

LFC Requester:	Hilla, Emily
-----------------------	---------------------

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 1/24/24
Bill No: HB 223

Sponsor: Rep. John Block
Short Voter ID Requirements
Title: _____

Agency Name and Code AOC
Number: 218
Person Writing Kathleen Sabo
Phone: 505-470-3214 **Email** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with SB 12, also amending Section 1-4-5.1 NMSA 1978. Conflicts with SB 38, also amending Sections 1-6-4, 1-12-7.1, 1-12-20 NMSA 1978.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 223 amends and enacts statutory sections within the Election Code, Chapter 1 NMSA 1978, to require all voters to present identification before voting. Specifically, HB 223 provides:

- **Section 1 (new):** requires the state to provide, at the request of a voter and a not charge, a copy of the voter’s required voter ID document when the voter presents the document as specified.
- **Section 2 (Section 1-1-24 NMSA 1978):** defines “required voter identification,” as used in the Election Code, to mean:
 - For in-person voting, a current driver’s license or ID card issued by the Motor Vehicle Division (MVD) of the Taxation and Revenue Dept. (TRD); or
 - For absentee by mail, a current driver’s license of ID card issued by the MVD of the TRD or the voter’s social security number.
- **Section 3 (Section 1-4-5.1 NMSA 1978):** requires a qualified elector who wishes to register to vote is required to provide a copy of the required voter ID.
- **Section 4 (Section 1-6-4 NMSA 1978):** requires each application on a paper from for a mailed ballot to include required voter ID. Requires a voter submitting an online application for a mailed ballot to provide the person’s full NM driver’s license number, state ID card number or social security number.
- **Section 5 (Section 1-6-5 NMSA 1978):** removes the provision requiring the county clerk to notify a voter that the voter must submit a form of documentary ID with a mailed ballot, when required by federal law.
- **Section 6 (new):** provides that if the required voter ID is challenged because it does not conform to the requirements of Section 1-1-24 NMSA 1978, the voter shall be allowed to vote on a provisional ballot.
- **Section 7 (Section 1-12-7.1 NMSA 1978):** removes the provision regarding a judge or election clerk asking a voter for the required physical form of ID, if the signature roster indicates physical ID is required.
- **Section 8 (Section 1-12-8 NMSA 1978):** strikes the provisions outlining when a voter is required to vote on a provisional ballot.
- **Section 9 (Section 1-12-20 NMSA 1978):** provides that a challenge may be interposed by a member of the precinct board or by a party challenger when the

required voter ID that the person presents does not conform to the requirements of Section 1-1-24 NMSA 1978.

- **Section 10 (Section 1-12-25.3 NMSA 1978):** prohibits a provisional paper ballot from being rejected for lack of required information, when the voter provides a valid signature and sufficient information for the clerk to determine the voter is a qualified elector and has provided a copy of the required voter ID.
- **Section 11 (Section 1-24-3 NMSA 1978):** removes the provision requiring the county clerk to notify a voter that the voter must submit a form of documentary ID with a mailed ballot, when required by federal law.

Additionally, HB 223 amends Section 66-5-408, within the Motor Vehicle Code, to waive the ID card fee if the applicant will be at least 18 on the date of the next general election and the person signs a statement requesting an ID card at no cost for voter ID purposes.

The effective date of the Act is July 1, 2024.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) Chapter 1, Article 20 provides offenses and penalties for violations of the Election Code. Section 1-20-1 NMSA 1978 provides that the penalties imposed by Sections 1-20-3 through 1-20-23 NMSA 1978 do not apply to offenses for which penalties are otherwise provided in the Election Code.

Section 1-20-3 NMSA 1978 provides a fourth degree penalty for registration offenses. Section 1-20-8 NMSA 1978 provides a fourth degree penalty for false voting. A fourth degree felony penalty is provided for most offenses listed in Sections 1-20-3 through 1-20-23 NMSA 1978, although there are exceptions, such as Section 1-20-20 NMSA 1978, providing a petty misdemeanor penalty for disturbing the polling place.

- 2) Many have opined about voter ID laws, including the League of Women Voters (*What's So Bad About Voter ID Laws?*, May 23, 2023 at <https://www.lwv.org/blog/whats-so-bad-about-voter-id-laws>, and noting the disproportionate impact on Black, Native, elderly and student voters, etc.); Ballotpedia (*Arguments for and against voter identification*, January 2024 at https://ballotpedia.org/Arguments_for_and_against_voter_identification_laws); the ACLU (*Oppose Voter ID Legislation – Fact Sheet*, July 21, 2011 at <https://www.aclu.org/documents/oppose-voter-id-legislation-fact-sheet>); the Federalist Society (*Do Voter ID Laws Burden Voters?*, February 28, 2020 at <https://fedsoc.org/commentary/videos/do-voter-id-laws-burden-voters-policybrief>); and the Brennan Center for Justice (*Project Voter ID* at <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/voter-id>).

Additionally, the National Conference of State Legislatures (NCSL) has reported that 36 states have laws requesting or requiring voters to show some form of ID at the polls, with the remaining 14 states and D.C. using other methods to verify the ID of voters. (See the NCSL report, *Voter ID Laws*, updated November 9, 2023 at <https://www.ncsl.org/elections-and-campaigns/voter-id>.)

- 3) It is likely that there will be challenges to the HB 223 amendments, as they involve a fundamental right. In the FIR for 2023's HB 110, the Office of the New Mexico Attorney General noted, "Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 377 U.S. at 562, 84 S.Ct. 1362 (1964). (See the FIR for 2023's HB 110 at <https://www.nmlegis.gov/Sessions/23%20Regular/firs/HB0110.PDF>.)

Because ID requirements have been found to disproportionately impact people of color, the elderly, the poor and other classes of people, the provisions of HB 223 will likely be challenged as a violation of equal protection, and reviewed with strict scrutiny.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB 12, also amending Section 1-4-5.1 NMSA 1978. Conflicts with SB 38, also amending Sections 1-6-4, 1-12-7.1, 1-12-20 NMSA 1978.

TECHNICAL ISSUES

- 1) It seems likely that the HB 223 amendment to Section 1-1-24(B) NMSA 1978, defining "required voter identification" is meant to require a voter voting absentee by mail to present a "xerographic copy" of a current driver's license or ID card.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS