

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/17

SPONSOR Sapien LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Unaffiliated Voters in Primary Elections SB 205

ANALYST Esquibel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			Minimal	Minimal	Recurring	General Fund, Local Government Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Senate Bill 205 duplicates House Bill 206 and relates to House Joint Resolution 6, Top Two Candidates Open Primary Elections, CA.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (OAG)

Secretary of State's Office (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 205 (SB205) would amend the election code to allow a registered voter who has not designated a political party preference on their voter registration certificate to choose to affiliate with a major political party during a primary election by requesting any major political party ballot of their choice.

The effective date of SB205 is July 1, 2017.

### FISCAL IMPLICATIONS

The bill does not include an appropriation.

The Secretary of State’s Office (SOS) indicates to project the number of paper ballots that must be printed for each primary election, the SOS and county clerks calculate an expected voter turnout and print a certain percentage of each political party ballot based upon the number of registered democrats and republicans in each precinct. Under the provisions of the bill, ballot projections may be more difficult to determine as it will be difficult to anticipate which ballot style the unaffiliated voter may choose. This could result in ballot printing costs increasing in the primary election; however, this would not be an issue in precincts that use a ballot-on-demand printing system.

## **SIGNIFICANT ISSUES**

The Secretary of State’s Office (SOS) indicates the legislation proposes to allow voters without a political party designation to participate in primary elections, but would still exclude other minor political party voters from participating in primary elections.

There is typically a lower voter turnout in primary elections compared to general elections, and an open primary may result in increased voter turnout.

The Office of the Attorney General (OAG) writes the New Mexico Supreme Court recently upheld New Mexico’s current election code which does not allow for an “open primary” by stating the Legislature was within its authority to restrict primaries to party members, and compelling political parties to open primaries could infringe on associational rights under the First Amendment. [See *Crum v Duran*, SISC 36030 (2016).]

## **ADMINISTRATIVE IMPLICATIONS**

The Secretary of State’s Office (SOS) notes if the proposed legislation is enacted, the roster of eligible voters generated in each county would be required to include voters who are registered with a major political party as well as those voters that do not have a political party affiliation. The current election management system is capable of generating this type of roster without any additional system enhancements.

## **OTHER SUBSTANTIVE ISSUES**

The Administrative Office of the Courts (AOC) notes according to the National Conference of State Legislatures (NCSL), New Mexico is one of nine states to hold closed primaries, where a voter seeking to vote in the primary must first be registered with a major party. Seven states hold partially closed primaries, where state law permits political parties to choose whether to allow unaffiliated voters to participate in their nominating contests before each election cycle. In a partially closed system, parties may let in unaffiliated voters and exclude members of opposing parties. Six states hold partially open primaries, permitting voters to cross party lines, but voters must either publicly declare their ballot choice, or ballot selection may be regarded as a form of registration with the chosen party. Nine states permit only unaffiliated voters to participate in any party primary they choose. Fifteen states hold open primaries, where voters may choose privately in which primary to vote, without the effect of registering to vote with that party. Four states use a “top two” primary format (see *State Primary Election Types*, <http://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx>).