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## FISCAL IMPACT REPORT

SPONSOR McQueen ORIGINAL DATE 2/15/19  
LAST UPDATED \_\_\_\_\_ HB 425

SHORT TITLE Presidential Elector Disqualification SB \_\_\_\_\_

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 55

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)

New Mexico Attorney General's Office (NMAG)

### SUMMARY

#### Synopsis of Bill

House Bill 425 amends provisions in the election code regarding presidential electors. It provides that an elector who does not vote for the candidate of the political party that nominated the elector be disqualified, as determined by the Secretary of State upon examination of the ballot submitted by an elector. In the event of a disqualification, the governor appoints a replacement from a list of names of voters of the state nominated by the state chair of the same political part represented by the disqualified elector.

New Subsection 2(H) provides that if the agreement among the states to elect the president of the United State by national popular vote has been adopted and is in effect in New Mexico and other states whose electors cumulatively add up to 270 or more electoral votes, that agreement shall govern the votes cast by the state's electors.

### FISCAL IMPLICATIONS

No fiscal impact to the state is anticipated.

**SIGNIFICANT ISSUES**

NMAG advises:

there are significant questions whether the proposed amendments are constitutional. The U.S. Constitution, Article II, Clause 3 sets forth how electors are to meet and vote. The state may determine how electors are appointed, Art. II, Clause 2, but there is no provision for allowing the intervention of the secretary of state or the invalidation of an elector's vote by a secretary of state. In addition, Article IV, Section 4 guarantees a republican form of Government. Providing that electors vote in accord with the majority of voters in all states, rather than the majority in New Mexico, thereby potentially voting in opposition to the election results, may violate that guarantee.

*Gray v. Sanders*, 372 U.S. 368 (1963) points out that presidential elections, unlike congressional elections, are not popular votes. *Ray v. Blair*, 343 U.S. 214 (1952) and *Democratic Party v. Wisconsin*, 450 U.S. 107 (1981) held that requiring loyalty oaths from prospective electors is not unconstitutional. Neither stands for the proposition that the state can direct how the electors vote. *Koller v. Brown*, 224 F.Supp.3d 871 (Distr. Ct., N.D. CA), decided in conjunction with the most recent presidential election, involved a potentially unfaithful elector, fearing he could be punished by California for violating his oath, seeking an injunction, but the court found no irreparable harm, and the case appears to have died there.

The existing provision in law being repealed in Section 3 of the bill requires a presidential elector to cast the elector's ballot for the candidates of the political party which nominated the elector, and establishes failure to so act to be a fourth degree felony.

MD/sb