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## FISCAL IMPACT REPORT

SPONSOR SRC ORIGINAL DATE 3/06/19  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Non-Affiliated Voters in Primary Elections SB 418/SRCS  
ANALYST Glenn

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		Recurring	See Fiscal Implications

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB86, HB93, HB292, HB407, SB52

Conflicts with HB86, HB93, SB52

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

#### No Responses Received From

Secretary of State's Office (SOS)

### SUMMARY

#### Synopsis of Bill

The Senate Rules Committee Substitute for Senate Bill 418 amends the Election Act to allow parties to decide who may vote in their primaries.

The bill amends the Election Code to allow each qualified political party to provide in its rules for participation of nonparty members in the party's nomination process. The party's rules may allow participation by (1) only that party's members (2) party members and voters who are not a member of any qualified political party (3) party members and voters who are not a member of any major political party or (4) any voter, including members of other qualified political parties. When more than one party allows nonmembers to participate in the party's primary election process, those persons are allowed to choose the ballot of only one of the parties and may vote only for candidates on that ballot in the primary election.

The bill amends the Presidential Primary Act to provide that voters may vote in a presidential

primary election on the ballot of only one party, and only if the rules of that party allow a voter to participate in that party's presidential primary.

The effective date of SB418 is July 1, 2019.

## **FISCAL IMPLICATIONS**

Although SOS did not provide an analysis for the SRC substitute, in its analysis for SB418, SOS stated that to project the number of paper ballots that must be preprinted for each primary election, SOS and county clerks calculate an expected voter turnout and print a percentage of each party ballot based on the number of registered voters of the parties for each precinct. Under the provisions of the bill, ballot projections may be more difficult to determine as it will be difficult to anticipate which ballot style the unaffiliated voter may choose. This could result in an increase in preprinted ballot costs in the primary election to ensure sufficient available ballots at each precinct. This would not be an issue in precincts that use a ballot-on-demand printing system. SOS notes that preprinted ballots in the 2018 primary election cost \$68.4 thousand.

## **SIGNIFICANT ISSUES**

In its analysis for SB418, SOS stated that by allowing voters who are nonparty members to participate in the primary election, the bill, if enacted, would likely increase voter participation in the primary election.

NMAG notes that although both closed and open primary systems have been subject to constitutional challenge, the system proposed by the SRC substitute avoids at least some of the grounds for constitutional challenge a primary election system faces. By allowing parties to elect whether to hold closed or open primaries, the substitute should avoid constitutional challenge on the grounds that it interferes with political parties' rights to association. See *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986) (holding that Connecticut law prohibiting party from opening its primary violated First Amendment). NMAG states there still may be constitutional challenges brought by voters who want to participate in a party's closed primary. However, such challenges brought to the existing law have so far been unsuccessful. See *Crum v. Duran*, 2017-NMSC-013, 390 P.3d 971 (rejecting challenge to closed primary under the New Mexico Constitution); *Chavez v. Oliver*, No. S-1-SC-37371 (2019) (rejecting challenge to closed primary on anti-donation grounds).

## **ADMINISTRATIVE IMPLICATIONS**

In its analysis for SB418, SOS noted that if the bill is enacted, it will require the roster of eligible voters generated in each county to include all registered voters, regardless of party affiliation. According to SOS, its current election management system is capable of generating this type of roster without any additional system enhancements and includes the ability to print a ballot for the major political party selected by an unaffiliated voter.

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

### Relates to:

HB86 Election Day & Early Voting Registration

HB93 Primary Election Participation by DTS Voters

HB292 Early Voting Voter Privacy  
HB407 Election Law 50-Year Tune Up  
SB52 Register to Vote Three Days Prior to Election

Conflicts with:

HB86, H93, and SB 52, which also amend Section 1-12-20 NMSA 1978  
HB93, which also amends Sections 1-12-7, 1-12.7.1, 1-15A-2, & 1-15A-8

**TECHNICAL ISSUES**

NMAG makes the following suggestions for clarifying provisions of the SRC substitute for SB 418:

- On page 3, line 7 (Section 2(B)), consider changing “that party’s” to “a party’s,” because there are several prior references to “party” to which “that party” can refer.
- In several places, the substitute uses the phrase “primary election process” (*see, e.g.*, page 4, line 16; page 7, lines 1, 3, and 6). Because it is unclear what the word “process” means in these instances, consider removing the word “process.” If only the “primary election” itself is intended, then “process” can be deleted. If a broader reference to activities around the primary election are intended, more specificity than “primary election process” may be preferred.
- As with the first issue noted above, on page 7, line 1 (Section 4(D)), it is unclear what “the party’s primary” refers to because there are several different instances of the term “party” previously in the sentence. Specifically, it is unclear whether “party” refers to the party of the candidate the voter wishes to vote for, or the party on the voter’s certificate of registration. Consider changing the sentence to “... allowed to participate in the primary election of the candidate’s party.”
- On page 8, line 16 (Section 6(B)), consider changing “such voters” to “the voter” as “such voters” is ambiguous.
- Section 7(B) is vague in that it is unclear what “in accordance with party rules” references. Because this section is not about voter eligibility, there is no context of party rules being about the openness of primary elections. Consider beginning the paragraph instead with “As permitted by party rules regarding participation in primary elections, the voter shall be able to cast a ballot for one of the presidential candidates or for an uncommitted delegation.”