LFC Requester:	Emily Hilla

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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:

					Date Prepared:	1/29/2024
Original	X	**Amendment**			**Bill No**:	HB182
Correction		**Substitute**				

Sponsor:	Gail Chasey, Charlotte Little, Katy M. Duhigg	**Agency Name and Code Number:**	305 – New Mexico Department of Justice
Short Title:	Amending and Enacting Sections of the Campaign Reporting Act related to Artificial Intelligence	**Person Writing Analysis:**	AAG Jesse Kelly and AAG Blaine N. Moffatt
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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
This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

House Bill ("HB") 182 proposes to add new election law provisions that address advertising using artificial intelligence. HB 182 would require specific disclosures if artificial intelligence is used in political advertising.   Civil and criminal penalties would be associated with violations. News organizations and media are exempted from any penalties related to improper disclosure.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

HB 182's definition of "Distribution Platform" may not address some websites because they are not sites that specifically "carr[y] news and commentary of general interest." The way the current definition of distribution platform reads it would affect websites that publish magazines, shows and/or newspapers. It is not clear if websites like MSN, Reddit, or social media websites that gather news stories from the across the internet and carry ads would meet the "distribution platform" definition as they are forums on the internet and do not regularly carry or publish the general circulation news. Rather the sites recommend links to its users that can be news sites and other items based on the browsing history of the user.

Additionally, the proposed criminal or civil penalties of HB 182 include a specific intent element that requires proof that a defendant "intend[s] the distribution to result in altering the voting behavior of electors in an election by misleading the electors into believing that the depicted individual engaged in the speech or conduct depicted, and the distribution is reasonably likely to cause that result." Direct evidence of such intent could be difficult to obtain. However, in criminal proceedings, proof of specific intent may be shown by circumstantial evidence, which would include contextual circumstances surrounding the distribution of AI media.

PERFORMANCE IMPLICATIONS

None currently.

ADMINISTRATIVE IMPLICATIONS

HB 182's purpose is to address the use of artificial intelligence in political advertising and proposes by adding Section 1-19-26.8 into statute that uses already existing methods to enforce violations related to political advertising, such as through the Attorney General, District Attorney, the falsely depicted individual, the candidate for office that is wronged, or any organization that represents the interests of the voters.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 130 ("SB 130") proposes to create a new "Work Group" on Artificial Intelligence Systems. SB 130 would require the Work Group to develop legislative proposals and recommendations for policies for state use and procurement, to meet four (4) times a year, and submit reports of activities and recommendations to the legislative finance committee, the appropriate legislative committee on science and technology, and the Governor. Agencies would be required to cooperate with the Work Group by providing information requested, as outlined in SB130.

Conflict – SB 130 defines the term "Artificial Intelligence System" as "a hardware or software system using algorithms to process and interpret data to imitate intelligent behavior for specific decision-making goals." The definition of Artificial Intelligence System in SB 130 is different than in HB 182. This could cause conflict within the law if agencies or the people of New Mexico will be relying on both definitions for providing information to the Work Group (as defined in SB 130) and Department (as defined in HB 182).

House Bill 184 ("HB 184") proposes to create new law relating to Artificial Intelligence ("AI") transparency in state government by requiring inventories and assessments of AI systems in use. The proposed legislation would require every state agency to annually submit an inventory of AI solutions to the General Services Department ("GSD"). Additionally, the bill would require the Department to annually provide an aggregate inventory report to the Governor of New Mexico, the New Mexico State Legislative Finance Committee, and legislative interim committee on science and technology. HB 184 would also require the Department to annually conduct assessments or reassessments of all new and current AI system used by agencies.

Conflict – HB 184 is related to HB 182 in the sense that it uses similar definitions to those added by HB 182 to Section 1-19-26. In addition, there is motive of transparency here and HB184 may want to reference legislation that is passed.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

To the extent HB 182 could potentially be challenged as impermissibly infringing on freedom of political speech, the US Supreme Court has permitted disclaimer and disclosure requirements in political advertisements where there is a "substantial relationship" between the disclosure requirement and a "sufficiently important" government interest. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366-67 (2010) (citing *Buckley v. Valeo*, 424 U.S. 1 at 64, 96 S.Ct. 612; *McConnell v. Federal Election Comm'n*, 540 U.S. at 201, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003).) In those case, the Court upheld disclaimer and disclosure requirements, finding they "impose no ceiling on campaign-related activities," *Buckley*, 424 U.S., at 64, or "prevent anyone

from speaking[.]"*McConnell,* at 201.

For HB 182, the test would weigh whether the disclaimer and disclosure requirements outlined in HB 182 have a substantial relation between the requirements and sufficiently important governmental interest. Arguably, the proposed disclaimers would provide factual information to the electorate, ensure that the voters are fully informed, and at the very least, avoid confusion by making clear that the ads are created by Artificial Intelligence. The proposed disclosures are a less restrictive alternative to more comprehensive regulations.

Additionally, to note, on October 30, 2023, President Biden signed a Presidential Executive Order 14110 ("E.O.") on *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*. It establishes a government-wide effort to guide responsible artificial intelligence (AI) development and deployment through federal agency leadership, regulation of industry, and engagement with international partners. E.O. 14110 directs over 50 federal entities to engage in more than 100 specific actions to implement the guidance set forth in the E.O. While there are currently no Federal Regulations and Laws on AI, they are being developed and may impact how the State of New Mexico implements HB 182.

ALTERNATIVES

HB 182 proposes a definition for "Artificial Intelligence" in Section 1-19-26(C). Consider whether to broaden this definition with additional terms such as the following:

> "Artificial Intelligence means a machine-based <u>or computer-based</u> system that<u>, either through hardware or software,</u> can emulate the <u>through the use of data, algorithms, or neural networking,</u> structure<u>s</u> and characteristics of input data in order to <u>that</u> generate synthetic <u>or fabricated</u> content, including<u>, but not limited to,</u> images, video<u>,</u> or audio."

HB 182 proposes a definition for "Distribution Platform" in Section 1-19-26(M). Consider whether to broaden this definition with additional terms such as the following:

> "Distribution Platform" means a website<u>,</u> or a regularly published newspaper, magazine<u>,</u> or other periodical of general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest and that publishes advertisements.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will remain, and artificial intelligence will not be regulated like every other type of political advertising is.

AMENDMENTS

It may be helpful to align the definitions in HB 182, HB 184, and SB 130 to create consistency in the law.