Assembly to appropriate at least \$2.5 million from the General Fund for the 2024 General Election.

Among its other many changes to state election law, the bill:

- changes the timeline and disclosure requirements for several election procedures;
- places limitations on certain campaign contributions;
- allows for digital voter identification;
- changes the requirements the number and location of voter service and polling centers (VSPCs) and drop boxes;
- changes requirements for the number and conduct of election judges and watchers;
- creates a new misdemeanor offense, punishable of a fine between \$1,000 and \$5,000, for candidates who willfully file a false or incomplete campaign finance affidavit or disclosure statement, among other things;
- repeals several outdated provisions; and
- aligns various provisions of statute with current practices and federal law.

## **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. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

**Prior conviction data and assumptions.** This bill creates the new offense of willfully filing a false or incomplete campaign finance affidavit or disclosure statement, an unclassified misdemeanor punishable by a fine. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of perjury related to any oath or affirmation under the election code as a comparable crime. From FY 2019-20 to FY 2021-22, zero offenders have been sentenced and convicted for this existing offense; therefore, the fiscal note assumes that there will be minimal or no additional case filings or convictions for the new offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note.

## **State Revenue**

The bill increases fee revenue in the Department of State by an estimated \$5.1 million in FY 2024-25, \$7.8 in FY 2025-26, and \$6.4 million in FY 2026-27, assuming the Department of State adjusts its fees to cover the estimated costs paid from the Department of State Cash Fund beginning one year before the funds are needed. It may also increase fine revenue. These impacts are described below.

**Fee impact on businesses and professions.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Under current law, the Department of State (DOS) is authorized to adjust fees so that the revenue generated approximates its direct and indirect costs. The DOS is primarily funded through business filing fees. To cover the costs described in the State Expenditures section below, fees will likely need to be raised to cover all or some of the costs of this bill. The fees affected and the actual amount of fee charges will be set administratively by the DOS based on cash fund balance, total program costs, and the estimated number of business activities subject to fees. This revenue is subject to TABOR. Given the size of the increase, DOS may need to adjust fee amounts up to a year in advance to ensure sufficient funds are available.

**Fine revenue.** To the extent candidates willfully file false or incomplete affidavits or disclosure statements and are convicted of the new misdemeanor under the bill, fine revenue will increase. As noted in the Comparable Crime section above, any impact is assumed to be minimal. Revenue is assumed to be deposited to the General Fund, as no other fund is identified.

## **State Expenditures**

The bill increases state expenditures in the DOS by about \$0.5 million in FY 2023-24, \$5.1 million in FY 2024-25, and \$7.8 million in FY 2025-26. For the purposes of this fiscal note it is assumed that the \$2.5 million General Fund FY 2024-25 appropriation will be the only portion of these costs paid from the General Fund. The remainder will be paid from the Department of State Cash Fund. Costs in future years will vary, roughly between \$6 and \$9 million per year, based on the election cycle. New state costs are displayed in Table 2 and described below.

**Table 2  
Expenditures Under SB 23-276**

	FY 2023-24	FY 2024-25	FY 2025-26
<b>Department of State</b>			
Personal Services	\$31,661	\$128,232	\$193,140
Operating Expenses	\$675	\$2,700	\$4,050
Capital Outlay Costs	\$6,670	\$0	\$0
Hearing Officer	\$2,000	-	\$2,000
Paralegal	\$600	-	\$600
Computer Programming	\$295,200	-	-
Other System Changes	\$132,395	-	-
County Reimbursement	-	\$4,906,164	\$7,546,664
Centrally Appropriated Costs <sup>1</sup>	\$8,472	\$34,039	\$51,131
<b>Total Costs</b>	<b>\$477,673</b>	<b>\$5,071,135</b>	<b>\$7,797,585</b>
<b>Total FTE</b>	<b>0.5 FTE</b>	<b>2.0 FTE</b>	<b>3.0 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

### Department of State

Starting in FY 2024-25, DOS has costs to reimburse counties for election expenses. Additionally, DOS has costs for staffing and for information technology system upgrades, as outlined below.

**County reimbursement.** Currently, DOS reimburses counties about \$3.2 million per year. This bill will increase the cost to reimburse counties for a set portion of costs incurred. Reimbursement to counties for general elections will start in FY 2024-25 and for coordinated elections and state primary elections in FY 2025-26. Reimbursement for these elections will fluctuate on a two-year cycle, based on how regularly scheduled elections fall within state fiscal years.

