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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/13

SPONSOR Brown LAST UPDATED _____ HB 103

SHORT TITLE Voter I.D. Requirements SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
\$11.5	\$0.0	\$0.0	\$11.5.0	Nonrecurring	TRD-ITD Operating Budget
	\$441.5	\$189.2	\$630.7	Recurring	TRD-MVD Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 209

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
 Indian Affairs Department (IAD)
 Department of Finance and Administration (DFA)
 Taxation and Revenue Department (TRD)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Bill 103 would amend sections of the Election Code to require that all voters present a physical form of identification before voting in person. Individuals voting by absentee ballot would be required to include the voter's driver's license number or MVD-issued identification card number. Section 66-5-408 NMSA 1978 is amended to provide for free identification cards for applicants who will be at least eighteen on the date of the next general election and sign a statement requesting an identification card at no cost for voter identification purposes. The bill also repeals Section 1-12-4.1 NMSA 1978 which relates to the suspension of certain voter identification requirements in the event voter waiting times exceed 45 minutes.

The bill proposes to:

- enact a new section of the Election Code to provide at no charge a copy of the voter's required voter ID at any state office capable of making copies;
- amend 1-1-24 to clarify that the required voter ID is a document that
 - 1) includes a name which conforms to the person's voter registration record and at least two members of the precinct board believe sufficiently matches the voter's certificate of registration; shows a photo; includes an expiration date, and if expired, has not been expired for more than eight years; and was issued by the United States or New Mexico, including any public post-secondary educational institution;
 - 2) *or* a document that includes a name which conforms to the persons' certification of registration and two members of the precinct board believe matches the voter's certification of registration; includes the person's tribal enrollment number; and was issued by an Indian nation, tribe or pueblo;
 - 3) *or* in the case of a voter who is voting absentee and who is not required to submit identification pursuant to the federal Help America Vote Act, the voter's driver's license number or the identification number on the identification card issued by the Motor Vehicle Division.
- amend 1-4-5.1 to clarify that voter information state that a first time applicant must submit the voter registration form with the required identification;
- amend 1-6-4 relating to absentee ballot applications to include the proposed changes in ID requirements as well as stipulate that the form is to include notice that it is a fourth degree felony to falsify any information on the form or sign a person's name other than one's own;
- amend 1-6-5 to clarify that an absentee ballot that is returned without a copy of the required voter ID will be considered to be and handled as a provisional ballot;
- amend section 1-6-8 to provide that the Secretary of State shall prescribe the form for, procure and distribute to each county clerk a supply of inner envelopes, official mailing envelopes, absentee ballot instructions, and official transmittal envelopes for use by the county clerk in mailing absentee ballot materials. Further, that transmittal envelopes to and from the county clerk and federal electors shall be printed in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act and be printed in black; also that the reverse of each official mailing envelope will contain a form to be executed by the voter that stipulates "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote." The form will also contain a notice that it is a fourth degree felony to commit false voting or to falsely swear pursuant to Section 1-20-8 or 1-20-10 NMSA 1978. Lastly, the official mailing envelope will contain a space for the voter to record the voter's name, registration address and year of birth, and have a security flap to cover this information;

- add a new section (7) to the Election Code if a challenge is interposed because of nonconforming voter ID, that the voter be allowed to vote on a provisional ballot;
- amend 1-12-20 to include the failure to provide the required voter ID to the reasons for which a vote may be challenged by a precinct board or party challenger;
- amend 1-12-25.3 to include a fine for any poll worker, or county clerk, who intentionally and knowingly allows a person who is not a qualified elector to vote, up to \$500 per incident while disallowing indemnification of such workers by the state or political subdivision for the fines;
- amend 66-5-408 relating to Motor Vehicles to provide free ID cards for adult applicants who sign a statement requesting an ID card at no cost for voter ID purposes; and
- repeal 1-12-4.1 relating to the suspension of certain voter ID requirements in the event voter waiting times exceed 45 minutes.

FISCAL IMPLICATIONS

It is assumed the county clerks will shoulder any additional administrative expenses alongside the SOS to help implement the amendments in the bill. SOS states: “This bill does not create a significant fiscal impact for the Secretary of State’s office.”

However, the fiscal implications are significant for the TRD. At the present time, an original birth certificate or notarized copy, military ID or passport, Social Security card, and proof of residence must be provided in person to the Motor Vehicle Department (MVD) to obtain a New Mexico ID card. Issuance fees are \$10 for four years but will be free to voters upon written request under the SB 103. The MVD currently waives fees for applicants 75 or older.

The TRD estimates the budget impact to the MVD under the following assumptions:

- 10 percent of registered voters have no state-issued driver’s license or ID,
- 50 percent will apply for the free ID
- 70 percent of those applications will be in FY14 and the remaining 30 percent in FY15. The cost to MVD of issuing IDs is \$10 per card (a wash for ID cards that are paid for and a \$10 expense to the Department for ID cards that are not).

