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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Martínez, J/Chasey/Duhigg/Johnson/Lara</u>	<b>LAST UPDATED</b> <u>2/28/23</u>	<b>ORIGINAL DATE</b> <u>2/2/23</u>
<b>SHORT TITLE</b> <u>Voting Rights Protection</u>	<b>BILL NUMBER</b> <u>House Bill 4/aHFI#1/aSRC</u>	<b>ANALYST</b> <u>Daly</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$0.0	\$201.6	\$366.2	\$567.8	Nonrecurring	TRD/MVD Suspense Fund- Contranatural Resources
	\$0.0	\$53.3	\$96.6	\$149.9	Nonrecurring	TRD/MVD Suspense Fund- Staff Workload Cost
<b>Total</b>		\$254.9	\$462.8	\$717.7		

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent version of this legislation.

Conflicts with HB 110

### Sources of Information

LFC Files

#### Responses Received From

Indian Affairs Department (IAD)  
 New Mexico Attorney General (NMAG)  
 Secretary of State (SOS)  
 Taxation and Revenue Department (TRD)  
 Public Education Department (PED)

## SUMMARY

### Synopsis of Senate Rules Committee Amendments to House Bill 4

The Senate Rules Committee amendment to House Bill 4:

- Remove provisions regarding amendments to existing law expanding the use and disposition of voter information;
- Provide a definition of “correctional facility” for new language barring a voter from voting while imprisoned in that type of facility following a felony conviction, but allowing that offender to vote on release;

- Provide a process by which a county clerk may seek a waiver, due to geographic or security constraints in that county, of the new requirement that each county have at least two monitored secured containers; and
- Revise the effective dates consistent with the other amendments to the bill.

### **Synopsis of House Floor Amendment #1 to House Bill 4**

The House floor amendment #1 to House Bill 4 strikes the provision allowing for tribal absentee ballot assistants in Section 22 of the original bill, and references to them. The amendments also make changes consistent with the removal of that section.

### **Synopsis of Original House Bill 4 (as amended)**

House Bill 4 makes numerous updates and changes to the Election Code, including expanding automatic voter registration, restoring a convicted felon's right to vote upon release from prison, creating a voluntary permanent absentee voter list, and enacting the Native American Voting Rights Act. Changes are summarized by Sections, along with the effective date of each grouping of sections.

Sections 2 and 7-9 (section numbers as amended by SRC): Address agency-based voter registration (AVR) which automatically registers confirmed qualified electors who prove their citizenship at the Motor Vehicle Division (MVD). Each elector receives a mailer allowing the elector to opt out of registration, or confirm party affiliation after the fact. Individuals who do not provide documentation of citizenship are still allowed to affirm their citizenship and register at MVD. Existing registrant addresses would be updated to match an address change made at MVD. SOS is authorized to expand AVR to additional state agencies, including Human Services Department and Indian nations, tribes, or pueblos. These changes are effective July 1, 2025.

Section 3 (section number as amended by SRC): As amended by SRC, removes provisions allowing for expanded access to voter information, and prohibits the transferring, copying, sharing, or conveying of special voter data lists, voter data or mailing labels except as provided in the Election Code. Such data cannot be made accessible by the public on the internet or through other means. This restriction is effective July 1, 2023.

Section 4: Addresses provisions relating to same day registration at a polling place and clarifies that this option shall be available to all voters for the duration of in-person (early) voting through election day. It also clarifies the voter identification requirements at the polling location applicable to a qualified elector participating in the same day registration process. These provisions are effective July 1, 2023.

Sections 5-6: authorizes a person convicted of a felony to be able to register immediately before and vote upon release from incarceration. A voter convicted of a felony remains ineligible to vote while in a correctional facility (now defined in Subsection E by SRC amendment), but the right is reinstated upon release after registering or updating an existing registration. These provisions are effective July 1, 2023.

Section 10 (section number as amended by SRC): amends the Absent Voter Act to provide for a permanent absentee voter list. A registered voter may request to be placed on a list maintained by the county clerk to receive a mailed ballot for every election without having to first submit an

application for each upcoming election (as current law requires). Voters on this list would be mailed a reminder notice prior to being sent the ballot. If the notice or other piece of election mail is returned undeliverable then the voter would not be mailed a mailed ballot. A voter also may be removed if a voter fails to return a mailed ballot in two consecutive elections, a registration is cancelled, or if a voter has moved outside of the county, or has requested to be removed from the list. These provisions are effective January 1, 2024.

Section 11 (section number as amended by SRC amendments): mandates a minimum of two of secured containers in be available in each county. It also provides that a political subdivision of the state (a municipality, school district, or community college) may make a written request to the county clerk for one or more monitored secured containers on or near the boundaries of the political subdivision, and allows for an appeal to SOS in the event of a denial. The SRC amendments provide a process by which a county clerk may seek a waiver, due to geographic or security constraints in that county, of this new requirement. These provisions are effective July 1, 2023.