DOS will reimburse 45 percent of election expenses, resulting in an estimated increase of \$5 million in FY 2024-25 (for the November 2024 general election), and \$8 million in FY 2025-26 (for the November 2025 coordinated election and the 2026 primary election). County election costs are based on the unaudited reported county costs in recent elections, and the costs to the DOS under the bill represent the increase over the approximately \$3.2 million reimbursement under current law. Table 3 estimates these costs through FY 2027-28. However, actual costs may vary based on a number of factors. First, previously reported election costs may not reflect all election costs, as counties did not have an incentive to fully account for all costs for this informational reporting. Under the bill, counties will be incentivized to report costs more fully, which could result in higher reimbursement than estimated in this fiscal note. In addition, exact reimbursement amounts will depend on future rules and qualifying costs, as determined by the Secretary of State. It is assumed that future reimbursements will be addressed through the annual budget process as more is known about the potential costs.

**Table 3  
County Reimbursement Estimates**

<b>Item</b>	<b>FY 2023-24</b>	<b>FY 2024-25</b>	<b>FY 2025-26</b>	<b>FY 2026-27</b>	<b>FY 2027-28</b>
Coordinated Election	\$9,917,393		\$11,503,472		\$13,343,210
General Election		\$18,013,697		\$20,894,610	
State Primary Election	\$10,671,347		\$12,378,005		\$14,357,607
<b>Total County Election Costs</b>	<b>\$20,588,740</b>	<b>\$18,013,697</b>	<b>\$23,881,476</b>	<b>\$20,894,610</b>	<b>\$27,700,817</b>
Reimbursement Amount	\$3,200,000	\$8,106,164	\$10,746,664	\$9,402,574	\$12,465,368
Current Law Reimbursement	\$3,200,000	\$3,200,000	\$3,200,000	\$3,200,000	\$3,200,000
<b>Total Increase</b>	<b>\$0</b>	<b>\$4,906,164</b>	<b>\$7,546,664</b>	<b>\$6,202,574</b>	<b>\$9,265,368</b>

**Staffing.** DOS requires 0.5 FTE in FY 2023-24 and between 2.0 FTE and 3.0 FTE in out years, depending on the election cycle. Additionally, DOS requires a combined 15 hours of work from a hearing officer and paralegal in odd years. Responsibilities of this staff include: auditing and processing costs submitted for reimbursement, assisting with the increase volume of determination challenges, assisting in system changes and otherwise assuring that the new timeline and disclosure requirements are met, and assisting with resulting complaints.

**IT system changes.** In FY 2023-24 only, DOS requires \$428,000 for computer programming and other information technology system changes. The bill makes several changes to timeline, disclosure and other requirements that drive changes in the Statewide Voter Registration System (SCORE), Online Voter Registration (OLVR), Ballot Access, Voting Systems, and Campaign and Political Finance Compliance and Enforcement systems.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

## **Local Government**

The bill increases revenue to counties via the increased reimbursements for election costs shown in Table 2 above. Since the remaining 55 percent share of county election costs will be lower than under current law, school districts, municipalities, and special districts that participate in coordinated elections may have lower costs to reimburse counties for their share of these remaining election costs.

The bill may also impact the county election costs in three main ways. First, for some smaller counties, costs may decrease by allowing for a reduction in election judges under certain circumstances. Second, costs may increase by removing the option for unaffiliated voters to indicate a party preference for which primary ballot to receive, which will result in additional ballots for both major parties being mailed to these voters. Third, the bill may result in some counties operating additional VSPCs on private institutions of higher education and on tribal land. This impact may be reduced to the extent that counties shift VSPC locations, rather than open additional locations to comply with the requirements.

### **Effective Date**

The bill was signed into law by the Governor and took effect on June 6, 2023, except that section 52 (concerning disclosure requirements) takes effect January 1, 2024, and sections 17 and 18 (concerning the county reimbursement mechanisms charge) and 27 (concerning definitions) take effect July 1, 2024.

### **State Appropriations**

For FY 2023-24, the bill requires and includes an appropriation of \$469,201 and 0.5 FTE to the Department of State from the Department of State Cash Fund.

### **State and Local Government Contacts**

Counties

County Clerks

Local Affairs

Municipalities

State