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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Sens. Figueroa and Wirth/Reps. Cates, Parajón and Rubio	<b>LAST UPDATED</b>	2/18/25
		<b>ORIGINAL DATE</b>	2/11/25
<b>SHORT TITLE</b>	Non-Major Party Voters in Primary Elections	<b>BILL NUMBER</b>	Senate Bill 16/aSRC/aSJC
		<b>ANALYST</b>	Hilla

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS	No fiscal impact	\$125.0	No fiscal impact	\$125.0	Nonrecurring	General Fund
SOS	No fiscal impact	\$4,600.0- \$6,200.0	No fiscal impact	\$4,600.0- \$6,200.0	Nonrecurring	General Fund
Total	No fiscal impact	\$4,725.0- 6,325.0	No fiscal impact	\$4,725.0- \$6,325.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 218

### Sources of Information

LFC Files  
National Conference of State Legislatures (NCSL)

Agency Analysis Received From  
Secretary of State (SOS)

Agency Analysis was Solicited but Not Received From  
New Mexico County Clerks Association (NMCCA)

## SUMMARY

### Synopsis of the SJC Amendment to Senate Bill 16

The Senate Judiciary Committee amendments to Senate Bill 16 (SB16) strikes all amendments made by Senate Rules Committee. The Senate Judiciary Committee amendments allow unaffiliated voters and minor-party voters to request ballots in a primary election while not changing the unaffiliated voter's registration status.

### Synopsis of the SRC Amendment to Senate Bill 16

The Senate Rules Committee amendment to Senate Bill 16 (SB16) includes striking language that is in reference to major political parties.

### Synopsis of Senate Bill 16

Senate Bill 16 (SB16) would allow voters not registered with a major political party to vote in

primary elections. These voters would participate in a primary election by choosing a major political party to affiliate with. The voter's certificate of registration would not be changed to reflect a new or different party affiliation unless the voter so requests. The bill would also allow a voter affiliated with a party other than a major political party, but who chooses to affiliate with a major political party participating in a primary election, to have the option to request a mailed in ballot.

The effective date of this bill is July 1, 2025

## FISCAL IMPLICATIONS

The Secretary of State (SOS) indicates that implementing an open primary would necessitate additional ballot-on-demand (BOD) printing systems in certain counties to support early and election day voting. The estimated cost range for these systems reflects the actual difference in BOD expenses from the 2024 primary election. While these costs could impact the election fund, or by extension, the tax administration suspense fund, this analysis assumes the additional BODs will be covered by the general fund, not the election fund, due to increase in the costs of primary elections.

Laws 2024, Chapter 24, establishes a new \$15 million maximum distribution from the tax administration suspense fund to the SOS's election fund, which would otherwise contribute to the general fund. SOS reports that the 2024 primary election cost approximately \$14 million. The 2026 primary election will be the first funded under this new distribution and could also be the first open primary if SB16 passes. Higher voter turnout under SB16 would likely increase the need for additional BOD systems, as noted by SOS, which would add an estimated \$4–6 million in nonrecurring costs, but would by extension also increase the recurring costs for new system maintenance, potentially above the \$15 million cap. Considering the 2024 primary election cost of \$14 million for a closed primary election, this analysis assumes the costs for additional BOD maintenance and other open primary election costs, like additional poll workers, would increase total election costs beyond the election fund's \$15 million cap. Even though the BOD acquisition costs are nonrecurring in this chart, SB16 would create additional recurring costs.

With rising election expenses due to expanding statutory obligations, SB16 could further drive-up costs beyond the reimbursement limits set by Laws 2024, Chapter 24. Since the state has not previously encountered election costs exceeding the \$15 million cap, SB16 may result in either:

1. A funding shortfall that counties would need to absorb unless the distribution cap is raised, or
2. A higher distribution from the tax administration fund to support election costs exceeding \$15 million if SB16 passes. Since the distribution from the tax administration fund would otherwise go to the general fund, this analysis assumes a \$4-6 million nonrecurring impact to the general fund.

However, if election costs remain within the \$15 million cap, the direct financial impact on the tax administration suspense fund would not change.