Sections 12– 21 (section numbers as amended by SRC amendments), as amended by HFI#1: Enacts the Native American Voting Rights Act, which consolidates existing law applicable to Native American voting rights. It also allows for Indian nations, tribes, and pueblos to amend their request for voting locations and to apply for secured containers. HFI#1 strikes the provision authorizing tribal absentee ballot assistants and reference to that provision. Section 20 authorizes a qualified elector residing on Indian nation, tribal, or pueblo land to designate a tribal government building as the qualified elector’s mailing address. Expenses incurred by a county clerk in compliance with the provisions of this Act shall be paid or reimbursed by SOS. These provisions are effective July 1, 2023.

Section 22, as renumbered by HFI#1 and SRC: Makes every general and regular local election is a school holiday. This provision’s effective date remains unchanged by HFI#1 and SRC amendments: January 1, 2024.

## **FISCAL IMPLICATIONS**

TRD reports implementation of this bill will have a high impact on its IT Division. The estimated time to develop, test, and implement the changes is approximately 2,704 hours or 17 months and approximately \$717,700 (\$567,800 contractual resources including gross receipts tax, and staff workload costs of \$149,900). The bill will require MVD to partner with SOS to make changes to the interface between the two agencies.

## **SIGNIFICANT ISSUES**

SOS comments that HB4 contains a number of pro-voter mechanisms that may reduce the bureaucracy surrounding registering and voting that may frustrate or prevent certain qualified electors from participating in the voting process, without compromising sensible security and administration practices. For example, the updates to AVR are expected to increase the efficiency of registering to vote and improve the accuracy of the voter rolls since address changes at the MVD will automatically result in an address update in the voter registration database. Similarly, SOS anticipates implementing a permanent absentee voter list will make voting by mail easier for those voters who choose to vote in this manner in every election,

particularly those individuals who are home bound.

Additionally, SOS expects the procedures to immediately reinstate voting rights when a convicted felon is released from incarceration will simplify the administrative burden on the SOS and county clerks to register these individuals. It notes that current law provides that a felon on probation or parole is ineligible to register or vote, as well as those who are incarcerated. While the voter registration system does maintain some records provided by the courts regarding probation and parole status of some individuals, it is often outdated or missing records. This issue places the county clerk and the qualified elector in a position of having to research and dig up release papers to re-register to vote. This cumbersome process has resulted individuals who are eligible to vote to be denied that right.

TRD advises that implementation of this bill will be a significant change to how voter registration is currently provided in MVD offices and will require significant system changes. It points to Section 8 (B)'s requirement that MVD create and maintain a database of individuals who have satisfied the citizenship requirement for eligibility to vote. To date, MVD has only recorded verification of lawful presence, as opposed to records of the citizenship status of any customer. MVD would need to determine appropriate access to citizenship information that would now be tied to a driver record in their database. MVD would also need SOS to define which documents are "demonstrating US citizenship" and determine if these documents align with MVD's lawful presence requirements. In addition,

Both TRD and IAD comment on provisions of the new Native American Voting Rights Act (Sections 13-23). IAD provides these comments:

**Monitored Secured Containers** It would be important for the state to fully fund county clerks to install the Monitored Secured Containers on and near Tribal land. Many Native people drive on average 40 to 60 miles to work, school or conduct daily business. This means people often do not have the time to wait for polling places to open or return when they are already closed. Monitored Secured containers are convenient, yet secure ways for Native voters to vote. Tribes, Pueblos and Nations have been denied this type of service due to lack of funding at the county clerk level.

**Tribal Absentee Ballot Assistants** The House floor amendment strikes the new language referencing and providing for tribal absentee ballot assistants.

**Adjusting precinct boundaries**

A board of county commissioners that wants to change the precinct boundaries affecting Indian tribes, nations or pueblos should notify Indian nations, tribes and pueblos and that board should be the ones to seek the appropriate information submitted to the US census bureau by the Indian nation, tribe or pueblos. Each county should work with the Indian nation, tribes or pueblos to comply with federal law when adjusting precinct boundaries.

**Requests for polling places and monitored secured containers**

Tribes must submit a written request for Early Voting poll locations in odd-years and Election Day poll locations in even-numbered years. Understanding the cycle that tribes can request a specific type of poll location is complicated and could disenfranchise Tribal nations if the requests are made in the wrong year. Additionally, there is no indication whether or not tribal colleges are included in requests for containers.

**Use of Governmental and Official Buildings as mailing addresses** on Voter Registration certificates and mailed ballot applications will be helpful to many Native American voters that live on reservations in rural areas. Additionally, such a mailing address will be helpful to urban Indian voters who are either transient or homeless.

TRD notes that Section 20's requirement regarding use of a government or official building as a voter's registration office will require considerable effort, and warns that an effective date of July 1, 2023 is not feasible.

PED notes that in light of the provision declaring every general election and regular local election to be a school holiday for public school students and staff, school districts and charter schools will need to adjust their schedules to ensure they meet minimum instructional hours.

## **CONFLICT**

HB4 conflicts with HB110, which sets specific voter identification requirements in order to vote in New Mexico elections.

MD/al/ne/hg