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## FISCAL IMPACT REPORT

SPONSOR Nibert LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/10/23  
BILL  
SHORT TITLE Revised Uniform LLC Act NUMBER House Bill 281  
ANALYST J. Torres

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	Indeterminate but substantial		Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

Responses Received From  
Secretary of State (SOS)  
Administrative Office of the Courts (AOC)  
New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of House Bill 281

This bill repeals the existing Limited Liability Corporation (LLC) Act, Sections 53-19-1 through 53-19-74, NMSA 1978; and amends Section 47-1-4.1, NMSA 1978; as well as several provisions within the Business Corporation Act, Sections 53-11-1 through 53-1-51, NMSA 1978; and Merger/Consolidation Sections 53-14-1 through 53-14-7, NMSA 1978.

This bill is based upon the Revised Uniform LLC Act developed by the National Conference of Commissioners on Uniform State Laws in 2006 and updated in 2013. It is reportedly enacted in 20 states.

The effective date of this bill is July 1, 2024.

## FISCAL IMPLICATIONS

AOC states:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any commenced actions, including petitions files, requests for orders, judicial review, judicial supervision, applications for

determination, issuance of injunctions and appeals. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

AOC also listed several provisions that impact the courts.

SOS documented that the bill will have significant impact on its administrative functions, training, business filing system, staffing, filings, and notification requirements.

NMAG did not document any fiscal implications (see administrative implications section below).

## **SIGNIFICANT ISSUES**

SOS states:

This bill will have significant impact on the SOS administrative functions, which include significant system and form changes, and training for all staff. This bill proposes several transactions that are not in current statute that will be required to implement to include the Triennial Reports, Domestication, and Correction. Our office is currently in the process of converting to a new business filing system, which will be significantly impacted by these changes. These changes will also require rule making changes as well as the need for training of new processes. As LLCs will be required to submit triennial reports when the law takes effect, and the ability for LLCs to opt in the new law by submitting reinstatements, there will also most likely be a significant increase in filings, which may require a need for increased staff. There will also need to have significant time to notify the public of the major changes that will impact all LLCs registered with the SOS, as well as LLCs that will register after the law takes effect. The majority of the changes will be beneficial to the state and the public, increasing the transparency of LLCs, the definitions make the law more clearly defined, and hold LLCs more accountable in formation, amendments, mergers and conversions.

AOC states:

Section 53-19-56 NMSA 1978 in the current Limited Liability Company Act (LLCA) provides that the attorney general (AG) may maintain an action to recover civil penalties and restrain a foreign limited liability company from transacting business in New Mexico in violation of the LLCA. HB 281, Section 902(F) permits the AG to bring proceedings to recover all amounts due New Mexico in fees, taxes and interest that would have been imposed by the RULLCA from a foreign limited liability company that does business in the state without a valid registration. Subsection G provides that a foreign limited liability company that does business in New Mexico without a valid registration shall be subject to a civil penalty not to exceed \$200 per year. Subsection H provides that the civil penalty may be recovered in an action brought by the AG and, that upon a finding by the court that a foreign limited liability company or any of its members or managers have done business in New Mexico in violation of the Revised Uniform Limited Liability Company Act, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further doing of business by the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in New Mexico.

AOC's list of provisions that impact the courts is set forth as follows:

**Section 105(E):** requiring the court to decide as a matter of law whether a term of an operating agreement is manifestly unreasonable.

**Section 112(F):** requiring a final judgment of the district court establishing the right of a company to use a previously registered name in New Mexico.

**Section 204(A):** permitting an aggrieved person to petition the district court when a person required by the Revised Act to sign or deliver a record to the SOS for filing under that Act does not do so.

**Section 210:** permitting a person to petition the district court to compel the filing of a record by the SOS when the SOS refuses to do so, pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**Sections 213(A) and 214(A):** permits the seeking of judicial review of a denial of reinstatement under Section 216 of the RULLCA.

**Section 406:** provides six year statute of limitations for actions involving improper distributions.

**Section 503(A):** permits a court, on application by a judgment creditor of a member or transferee, to enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.

Section 602(F):

**Section 701(B):** permits the court to order a remedy other than dissolution in a proceeding brought under Subsection A(4)(c).

**Section 702(E):** permits the district court to order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities and affairs.

**Section 705:** provides for a three year statute of limitations for claims against dissolved limited liability companies by specified individuals.

**Section 706:** permits a dissolved limited liability company to file an application with the district court for a determination of the amount and form of security to be provided for payment of claims. Permits the court to appoint a guardian ad litem to represent all claimants whose identities are unknown.

**Section 710:** permits an LLC to seek judicial review of denial of reinstatement in the district court within 30 days after service of the notice of denial.

Section 801:

**Section 806(B):** permits a court to award a plaintiff reasonable expenses from the recovery of the limited liability company, if a derivative action is successful in whole or in part.

**Section 902(H):** requires the court to issue, in addition to the imposition of a civil penalty, an injunction restraining further doing of business by the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in New Mexico, upon a finding by the court that a foreign limited liability company or any of its members or managers have done business in New Mexico in violation of the Revised Uniform Limited Liability Company Act.

**Section 912(B):** permits a foreign limited liability company to appeal a denial of reinstatement pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**Section 1106(B):** permits the district court, on the application of any shareholder, to order a meeting to be held, if the annual meeting is not held within any thirteen-month period.

NMAG states:

It is not clear how an LLC formed prior to July 1, 2024 would be governed by the existing LLC Act and when that Act will be repealed in its entirety and replaced by the Revised LLC Act.

## PERFORMANCE IMPLICATIONS

AOC states:

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed; and
- Percent change in case filings by case type.

## ADMINISTRATIVE IMPLICATIONS

NMAG states:

HB281 authorizes the Attorney General to maintain civil actions to enjoin an unregistered foreign LLC from doing business in New Mexico, and to be given notice and an opportunity to be heard in proceedings by the district courts to specify the disposition of property held for a charitable purpose by a domestic or foreign entity relative to a merger, interest exchange, conversion or domestication. It is unclear how often such action may be needed from the Office of the Attorney General or whether additional administrative resources might be needed. No appropriation is included in the bill.

SOS states:

The majority of the changes will be beneficial to the state and the public, increasing the transparency of LLCs, the definitions make the law more clearly defined, and holds LLCs more accountable in formation, amendments, and mergers and conversions.

JT/al/ne