

- Preparing or submitting a false canvass report, certificate of canvass, certificate of election, report of the state canvass, or certificate of ascertainment of appointment of electors.

HB19 also creates the crime of falsely acting as a presidential elector. The bill defines falsely acting and states that the penalty for falsely acting as a presidential elector is a third degree felony. The bill additionally states the attorney general or a district attorney may bring an action in the name of the state to enforce either provision.

HB19 contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

If the proposed legislation were to be passed, it would create two new third degree felony crimes. Current New Mexico statute states that the base sentence for a third degree felony is up to three years in prison and a possible fine of \$5,000. This analysis is unable to predict how many possible cases would be created by this new crime, or how many people would be charged and then found guilty of election offenses.

But regardless of number, the proposed legislation will increase the prison population if the crime results in convictions. This will therefore increase the amount of funds needed to cover incarceration expenses.

SIGNIFICANT ISSUES

Agency analysis from the Law Offices of the Public Defender (LOPD) states that only in the event of a large-scale riot or protest where a significant amount of people were accused of crimes related to election offenses would HB19 affect their workload. The agency also noted that due to the specific nature of the bill, it avoids infringing on constitutionally protected speech.

An LFC report from 2022 on crime in Bernalillo County notes that the certainty of being caught and being punished for a crime is a more effective deterrent to crimes, rather than more severe penalties. The bill's creation of penalties for election offenses without also providing direction as to how to increase the certainty of preventing and prosecuting election offense could result in election offenses not being reduced but just the punishment for offenses being created.

OTHER SUBSTANTIVE ISSUES

Agency analysis provided by the Administrative Office of the Courts (AOC) provides the impetus for the proposed legislation. It notes that after the 2020 election, five Republican electors from New Mexico filed election certificates that falsely declared the winner of the 2020 presidential election. These electors also stated that their submission of these incorrect election certificates would only take affect if a court declared an alternative winner of the 2020 presidential election.

New Mexico was not the only state where false election certificate were submitted. According to analysis by AOC, other states are prosecuting electors who submitted false election certificates.

Some sentences have been as long as 10 years. According to the agency analysis, when the New Mexico Attorney General's office tried to prosecute the five electors who submitted false election certificates, the office was unable to find laws in New Mexico that allowed prosecution of the electors. The proposed legislation is therefore an attempt to fix this gap in the law.

Current federal statute already has crimes and penalties in place for election interference. According to the FBI, federal law begins when an election crime "pertains to a fraudulent voter registration." If the proposed legislation passes, and adds new penalties related to election offenses, it creates the question of whether the umbrella of federal law includes, and possibly duplicates, these new penalties and whether these crimes should be prosecuted in federal, not state court.

AD/al/ne/ss