

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 X **Amendment** _____
Correction _____ **Substitute** _____

Date 1/29/2024

Bill No: HB 19-280

Sponsor: Rep. Gail Chasey, Rep. Janelle Anyanonu, Sen. Katy Duhigg
Short Title: Election Offense—False Electors

Agency Name and Code LOPD-280
Number: _____
Person Writing Caitlin Smith
Phone: 505-396-2830 **Email** caitlin.smith@lopdm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 19 would create two new election-related crimes, both third-degree felonies.

Section 1 would create the crime of “disrupting election results,” which would essentially include suppressing, defacing, or falsifying certain election documents or the entries in them.

Section 2 would create the crime of “falsely acting as a presidential elector,” which is defined as making a false representation that a person is a presidential elector for the state. Section 2B specifically says that it is not a defense that the person claimed only to be a *conditional* elector, in case some future event happened.

HB 19 appears to be a response to the New Mexico Attorney General’s decision not to charge the “fake electors” from the 2020 presidential election and his recommendation that the legislature amend the election code.

HB 19 would take effect immediately.

FISCAL IMPLICATIONS

The proposed offenses are limited to elections. Unless a large number of indigent people were involved in a scheme to disrupt election results or act as fake electors, this would be unlikely to have a significant impact on LOPD’s workload.

However, if “disrupting election results” charges arose out of a riot or other large-scale event involving many defendants, it is possible that LOPD would require one-time funding to provide representation for those defendants. In that situation, there would very likely be conflicts of interest preventing LOPD from representing co-defendants, and many cases would have to be handled by contract counsel.

SIGNIFICANT ISSUES

This analyst does not see significant constitutional or practical problems as written. Section 1 is narrowly written to criminalize destruction, suppression, or falsification of election results, and it requires a mens rea of knowing or reckless conduct.

Section 2 gets close to some activity that is protected by the First Amendment, but is also narrow enough that it likely avoids constitutionally protected speech. It requires “knowingly or

recklessly making a false representation” that the person is an elector, which should be sufficient to exclude situations in which there is a genuine dispute about which slate of electors is valid. It also requires that the defendant make that representation “to an election official or in an election document,” which should exclude any application to other public statements in unofficial channels. As written, Section 2 should allow potential or alternate electors to describe their status publicly, explain that they would be the electors in the event of some contingency (like a successful court challenge), and advocate that they *should* be recognized as the real electors.

A broader bill that criminalized other conduct or reduced the mens rea for the proposed offenses could raise constitutional concerns.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

This bill appears germane pursuant to House Executive Message No. 38.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. These particular acts would not be criminalized in the election code.

AMENDMENTS