



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 22-0414
Prime Sponsors: Sen. Fenberg
Rep. Lontine

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Bill Status: Senate SVMA
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Bill Topic: **INTERNAL ELECTION SECURITY MEASURES**

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill makes several changes to state law regarding 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. The bill increases state and local government expenditures on an ongoing basis beginning in FY 2022-23, and may minimally increase state and local government revenue.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$500,000 to the Department of State.

Fiscal Note Status: The fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under SB 22-153**

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$500,000	-
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$75,000	-

Summary of Legislation

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

- allows the Secretary of State to file for an injunctive action with the courts to enforce the provisions of the Uniform Elections Code of 1992 (state election code) and requires the courts to act within specified time frames;
- requires additional county and state election staff 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 an election offense, or certain offenses against the government, and prohibits an election official from spreading misinformation about elections;
- expands prohibitions on an election official's access to voting equipment;
- 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;
- authorizes the Secretary of State 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, except under certain circumstances, and allows rule promulgation to implement these requirements; and
- creates a new grant program to cover local government costs to implement the bill's requirements, and requires that \$500,000 General 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) by \$500,000 in FY 2022-23, paid from the General Fund. It also increases ongoing workload, and potentially costs, in the DOS and the Judicial Department. These impacts are described below.

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 \$500,000 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.

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 \$75,000 in FY 2022-23, 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 most large counties already have key card access systems, and that some small counties may be exempt from the requirements through the waiver for historical buildings. These expenditures will be partially offset by grant funds available from the DOS.

Criminal justice costs. Similar to the state, it is expected that workload and cost increases for district attorneys to prosecute additional offenses will be minimal. Workload and revenue may also increase for Denver County Court, which is operated and funded by the City and County of Denver, to the extent any additional misdemeanor election offenses are brought in this jurisdiction.

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 \$500,000 to the Department of State from General Fund.

State and Local Government Contacts

Department of State

County Clerks