

RÉSUMÉ DIGEST

SB 20

2020 Second Extraordinary Session

Hewitt

Present law provides that if the secretary of state determines that an emergency declared by the governor impairs an election that could be held except for technical, mechanical, or logistical problems with respect to the relocation or consolidation of polling places and potential shortages of commissioners or voting machines, the secretary of state shall certify such facts and the reasons therefor to the governor, the Committee on Senate and Governmental Affairs, and the Committee on House and Governmental Affairs. Proposed law would add other impairments that affect participation in or the integrity of the electoral process to the impairments that the secretary shall consider and certify to the governor and the committees.

Present law provides that if the governor and a majority of the members of each committee concur that an emergency plan is necessary, the secretary of state shall develop an emergency plan to address the impairments. Present law would be applicable to the additional impairments added by proposed law.

Proposed law additionally would require the committees to meet within 10 days following the secretary of state's certification and requires the committees to meet and function as a joint committee.

Present law authorizes the secretary of state to include in the plan a proposal to conduct early voting. Proposed law would retain present law.

Present law limits the locations of such early voting to the offices of the registrars and provides for conducting early voting in accordance with present law. Proposed law would remove these limitations and provides for such early voting at times and locations that are accessible to affected voters.

Present law requires the secretary of state to present the plan to the governor, Senate and Governmental Affairs Committee, and House and Governmental Affairs Committee for their approval.

Proposed law would specifically authorize the secretary of state to present alternative plans at the same time and also authorize the secretary to present the plan or plans at the same time as the certification. Would further require the joint committee to meet no later than 10 days following receipt of the plan and require the joint committee to send notice of each meeting held pursuant to proposed law to the governor and provide that the governor or his designee may attend and provide recommendations regarding the emergency plan. Proposed law would further specifically provide that the secretary of state may incorporate changes suggested and approved by the joint committee.

Present law provides that upon approval by a majority of the members of the Senate and Governmental Affairs Committee and House and Governmental Affairs Committee, the emergency election plan shall be sent to members of each house of the legislature for approval by mail ballot. Proposed law would retain present law but removes the requirement that the ballot be a "mail" ballot.

Present law provides that a copy of the roll call votes of the Senate and Governmental Affairs Committee and the House and Governmental Affairs Committee on the approval of the emergency plan and the plan shall be included in the notice sent with the ballots to members of both houses of the legislature and that the ballots must be returned to the secretary of the Senate or clerk of the House of Representatives within a certain time period.

Proposed law would retain present law but remove provisions specifically related to mailing ballots and different time periods for voting and deadlines for return of ballots dependent upon whether the legislature is in session or not. Proposed law would provide for procedures for transmittal of the ballot by the secretary of the Senate or clerk of the House of Representatives using the most efficient medium available and for them to devise a method for a member to validate his ballot. Proposed law would provide that the ballots shall be returned no later than the fifth business day after transmittal, allow a member to withdraw

his ballot or change his vote prior to the deadline, and provide that the secretary of the Senate and clerk of the House shall tabulate the votes on the next business day after the deadline.

Proposed law would further require that if a majority of the elected members of each house approved the emergency plan, the governor to approve or veto the plan no later than five days after he receives the certified tabulation sheet. Would require the governor to send approval message to the secretary of state and the chairs of the governmental affairs committees. Would require the governor to immediately send his disapproval message to the secretary of the Senate and clerk of the House who shall immediately transmit a ballot to each member of the legislature phrased to allow member to vote for or against overriding the governor's disapproval using the same procedures and deadlines provided in proposed law above.

Present law provides that upon approval by a majority of the members of each house of the legislature and the governor, the secretary of state shall take all steps necessary to implement the plan. Proposed law would retain present law and further provide that if two-thirds of the elected members of each house of the legislature vote to override the governor's veto, the secretary of state shall take all steps necessary to implement plan.

Would become effective upon signature of governor or lapse of time for gubernatorial action.

(Proposed to amend R.S. 18:401.3)

VETO MESSAGE: "Please be advised that I have vetoed Senate Bill 20 of the Second Extraordinary Session.

This bill was drafted to address the method by which emergency election plans are submitted by the Secretary of State and adopted by the Legislature and the Governor. During the spring elections this year, which were ultimately delayed until July and August because of the COVID-19 emergency, Louisiana operated under an emergency election plan that allowed for the people of Louisiana to safely and securely vote without taking unnecessary health risks. Unfortunately, for the most recent election conducted just one week ago, the emergency election plan that was submitted by the Secretary of State was wholly inadequate for the dangers posed by the COVID-19 environment. Because it did not adequately protect the health and safety of the people of Louisiana, I rejected that plan, for reasons that I made clear at the time. Thankfully, United States District Judge Shelly Dick ordered that the July/August election plan be implemented for the November election. By all accounts, this election plan seems to have been conducted safely and securely, belying all of the concerns raised by the Attorney General and others about an emergency election plan that acknowledges that Louisiana is, in fact, in a state of emergency. Thus, the only loss to the State from the manner in which the most recent election was held is the nearly \$1 million dollars the Attorney General reportedly paid to out-of-state lawyers to unsuccessfully fight the litigation.

Senate Bill 20 is a product of the disputes over the emergency election plan this fall. As originally introduced, it was designed to significantly reduce the Governor's authority to disapprove of an election plan. This was an obvious attempt to respond to my action this fall and to eliminate the necessary check that the Governor has on legislative approval of an inadequate election plan. However, in the House, the bill was made significantly better, as it was amended to maintain that the Governor could disapprove of the emergency election plan. This disapproval could only be overridden if two-thirds of the elected members of each chamber would vote to overrule the Governor's disapproval. This is consistent with the constitutional requirement of a supermajority for the Legislature to override the Governor. Further, some of the other changes in Senate Bill 20 are favorable to the cumbersome structure in current law.

However, as finally passed, Senate Bill 20 has some defects that should not be written into law. First and foremost, there was insufficient consideration of the constitutional restriction imposed by Article 3, Section 15, which provides "action on any matter intended to have the effect of law shall be taken only in open, public meeting." The structure for voting to approve the plan or to override the disapproval would seemingly run afoul of this requirement, as any action taken by the Legislature pursuant to this vote would have the "effect of law" and would not be taken in an open meeting. Further, this structure suffers from the same infirmity as House Bill 4 of this session in that it allows for transmittal of ballots via text message. This method of transmittal is simply not acceptable. Putting aside the irony that many of the

supporters of this bill assailed the security of mail-in voting for the public while at the same time providing for mail-in voting of ballots for themselves, this process should not be taken a step further by allowing balloting by text messaging and eliminating the paper trail of a mail-in ballot.

Since there will be no statewide elections conducted before the next legislative session, I pledge to work with the bill author, Senator Hewitt, and the leadership to draft a bill in the upcoming regular session that will address these concerns, while preserving some of the improvements proposed in the current bill."