

LFC Requester:

Noah Montano

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: January 30, 2025

Check all that apply:

Bill Number: HB170

Original x Correction
Amendment Substitute

Sponsor: Rep. John Block, Rep. Stefani Lord, Rep. Mark Duncan, Sen. Steve D. Lanier, Sen. Jay C. Block

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

House Bill 170 (the “Bill” or “HB170”) would amend the Election Code to implement a restricted voter identification law that would eliminate most categories of documents sufficient to register to vote and to vote. Under the Bill, qualified electors would be required to have a current driver’s license or photo identification card from the Motor Vehicle Division.

Section One

Section One of the Bill adds a new section to the Election Code to require that any city, county, or state government office capable of making xerographic copies to provide free xerographic copies of a voter’s voter identification document.

Section Two

Section Two of the Bill amends Section 1-1-24 NMSA 1978 to amend the definition of “required voter identification” in the statute. Presently, documents sufficient to establish voter identification include a photo identification (with or without an address, which need not match the voter’s certificate of registration), an original copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo that shows the name and address of the person. HB170 would amend this section to limit sufficient voter identification to a current driver’s license or identification card issued by the Motor Vehicle Division of the Taxation and Revenue Department. Additionally, the Section adds a provision that for voting absentee by mail, voter identification includes a driver’s license or identification card, and a social security number.

Section Three

Section Three of the Bill amends Section 1-4-5.1 NMSA 1978 concerning the registering to vote via mail-in form. The proposed amendment adds a provision to require a qualified elector to provide a copy of the required voter identification at the time of submission of the voter registration form. The proposed amendment additionally strikes language permitting the currently accepted voter identification and language permitting a voter to present identification when voting for the first time rather than at the time of submission of the form.

Section Four

Section Four of the Bill amends Section 1-6-4 NMSA 1978 concerning applications for mailed absentee ballots. The amendment requires voters to provide a copy of photo identification with the mailed form requesting the ballot. The amendments also remove language permitting a voter to use an expired driver's license or photo identification when applying online for an absentee ballot. The bill would additionally permit voters to submit a social security number instead of driver's license number or state identification card number when applying online. Section Four removes Subsection F of the current statute requiring that a voter who does not provide requisite identification when registering to vote must do so at the time of returning the absentee ballot (as Section Three of the Bill would not permit a voter to register without providing identification at that time).

Section Five

Section Five of the Bill amends Section 1-6-5 NMSA 1978 concerning processing applications for absentee ballots and their issuance. The Bill strikes Subsection C of the current statute which requires county clerks to provide voters requesting an absentee ballot and who did not present identification at the time of registration a notice that the voter is required to submit requisite identification when returning the absentee ballot. Under Section Three of the bill, qualified electors would not be permitted to vote without providing the requisite identification at such time.

Section Six

Section Six of the Bill amends Section 1-6-6 NMSA 1978 concerning the absentee ballot register required to be kept by county clerks. The Bill amends the language in Subsection A(7) and Subsection B(5) to change the term "documentary identification" to "required voter identification" in accordance with the policy goals of the Bill.

Section Seven

Section Seven of the Bill amends Section 1-6-8 NMSA 1978 concerning the procurement and distribution of mail-in ballot envelopes. The Bill removes language from Section C of the current statute requiring an absentee voter to only record the last four digits of the voter's social security number and instead record the full social security number.

Section Eight

Section Eight of the Bill amends Section 1-6-10 NMSA 1978 concerning receipt of mailed absentee ballots. At present, the statute requires county clerks to confirm that the last four digits of the social security number provided by the voter on an absentee envelope match the information held by the county clerk. The Bill amends the statute to reflect the change made in Section Seven that voters are required to provide their full social security numbers.

Section Nine

Section Nine of the Bill creates a new section of Chapter 1, Article 12 NMSA 1978 that states that if a voter's required identification is challenged for not conforming to the requirements contained in Section 2 of the Bill, a voter may vote a provisional ballot.

Section Ten

Section Ten of the Bill amends Section 1-12-7.1 NMSA 1978 concerning physical rosters of voters at polling locations. The Bill strikes Subsection F of the current statute providing for a procedure for voters who did not provide identification at the time of registration (as Section Three of the Bill would not permit a voter to register without providing identification at that time).

Section Eleven

Section Eleven of the Bill amends Section 1-12-8 NMSA 1978 concerning provisional voting. The Bill strikes Subsection B of the current statute, providing for the instances in which a voter shall vote on a provisional paper ballot.

Section Twelve

Section Twelve of the Bill amends Section 1-12-20 NMSA 1978 concerning interposing challenges from precinct board members or party challengers. At present, the Statute provides for bases for people to challenge the legality of a voter. The Bill proposes an additional Subsection E, providing that a voter may be challenged because their required voter identification does not conform to the requirements provided in Section 2 of this Bill.

Section Thirteen

Section Thirteen of the Bill amends Section 1-12-25.3 NMSA 1978 concerning provisional paper ballots. The Bill amends the requirements for a provisional ballot to be accepted to include that the qualified elector has provided a copy of the required voter identification.

Section Fourteen

Section Fourteen of the Bill Amends Section 1-24-3 NMSA 1978 concerning procedures for special elections. The Bill strikes Subsection F of the current statute providing for a procedure for voters who did not provide identification at the time of registration (as Section Three of the Bill would not permit a voter to register without providing identification at that time).

Section Fifteen

Section Fifteen of the Bill amends Section 66-5-408 of the Motor Vehicle Code concerning fees for Motor Vehicle Division-issued identification cards. The Bill provides that the fee for identification cards shall not be charged to individuals requesting an identification card for voter identification purposes.

