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FISCAL IMPACT REPORT

SPONSOR Smith/Ivey-Soto **ORIGINAL DATE** 02/18/15
LAST UPDATED 02/24/15 **HB** 61/aHGEIC
SHORT TITLE Voting Verification Procedures **SB** _____
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		≥\$ 50.0			Nonrecurring	Election Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 340 Change Certain Voter ID Requirements

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Administrative Office of the Courts (AOC)
 Taxation & Revenue Department (TRD)
 New Mexico Clerks Affiliate (NMCA)
 Indian Affairs Department (IAD)
 Secretary of State (SOS)

SUMMARY

Synopsis of HGEIC Amendment

House Government, Elections and Indian Affairs Committee amendment to House Bill 61 would effect the following changes:

- All references to voters’ full social security numbers have been changed to reflect only the last four digits of such numbers;
- On page 28, following line 8, the following three subsections have been added:

C. The secretary of state and the county clerk of each county that maintains a web site shall provide notice of and the voter verification requirements for voting in person and by mail on each entity's respective web site in each language in which voter registration

materials are available. The secretary of state shall prescribe the wording of the notice to be included on the web sites.

D. The secretary of state shall conduct a statewide effort to educate voters regarding voter verification requirements for voting in person and by mail.

E. The county clerk of each county shall post in a prominent location at the clerk's office a physical copy of the notice prescribed by Subsection C of this section in each language in which voter registration materials are available.

Synopsis of Original Bill

House Bill 61 amends various sections of the Election Code (Section 1-1-1 to 1-1-24 NMSA 1978).

HB 61 amends the definition of “required voter identification” in 1-1-24 to require a physical form of identification (ID) for in-person voting, thus eliminating verbal statements by a voter as an acceptable form of voter ID.

In the first category of ID, the required ID must be a physical form of ID that is issued by a government, including a federally recognized Indian nation, tribe or pueblo, or by an educational institution. The ID must contain a name that reasonably matches the voter’s registration and a photograph that resembles the person, and is presumed to resemble the person unless challenged. IDs issued by a federally recognized Indian nation, tribe or pueblo are not required to contain a photo. The ID may or may not contain an address or expiration date.

In the second category of ID, the bill provides that if the voter’s photo is contained in the database available to poll workers, then the voter may provide a written or verbal statement by the voter of the voter’s name, registration address and year of birth, if the name reasonably matches the voter registration, the photo resembles the person and is presumed to resemble the person unless a challenge is imposed. In this case, a form filled out and signed by the voter with the voter’s month, day and year of birth, which must match the voter file, and the voter’s full social security number, which must match the voter file.

A third type of acceptable ID is defined as “federally required identification” and means a form of identification required by Section 303(b) of the federal Help America Vote Act of 2002. In this case, the ID may consist of an original or copy of a photo ID with or without an address, with the address not required to match the voter’s registration, and the ID also may be expired; OR the ID may consist of an original or copy of a utility bill, bank statement, government check, paycheck, student ID card or other government document, including ID issued by an Indian nation, tribe or pueblo, but any such document must show the name and address of the person, though the address need not match the voter’s certificate or registration.

For absentee voting (voting by mail), the bill provides that a voter must complete a form providing the driver’s license number or ID card number on the voter’s NM driver’s license or ID. The MVD address is not required to match the voter file address and the license or ID may be expired. The second form of absentee ID is for the voter to provide the voter’s full date of birth and social security number. This section would also allow the photo ID to be expired. The bill amends 1-4-11 to delete the reference to a general election. It amends 1-4-12 to change

the term “voter identification card” to “voter information document.” The bill amend 1-5-31 to require the SOS to provide to each county clerk, through an agreement with MVD, access to the division’s driver’s license database for the purpose of verifying voter registrations, processing absentee ballots and qualifying provisional ballots. It also includes rulemaking authority for the SOS to “regulate the use of the driver’s license database.”

The bill amends 1-6-4, 1-6-5 and 1-6-6 to match the voter ID requirement for absentee voters and amends it to include the federally required ID. It amends 1-6-8 to change the form on absentee ballot outer envelope to provide space for the required voter identification. It amends 1-6-14 to provide that absentee ballots may be challenged for failure to provide the required ID or federally required ID. It provides that if an absentee ballot does not contain the required voter ID or federally required voter ID, then it shall be treated as a provisional ballot. The bill amends 1-6-16.2 to delete the reference to a signature comparison, and requiring the voter to provide the required ID with an alternative ballot.

