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FISCAL IMPACT REPORT

SPONSOR Fox-Young ORIGINAL DATE 2/20/07
LAST UPDATED _____ HB 628
SHORT TITLE Voter ID Requirements SB _____
ANALYST Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Association of County Clerks

No Responses Received From

Secretary of State

SUMMARY

Synopsis of Bill

House Bill 628 is intended to amend the Election Code, NMSA 1978, NMSA 1978, § 1-1-1 et seq., by (1) requiring county clerks to issue voter photo identification to persons who present certain identifying documents; (2) allowing persons who cast provisional ballots because they did not provide the required photo identification to have their ballots counted if they affirm within two days after the election that the voter has a religious objection to being photographed; (3) requiring in-person voters to present photo identification before voting; (4) requiring absentee voters to submit copies of photo identification with their mail-in ballots; (5) allowing provisional ballots to be counted only if the voter casts the ballot in the precinct in which the voter is registered; and (6) allowing submission of required identification after the polls close.

FISCAL IMPLICATIONS

There is no appropriation tied to this bill but there are several costs that will be incurred. First, county clerks would be required to issue, free of charge photo ID cards. Second, a windowed envelope for absentee ballots is also required.

SIGNIFICANT ISSUES

According to the AGO, HB 628 requires photo identification for in-person and absentee voting. Similar statutes in other jurisdictions requiring photo identification for in-person voting have been challenged under various state and federal constitutional and legal theories with mixed results. Cf., e.g., Crawford v. Marion County Election Board, et al., ___ F.3rd ___, 2007 WL 16194 (7th Cir. (Ind.)) (Indiana law, requiring voters to present photo identification to vote in person, was not undue burden on the right to vote; law furthered state's compelling interest in preventing voter fraud and burden on right to vote was slight); González, et al. v. State of Arizona, et al., 2006 WL 3627297 (D. Ariz. 2006) (consolidated plaintiffs seeking preliminary injunction to enjoin enforcement of state law requiring photo identification to register to vote and to cast vote did not establish substantial likelihood of success that law violated state and federal equal protection clauses, the National Voting rights Act, the Civil Rights Act, and impedes the fundamental right to vote); Common Cause/Georgia, League of Women Voters of Georgia, Inc. v. Billups, et al., 439 F.Supp.2d 1294 (D. N.D. Ga. 2006) (organizations seeking preliminary injunction to enjoin enforcement of state's photo identification requirement for in-person voting established a substantial likelihood of success on the merits of their claim that photo ID requirement violated federal equal protection clause; burden on affected voters was severe and statute was not sufficiently narrowly drawn to serve state interest in preventing voter fraud); and Weinschenk v. State of Missouri, 203 S.W.3rd 201 (Mo. 2006) (statute placed substantial burden upon the fundamental right to vote and thus was subject to strict scrutiny; statute was not strictly necessary or narrowly tailored to meeting the state's compelling interests, thus violating equal protection and fundamental right to vote). To date, New Mexico courts have not addressed the constitutionality of photo ID requirements for in-person and/or absentee voting. It appears likely that this issue ultimately will be decided by the United States Supreme Court, given the diversity of opinions, as noted above.

The AGO further adds that there is a pending federal court case regarding the legality of Albuquerque's photo ID requirements. It appears the Federal Judge will hear the case on March 13, 2007. American Civil, et al v. Chavez et al (05-CV-01136-M CA-WDS)

OTHER SUBSTANTIVE ISSUES

According to the Association of County Clerks, counties would be hit with an enormous fiscal impact.

Additionally, notes the Association of County Clerks, provisional ballots will only be allowed in the precinct that you live which is contrary to the point of provisional voting. An example of a provisional ballot allows a person to walk into a district other than one's own and vote for all national and statewide offices, and if the voter is deemed eligible that these would be counted. Of course, based on this example votes made on district races would not count. To allow provisional ballots be cast only in a voters district will likely disenfranchise voters because if there is an administrative error or if a person moved and they are at the wrong precinct their ballot will be ineligible and not count.

Lastly, offers the Association of County Clerks, requiring clerks to post a list of voters who cast absentee ballots on the first day after election may be a challenge because the bill does not

include funding to hire staff to assist with this additional responsibility.

POSSIBLE QUESTIONS

How will voters be forced to come get there photo taken?

What will the purpose of the photo ID? If it's to prevent voter fraud, what evidence is there that this will do alleviate it?

Is there evidence that there is voter fraud?

EO/nt