

LFC Requester:

Emily Hilla

### 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:** March 5, 2025

*Check all that apply:*

**Bill Number:** HB 540

Original  Correction   
Amendment  Substitute

**Sponsor:** Rep. Linda Serrato, Rep. Janelle Anyanonu, Rep. Michelle Paulene Abeyta

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

**Person Writing**

**Analysis:** Eduardo Ugarte

**Short Title:** Legislative Vacancies Eligibility & Process

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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
<b>Total</b>						

(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: The bill (1) establishes eligibility requirements and procedures to fill a vacancy in the office of representative and in the office of senator and (2) requires boards of county commissioners to establish procedures to fill vacancies.

Section 1 of the bill amends Section 2-7F-4 NMSA and Section 2 of the bill amends Section 2-8F-4 NMSA in essentially the same manner as follows:

A new subsection A defines “eligible individual” as an individual who is registered to vote and has resided in the relevant district since the date of the proclamation of the most recent previous general election. The newly defined term was inserted throughout the amended language to clarify that a proposed appointment for a vacancy must be an eligible individual.

New language in renumbered subsection C sets out that, for a representative district situated within two or more counties, the governor shall appoint the representative within seven business days of receiving the list of eligible individuals from the board of county commissioners of each county.

A new subsection D sets out the procedure to be used by a board of county commissioners for filling a vacancy when the legislature is not in session: (1) solicit applications from eligible individuals immediately following vacancy; (2) announce date of special public meeting withing two business days of vacancy; and (3) hold special public meeting within three weeks of vacancy at which the board shall vote by ballot to make the appointment.

A new subsection E sets out the procedure to be used by a board of county commissioners for filling a vacancy when the legislature is in session: (1) solicit applications from eligible individuals immediately following vacancy; and (2) vote by ballot to make the appointment within five business days of vacancy.

A new subsection H directs each board of county commissioners, by January 1, 2026, to adopt a procedure to use when the board considers appointments to fill future vacancies in the house of representatives or senate and sets out what the procedure shall include.

Section 3 sets the effective date of the proposed act as July 1, 2025.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

### **SIGNIFICANT ISSUES**

Existing Sections 2-7F-3 and 2-8F-3 NMSA, require that a candidate shall reside in the district for which the candidate files. The current statute does not require a candidate to be registered to vote. The bill appears to create different qualifications for appointed replacements as compared to elected candidates. Similarly, Article IV, Section 3 of the New Mexico Constitution requires representatives and senators to reside in their districts to be qualified for office. By adding qualification of members beyond what is provided for in the Constitution, the bill could face constitutional challenges.

### **PERFORMANCE IMPLICATIONS**

None

### **ADMINISTRATIVE IMPLICATIONS**

None

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

Related to SB 299, which requires the Secretary of State to notify affected county commissioners upon a legislative vacancy. The 15 day notification window in which to notify commissioners under SB 299 could conflict with this bill's requirement that county commissioners appoint a replacement within five days of the vacancy occurring during a legislative session.

### **TECHNICAL ISSUES**

None

### **OTHER SUBSTANTIVE ISSUES**

None

### **ALTERNATIVES**

None

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

### **AMENDMENTS**

The definition of "eligible individual" could be amended to match the qualifications for office provided by the Constitution and existing statutes to avoid the significant issue noted above.