The bill amends 1-12-7.1 to clarify that posted voter lists shall not contain voter’s month or day of birth. It also provides that a voter may provide the required voter ID by 5:00 p.m. on the day after the election.

The bill amends 1-12-10.1 to require the SOS to provide voter ID and provisional ballot information to voters. It amends 1-12-13 to provide that a voter who requires assistance may have assistance in filling out any forms necessary to vote.

HB 61 amends 1-12-20 to provide that failing to provide the required ID or federally required ID is a basis for interposing a challenge to a voter. It amends 1-12-25.2 to provide that a provisional ballot that was rejected for lack of ID will be counted if the voter provides the required ID at an appeal hearing conducted prior to Friday before the state canvassing board meeting.

It amends 1-12-25.3 to add the voter’s SSN to the required items on a provisional ballot envelope. It adds a section that provides that if a voter was issued a provisional ballot for failure to provide the required ID, the ballot shall be qualified as long as the voter provides a signature, date of birth that matches the voter file and the voter’s SSN, that matches the voter file. It amends 1-12-25.4 to provide that a voter who is required to provide the federally required ID may provide that by 5:00 p.m. on the day after the election and have the provisional ballot counted.

The bill contains new material which preempts all existing local voter ID ordinances, rules, regulations or resolutions. Finally the bill adds the required voter identification provisions to the municipal election code.

Lastly, HB 61 amends the provision of the state Motor Vehicle Code to recognize the issuance of a written notice of revocation and the right to a hearing to a person who is suspected of driving while intoxicated and has refused a chemical test or has submitted to such a test which has indicated legal intoxication as constituting a temporary license, but only for a driver otherwise licensed to drive in this state.

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

The HGEIC amendment will result in increased operating impact for the SOS since there is now a requirement to conduct a statewide effort to educate voters regarding voter verification requirements for voting in person and by mail, cost of which is indeterminate at this time.

HB 61 includes no appropriation but it would have an impact on the operating budget of the SOS because one type of ID accepted per the bill requires a photo of the voter contained in the voter file, available at the polling place.

SOS analysis states:

Currently the SOS does not have photos in the voter file. However, as part of SOS's work with MVD under NVRA ("motor voter"), the MVD's new Tapestry system will transmit the photo of the voter for every voter registration completed at MVD counters or online through MVD. However, a project which would import MVD photos for all existing voters in the voter file would have a fiscal impact on the SOS and possibly MVD as well.

The bill also addresses the availability of the information in the MVD file to the county clerks, through an agreement between MVD and SOS. The statewide voter registration file was originally developed with the intention that the SSNs would be verified through MVD. The specification for that process appears to have been paid for by the SOS in 2008 and developed, but never implemented. The SOS IT staff has reviewed the 2008 specification and determined that it is now irrelevant to the current technology.

Based on the costs of development of the existing MVD interface for voter registration, the SOS estimates the cost of developing a new specification for exchange of information between MVD and SOS databases to be \$50,000.00. The SOS strongly supports the exchange of information between the databases for the purposes outlined in the bill, maintaining an accurate voter file, and allowing for the matching of voter registration information against other state voter files.

Existing systems leased by the SOS to print ballots at polling locations would have to be modified to accommodate photos.

Fiscal implications provided by the affected agencies did not any estimates for potential litigation costs. According to the National Conference on State Legislatures (NCSL), more than half of the voter ID laws that have been enacted have faced at least one legal challenge ([http://www.ncsl.org/research/elections-and-campaigns/voter-id-faqs.aspx#How much?](http://www.ncsl.org/research/elections-and-campaigns/voter-id-faqs.aspx#How%20much?)).

SIGNIFICANT ISSUES

Supporters of voter ID laws argue that they help prevent fraud and the perception of fraud. They also point out that voter ID is very popular with voters. Opponents of voter ID laws argue that they disenfranchise eligible voters and add cost and inefficiency to the voting process.

New Mexico is currently one of nineteen states that does not require voters to show some sort of

identification at the polls. HB 61 would change the Election Code, requiring identification for both in-person voters and absentee voters.

Statistics related to voter fraud are difficult to locate. Wendy Underhill in a July/August 2011 report titled “Proof at Polls” for the NCSL states:

How much fraud exists? Concrete data are hard to find, but election officials often say that elections will never be 100 percent fraud free. The 2005 Commission on Federal Election Reform—the Carter-Baker Commission—acknowledged voting by ineligible ex-felons or by people using false names, fake addresses or voting using the names of dead people has occurred. But it did say, “there is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.”