Additionally, enhancements to the SOS's mailed ballot application system would incur a one-time cost of \$120 thousand; SOS would also incur a \$5,000 cost to commence outreach to the state's permanent absentee voter list, impacting the office's general fund. The analysis assumes all costs in FY26, which is when the next primary election will occur.

## SIGNIFICANT ISSUES

The original SB16 specifically allows voters without a major political party affiliation to participate in primaries by requesting a ballot. The Senate Judiciary Committee's (SJC) amendments on page 3, line 4 changes the wording to "a voter who has declined to designate a party affiliation" can request a primary ballot. This could be interpreted as only voters who left their party field blank can request a primary ballot, rather than incorporating both unaffiliated voters and minor party voters. SJC's additions in Section 6. (E) on page 13, line 18 to now read "in the case of a primary election, the person with a major political party represented or a political party not on the ballot for a party with which the person is not affiliated" suggests that minor-party voters may be included; however, it is not explicitly stated. Eligible voters should be defined. It is unclear if an unaffiliated voter requesting a ballot creates a temporary party affiliation. While SJC's amendments state that the certificate of registration shall not be changed unless the voter requests it, the bill does not clarify if this would create a temporary affiliation, nor how election officials would track voter voting in multiple primary elections of different parties over time because registration does not change, and election officials cannot track affiliation history. SJC's amendments pose similar legal concerns as the Senate Rules Committee's amendments.

The Senate Rules Committee (SRC) amendments to remove language referencing "major political party" allows all voters to request a ballot from any party, including minor parties like the Green Party, Independent Party, etc. SRC's amendments would expand ballot styles to accommodate multiple party primaries, including minor parties, which could create additional costs than currently listed in the fiscal impact to accommodate additional training for poll workers, the costs of printing more ballots, among other costs. The amendments change the original SB16 as a semi-open primary to a completely open primary election. In the *California Democratic Party v. Jones*, 530 U.S. 567 (2000), the U.S. Supreme Court ruled that while states play a role in structuring and monitoring the primary election process, the process by which political parties must select their nominees are not wholly public affairs that states may regulate freely, ultimately ruling that political parties have the constitutional right to determine their own nominees without interference from non-members as per the First Amendment of the U.S. Constitution's right of association. SRC's amendments striking "major political party language" could create legal challenges under the *Jones* ruling.

According to the National Conference of State Legislatures (NCSL), 15 states have completely open primary elections, including Texas, Virginia, and Wisconsin. States with open primaries typically do not disclose the ballot an unaffiliated voter chose to vote on. Seven states are "open to unaffiliated voters" for primary elections, including Arizona and Colorado, meaning that these states allow unaffiliated votes to participate in any party primary they choose, but do not allow voters who are registered with one party to vote in another party's primary.

Changing New Mexico from one of 10 states with closed primary elections to an open system could increase voter participation. SOS notes that as of December 2024, more than 340,000 voters, 24.4 percent of registered voters in New Mexico, were not affiliated with one of the three major parties (Democratic, Republican, and Libertarian).

SOS states that in *Crum v. Duran*, 2017-NMSC-013, the New Mexico Supreme Court observed that state legislatures could not infringe on a voter's right to vote; however, legislatures may

reasonably regulate elections and impose voter qualifications. The Supreme Court upheld the Legislature’s authority to enact election-related laws. SOS states that *Crum* “does not foreclose a subsequent legislature from eliminating, altering, or otherwise revising the requirement of major party affiliation designation to vote in a primary election, as long as such subsequent legislation is defensible as a reasonable exercise of ‘manner, place, and time’ authority.”

While *Crum* affirms the Legislature has the power to make open primaries, which could allow SB16 under SRC’s amendments to withstand a legal challenge, this ruling does not override First Amendment rights of political parties as ruled in *Jones*, in which minor parties could still challenge a fully open system should SB16 pass with SRC’s amendments.

## **ADMINISTRATIVE IMPLICATIONS**

SOS states that a roster of all eligible voters, affiliated or not, would be required for each county, which could pose changes to current BOD systems; SOS does not anticipate this will cause an increase in costs.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to Senate Bill 218 which amends the Election Code.

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