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[SF 413](#) – Elections (LSB2298SV.2)  
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Fiscal Note Version – Final Action

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### **Description**

[Senate File 413](#) relates to the conduct of elections, including absentee ballots and voter list maintenance activities, and makes penalties applicable. The Bill takes effect upon enactment.

### **Election Misconduct and Applicable Penalties**

Senate File 413 creates penalties for election officials who willfully fail to perform duties. Specifically, the Bill changes the following offenses to apply to the individuals specified:

- *Election misconduct in the first degree* — Election officials who fail to perform duties prescribed in Iowa Code chapters [39](#) through [53](#), with the exception of voter registration maintenance; fail to follow or implement guidance issued by the Secretary of State's (SOS) Office; or perform duties in a way that hinders or disregards the object of the law.
- *Election misconduct in the second degree* — Election officials who fail to perform voter list maintenance as found through an audit by the SOS Office and investigated by the relevant county attorney and Attorney General.
- *Election misconduct in the third degree* — Election officials who interfere with a person who is allowed to be at a polling place.

The Bill also applies election misconduct in the third degree to a person who returns a voted absentee ballot, including to a ballot drop box, who is not the registered voter, an individual who lives in the same household as the registered voter, an immediate family member of the registered voter, a caregiver of the registered voter, or an election official assisting a registered voter who became a patient, tenant, or resident of a hospital, assisted living program, or health facility. Election misconduct in the third degree is also applied to a person who makes a false or untrue statement that an absentee ballot was returned by a prohibited person.

Senate File 413 also requires the SOS Office to issue a fine of up to \$10,000 to county commissioners upon issuance of a technical infraction. A county commissioner who does not pay a fine that was not dismissed pursuant to Iowa Code chapter [17A](#) is to be suspended from office for a period not to exceed two years.

The Bill requires the Attorney General and county attorney to investigate allegations of election misconduct for prosecution under Iowa Code chapter [721](#) and submit the results to the SOS Office. The Bill also requires the SOS Office to conduct an audit of counties' voter registration maintenance activities in April of each odd-numbered year and submit any audits that identified failure to perform required voter list maintenance to the Attorney General and county attorney for investigation.

### **Other Provisions**

Senate File 413 also includes the following changes:

- Establishes provisions regarding persons serving in voting units of conference boards.

- Prohibits nominations by a nonparty political organization for a person who was nominated by a political party for the same office in the same election.
- Prohibits nomination papers from being filed on behalf of a candidate if nomination papers have been filed on behalf of the candidate for the same office and election year.
- Changes the required convention or caucus size for nominees from nonparty political organizations.
- Makes certain changes to signature requirements for nomination papers and petitions.
- Allows the SOS Office to issue guidance on elections and eliminates home rule power for county commissioners.
- Requires the SOS Office to verify all voters in the statewide voter registration file annually and submit a report to the General Assembly regarding the number of registrations canceled.
- Requires the SOS Office to update voter registration information using the Electronic Registration Information Center (ERIC).
- Changes the voter registration deadline to 5:00 p.m. 15 days before each election and requires confirmation notices sent to voters who may have moved to be returned 15 days before an election.
- Requires voter identification cards to include the times during which polling places will be open on election days.
- Requires each county commissioner to participate in the United States Postal Service National Change of Address (NCOA) Program, send a notice to and mark as inactive a voter who has not participated in the most recent general election and has not reported a change of address or registered again, and report inactive records annually to the SOS Office.
- Allows oversight of county commissioners by the SOS Office during election periods.
- Requires replacement of individuals on a precinct election board following a party affiliation change.
- When there is a change to a polling place, requires notices to be mailed to all registered voters in the precinct and posted in the county commissioner's office and on the county commissioner's Internet site not less than seven days, but not more than 20 days, before the election.
- Changes polling place closing time to 8:00 p.m. for all elections.
- Until November seventh, 2024, requires the Legislative Services Agency (LSA) to post on its website the opening and closing times of polling places.
- Prohibits individuals who are standing for election on the ballot from assisting voters in casting a ballot or from occupying the voting booth with the voter.
- Authorizes law enforcement to take reasonable actions to prevent violation of Iowa Code chapter [50](#) (Canvass of Voters).
- Changes from three hours to two hours the amount of time that an employee is entitled to take off from work in order to vote.
- Changes the number of days prior to an election that any registered voter can apply for an absentee ballot from 120 days to 70 days.
- Allows county commissioners to send an absentee ballot application to a voter only at the request of the voter.
- Prohibits absentee ballot applications from being provided with any field prefilled, excluding the type and date of the election.
- Requires county commissioners to provide necessary information for the SOS Office to publish daily reports by county on the number of absentee ballot request forms received, the number of absentee ballots sent, and the number of absentee ballots received, including the method of delivery.

