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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Serrato/Anyanonu/Abeyta **ORIGINAL DATE** 3/7/25

BILL

SHORT TITLE Legislative Vacancies Eligibility & Process **NUMBER** House Bill 540

ANALYST Hilla

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Counties	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact	Recurring	Other state funds

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
 Nation Conference of State Legislatures

Agency Analysis Received From
 New Mexico Attorney General (NMAG)
 Secretary of State (SOS)

Agency Analysis was Solicited but Not Received From
 Office of the Governor
 New Mexico Municipal League
 New Mexico County Clerks Affiliate

SUMMARY

Synopsis of House Bill 540

House Bill 540 (HB540) amends Section 2-7F-4 NMSA 1978. HB540 adds the term “eligible individual” to this section statute, defined as an individual who is registered to vote in and who resides in the district for which the individual will serve when appointed; provided that the individual shall have been registered to vote and have resided in that district continuously since the date of the Secretary of State’s (SOS) proclamation for the most recent previous general election.

In the event of a vacancy in the Office of Representative or in the Office of Senator, the governor shall appoint a representative to fill the vacancy from the names of eligible individuals within seven business days of receiving the list, provided that one or more boards of county commissioners has not submitted a name to the governor within thirty days of the vacancy notice.

Should a board of county commissions be required to fill a vacancy in the House of Representatives or Office of Senator by appointment, the board shall: solicit and accept applications from eligible individuals, announce the date of a special public meeting within two days of the vacancy, and hold the special public meeting within three weeks of the vacancy. If a vacancy occurs in the House or Senate during a legislative session, the board shall solicit and accept applications from eligible individuals immediately following the vacancy and vote by ballot to appoint a successor within five days of the vacancy.

By January 1, 2026, each board of county commissioners shall adopt a procedure to be used when the board considers appointments to fill future vacancies in the House or Senate, provided that each commission shall rank the top five candidates by preference, and if fewer than five candidates applied for the vacancy, they are to be ranked in ascending order of preference.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

The bill does not affect the state's finances. The bill adds stricter timelines to existing processes at the local level, which may increase administrative functions, but is not anticipated to impact county finances.

SIGNIFICANT ISSUES

According to the National Conference of State Legislatures (NCSL), the country is evenly split between vacancy-filling processes, with 25 states filling vacancies through special elections and 25 filling vacancies through an appointment process, whether via the political party of the incumbent legislator, a board of county commissioners, the governor, or the respective state's legislature. New Mexico currently fills legislative via appointment from the appropriate county commissioners as outlined in Article IV, Section 4 of the New Mexico Constitution. New Mexico is one of eight states that appoint vacancies from a board of county commissioners. HB540 formalizes the current selection process with structured ranking and deadlines.

SOS notes that the date of issuance of the general election proclamations is addressed in Section 1-8-12 NMSA 1978 and is established the last Monday in January of each even-numbered year. SOS adds that persons certified to be candidates in statewide elections in the state must be residents in the district of the office for which the person is seeking candidacy on the date of the secretary of state's proclamation for that election. HB540 requires eligible individuals to live and be registered to vote in the district for which they are being appointed, and must have been registered to vote and have continuously resided in the district since the date of the secretary of state's proclamation for the most recent general election.

The New Mexico Attorney General (NMAG) states that current statute does not require a candidate to be registered to vote, noting HB540 creates different qualifications for appointed replacements as compared to elected candidates. NMAG points to Article IV, Section 3 of the New Mexico Constitution, which requires representatives and senators to reside in their districts to be qualified for office, noting that if the bill adds qualifications for members beyond what is provided for in the Constitution, it could lead to constitutional challenges.

ADMINISTRATIVE IMPLICATIONS

This bill may add additional administrative workload to boards of county commissioners, given the new timelines under HB540.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB540 relates to Senate Bill 299, which requires SOS to notify affect county commissioners upon a legislative vacancy within 15 days, which could conflict with HB540’s five-day reporting window.

TECHNICAL ISSUES

NMAG states the definition of “eligible individual” could be amended to match the qualifications for office as provided in the state’s constitution and existing statutes to avoid legal challenges.

OTHER SUBSTANTIVE ISSUES

HB540 is tied to redistricting maps created by the Citizens Redistricting Commission, which will make new redistricting maps for legislative and gubernatorial approval in 2031; these maps could impact appointments made under HB540 should there be changes to current district lines.

EH/hj/SL2