

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 01/29/2024
Bill No: HB 19

Sponsor: Reps. Gail Chasey, Janelle Anyanonu, and Katy M. Duhigg
Short Title: Election Offenses – False Electors

Agency Name and Code
Number: 218 AOC
Person Writing Sonya Duke-Noel
Phone: 505-946-7140 **Email** aocskd@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
N/A	N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 19 creates a new law, governing the election offenses of disrupting election results and falsely acting as a presidential elector. To wit:

Disrupting Election Results –

A. Disrupting election results consists of knowingly or recklessly: (1) suppressing or materially defacing, altering, forging, or making false entries in a county canvass report, certificate of canvass, certificate of election, report of the state canvass, or certificate of ascertainment of appointment of electors; or (2) 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.

Under HB 19 whoever commits disrupting election results is guilty of a third-degree felony which carries a possible 3-year prison sentence.

Falsely Acting as a Presidential Elector –

A. Falsely acting as a presidential elector consists of a person knowingly or recklessly making a false representation to an election official or in an election document that the person is an elected presidential elector for the state.

B. It shall not be a defense for a violation of this section that the person’s representation is made with a qualification that the person’s status as an elected presidential elector is conditional upon the occurrence of a future event.

Under HB 19 whoever commits falsely acting as a presidential elector is guilty of a third-degree felony which carries a possible 3-year prison sentence.

FISCAL IMPLICATIONS

There will be minimal administrative costs for statewide updates, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions. 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.

Felony penalties are likely to result in defendants invoking their right to trial, as well as to jury trial. Trials will require additional judge time, courtroom staff time, courtroom availability, juries, and jury fees. Indigent offenders are also entitled to public defender services.

SIGNIFICANT ISSUES

- 1) This bill appears to be an attempt to provide the legal authority necessary to prosecute those who knowingly or recklessly disrupt the election process, falsely claim to be a presidential elector, or file false documents pertaining to the results of a legally conducted election. The catalyst for this bill was the events following the 2020 presidential election wherein five Republican electors from New Mexico filed election certificates falsely declaring Donald Trump the winner of the 2020 presidential election. The five New Mexico Republican electors conditioned the submission of the false documents as only being valid if Donald Trump was later declared the winner of the election; meaning the certificates would only become valid if Donald Trump was to prevail in any of the court cases filed where he claimed that but for election fraud, he had won the presidential election.

Republican electors filed such certificates in multiple states. In states where laws have been enacted to protect legitimate election results, electors who filed false documents have been or are being prosecuted for varying crimes, some with possible prison sentences greater than 10 years. When the New Mexico Attorney General's Office sought to prosecute the five Republican electors from New Mexico, an investigation showed that New Mexico had no law on the books that would allow prosecution for the acts committed by the electors. As no law had been broken, the five New Mexico Republican electors could not be prosecuted.

HB 19 seeks to criminalize the acts committed in 2020 by the five New Mexico Republican electors, and further seeks to criminalize other acts committed knowingly or recklessly that disrupt valid election results. The bill also contains language nullifying any attempt to qualify that the person's status as an elected presidential elector is conditioned upon the occurrence of a future event, such as the outcome of a court case.

- 2) The passage of HB 19 is not likely to result in many prosecutions. However, for those who are prosecuted, HB 19 imposes a third-degree felony penalty which carries a possible 3-year prison sentence and is likely to result in defendants invoking their right to trial, as well as to jury trial. Trials require additional judge time, courtroom staff time, courtroom availability, juries, and jury fees. Indigent offenders are also entitled to public defender services.
- 3) HB 19 carries a provision to cause it to take effect immediately as an emergency, stating, "It is necessary for the public peace, health, and safety that this act take effect immediately." This could cause minimal issues regarding statewide updates, distribution, and documentation of statutory changes.

PERFORMANCE IMPLICATIONS

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
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP - None.

TECHNICAL ISSUES – None identified.

OTHER SUBSTANTIVE ISSUES – None.

ALTERNATIVES – None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL – None for the judiciary.

AMENDMENTS – None.