The 2007 report, “The Truth About Voter Fraud,” from the Brennan Center for Justice, chases down many accounts of voter fraud and concludes that “allegations of widespread voter fraud, however, often prove greatly exaggerated.” John Fund, however, came to the opposite conclusion in his 2004 book “Stealing Elections: How Voter Fraud Threatens Our Democracy.”

<http://www.ncsl.org/research/elections-and-campaigns/proof-at-the-polls.aspx>

A more recent article on voter fraud at the polls appeared in a guest post by Justin Levitt (a professor at the Loyola University Law School who is an expert in constitutional law with a particular focus on election administration and redistricting) in the Washington Post on August 6, 2014. This article, titled “A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents Out of One Billion Ballots Cast,” lists all credible allegations of potential fraud since 2000 that might have been prevented by a rule requiring ID at the polls.

<http://www.washingtonpost.com/blogs/wonkblog/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/>

HB 61 may be challenged in the courts (see Other Substantive Issues). Analysis from the AGO points out legal challenges that Voter ID laws have faced in other states:

While state laws requiring government-issued photo identification to vote have survived challenges on constitutional grounds if the state’s interests for enacting the law are sufficiently weighty, see *Crawford v. Marion County Election Board*, 128 S. Ct. 1610 (2008), similar laws have been found unconstitutional, as applied, and violative of the Voting Rights Act, if the law is found to have a disparate impact on a subgroup of the voters that cannot be mitigated by certain safe harbor procedures such as provisional balloting, see, e.g., *Veasey v. Perry*, 2014 WL 5090258, F. Supp. 3d (S.D. TX 2014). It is uncertain how the New Mexico Supreme Court would rule if asked to review a statute like HB 340. Thus, it is an open question, even with the provisional balloting included in this bill, if it would be ruled constitutional by the NM Supreme Court based in particular on its interpretation of state constitutional principles and rights.

The SOS supports the implementation of photo voter ID in New Mexico. However, SOS analysis states that:

The second type of ID listed in the bill is a photo of voter contained in the voter file, if it is available at the polling place. At this time, that provision would create a standard that is not uniform and nondiscriminatory. It is assumed that this provision would be used where electronic poll books and ballot printers are used, rather than in polling locations where paper signature rosters are used. At this time, there are many polling locations which use paper signature rosters where this option would not be available.

The third type of ID—statement containing full DOB and SSN—removes any photo requirement. Poll workers would be required to have access to every voter’s full date of birth and full SSN, which is not currently provided at the polling place.

Additionally, absentee boards will be required to have access to SSNs as well as MVD driver’s license numbers and ID numbers. The full SSN would be required to appear on the under the security flap of an absentee ballot. These uses of the full date of birth and SSN raise privacy concerns. The full SSNs and dates of birth of all 1.3 million voters would be required to be available to temporary poll workers in order to accommodate a relatively small number of voters who do not possess a photo ID.

Crimes such as identity theft are on the rise and identity theft continues to generate the most complaints with the Federal Trade Commission. Identity theft is a fourth degree felony in New Mexico (Section 30-16-24.1 NMSA 1978). Making available the data outlined above to pollworkers and absentee boards across the state increases the likelihood for identity theft.

The bill provides that the statewide voter ID requirement supersedes and replaces any and all local voter ID requirements. The bill would impose less stringent voter ID requirements in the municipalities such as Albuquerque, Rio Rancho and Hobbs that have adopted photo voter ID requirements.

IAD in previous analysis of a similar bill state: “Not all N.M. tribes issue tribal IDs to tribal members... 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.”

IAD analysis of HB 61 states:

The enactment of the additional requirements for written voter identification could become a hurdle for Native Americans who are not English first speakers. Additionally, these individuals may not be able to access the information about the changes for identification.

New Mexico, at 9.1%, is one of 13 states with the highest percentage of American Indian and Alaska Native population. (Center for Disease and Prevention, American Indian and Alaska Native Populations, based on US Census data, “news/minority health/populations/News/AIANNews.html”).

Lastly, the bill also amends Section 66-8-111.1 to clarify that, when a law enforcement officer serves written notice of revocation for DUI, the written notice of revocation and right to a hearing shall, but only for a driver with otherwise valid driving privileges, be a temporary license valid for 20 days or, if the driver requests a hearing until the date the department issues the order following that hearing.

ADMINISTRATIVE IMPLICATIONS

TRD states that: “Page 8, lines 4-9 requires an agreement between the Secretary of State and Taxation and Revenue Department Motor Vehicle Division, allowing county clerks access to the driver’s license database. With The Motor Vehicle Division’s (MVD) Tapestry system reengineering project rolling out on May 25, 2015, MVD may not be able to accomplish this by the July 15, 2015 effective date in the bill.”

