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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 2/2/23

**SPONSOR** Schmedes

**BILL**  
**NUMBER** Senate Bill 175

**SHORT TITLE** Open Primary Elections

**ANALYST** Daly

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

|                                   | FY23                    | FY24                           | FY25             | 3 Year Total Cost              | Recurring or Nonrecurring | Fund Affected |
|-----------------------------------|-------------------------|--------------------------------|------------------|--------------------------------|---------------------------|---------------|
| <b>Primary Election Mailers**</b> | No fiscal impact        | Roughly \$125.0                | No fiscal impact | \$125.0                        | Recurring                 | Election Fund |
| <b>Ballot On Demand System</b>    | No fiscal impact        | \$500.0 -<br>\$1,000.0         | No fiscal impact | \$500.0 -<br>\$1,000.0         | Nonrecurring              | Election Fund |
| <b>Total</b>                      | <b>No Fiscal Impact</b> | <b>\$625.0 -<br/>\$1,125.0</b> | <b>\$125.0</b>   | <b>\$625.0 -<br/>\$1,125.0</b> |                           |               |

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

\*\* Primary election costs will be incurred in FY24 and will recur every other year.

Conflicts with SJR 7, HB 54, and SB 73

### Sources of Information

LFC Files

Responses Received From  
Secretary of State (SOS)

## SUMMARY

### Synopsis of Senate Bill 175

Senate Bill 175 allows every voter, regardless of political affiliation shown on the voter's voter registration certificate, to vote in the primary election of a major political party by requesting that party's primary election ballot and voting for the candidates on that ballot. A voter may vote in only one major political party's primary each election cycle.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

This bill would essentially make all voters eligible to participate in primary elections, which could have an impact on voter turnout. If there is a resulting increase in voter turnout as a result

of this bill, the Secretary of State's Office (SOS) estimates the need for additional ballot on demand (BOD) systems to accommodate the increase. The office estimates a nonrecurring cost of \$500 thousand to \$1 million for the additional systems, based on the real difference of ballot on demand costs from the 2022 primary.

SB175 requires additional notices be sent to voters who are unaffiliated with a major party during a primary election. The increase in mail ballot election precinct notifications would result in additional costs. SOS notes "mail ballot precincts have fewer than one hundred voters and the nearest polling place for an adjoining precinct is more than 20 miles driving distance from their boundaries. These precincts are exceptional in that they are created upon request of the county clerk. There are many more precincts in New Mexico that are not mail-ballot precincts." According to the office, costs would vary based on size of the precinct and number of voters within who are unaffiliated with a major party.

However, generally the office reports it spends \$500 thousand to notify voters per election. Given that nearly one quarter of voters would need to be notified due to their unaffiliated status, this could result in an additional cost of \$125 thousand, and the amount is scored as recurring. However, the cost would only be incurred every other year when there is a primary election. Additionally, that estimate also includes costs of notifying voters during special elections, which the SOS takes over for the counties, so this estimate likely overstates the expected cost to some extent.

## SIGNIFICANT ISSUES

SB175 allows cross-party voting in state primary elections, where a voter who is affiliated with a major political party in the state is allowed to vote in the other major party's primary.

SOS advises the New Mexico Supreme Court has upheld New Mexico's current closed primary system, which allows only voters affiliated with a major political party to participate in a primary election. See *Crum v. Duran*, 2017-NMSC-013. Thus, it suggests that the adoption of an open primary system could be challenged in court.

As SOS points out, SB175 is an open primary bill that does not limit the expansion of the primary election to just those voters who are unaffiliated with a major party. In SB175's open primary, all registered voters may choose in which primary to vote. More specifically, major party voters may choose which party's ballot to vote. According to SOS, critics argue that this type of open primary dilutes a party's ability to nominate. Supporters say this system gives voters maximal flexibility—allowing them to cross party lines—and maintains their privacy.

SOS suggests any legal challenge may focus on whether the voter is meaningfully affiliating with a major political party, and the associational right of the major political parties. It advises that in *Washington State Grange v. Washington State Republican Party*, the Supreme Court upheld Washington's blanket primary system which seems to provide room for state regulation of political party primaries: the question becomes to what extent.

## **ADMINISTRATIVE IMPLICATIONS**

In conducting an open primary under SB175, SOS notes the roster of eligible voters for that election in each county would be required 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. It warns, however, that some changes to the BOD systems are anticipated to allow poll workers to issue ballots to unaffiliated voters. SOS does not anticipate these changes will cause an increase in costs.

## **CONFLICT**

SB175 conflicts with HB54 and SB73, which allow voters unaffiliated with a major political party to vote in one of the major political party's primaries. SB175 also conflicts with SJR7, which in pertinent part would create nonpartisan primaries from which the top five candidates or tickets proceed to the general election.

## **OTHER SUBSTANTIVE ISSUES**

Although it is unclear from the provisions of the bill how many individuals would now be eligible to vote in a primary election who were not eligible before, Pew Research finds 15 percent of New Mexican adults identify with no particular party, equating to roughly 315 thousand individual who could be impacted by this bill. This aligns relatively closely with the Secretary of State's voter information data, which shows as of December 2022, 22.6 percent of registered voters in New Mexico were not affiliated with one of the three major parties—Democratic, Republican, and Libertarian. Therefore, under the provisions of SB175, almost one quarter of the state's registered voters would now be able to vote in a primary election.

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