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FISCAL IMPACT REPORT

SPONSOR SJC LAST UPDATED 2/8/24
ORIGINAL DATE 1/30/24
BILL CS/Senate Bill
SHORT TITLE Firearms Near Polling Places NUMBER 5/SJC/aSFI#1
ANALYST Hilla

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to Counties		Up to \$9.6	Up to \$9.6	\$19.2	Recurring	Local County General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Secretary of State (SOS)

Public Defender Department (LOPD)

Department of Public Safety (DPS)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor #1 amendment to the Senate Judiciary Committee Substitute for Senate Bill 5 changes the language of Section 1. A (1) and (2) to make unlawful possession of a firearm at polling place unlawful while early voting is in progress or on election day, as opposed to early voting and on election day.

Synopsis of Original Bill

The Senate Judiciary Committee Substitute for Senate Bill 5 amends the “Election Code” to prohibit the possession of a firearm at a polling place and provides a penalty for a person found guilty of a petty misdemeanor to be sentenced pursuant to Section 31-19-1 NMSA 1978. Exceptions are law enforcement officers or authorized security personnel.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center.

The bill could increase the number of incarcerated individuals and increase the time they spend incarcerated. For purposes of this analysis, it is estimated an individual could spend up to six months incarcerated in jail for a petty misdemeanor under the bill. Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could result in estimated increased costs up to \$9,614 to counties. It is difficult to estimate how many individuals will be charged, convicted, or get time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to prison each year for this crime, resulting in increased costs to counties of \$9,614 per year.

To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY25. Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under the bill, are not included in this analysis, but may exist.

The Public Defender's Office (LOPD) states:

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

The Secretary of State (SOS) says, in recent years, numerous states have passed legislation that prohibit or restrict carrying of firearms at polling locations. Following *New York State Rifle & Pistol Association, Inc. v. Bruen*, the U.S. Supreme Court defined polling places as "sensitive places." The Secretary of State further adds:

Firearms are already prohibited in many public places in New Mexico that are used as polling locations: schools (Section 30-7-2.1 and Section 29-19-8), tribal land (Section 29-19-10), court facilities (Section 29-19-11). Passing this legislation would increase the amount of protection available to our election administrators, poll workers, and voters, and it would work towards eliminating threats of fear and intimidation."

Although intimidation is a crime in the state, the bill does not mention intent, as the LOPD points out. LOPD states:

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.

SOS agrees that intimidation/intent would need to be proven following the bill. LOPD says that there should be advertisement and education of the bill if enacted to “prevent innocents from inadvertently becoming criminals by continuing behavior they have legally done all their lives.” LOPD states, “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

SOS expressed that the bill should apply to all election stages to “include the early voting/in-person absentee period as well as the period during which mailed ballots go out to those voters who have properly completed mailed ballot applications.”

The office also raises concerns about the proposed boundaries in the bill:

Increasing the proposed boundaries may bolster or help solidify protections achieved by the firearm prohibition. For example, recently in Maricopa County, Arizona, armed individuals were filmed ‘monitoring’ ballot boxes. A fifty-foot boundary would still be within view of most monitored containers and therefore could still result in voter intimidation.

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