

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: SB38

Sponsor: O'Neill and Figueroa

Agency Name
and Code
Number:

Secretary of State, 370

Short Title: PRIMARY ELECTION
CHANGES

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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			\$500.0 - \$1,000.0	\$500.0 - \$1,000.0	Recurring	Election Fund, 68180

(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 38 allows voters who have not designated a major political party affiliation on their certificates of registration to participate in the primary election process by choosing to affiliate with a major political party participating in a primary. These voters will be able to participate by requesting a major party ballot.

The bill has an effective date of July 1, 2024.

FISCAL IMPLICATIONS

With the likely increase in voter turnout during the primary election due to all voters being eligible to participate, additional Ballot on Demand (BOD) printing systems may be needed in some counties to maintain voter wait times during early and election day voting in the primary election. The figures in the Estimated Additional Operating Budget Impact table are a cost range for leasing additional BOD systems for the primary election based on the Office’s current leasing and pricing agreements with the BOD vendors. The maximum of the provided range represents the real difference of BOD costs from the 2022 primary since this bill would effectively make all voters in the state eligible to participate in primary elections.

Section 3 of SB38 requires additional notices be sent to a specific subset of voters in mail ballot election precincts who are unaffiliated with a major party during a primary election. Although this notification is different than the statewide notification sent to all registered voters before an election, the increase in mail ballot election precinct notifications would result in additional costs. These costs would vary based on size of the precinct and number of voters within who are unaffiliated with a major party.

SIGNIFICANT ISSUES

By allowing voters without a party designation or those who are affiliated with an unqualified political party to participate in the primary election, SB38, if enacted, would likely increase voter participation in primary elections. According to SOS, as of December 2023, 24.2 percent of registered voters in New Mexico were not affiliated with one of the three major parties – Democratic, Republican, and Libertarian.

The NM Supreme Court has upheld New Mexico's current closed primary system, which allows only voters affiliated with a major political party to participate in a primary election. See *Crum v. Duran*, 2017-NMSC-013. This may mean that the adoption of an open primary system could be challenged in court.

Section 1 allows an independent voter to affiliate with a political party just for a primary without changing their certificate of registration. Other states seem to allow this semi-open primary structure (Colorado, Iowa, Kansas, Massachusetts, New Hampshire, Rhode Island, West Virginia, Wyoming). Any legal challenge will come down to whether the voter is meaningfully affiliating with a major political party or not.

Section 7 allows for certain challenges. Subsection (E) may be impossible to verify if the independent voter is not changing their voter registration. It also recommended that "currently affiliated with a political party represented on the ballot" be clarified to "currently affiliated with a major political party."

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

If SB38 is enacted, the roster of eligible voters in each county would be required to include all registered voters, regardless of party affiliation. The current election management system can generate this type of roster without any additional system enhancements. However, some changes to the ballot on demand systems are anticipated in order to allow for poll workers to issue ballots to an unaffiliated voter. The Secretary of State's Office does not anticipate these changes will cause an increase in costs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

During an election and in accordance with existing law, the Secretary of State and county clerks will continue to provide voters not registered with a major party the opportunity to register with a major party and vote in primary elections.

AMENDMENTS