- Requires the county commissioner to notify a voter within 24 hours that the absentee ballot application cannot be processed if the application is received between 5:00 p.m. on the 15th day before an election and 5:00 p.m. on the seventh day before an election.
- Changes the number of days prior to an election that an absentee ballot can be mailed to a voter from 29 days to 20 days and prohibits an absentee ballot from being mailed to any person who did not apply for an absentee ballot.
- Changes the number of days before an election for in-person absentee voting at a county commissioner’s office and satellite locations from 29 days to 20 days and eliminates the county commissioners’ ability to establish satellite absentee voting stations at their discretion.
- Requires absentee ballots to be received by the county commissioners before polls close on election day with exceptions for uniformed citizens, overseas citizens, and program participants of the address confidentiality program.
- Limits drop boxes to one per county and establishes guidelines.
- Changes the process for a county commissioner to notify a voter that an absentee ballot is incomplete.
- Specifies that an affidavit that lacks the voter’s signature is to be considered incomplete.
- Directs counties and special voters precinct boards to record absentee ballot statistics, including additional tracking requirements, and requires submission to the SOS Office on a daily basis and following an election.
- Makes certain changes to county elections.
- Until November 7, 2024, requires county treasurers to provide the hours during which polling places are open on election days to titleholders on statements of taxes due.

**The fiscal impact associated with the above provisions of the Bill cannot be estimated at this time. The fiscal impact discussed below relates only to the added penalties of election misconduct.**

**Background**

- There are approximately 2.1 million active, registered voters in Iowa. During the 2020 general election, approximately 1.0 million voters cast an absentee ballot. **Table 1** provides additional voting information.

**Table 1 — Secretary of State’s Office General Election Turnout Report**

General Election	Election Day Voters	Absentee Voters	Total Voters	Active/Registered Voters	% Active Voter Turnout	Inactive/Registered Voters	% Total Voter Turnout
2016	934,219	647,152	1,581,371	2,000,567	79.1%	172,418	72.8%
2018	787,074	547,205	1,334,279	2,011,617	66.3%	156,297	61.6%
2020	698,557	1,001,573	1,700,130	2,094,770	81.2%	148,988	75.8%

NOTE: Numbers of active and inactive voters for 2016 are as of November 8, 2016; 2018 numbers are as of November 6, 2018; and 2020 numbers are as of November 3, 2020.

- Per Iowa Code chapter [47](#), the SOS Office is designated as the State commissioner of elections and Iowa county auditors are designated as the county commissioners of elections.
- Under current law, most violations of election law under Iowa Code chapters [39](#) through [53](#) are prosecuted under Iowa Code chapter [39A](#). According to the Criminal and Juvenile Justice Planning Division (CJJP) of the Department of Human Rights, in FY 2019 and FY 2020, there were five convictions of election misconduct in the first degree and seven convictions of election misconduct in the third degree.

- Election misconduct in the first degree is a Class D felony, which is punishable by confinement for no more than five years and a fine of at least \$1,025 but not more than \$10,245.
- Election misconduct in the second degree is an aggravated misdemeanor, which is punishable by confinement for no more than two years and a fine of at least \$855 but not more than \$8,540.
- Election misconduct in the third degree is a serious misdemeanor, which is punishable by confinement for no more than one year and a fine of at least \$430 but not more than \$2,560.

