

LFC Requester:	Marty Daly
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**AGENCY BILL ANALYSIS
2023 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 **Amendment** _____
Correction _____ **Substitute** _____

Date 01/24/2023
Bill No: HB 110

Sponsor: Rep. J. Block
Short Title: Voter ID requirements

Agency Name and Code 305–Office of the Attorney General
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	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 Attorney General Opinion nor an Attorney General Advisory Letter. 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 Office of the Attorney General.

BILL SUMMARY

Synopsis:

HB 110 proposes new additions and significant changes to the state's Election Code and several statutes affecting voting, including NMSA 1978, Sections 1-1-24, 1-4-5.1, 1-6-4, 1-12-8, 1-24-3, and 66-5-408.

A total of 35 states have laws requiring voters to show some form of identification at the polls. Of that, 18 states request or require voters to show an identification document that has a photo on it, such as a driver's license, state-issued identification card, military ID, tribal ID, and many other forms of ID; and 17 states accept non-photo identification such as a bank statement with name and address or other document that does not necessarily have a photo.¹ Recent studies have found that strict photo id laws deprive millions of Americans the opportunity to vote and reduce voter turnout under the auspice of addressing unsupported or exceedingly rare allegations of voter fraud.

- It is estimated that more than 16 million Americans lack government issued IDs, with minority voters almost 3 times more likely to not have an ID²
- The U.S. Government Accountability Office found that strict photo ID laws reduce turnout by 2-3 percent on average, and a higher effect on minority turnout^{3 4}
- Voter fraud is exceedingly rare in both number of credible allegations and actual intent to commit fraud⁵

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

HB 110 amends significant portions of New Mexico's Election Code and would likely be subject to litigation as it involves a fundamental constitutional right. Infringements on the fundamental right to vote in our country are strictly scrutinized by the courts. "[S]ince 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.

¹ <https://www.ncsl.org/elections-and-campaigns/voter-id>

² <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>

³ <http://www.gao.gov/assets/670/665966.pdf>

⁴ See also Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, "Voter Identification Laws and the Suppression of Minority Votes" (University of California San Diego, 2016),

<http://pages.ucsd.edu/~zhajnal/page5/documents/voterIDhajnaletal.pdf>

⁵ Justin Levitt, "A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents Out of One Billion Ballots Cast," Washington Post, August 6, 2014,

<https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credibleincidents-out-of-one-billion-ballots-cast/>

HB 110 will require voters to present a photo identification to vote in New Mexico. The bill attempts to overcome the issue of access (socio-economic or otherwise), by adding a new section to Section 1-1-24 NMSA 1978 that would require the Motor Vehicle Division to provide free photocopies of a person's required identification, presumably an already issued state identification such as a driver's license. An immediate effect of this will be that such a service will meet both a budgetary and personnel constraint by the Motor Vehicle Division and is seen as an unfunded mandate.

HB110 requires that a fee must be paid to the Motor Vehicle Division to obtain an identification card, which is a required voter identification, and raises legal arguments of the guarantee of equality under the 14th Amendment. *See, Harper v. Virginia Board of Elections*, 383 U.S. 663, 86 S. CT. 1079, 16 L. Ed.2d 169 (1966).

Photo identification requirements have found (addressed in cited studies above) to place a disproportionate burden on minorities, people of color, the elderly, and the economically disenfranchised. Even though HB 110 proposes to for the Motor Vehicle Division driver's licenses free of charge, access to such a service can still be an obstacle for these populations. If successful, the law will most likely be subjected to litigation under equal protection issues and will have to overcome strict scrutiny. A recent North Carolina Supreme Court case struck down a senate bill from that state that required voter identification because the law was enacted with discriminatory intent. North Carolina Supreme Court: *Holmes v. Moore*, 2022-NCSC-122.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

The Office of the Attorney General 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

Related – SB 73 Primary Election Voting Requirements

Related – SB 101 Permanent Absentee Voter List

Related – SB 180 Election Changes

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A