Also, that MVD will need to develop and issue a new form for the notice of revocation.

On page 24, the bill shortens the time frame by 24 hours for a voter to provide the required voter ID after the election. The SOS questions shortening the timeframe because it would make it harder for a voter to provide the ID in time to have his or her ballot counted.

RELATIONSHIP

HB 61 conflicts with HB 340 Change Certain Voter ID that would require picture IDs issued by governmental agencies and makes exceptions only when a voter executes an affidavit stating religious objection to being photographed or loss of voter ID due to natural disaster.

TECHNICAL ISSUES

AGO analysis concurs with AOC analysis that points out a technical issue:

It might be that inclusion of Section 26 in the bill is inconsistent with the New Mexico Constitution art. IV, sec. 16. This constitutional provision prohibits adding a provision to a bill that is distinct from other provisions. All of the provisions in HB 61 relate to elections, voting and voter registration, except Section 26, which relates to DWI and the motor vehicle code.

In Section 1C of the bill that defines “federally required identification,” the deletion of the words “current and valid” preceding the words “photo identification” on (p. 4 lines 19-20 of the bill) appear to conflict with minimum requirements of HAVA in Section 303b2 that specifically state such identification must be “current and valid.” Further Section 304 of HAVA, “Minimum Requirements” states that States may choose to establish requirements that are “more strict than the requirements” defined in the bill (but they must meet minimum requirements).

SOS analysis points out that:

On page 30, line 21, under current law, a voter has until the Friday before the meeting of the state canvassing board to appeal a county clerk’s rejection of a provisional ballot. However, the appeal is to the county clerk who rejected the ballot. The SOS recommends a judicial procedure for appeal of a rejection of a provisional ballot.

OTHER SUBSTANTIVE ISSUES

The NCSL in 2014 reported that:

A total of 34 states have passed laws requiring voters to show some form of

identification at the polls. As of October 13, 2014, 31 of these voter identification laws are in force. Pennsylvania's law has been struck down and will not be appealed; North Carolina's law, enacted in 2013, goes into effect in 2016; and Wisconsin has been blocked by the U.S. Supreme Court from implementing its law for 2014, pending a court case.

The remaining 19 states use other methods to verify the identity of voters. Most frequently, other identifying information provided at the polling place, such as a signature, is checked against information on file.

The full report is available here:

<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

NCSL also reports that no new voter ID laws were enacted in 2014.

Also, NCSL states that voter ID laws may be characterized as strict or non-strict depending upon the procedures required of voters who fail to show the required ID. Non-strict voter ID laws allow the voter the option to cast a ballot that will be counted without further action on the part of the voter beyond signing an affidavit or having poll workers vouch for the person's identity. After Election Day, election officials determine whether a provisional ballot will be counted.

Strict voter ID laws require that voters without acceptable identification must vote on a provisional ballot and also take additional steps after Election Day for it to be counted. For instance, the voter may be required to return to an election office within a few days after the election and present an acceptable ID to have the provisional ballot counted. If the voter does not come back to show ID, the provisional ballot is not counted.

Using the non-strict/strict categorization, 21 states have non-strict voter ID requirements, and 10 have strict requirements. (See <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>). HB 61 as written would constitute a strict voter ID law.

IAD analysis also points out that women are disproportionately affected by voter ID laws:

It has been documented that requiring more strict identification has an adverse impact on women: "Voter ID law are particularly costly and burdensome for women in part because roughly 90 percent of women change their legal name upon marriage or divorce. According to the Brennan Center, 11 percent of eligible voters do not have a government-issued photo ID, and only 48 percent of voting-age women have a birth certificate that accurately reflects their current name."

AMENDMENTS

AOC recommends: "Separate out Section 26 as a stand-alone bill."

With regard to Section 26, TRD analysis recommends the following:

The bill amends Section 66-8-111.1 NMSA 1978, allowing a person to keep the driver's license after the officer issues a notice of revocation for a violation of the Implied Consent Act. Since an officer is no longer taking the person's license, Section 66-8-111.1 NMSA 1978, no longer needs to have language about a temporary license.

Instead of the language on page 52, line 17 through page 53, line 18, the following language is recommended:

On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section 66-8-107 NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age. ~~Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the department issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit.~~ The law enforcement officer shall send the person's driver's license to the department along with the signed statement required pursuant to Section 66-8-111 NMSA 1978.

CAC/je/aml/bb