**Assumptions**

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends, prisoner length of stay (LOS), revocation rates, plea bargaining, and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.
- The Attorney General’s Office anticipates that cases of election misconduct may be referred to its office instead of county attorneys.
- The Attorney General’s Office may need to hire 1.0 full-time equivalent (FTE) investigator experienced in election misconduct. If an experienced investigator is hired, the cost could be up to approximately \$117,000. However, the cost of an entry-level attorney position would be approximately \$72,000. For estimation purposes, a midpoint is used for the estimated cost.
- The Attorney General’s Office currently employs one Assistant Attorney General (AAG) to support elections and advise the SOS Office in a partial capacity; however, the Attorney General’s Office may need to have 1.0 AAG FTE position entirely devoted to election issues.

**Correctional Impact**

The correctional impact of SF 413 cannot be determined. The Bill establishes new criminal provisions, and no historical data exists to make a reliable estimate.

**Table 2** below shows estimates for sentencing to State prison, parole, probation, or Community-Based Corrections (CBC) residential facilities; LOS under those supervisions; and supervision marginal costs per day for all convictions ranging from serious misdemeanors to Class D felonies. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 22, 2021, for information related to the correctional system.

**Table 2 — Sentencing Estimates and LOS**

Conviction Offense Class	Percent to Prison	Avg Length of Stay in Prison (months)	FY 20 Marginal Cost/Day in Prison	Percent Ordered to Probation	Avg LOS on Probation	Avg Cost Per Day on Probation	Percent Sentenced to CBC Residential Facility	FY 20 Marginal Cost CBC Per Day	Percent Ordered to County Jail	Avg Length of Stay in County Jail	Marginal Cost Per Day	Avg LOS on Parole	FY 20 Average Cost Per Day Parole
Class D Felony (Non-Persons)	76.0%	11.6	\$20.33	64.5%	33.4	\$5.38	12.3%	\$14.78	34.0%	N/A	\$50.00	12.6	\$5.38
Aggravated Misdemeanor (Non-Persons)	32.0%	11.6	\$20.33	69.8%	22.3	\$5.38	9.5%	\$14.78	39.6%	N/A	\$50.00	4.4	\$5.38
Serious Misdemeanor	2.0%	5.0	\$20.33	56.0%	13.4	\$5.38	1.0%	\$14.78	69.0%	N/A	\$50.00	2.4	\$5.38

**Minority Impact**

Of the 12 election misconduct convictions in FY 2019 and FY 2020, 83.3% were committed by Caucasian offenders and 16.7% were committed by African American offenders. In FY 2020, Caucasians and African Americans made up 89.9% and 4.1% of the adult population of the State of Iowa, respectively.

Senate File 413 establishes new criminal provisions to include actions not previously penalized under Iowa Code chapter 39A. As a result, the CJJP cannot use prior existing data to estimate the minority impact. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 27, 2021, for information related to minorities in the criminal justice system.

**Fiscal Impact**

Senate File 413 establishes new criminal provisions, and the resulting cost to the justice system cannot be estimated. **Table 3** shows estimates for the average State cost per offense class type. The estimates include operating costs incurred by the Judicial Branch, the State Public Defender, and the Department of Corrections (DOC) for one additional conviction. The cost would be incurred across multiple fiscal years for prison and parole supervision.

**Table 3 — Average State Cost Per Offense Class Type**

<b>Offense Class</b>	<b>Total Minimum Cost</b>	<b>Total Maximum Cost</b>
Serious Misdemeanor	\$410	\$7,500
Aggravated Misdemeanor	\$3,700	\$7,800
Class D Felony	\$7,700	\$13,500

The DOC has stated that crimes against professionals are rare and assumes that county commissioners and election officials are likely to comply with the Bill. It is assumed that county commissioners will adhere to the new provisions and little revenue will be generated to the General Fund as a result of technical infraction fines.

For the Attorney General’s Office to hire an investigator at the Investigator 4 position, it would cost approximately \$94,000 annually; there would be approximately \$59,000 in additional annual expenses for an AAG 3 position fully dedicated to elections. These costs include salary and benefits.

As stated previously, the fiscal impact of the various provisions outlined on pages 1 and 2 of this **Fiscal Note** could not be estimated.

**Sources**

- Department of Human Rights, Division of Criminal and Juvenile Justice Planning
- Department of Corrections
- Office of the Attorney General
- Secretary of State General Election Voter Turnout Reports

/s/ Holly M. Lyons

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June 28, 2021

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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