

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 Amendment _____
Correction _____ Substitute _____

Date 1/18/2024
Bill No: SB 5-280

Sponsor: Peter Wirth & Reena Szczepanski
Short Title: Firearms near Polling Places

Agency Name and Code LOPD-280
Number: _____
Person Writing Luz C. Valverde
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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

BILL SUMMARY

Synopsis: SB 5 proposes to create a new crime of carrying a loaded or unloaded firearm within 100 feet of the entrance to a polling place, county clerk’s office, or other voting site on election day, and within 50 feet of any postal collection box. The new offense would be a petty misdemeanor, punishable by up to six months in jail.

SB 5 proposes to exempt on-duty law enforcement personnel and any person “conducting lawful, non-election related business” from criminal culpability.

The identical law was proposed by 2023’s SB 44 (with fewer specifics defining entrance of polling place).

FISCAL IMPLICATIONS

The fiscal implications of creating new criminal offenses is difficult to predict because no statistics exist to suggest how much of this currently legal conduct would continue and be prosecuted.

While the LOPD would likely be able to absorb some cases under the proposed law, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with the constitutional mandate. At this stage, accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

SIGNIFICANT ISSUES

SB 44 does not include an intent element. The addition of a requirement that the person “intentionally carry a firearm at a polling place” as an element of the proposed crime, would comport with due process and avoid a per se offense where a person with a lawful carry permit inadvertently carries a firearm within the prohibited area. An “intentional” or “purposeful” requirement would better target culpable conduct of carrying a firearm to a polling place as an act of intimidation.

In addition, because enactment of this law would declare to be criminal certain ordinary activities that have previously been legal since the founding days of New Mexico, any such enactment should come with profound fanfare, advertising and education to prevent innocents from inadvertently becoming criminals by continuing behavior they have legally done all their lives. *See State v. Montoya*, 1977-NMCA-134, ¶ 14, 91 N.M. 262 (stating the “general rule is that ignorance of the law is not a defense.”).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Existing law makes it a fourth-degree felony to intimidate any voter or election agent by “use of, or threatened use of” force or violence. NMSA § 1-20-14 (2023). Presumably this offense, if committed with a firearm, would require at least “facilitative use,” *State v. Zachariah G.*, 2022-NMSC-003, which conveys an intent requirement, as discussed above.

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS