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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 03/14/15
 LAST UPDATED 03/18/15 HB 340/HJCS

SHORT TITLE Change Certain Voter ID Requirements SB _____

ANALYST Cerny

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
		(Indeterminate but likely minimal)	Recurring	MVD Operating Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Indeterminate but likely moderate		Indeterminate but likely moderate	Nonrecurring	General Fund and MVD
		Indeterminate but likely moderate	Indeterminate but likely moderate	Indeterminate but likely moderate	Recurring	General Fund, MVD Operating Fund, and Public Election Fund
Total						

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 61 Voter Verification Procedures and may conflict with SB 195 Uniform Military and Overseas Voter Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)

Office of the Attorney General (AGO)

Department of Public Safety (DPS)

Administrative Office of the Courts (AOC)

No Response Received

Taxation and Revenue Department (TRD)

Indian Affairs Department (IAD)

SUMMARY

Synopsis of HJC Substitute

HB 340 as substituted by the House Judiciary Committee amends various sections of the Election Code (Section 1-1-1 to 1-1-24 NMSA 1978) to require voter identification (ID) when a person offers to vote in person or by mail (absentee).

This bill combines various aspects of HB 340 with HB 61 Voter Verification Procedures.

In doing so it takes a more stringent stance towards voter ID, requiring photo ID of some sort in most instances of in-person voting. Versions of the earlier bills allowed for alternative forms of voter ID.

The committee substitute does not include the specific language from HB 61 that provided that the statewide voter ID requirement would supersede and replace any and all local voter ID requirements.

However, in Section 20B, the bill states:

The definition of “required voter identification in the Election Code shall apply to the Municipal Election Code in addition to those definitions set forth in the Municipal Election Code”.

SOS analysis states: “The bill does not invalidate existing voter ID requirements adopted by home rule municipalities,” but this provision may be subject to challenge by other municipalities. Therefore, this definition may have the same effect as the language in HB 61.

The bill is summarized below:

In Person voting: Required ID

The bill amends the definition of “required voter identification” in 1-1-24 to require a physical form of identification for in person voting requiring that the ID contains a photo. The ID can be issued by any government, including an Indian nation tribe or pueblo, or by any educational institution.

The ID must contain a photo, with an exception for IDs issued by Indian nations, tribes or pueblos. The ID must contain the voter’s name, which must reasonably match the voter’s registration, and which is presumed to match unless a challenge is successfully imposed.

The photo must reasonably resemble the voter, and is presumed to resemble the voter unless a challenge is successfully imposed. The ID is not required to contain an address or expiration date.

A voter is not required to present a photo ID if a photo of the voter is contained in the voter registration database and is available at the polling place. In such case, the voter must provide

his or her name, registration address and year of birth. The same presumptions about the name and resemblance of the photo apply.

Absentee by Mail voting: Required ID

For mail ballots, the required voter identification is a form filled out by the voter that contains the voters name and address, as well as either (1) the voter’s NM driver’s license number or (2) the voter’s full date of birth and full social security number. The driver’s license number, social security number and/or date of birth must match the MVD file and/or voter file information for that voter.

The bill provides that the SOS will provide access to the necessary information in the MVD driver’s license database for the purpose of verifying voter registrations, processing absentee ballots and qualifying provisional ballots. SOS will also adopt rules to regulate the use of the MVD database by county clerks.

Under section 1-6-5, a person who votes “absentee in person” is required to present the ID required for in person voters.

All by-mail absentee voting materials are required to contain sufficient space for the by-mail voter identification requirements. If an absentee by mail ballot does not contain the required by-mail ID, it shall be handled as a provisional ballot.

The bill deletes the requirement in section 1-6-16.2 for a county clerk to compare signatures on a request for an emergency alternative ballot to the voter file.

Provisional Ballots: If a person fails to produce the required voter ID for in-person voting, the voter shall be offered a provisional ballot. The provisional ballot will be counted if the voter provides, on the provisional ballot outer envelope, the information sufficient to meet the ID requirements for absentee by mail voters.

If the voter does not provide that required ID on the provisional ballot outer envelope, the voter must provide the required information to the county clerk or the precinct board no later than 5:00 p.m. on the second day after the election for the vote to be counted.

County clerks are required to report the status of all provisional ballots to the SOS, who shall maintain a free access system for voters to check the status of their provisional ballots. Any provisional ballot that has been disqualified for failure to provide the required ID will be qualified if the voter appeals the rejection of the provisional ballot by the Friday prior to the meeting of the state canvassing board, and provides the ID required for either in-person voting or absentee by mail voting. A voter’s whose appeal is denied by the county clerk may appeal to a district court and shall receive free process in any such appeal.

Additionally, if a person does not have access to the voter ID required for either in-person voting or absentee by mail voting, as a result of a declared natural disaster that occurred within 45 days prior to casting the ballot, the voter may execute an affidavit that the voter was unable to access his or her voter ID as a result of the natural disaster.

Federally required ID for first time voters in NM who registered by mail: All references to the federal HAVA ID requirements (utility bill etc) have been deleted since the ID requirement for both in person and absentee voters is higher than the federal minimum requirement.

Public Education: The SOS and county clerks that maintain web sites must provide notice of the voter ID requirements in Spanish and English. The SOS shall conduct a statewide effort to educate voters regarding the voter ID requirements. The requirements shall be prominently posted in each county clerk's office.

Free Photo Identification Cards issued by MVD: the bill provides that MVD will issue free photo identification cards to applicants who state that they are obtaining the ID card for the purpose of voting and the applicant is either already registered to vote or submits a voter registration application through MVD. The SOS will reimburse MVD for the cost of the free IDs from the public election fund.

Application to Municipal Elections: the required voter ID requirements are applied to municipal elections conducted under the municipal election code.

Driver's License Revocations: the bill provides that when a person is stopped for DWI, the law enforcement officer may not take away the license or permit of the driver.

FISCAL IMPLICATIONS

This bill carries no appropriation but will have indeterminate but likely minimal nonrecurring and moderate recurring fiscal implications for the SOS, MVD, and the general fund.

Impact at MVD, based on previous analysis, will be on the Information Technology Division (ITD). Listed below are the required software changes (mostly nonrecurring costs) the bill would require:

- Capture of the customers intent for purchasing an ID card.
- If customer's intent and voter registration status qualifies them, remove the fee from the ID card issuance.
- Determine and implement how Secretary of State will be notified of the amount they are required to reimburse the Motor Vehicle Division
- Estimated Tapestry Development Hours: 120
- Estimated Tapestry Testing Hours: 60
- Total 180 hours at \$50/hour = \$9,000

The SOS expects minimal impact to the public election fund for reimbursing MVD for issuing identification cards for the purposes of providing voter identification for in person voting. Since these photo IDs will only be issued when a voter has no other form of acceptable photo ID, the recurring impact to the public election and general funds is expected to be minimal. The SOS analysis is unclear about how many IDs would be required for non-vehicle drivers aged eighteen and older, who likely may not have another form of government issued ID.

In previous analysis on HB 61, which also required photos from the MVD database to be available at polling places, SOS analysis stated:

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 thousand. 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.

In analysis for this bill, SOS indicates that the office “has been working with MVD and the fiscal impact will be minimal.” However, in addition to the software development cost for the exchange of a portion of a driver’s information, there could be moderate recurring costs for each municipality and or the SOS to have continued access to the MVD database.

Fiscal implications provided by the affected agencies did not include full cost allocations for voter education or 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?)).

In analysis of a different bill that the SOS felt was open to challenge, SOS analysis stated:

In lawsuits arising from those circumstances, the Secretary of State becomes the nominal defendant who is required to respond. When courts rule that legislative acts are unconstitutional or when they impose other remedies pursuant to such cases, cost to New Mexico taxpayers may reach as high as \$160,000 per lawsuit.

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 do not require voters to show some sort of identification at the polls. CS/340 would change the Election Code, requiring photo identification for nearly all in-person voters.

It would also require voters who have voted on provisional ballots to either

- Provide their NM Driver’s License number or full date of birth and full social security number which would be required on the provisional ballot outer envelope or
- to return with necessary information to the county clerk or precinct board no later than 5:00 pm on the second day after the election. For absentee ballots, the same information is required on the ballot outer envelope, under a security flap.

The requirement for a voter to return to provide necessary information following a provisional vote is considered a component of a “strict” voter ID law (see Other Substantive Issues).

AOC analysis states:

- The substitute bill’s amendment to Section 1-12-25.2 NMSA 1978, Subsection D, provides that a voter whose provisional paper ballot was rejected by the county clerk may

appeal to the district court and shall receive free process in the proceeding.

Subsection C permits the voter to appeal a rejection to the county clerk by the Friday prior to the meeting of the state canvassing board. The substitute bill does not set a time limit upon the voter's appeal to the district court.

