

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: 1/31/25

Check all that apply:

Bill Number: SB 218

Original  Correction   
Amendment  Substitute

Sponsor: Sens. Katy M. Duhigg and Heather Berghmans

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

Short Title: Election Changes

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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<br>Total Cost | Recurring<br>or<br>Nonrecurring | Fund<br>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:

SB 218 provides for numerous changes to Election Code and related statutes as follows:

- Section 1 amends NMSA 1978, Section 1-1-27.1 to extend home address confidentiality provisions to non-elected and non-appointed employees of the secretary of state or county clerks’ offices.
- Section 2 amends Section 1-2-5 to add a requirement that the secretary of state create a certification program for county clerks, that county clerks complete such certification within 12 months of initial appointment, election, or reelection, and requiring all county clerks to complete certification by July 2026
- Section 3 amends Section 1-2-12 by adding a provision that newly-appointed election board members who must report directly to a polling location on election day shall swear their oath to the presiding judge.
- Section 4 amends Section 1-2-34 to no longer place the elections security program within the bureau of elections.
- Section 5 amends Section 1-7-2 by adding a requirement that, by July 2026, the secretary of state implement a secure internet application to gather electronic signatures and verify that the signer is an eligible voter for the purposes of qualifying candidates.
- Section 6 amends Section 1-8-6 by removing language applying that Section to the date of filing with the secretary of state a certificate of designation by state convention.
- Section 7 amends Section 1-8-7 by removing from subsection (A)(1) the provision for filling vacancies caused by the death of a candidate after certification as a convention-designated nominee.
- Section 8 amends Section 1-8-13 by removing subsections E, F, and G, which relate to notifications of deadlines surrounding the conventions for major political parties.

- Section 9 amends Section 1-8-18 by removing reference to a statement of candidacy for convention designation as an alternative to filing a declaration of candidacy
- Section 10 amends Section 1-8-21 by removing subsection A, which provided for procedures for placing names for candidates for statewide office on a ballot based on preprimary convention designations.
- Section 11 amends Section 1-8-26 by removing references to preprimary conventions and related designations, and by removing the time restriction for mailing notice on the Tuesday following the filing date.
- Section 12 amends Section 1-8-27 by removing references to preprimary convention designations.
- Section 13 amends Section 1-8-29 by removing references to preprimary convention designations.
- Section 14 amends Section 1-8-33 by removing subsections B and D, which provide nominating procedures related to preprimary designations.
- Section 15 amends Section 1-8-39.1 by removing references to preprimary designations or references to conventions generally.
- Section 16 amends Section 1-8-40 by removing references to nominating petitions and preprimary convention designations, such that the crime described therein that applies to anyone “making a false statement in the person’s declaration of candidacy[.]”
- Section 17 amends Section 1-10-6 by applying the randomization of listing names on ballots to federal and presidential elections in addition to statewide elections.
- Section 18 amends Section 1-10-13 by changing the required ballot heading for write-in candidates from “Declared Write-In Candidate” to simply “Write-In.”
- Section 19 amends Section 1-11-4.1 by providing that the voter notification be sent to eligible voters only.
- Section 20 amends Section 1-12-8 by adding the requirement in subsection D that the provisional ballot be provided for the precinct of the address provided by the voter.
- Section 21 amends Section 1-12-25.4 to provide that the provisional ballot register be made available upon request as soon as practicable to any candidate in the election or the county chair of any political party represented on the ballot in a contested election.
- Section 22 amends Section 1-14-24 by amending the automatic recount procedures such that the one-half percent margin of total votes cast now triggers an automatic recount in all elections other than federal or statewide offices, judicial retention, and ballot questions. This also adds “in a statewide election” to the beginning of subsection B for clarity.
- Section 23 creates a new Section 1-15A-12, which requires that qualified political

parties who wish to have candidates for president and vice president on the general election ballot must certify the candidates to the secretary of state seventy days prior to the election.

- Section 24 creates a new Section 1-15A-13, which states that no vacancy occurring after the filing for nomination by petition shall be filled.
- Section 25 creates a new portion of Section 1-15A-14, which provides a procedure for a party to inform the secretary of state of vacancies for their presidential and vice presidential ticket, as well as a procedure for providing vacancy appointments
- Section 26 amends Section 1-19-26 to remove a reference to a preprimary convention in the definition of “expenditure.”
- Section 27 amends Section 1-19A-2 to add to the definition of “qualifying period” the period of time between 24 and 60 days following a primary for candidates appointed in the event of a vacancy.
- Section 28 amends Section 1-19A-3 by adding a subsection E that prohibits a candidate that has submitted a declaration of intent from withdrawing that declaration and submitting one for a different office for that election cycle.
- Section 29 amends Section 1-19A-7 by providing that certified candidates must return all money to the fund following a primary election even if they prevail and are continuing to the general election.
- Section 30 would add a Section to the Election Code requiring the legislature to notify the secretary in writing upon the creation of a new elected office.
- Section 31 amends Section 1-22-3 by removing the term “where applicable” in subsection A, an apparent clarifying change.
- Section 32 amends Section 1-24-3 by adding a subsection G, which provides that when a county or local public body calls a special election, or an automatic recount of said election is conducted, the same shall be canvassed in accordance with Article 13 of the Election Code and the results sent to the secretary of state.
- Section 33 creates a new Section of the Election Code setting forth procedures for county clerks and the secretary of state to follow in the event a state of emergency is declared that has the potential to negatively effect the normal election procedure.
- Section 34 repeals certain Sections of the Election Code:
  - o 1-8-21.1, which governs designation of candidates by party convention
  - o 1-8-42, which provides that a candidate who is unable to pay the filing fee may instead submit a pauper’s statement
  - o 1-12-7.1, which provides for procedures for posting voter lists and verifying voter registration at polling places
  - o 1-22-3.1, which provides procedures for municipal officer elections

## **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**

Repealing Section 1-12-7.1 would eliminate procedures for verifying voter registration and the use of provisional ballots. Without a procedure for addressing voter registration issues up front, those issues may be difficult to resolve after the fact without a provisional ballot procedure in place. For example, a voter who does not appear from their registration to be allowed to vote in a precinct would not have their status verified and therefore may not be able to avail themselves of the affidavit procedure in 1-12-7.2 unless they were aware of and proactively addressed this situation.

Repealing Section 1-22-3.1 would remove the procedure for electing municipal officers. It is unclear whether other portions of the Election Code would provide sufficient guidance on conducting these elections.

## **PERFORMANCE IMPLICATIONS**

None.

## **ADMINISTRATIVE IMPLICATIONS**

None.

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

There are numerous bills that address other portions of the Election Code, but none that impact this proposed legislation.

## **TECHNICAL ISSUES**

Section 1(B) currently extends privacy protections to “Nonelected and appointed employees.” From context, it appears that this section was meant to apply to non-elected and *non*-appointed employees. If so, “non” should be inserted into line 13 of page 3.

There is a potential timing issue in Section 25. When there are fewer than 90 but more than 70 days before the election, the party experiencing a candidate vacancy will be under no obligation to notify the secretary of state of the vacancy, but may still be able to provide an alternate nominee. It is unclear whether this result is intended.

Section 2, subsection D may require qualifying language, since “all county clerks” will include county clerks who will be elected or appointed after July 2026. Amending the language to read “all county clerks in office at the time this law is passed” or similar language would address this issue.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

None.

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

Status quo.

**AMENDMENTS**

As noted above.