

LFC Requester:

HILLA

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 1/18/2024

Bill No: SB5

Sponsor: Wirth & Szczepanski

Agency Name
and Code
Number:

Secretary of State, 370

Short Title: FIREARMS NEAR
POLLING PLACES

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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: Senate Bill 5 prohibits the carrying of firearms within one hundred feet of a polling location during an election. It also prohibits the carrying of firearms within fifty feet of a postal collection box or monitored secured container.

The bill provides exceptions for certified law enforcement officers in performance of the officer's official duties or other security personnel with written authorization of the appropriate municipal or county election official. Its prohibition provisions also do not extend to a person conducting lawful, non-election-related business.

The bill creates a misdemeanor penalty for unlawful possession of a firearm at a polling place.

The bill does not have an effective date, and therefore would be effective on May 15, 2024.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

In recent years, a number of states have proposed and passed legislation prohibiting or restricting the carrying of firearms at polling locations (CO, MD, MI, etc.). These states join more than a dozen states like California, Arizona and Florida that have prohibited or restricted the carrying of firearms at polling locations for some time.

In 2022, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, the United State Supreme Court identified “polling places” as “sensitive places” and affirmed that it “can assume it settled that these locations were... where arms carrying could be prohibited consistent with the Second Amendment.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ____ (2022).

In 2020, police arrested two men armed with “two loaded semiautomatic Beretta pistols, one semiautomatic AR-15- style rifle, and ammunition” after receiving an FBI tip that the men were making threats against the Pennsylvania Convention Center where election workers were counting mailed-in ballots. (Source link: <https://www.nbcphiladelphia.com/news/local/two-arrestedafter-police-get-tip-of-convention-center-threat/2587411>.)

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 of voters is currently a crime in NM, prosecutors would need to show that the person carrying a firearm sought to intimidate by carrying the weapon.

PERFORMANCE IMPLICATIONS

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.

ADMINISTRATIVE IMPLICATIONS

The provisions create bright lines for election administrators to ensure uniform compliance with physical security requirements and provide for secure participation in the democratic process, both from a staffing and voter perspective.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Section 1 of SB5 could be made clearer so that the prohibitions within the bill apply to polling locations, monitored secured containers, and postal collection boxes for the entire duration of when voters are casting ballots in an election. This would 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.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Secretary of State and county clerks will continue to administer elections in accordance with existing law.

AMENDMENTS