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## FISCAL IMPACT REPORT

SPONSOR Block LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 1/26/23  
SHORT TITLE Voter ID Requirements BILL NUMBER House Bill 110  
ANALYST Daly

### 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**	No Fiscal Impact**			
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent version of this legislation.

\*\*See Fiscal Implications

Conflicts with SB 180

### Sources of Information

LFC Files

#### Responses Received From

Secretary of State (SOS)

New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of House Bill 110

House Bill 110 removes all existing accepted forms of identification required for voting except for identification documentation issued by the state's motor vehicle division (MVD document), or, in the event of voting absentee by mail, the voter's social security number. The bill adds language allowing for challenges related to the identification documentation, in which instance the voter must provide a copy of an MVD document for the voter's provisional ballot to be counted. It also requires that a photocopy of a voter identification document be provided by the state upon request at no charge.

HB110 also repeals current law directing suspension of voter identification requirements other than those imposed by federal law if a voter is in line for over 45 minutes, which suspension is subject to challenge by certain members of the election board.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

Although the bill itself causes no fiscal impact, NMAG advises that upon passage it will likely be subject to litigation, which would cause an indeterminate impact to the general fund.

## SIGNIFICANT ISSUES

Current law provides a much broader range of the types of voter identification that may be submitted, including:

- Original or a copy of a current and valid photo identification with or without an address (which does not need to match the registration certification);
- Original or a copy of a utility bill, bank statement, government check, paycheck, student identification card or other government document, including identification issued by an Indian nation, tribe or pueblo that shows the name and address of the voter (which does not need to match the registration certification); or
- A verbal or written statement by the voter of the voter's name, registration address and year of birth.

HB110 removes all of these methods of identification except for an MVD-issued document, or, in the case of absentee voting by mail, the voter's social security number. SOS expresses concern that the bill's changes would suppress the participation of many groups in our state's electoral process, including senior citizen voters, who often have no current physical identification issued from the MVD. These groups rely on current provisions in Section 1-1-24 NMSA 1978 to vote, which allow for original physical identification and/or verbal or written statements related to identity.

NMAG advises HB110:

Would likely be subject to litigation as it involves a fundamental constitutional right. Infringements on the fundamental right to vote in our country are strictly scrutinized by the courts. “[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. at 562, 84 S.Ct. 1362.

Because a fee must be paid to the MVD to initially obtain a driver's license or an identification card, which under HB110 is required as virtually the only forms of voter identification, NMAG suggests that requirement raises legal issues under the Fourteenth Amendment's "guarantee of equality" of the United States Constitution, citing *Harper v. Virginia Board of Elections*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed.2d 169 (1966).

NMAG comments:

Photo identification requirements have been found (addressed in cited studies above) to place a disproportionate burden on minorities, people of color, the elderly, and the economically disenfranchised. If successful, the law will most likely be subjected to litigation under equal protection issues and will have to overcome strict scrutiny. A recent North Carolina Supreme Court case struck down a senate bill from that state that required

voter identification because the law was enacted with discriminatory intent. North Carolina Supreme Court: *Holmes v. Moore*, 2022-NCSC-122.

## ADMINISTRATIVE IMPLICATIONS

NMAG reports that it provides legal representation to SOS and would necessarily be involved in any litigation regarding this legislation and the various constitutional questions of law that would be raised.

## CONFLICT

NMAG points out that HB110 conflicts with SB180, which identifies procedures which allow voters to cast ballots without necessitating photo identification. SB180 references at two different points NMSA 1978, § 1-4-5.1(I) (3). HB110 repeals Paragraph (3) of Subsection I in its entirety. Both bills amend NMSA 1978, § 1-6-4(B), (F) in substantively contradictory ways (HB110 repeals Subsection (F), whereas SB180 expands it). Both bills amend NMSA 1978, § 1-6-5.

## OTHER SUBSTANTIVE ISSUES

NMAG reports:

A total of 35 states have laws requiring voters to show some form of identification at the polls. Of that, 18 states request or require voters to show an identification document that has a photo on it, such as a driver's license, state-issued identification card, military ID, tribal ID, and many other forms of ID; and 17 states accept non-photo identification such as a bank statement with name and address or other document that does not necessarily have a photo.<sup>1</sup> Recent studies have found that strict photo id laws deprive millions of Americans the opportunity to vote and reduce voter turnout under the auspice of addressing unsupported or exceedingly rare allegations of voter fraud.

- It is estimated that more than 16 million Americans lack government issued IDs, with minority voters almost 3 times more likely to not have an ID<sup>2</sup>
- The U.S. Government Accountability Office found that strict photo ID laws reduce turnout by 2-3 percent on average, and a higher effect on minority turnout<sup>3 4</sup>
- Voter fraud is exceedingly rare in both number of credible allegations and actual intent to commit fraud<sup>5</sup>

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<sup>1</sup> <https://www.ncsl.org/elections-and-campaigns/voter-id>

<sup>2</sup> <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>

<sup>3</sup> <http://www.gao.gov/assets/670/665966.pdf>

<sup>4</sup> See also Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, "Voter Identification Laws and the Suppression of Minority Votes" (University of California San Diego, 2016), <http://pages.ucsd.edu/~zhajnal/page5/documents/voterIDhajnaletal.pdf>

<sup>5</sup> Justin Levitt, "A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents Out of One Billion Ballots Cast," Washington Post, August 6, 2014, <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter->

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