Section Sixteen

Section Sixteen of the Bill repeals in its entirety Section 1-12-4.1 NMSA 1978, providing that the presiding judge of a precinct may, on election day, suspend the requirement for physical identification (except as required by federal law) if the time voters must spend in line before being able to vote exceeds forty-five minutes.

Section Seventeen

Section Seventeen of the Bill provides that the effective date of this legislation shall be July 1, 2025.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

Constitutionality

HB170 impacts the free exercise of the right to vote, which is a fundamental constitutional right. The U.S. Supreme Court has permitted voter ID laws to remain in effect. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181. However, a challenge to voter ID laws could potentially be sustained under provisions of the New Mexico Constitution. The New Mexico Constitution contains a Freedom of Elections Clause which states, "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of

suffrage.” N.M. Const. Art. II, § 8. The New Mexico Supreme Court has stated that, “the supreme right guaranteed by the Constitution of the state is the right of a citizen to vote at a public election.” State ex rel. Walker v. Bridges, 1921-NMSC-041, ¶ 8, 27 N.M. 169. New Mexico courts do not have well-developed caselaw on this subject and it is difficult to assess the outcome of a suit based upon infringement of the right to vote found in Art. II, Sec. 8. As such, this makes litigation a possibility.

Additionally, HB170 could be challenged as violative of the New Mexico Equal Protection Clause. See N.M. Const. Art. II, § 18 (“No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.”). Voter ID laws tend to have a disparate impact upon people of color. One study by Project Vote found that minority voters were almost three times more likely to not have a valid ID. The U.S. Government Accountability Office found that strict voter ID laws reduce turnout by two to three percentage points on average, with a higher effect on minority turnout. While HB170 is ostensibly race neutral, it is possible that the effect of the legislation would be to disproportionately disenfranchise voters of color. The disparate impact of the legislation on particular communities, in concert with the broad tailoring of the legislation to accomplish its desired ends may fail a challenge in court. Further, HB170 would have a broad effect, reducing the ability for voters to participate without improved assurances of election integrity. The legislation’s broad impact while not providing significant material gains in election security may contribute to a finding that the HB170 is unconstitutional.

Drafting Issues

Section 1-6-4(C) NMSA 1978 currently—and in the proposed text of Section 4(C) of the Bill—provides that “An online request for a mailed ballot shall contain all of the information that is required for paper form.” Section 4(B) of the Bill amends the preceding subsection to provide that applications for absentee ballots submitted on paper forms shall require the accompanying required voter identification. Under the new definition of required voter identification in Section 2 of the Bill for qualified electors voting absentee by mail, that includes a current driver’s license or identification card. If the same information is required to be provided online as via a form submission, this may require the SOS to provide an opportunity for individuals to upload copies of their required voter identification electronically. Legislators should consider revision to clarify.

Section 1-6-10(E) NMSA 1978 currently—and in the proposed text of Section 8(E)—explicates the procedure for instances in which absentee voters notified of the need to provide required voter identification fail to provide it when returning an absentee ballot, including marking the envelope as rejected and updating the ballot register. The Bill strikes from this section a reference to Section 1-6-4 NMSA 1978 which, under the current statute, creates the requirement that absentee voters be notified of the need to produce required voter identification. However, the rest of the Section 8(E) remains unchanged. This creates a reference to a notice procedure that, under the Bill, would no longer be present in the statute. Legislators should consider revision to clarify.

PERFORMANCE IMPLICATIONS

NMDOJ pursues litigation involving infringement of fundamental constitutional rights. Additionally, NMDOJ regularly provides legal representation to the Office of the Secretary of State. It is likely that NMDOJ would be involved should any litigation concerning this legislation arise.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

CONFLICT

HB170 conflicts with SB218. SB218, short titled Election Changes, introduced by Sen. Katy Duhigg and Sen. Heather Berghmans, amends various provisions of the Election Code. Both HB170 and SB218 amend Section 1-12-8 and Section 1-24-3 NMSA 1978 in different, conflicting ways. Additionally, SB218 proposes to repeal Section 1-12-7.1 NMSA 1978, whereas HB170 proposes amendments to its text. Additionally, SB218 contains references to statutes that HB170 seeks to amend.

HB170 conflicts with SB16. SB16, short titled Non-Major Party Voters in Primary Elections, introduced by Sen. Natalie Figueroa, Sen. Peter Wirth, Rep. Kathleen Cates, Rep. Christina Parajon, and Rep. Angelica Rubio, amends various provisions of the Election Code. Both HB170 and SB16 amend Section 1-6-4, Section 1-12-7.1, and Section 1-12-20 in different, conflicting ways.

RELATED

HB170 is loosely related to SB85 in that SB85 also proposes changes to the Election Code. SB 85, short titled Campaign Finance Changes, is introduced by Sen. Peter Wirth, Sen. Heather Berghmans, Rep. Andrea Romero, and Rep. Matthew McQueen. SB85's proposed changes largely relate to campaign finance rather than voter qualification.

HB170 is related to HB208. HB208, short titled Hunting & Fishing License Voter Registration, introduced by Rep. Rebecca Dow, Rep. Harlan Vincent, Rep. Jack Chatfield, Rep. Mark B. Murphy, and Rep. Mark Duncan, also proposes amendments to the Election Code. HB208 proposes to offer voter registration at the time that qualified electors apply for hunting or fishing licenses.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

See Significant Issues section, *supra*.