

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:

Original x **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 24 January 2024

Bill No: HB 223

Sponsor: Reps. John Block, Stefani
Lord, Jimmy Mason

**Short
Title:** Voter ID Requirements

**Agency Name and
Code Number:** 305 – New Mexico
Department of Justice

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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”) 223 would implement a “voter ID” law for New Mexico elections. The bill includes provisions that would remove the currently acceptable forms of identification required to vote and instead require that voters voting in-person provide a current driver’s license or identification card issued by the Motor Vehicle Division or, in the case of absentee voting, provide the voter’s social security number. At present, the Election Code permits a voter to present photo identification bearing the voter’s name; a utility bill, bank statement, government check, paycheck, student ID card, or other government document bearing the name and address of the voter; or a verbal statement by the voter of the voter’s name, registration address, and year of birth.

The bill would amend the Election Code to permit an election judge or official to challenge the voter identification as insufficient and force the voter to vote a provisional ballot.

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.

HB 223 itself does not impose new fiscal obligations for the state. However, if enacted, the law would almost certainly be challenged through litigation up to the New Mexico Supreme Court. *See Significant Issues, infra.*

SIGNIFICANT ISSUES

HB 223 would burden the free exercise of the right to vote, which is a fundamental constitutional right. The U.S. Supreme Court has permitted voter ID laws to remain in effect. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181. However, a challenge to a voter ID laws could potentially be sustained through provisions of the New Mexico Constitution. The New Mexico Constitution contains a Freedom of Elections Clause which states, “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” N.M. Const. Art. II, § 8. The New Mexico Supreme Court has stated that, “the supreme right guaranteed by the Constitution of the state is the right of a citizen to vote

at a public elections.” *State ex rel. Walker v. Bridges*, 1921-NMSC-041, ¶ 8, 27 N.M. 169. New Mexico courts do not have well-developed caselaw on this subject and it is difficult to assess the outcome of a suit based upon infringement of the right to vote found in Art. II, Sec. 8. As such, that makes litigation a significant possibility.

Additionally, HB 223 could be challenged as violative of the New Mexico Equal Protection Clause. *See* N.M. Const. Art. II, § 18 (“No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.”). The disparate impact of the legislation on particular communities, in concert with the broad tailoring of the legislation to accomplish its desired ends may fail a challenge in court. Voter ID laws tend to have a disparate impact upon people of color. One study by Project Vote found that minority voters were almost three times more likely to not have a valid ID. The U.S. Government Accountability Office found that strict voter ID laws reduce turnout by two to three percentage points on average, with a higher effect on minority turnout. While HB 223 is ostensibly race neutral, it is possible that the effect of the legislation would be to disproportionately disenfranchise voters of color. Further, HB 223 would have a broad effect, reducing the ability for voters to participate without improved assurances of election integrity. Voter fraud is exceedingly rare. The legislation’s broad impact while providing no material gains in election security would likely contribute to a finding that the HB 223 is unconstitutional.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The Department of Justice provides legal representation to the Office of the Secretary of State and would necessarily be involved in any litigation regarding this legislation and the various constitutional questions of law that would be raised.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 182 and SB 38 both amend the Election Code as well. Neither bill is substantially related to identification requirements for voters.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS