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FISCAL IMPACT REPORT

SPONSOR Stewart ORIGINAL DATE 3/01/17
LAST UPDATED _____ HB _____
SHORT TITLE Firearms Near Election Polling Places SB 410
ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$6.0		\$6.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

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 410 (SB410) would amend the election code making it unlawful to carry a loaded or unloaded firearm within 200 feet of a polling place during any election. "Firearm" is defined as a weapon that will, is designed to, or capable of being converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. Violations would be petty misdemeanors sentenced pursuant to Section 31-19-1 NMSA 1978.

FISCAL IMPLICATIONS

The Secretary of State's Office (SOS) notes it would be beneficial if the SOS or county clerks could print signs for placement in and near polling places to help educate the public regarding this prohibition should it be enacted. The SOS estimates printing signs would cost approximately \$6,000.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) notes SB410 does not exempt law enforcement

officers, whether on or off duty, active duty members of the United States armed services or the New Mexico national guard, or security personnel from the application of penalties associated with the new offense proposed in the bill.

The Attorney General's Office (AGO) indicates, there are other state laws that prohibit handguns within a number of areas where polls are located; i.e. schools (NMSA 1978 Sections 30-8-2.1 and 29-19-8), universities (NMSA 1978 Section 20-7-2.4), court facilities (NMSA 1978, Section 29-19-10), and hospitals. Also, concealed carry licenses do not allow guns where they are otherwise prohibited by state law. In addition, NMSA 1-20-14, prohibits voters from being intimidated at polling locations.

The AGO indicates the bill could raise an issue reconciling the 200 feet restriction against a person's second amendment right to vote. Courts have held that an individual's right to speech under the first amendment related to political speech must give way to state-imposed restrictions prohibiting campaigning within 100 feet of an entrance to a polling place. [*Burson v. Freeman*, 504 U.S. 191 (1992) holds that states have a compelling interest in preventing intimidation, an interest that can be protected by limiting political speech before voting.] Therefore, it seems as though the Court would be willing to uphold a restriction of a right guaranteed by the Constitution for the right to vote, up to 100 feet from a polling location.

The AGO notes courts in other jurisdictions have held that polling places are nonpublic forums. As a result, a lesser form of scrutiny will be applied to the justification used as the basis for the government interest in such a restriction. [See *Longo v. US Postal Serv.*, 983 F.2d, 12 (2d Cir. 1992); *Marlin v. D.C. Bd. Of Elections & Ethics*, 236 F.3d 716, 719 (D.C. Cir. 2001).]

ADMINISTRATIVE IMPLICATIONS

The Secretary of State's Office (SOS) notes it would need to develop training and guidance for poll workers, potentially in cooperation with law enforcement experts, about how to approach and enforce this requirement.

RELATIONSHIP

The Administrative Office of the Courts (AOC) notes the bill's definition of a "firearm" is consistent with the federal gun control act (18 U.S.C., § 921(a)(3)).

TECHNICAL ISSUES

The Attorney General's Office (AGO) notes the bill does not allow for peace officers, security personnel, or police officers to carry their firearm into the polling location. There could also be a provision which allows for the Secretary of State or county clerks to grant written authorization to individuals to carry firearms in the polls.

OTHER SUBSTANTIVE ISSUES

The AOC writes in November 2016, a Washington Post article stated that most states do not have laws restricting firearms in polling places: https://www.washingtonpost.com/news/the-fix/wp/2016/10/21/most-states-have-no-laws-about-guns-in-polling-places-some-election-officials-think-that-could-be-a-problem/?utm_term=.1d34e34cb77a. Six states have laws

banning firearms in polling places: California, Florida, Texas, Arizona, Georgia and Louisiana. However, many states have laws restricting or banning firearms in locations that are commonly used as polling places, such as schools, churches, and government buildings. In New Mexico, firearms on school premises are banned, with few exceptions, and violations are a fourth degree felony (Section 30-7-2.1 NMSA 1978).

RAE/sb