

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: 2/20/2025

Check all that apply:

Bill Number: SB 452

Original Correction
Amendment Substitute

Sponsor: Sen. James Townsend, Sen. Steve Lanier, Sen. Anthony Thornton, Sen. David Gallegos

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

Person Writing Analysis: Assistant Solicitor General Taylor Bui

Short Title: Registration of Non-Citizens to Vote

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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:

Section 1 amends the Election code to add a new section that would make it unlawful for anyone from knowingly solicit an individual that is a non-citizen to register to vote or to vote in the state, and imposes a fourth-degree felony and \$5,000 fine. Section 1 also states that it will not be a defense to include a disclaimer that individuals solicited if they are a not a US citizen.

Section 2 empowers both the Attorney General or a district attorney to prosecute violations of section 1.

Section 3 would set the effective date to be 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.

SB 452 places criminal enforcement of this provision with the Attorney General who may need additional attorney FTEs to prosecute these cases.

SIGNIFICANT ISSUES

Most of the acts proscribed by the statute could already be prosecuted under existing law. For example, the Election Code already criminalizes “inducing, abetting or procuring or attempting to induce, abet or procure a person known to not be a qualified elector to vote[.]” NMSA 1978, § 1-20-8(E) (2011). And the general criminal solicitation statute, NMSA 1978, § 30-28-3 (1979), could be used to prosecute those who solicit others to register to vote when not qualified as an elector under NMSA 1978, § 1-20-3(A) (1993).

SB 452 could be challenged for violating the free speech rights of individuals soliciting voter registration, as guaranteed under the First Amendment of the US Constitution and Article II,

Section 17 of the New Mexico Constitution. Courts have recognized that the act of helping others to register to vote is protected expressive conduct. *See Am. Ass'n of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1215 (D.N.M. 2010) (finding that “endeavors to assist people with voter registration are intended to convey a message that voting is important[. . .]). While the State generally has the authority to regulate its elections, *see Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 191 (1999) (finding that states have considerable leeway to protect the integrity and reliability of the election process generally), any restriction on expressive conduct must still balance that important state interest with the “character and magnitude” of the restriction. *Am. Ass'n of People with Disabilities*, 690 F.Supp.2d at 1195 (quoting *Anderson v. Celebrezze*, 460 U.S. 789 (1983)). HB 452 would broadly prohibit individuals from soliciting a class of voter registrations and impose a fourth-degree felony and a \$5,000 fine criminal penalty per solicitation. This could chill protected speech and could therefore be found to be overly broad. *See Vill. of Ruidoso v. Warner*, 2012-NMCA-035, ¶ 6, 274 P.3d 791, 794 (“According to our First Amendment overbreadth doctrine, a statute is facially invalid if it prohibits a substantial amount of protected speech[.]” quoting *United States v. Williams*, 553 U.S. 285, 292 (2008)). These potential overbreadth challenges would be of greater possible concern because SB 452 would define solicitation to encompass a greater range of conduct than is included in the ordinary definition of criminal solicitation, and would not include some of the affirmative defenses to a solicitation prosecution.

PERFORMANCE IMPLICATIONS

SB 452 places criminal enforcement of this provision with the Attorney General who may need additional attorney FTEs to prosecute these cases.

ADMINISTRATIVE IMPLICATIONS

SB 452 places criminal enforcement of this provision with the Attorney General who may need to prosecute these cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 572 is a House duplicate of this bill.

HB 170 is related to SB 452, as it requires identification to register and to vote.

SB 453 is related to SB 452 because it prohibits the Secretary of State from sending notice of edibility to register to vote to non-citizens and groups of person that may include a person who is a non-citizen.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.