- The HJC Substitute for HB 340's amendment to Section 1-12-25.4 provides that if a person is registered to vote in the county but has voted on a provisional ballot for failure to provide the required voter ID, the provisional paper ballot shall be counted if: (1) the voter provides the voter ID required by Section 1-1-24(B) NMSA 1978 on the provisional ballot outer envelope; or (2) the voter executes an affidavit under penalty of perjury that states the voter does not have the required ID as a result of a natural disaster that was declared by the U.S. president or the governor, the disaster occurred not earlier than 45 days before the date the ballot was cast and caused the destruction of or inability of the voter to access the voter's ID.

The crime of perjury carries a fourth degree felony penalty under Section 30-25-1 NMSA 1978. Section 1-20-22 NMSA 1978 provides a petty misdemeanor penalty for a knowing violation of the Election Code unless the code imposes a specific penalty for the violation of a provision prohibiting a specific act.

CS/340 (unlike the original bill) makes no provision for exceptions when a voter states a religious objection to being photographed, for example, by executing an affidavit so stating religious objection.

The requirement to provide full date of birth and full social security number on the outer envelope of the provisional ballot appears to compromise security of this information, which could contribute to identity theft. 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 personal data to pollworkers and absentee boards across the state increases the likelihood for identity theft.

SOS analysis states:

The SOS strongly advocates for the implementation of photo voter ID in New Mexico. The current law not requiring a photo ID makes it easy for people to vote under names not their own inviting fraud that compromises the integrity of elections. Reports of these "stolen votes" have been reported in each state election including most recently during the 2014 general by individuals living in Bernalillo and Rio Arriba Counties. Once a vote is stolen it cannot be corrected because once a ballot is placed in the tabulator at a polling location there is no way to identify that ballot and remove it from the results. This has the potential to alter the results of an election when, especially in smaller communities, results can be within a small margin or even tied.

Statistics related to voter fraud are difficult to locate. Wendy Underhill in a July/August 2011 report titled "Proof at Polls" by 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 thirty-one credible allegations of potential fraud since 2000 that might have been prevented by a rule requiring voter ID at the polls. See:

<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/>

AGO analysis references voter ID laws that have been challenged 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.

IAD prior analysis states:

HB 340 lists a tribal ID as one of the acceptable required voter identifications. An acceptable ID is “a physical form of identification that is issued by a branch, department, agency or entity of the state of New Mexico, the United States, a federally recognized Indian nation, tribe or pueblo or a New Mexico educational institution....” This is good for tribes. However, not all Indian tribes issue their members identification cards so being

able to use the tribal ID does not necessarily help tribal members to have greater access to voting.

CS/340 proposes that the Secretary of State and county clerks use the internet to provide education about the voter requirement changes to the Election Code. CS/430 will have the voting materials available “in each language in which voter education materials are available.”

IAD in prior analysis states:

However, many New Mexico tribes use oral language so written voter materials will not benefit them because many of them, especially elders, are not English first speakers. Having the written material placed by the Secretary of State and by county clerks on their website is not useful to people who are not conversant in using computers or do not own computers—and many elders and people affected by poverty would be included in this group. Therefore, these individuals may not be able to access the information about the requirements for voter identification in HB 340.

For Native Americans, who have so many important aspects of their lives affected by the results of an election, the administrative and financial burden of having to use an voter ID verified by the MVD could result in a significant number of them not being able to exercise a civil right.

The present statute works for Native Americans because it allows for a variety of situations in which individuals are allowed to use the “form of identification as chosen by the voter.”

PERFORMANCE IMPLICATIONS

TRD analysis that that “The new Tapestry system will be in production beginning May 25, 2015. Since the effective date of this bill is July 1, 2015, there is a possibility that the changes cannot be implemented into production by the effective date.”

ADMINISTRATIVE IMPLICATIONS

The bill 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. TRD prior analysis stated: “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, MVD will need to develop and issue a new form for the notice of revocation and will need to establish and train staff in procedures and systems for issuing free identification cards used for voting, for notifying the Secretary of State of all such ID cards issued, and the cost of issuing those cards. A new account will need to be established for acceptance of reimbursement from the Secretary of State.

Implementation of this bill will have a minimal impact on the MVD Information Technology Division.

CONFLICT

HB 340 conflicts with HB 61 Voter Verification Procedures which also amends the Election Code and provides for differing types of voter IDs.

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.

AOC analysis stated: “Separate out Section 26 as a stand-alone bill.”

Unlike much other proposed legislation, the substitute bill contains an effective date of July 15, 2015, rather than July 1, 2015. Is this a typographic error?

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.

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

No new voter ID laws were enacted in 2014.

NCSL also 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>). CS/340 as written would constitute a strict voter ID law.

IAD previous analysis 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 laws 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.”

CAC/bb