NM registered voters (12/31/12)	1,261,396	
Percent w/o NM DL ID	10%	
Percent applying for free ID	50%	
Number applying for free ID	63,070	
Cost per ID	\$10	
Total Cost	\$630,698	
Budget impact FY14	70%	\$441,489
Budget impact FY15	30%	\$189,209
Total budget impact FY13-15		\$630,698

SIGNIFICANT ISSUES

AGO raises some significant legal issues:

- Section 303(b) of HAVA specifies the identification requirements for voters who register to vote by mail. Specifically, HAVA states that valid identification includes "current and valid photo identification" or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter." As such, House Bill 103 would appear to conflict with HAVA in specifically disallowing these documents as a proposed deletion to Section 1-4-5.1(I)(4)(a).
- The bill proposes that the name on the document must conform to the name in the person's voter registration record. Use of the word "conform" may subject the bill to legal challenge on grounds that it is vague and subject to subjective interpretation.
- Similarly, there is a concern with the proposed provision which allows members of precinct boards to determine if the information on an individual's document "sufficiently matches" the information on the voter's certificate of registration. This provision is subjective and may give rise to legal challenge.
- Requiring a person who does not have a valid New Mexico driver's license to obtain an identification document from the motor vehicle department may make this bill vulnerable to legal challenge on grounds of disparate treatment of voters.

IAD agrees the bill is vulnerable to challenge based on disparate treatment of voters adding "Not all N.M. tribes issue tribal IDs to tribal members. Non-Indian people and tribal members without tribal IDs will be required to show picture ID. The bill could create barriers of cost, logistics, and distance to obtaining required IDs that would affect not only tribal people, but other groups as well."

ADMINISTRATIVE IMPLICATIONS

TRD indicates the following administrative impact to become operational: "implementation of this bill will have a low impact for IT. Listed are the affected programs and time estimates:

- MVD 2.0 – 100 hours
- Point of Sale – 30 hours
- Mainframe batch programs – 60 hours
- Mainframe finance (MVRO) program- 40 hours

Total Hours -230 @ \$50/hour = \$11,500."

OTHER SUBSTANTIVE ISSUES

The SOS office believes that voter ID will increase the confidence in the fairness and integrity of elections and may result in higher voter turnout.

The National Council on State Legislatures reports that thirty-three states require voters to show ID before voting at the polls. In 16 of these, the ID must include a photo of the voter; in the remaining 17, non-photo forms of ID are acceptable. (<http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx>) Several states have been barred from enforcing the voter identification laws or are in the process of pre-clearance under Section 5 of the Voting Rights Act.

According to the NCSL, the thirty-three voter ID laws that have been enacted vary in their details. Two key distinctions are whether a law is strict or not, and whether or not the ID must include a photo.

- **Strict vs. Non-Strict:** In the "strict" states, a voter cannot cast a valid ballot without first presenting ID. Voters who are unable to show ID at the polls are given a provisional ballot. Those provisional ballots are kept separate from the regular ballots. If the voter returns to election officials within a short period of time after the election (generally a few days) and presents acceptable ID, the provisional ballot is counted. If the voter does not come back to show ID, that provisional ballot is never counted.
- **Photo vs. Non-Photo:** Some states require that the ID presented at the polls must show a photo of the voter. Some of these are "strict" voter ID laws, in that voters who fail to show photo ID are given a provisional ballot and must eventually show photo ID in order to get that provisional ballot counted. Others are "non-strict," and voters without ID have other options for casting a regular ballot. They may be permitted to sign an affidavit of identity, or poll workers may be able to vouch for them if they know them personally. In these "non-strict" states, voters who fail to bring ID on Election Day are not required to return to election officials and show ID in order to have their ballot counted. In the other voter ID states, there is a wide array of IDs that are acceptable for voting purposes, some of which do not include a photo of the voter. Again, some of these states are "strict" in the sense that a voter who fails to bring ID on Election Day will be required to vote a provisional ballot, and that provisional ballot will be counted only if the voter returns to election officials within a few days to show acceptable ID.

HB 103 states in Section 9 B that a provisional ballot shall be qualified as long as the voter has provided a valid signature and sufficient information for the clerk to determine the voter is a qualified elector and "has provided a copy of the required voter identification." It does not anticipate how this required identification will be provided or in what time frame.

On January 23, 2013 a bill titled the "Voter Empowerment Act" (H.R. 12) was introduced by U.S. Representative John Lewis that would, prohibit any additional conditions or requirements to voting by mail, other than deadline and returning the ballot. However, the bill would require signature comparison in order for absentee ballot to be accepted.

CAC/bm