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FISCAL IMPACT REPORT

SPONSOR Duhigg LAST UPDATED _____
ORIGINAL DATE 1/29/2023
BILL
SHORT TITLE Intimidation of Election Officials NUMBER Senate Bill 43
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	\$26.6	\$37.6	\$37.6	\$101.8	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

New Mexico Attorney General (NMAG)

Sentencing Commission (NMSC)

Secretary of State (SOS)

Corrections Department (NMCD)

Department of Public Safety (DPS)

No Response Received

County Clerk's Association

SUMMARY

Synopsis of Senate Bill 43

Senate Bill 43 amends the Election Code relating to the crime of intimidation to include acts against employees and agents of the Secretary of State, County Clerks', and Municipal Clerks' offices or the officials themselves. The bill maintains that intimidation against the aforementioned parties constitutes a fourth degree felony. The bill has the effect of expanding the scope of the existing statute.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have fiscal impacts. Expanding the scope of the crime of intimidation could increase the population of New Mexico's prisons, consequently increasing long-term costs to the state general fund. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. To the extent that SB43 results in additional individuals being sent to prison for the crime of intimidation, it would increase the number of individuals incarcerated.

The changes to the crime of intimidation outlined in SB43 may result in additional individuals being incarcerated for the crime, a fourth-degree felony, which carries an 18-month prison sentence; the Sentencing Commission estimates the average length of time served by offenders released from prison in FY21 whose highest charge was for a fourth-degree felony was 516 days. Based on the marginal cost of each additional inmate in New Mexico's prison system, each offender sentenced to prison for this crime could result in estimated increased costs of \$37.6 thousand to NMCD.

It is difficult to estimate how many individuals will be charged, convicted, or get time in prison or jail based on the expansion of the scope of this crime. Without additional information, this analysis assumes at least one additional person will be admitted to prison each year for this crime, at a cost of \$37.6 thousand. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 151 days (\$11 thousand) would be incurred in the second year of incarceration. To account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect, in FY25. Because the estimated time served is greater than one year, costs are anticipated to increase in FY26, as an offender admitted in FY25 serves the remainder of their term and another offender is admitted, but will level out that same year (as offenders begin to be released from prison) and remain level in future fiscal years.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under SB43 are not included in this analysis, but may exist.

The Secretary of State's office (SOS) is charged with investigating complaints related to elections. By expanding the scope of the crime of intimidation, SOS office may experience an increase in complaints that would need to be investigated and dealt with as appropriate. While the extent of complaints is unknown at this time and is difficult to determine, the expansion may serve as a deterrent and may reduce instances of intimidation in New Mexico.

SIGNIFICANT ISSUES

In 2021, the federal Department of Justice (DOJ) cited a recent rise in threats to election workers and, as a result, launched a taskforce to combat intimidation of election workers nationwide. In August 2022, the DOJ task force reported it investigated over 1,000 contacts reported as hostile

or harassing by the election community.¹ A March 2022 survey from the Brennan Center for Justice found about 17 percent of local election officials have experienced threats, and more than half those cases were not reported to law enforcement. Nearly one-third of those surveyed knew of at least one election worker who left their job at least in part because of fears for their safety, increased threats, or intimidation.²

The office of the Secretary of State writes

Extreme harassment and intimidation of government election officials has been documented in many states including Georgia, Michigan, Arizona and Nevada during or after the 2020 general election. In addition, multiple congressional hearings on the subject of threats to election officials were conducted last year.

By expanding the scope of the crime of intimidation under the election code to include more government election officials and election board members, this may curtail the rise of intimidation recently experienced in New Mexico of state and county election officials. During the 2020 election, the NM Secretary of State's picture was featured beneath a gun scope on a website labeled "Enemy of the People" along with a picture of her home with home address. This was in addition to threatening calls received by the SOS office and multiple county clerk offices throughout the state.

The Administrative Office of the District Attorneys writes "SB 43 addresses the recent incidents of election officials being harassed by persons for doing their jobs. Providing these protections may help attract and retain election workers and assure the elected officials and their staff can be protected from intimidation or abuse."

The Public Defender Department (PDD) notes the conduct described in SB43 is already punishable under existing criminal statutes, although, depending on specific circumstances, the conduct may constitute a petty misdemeanor rather than a fourth-degree felony. Depending on the gravity of the act, threatening behavior, damage to property, and economic retaliation are addressed by various statutes. Where a deadly weapon is used or great bodily harm results, aggravated battery can rise to a third-degree felony. When great bodily harm is threatened, or a person uses a deadly weapon to threaten another, fourth-degree aggravated assault may be charged. Finally, if a person threatens another with the intent to commit some further violence upon them, aggravated assault is a third-degree felony. Because similar offenses are already codified in existing statute, PDD notes an increase in cases under this bill could result in "general-specific" litigation or, if multiple crimes are charged, double jeopardy violations leading to appellate litigation.

ALTERNATIVES

PDD suggests an alternative to SB43 could be a statutory enhancement attached to the sentences for existing criminal offenses.

¹ <https://www.justice.gov/opa/pr/readout-election-threats-task-force-briefing-election-officials-and-workers>

² <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>

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