FISCAL IMPACT REPORT

	LAST UPDATED	
SPONSOR Rep. Chasey and Rep. Little/Sen. Duhigg	**ORIGINAL DATE**	1/30/24
	BILL	
SHORT TITLE Election Changes	**NUMBER**	House Bill 182/ec
	ANALYST	Hilla

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to state (NMCD)	No fiscal impact	Up to $6.11	Up to $32.70	Up to $38.81	Recurring	General fund
Costs to counties	No fiscal impact	Up to $19.2	Up to $28.8	Up to $48.0	Recurring	See Fiscal Implications
Total	No fiscal impact	Up to $25.31	Up to $61.5	Up to $86.81	Recurring	See Fiscal Implications

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 184 and Senate Bill 130

Sources of Information

LFC Files
National Conference of State Legislatures (NCSL),

Agency Analysis Received From
New Mexico Attorney General (NMAG)
Department of Information Technology (DoIT)
Corrections Department (NMCD)
Office of Broadband Access and Expansion (OBAE)
Regulation and Licensing Department (RLD)
Secretary of State (SOS)

SUMMARY

Synopsis of House Bill 182

House Bill 182 (HB182) amends the Campaign Reporting Act by adding a disclaimer requirement for materially deceptive media or advertisements generated by using artificial intelligence (AI) and creating the crime of distributing or entering into an agreement with another person to distribute materially deceptive media. This applies to all websites, regularly published newspapers, magazines, or other periodical of general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest and publishes advertisements.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

The bill creates a $500 fine for a first violation or a misdemeanor punishable by imprisonment of up to 90 days, or both. Subsequent violations within five years of a previous violation can be a felony punishable of up to five years or a fine of $1,000 or both. According to analysis of from the Corrections Department (NMCD), the bill would require the department to undergo system changes to allow for the ability of to track inmate time for the new crime in the offender management system. The cost of projected changes to the system are less than $5,000, but costs to the department would increase if an offender was sentenced on the second charge within five years. A single offender sentenced on this charge, NMCD estimates, would cost the agency between $57.1 thousand and $285.5 thousand, depending on the term imposed by the judge.

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison and the length of time served in prison that might result from this bill. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. NMCD reports the average cost to incarcerate a single inmate in FY21 was $49.6 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of $23.4 thousand per inmate per year across all facilities and estimates a marginal cost (the cost per additional inmate) of $19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. HB182 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Overall, this analysis estimates HB182 will result in additional incarceration costs of up to $86.81 thousand per year, per individual. Based on the costs to incarcerate a single inmate at both NMCD and county jails, this analysis estimates the changes proposed by HB182 based on the costs of incarcerating at least one additional person annually, though the likelihood of incarceration is low because the bill allows for a fine of $1,000 or a felony charge.

Based on estimates of actual time served for fourth-degree felonies (the lowest classification of felony available for estimation purposes) provided by the Sentencing Commission, an individual would spend an additional 236 days in prison each due to the increased penalty, at a cost of up to $26.6 thousand per offender. These additional costs will begin to be realized in FY25, increasing over the following three years (as more individuals serve longer sentences for fourth-degree felonies) and leveling out at up to $86.81 thousand per offender in FY27 (as offenders begin to be released from prison).

SIGNIFICANT ISSUES

The bill defines "artificial intelligence" as a machine-based system that can emulate the structure

and characteristics of input data to generate synthetic content, including images, video, or audio. Other words associated with artificial intelligence are the terms "deepfake," "synthetic media," or "deceptive media" when referring to AI. According to the National Conference of State Legislatures (NCSL), there are few existing statues that may apply to the use of A.I. in elections and campaigns:

Existing Statutes That May Apply to the Use of A.I. in Elections and Campaigns

State	Statute	Year Enacted	Description
California	Cal. Election Code §20010	2019	Prohibits the publication of materially deceptive media 60 days prior to an election where a candidate will appear on the ballot, unless it includes a disclosure that the media has been manipulated.
Michigan	Mich. Comp. Laws §§168.932f, 169.247	2023	Requires a disclosure on political ads generated by AI. and prohibits the publication of materially deceptive media 90 days prior to an election where a candidate will appear on the ballot, unless it includes a disclosure that the media has been manipulated.
Minnesota	Minn. Stat §609.771	2023	Prohibits the publication of deepfake media to influence an election 90 days prior to an election.
Texas	Tex. Election Code Ann. §255.004	2019	Prohibits the publishing of deepfake videos to influence an election 30 days prior to an election.
Washington	Wash. Rev. Code §42.62.020	2023	Requires a disclosure on synthetic media used to influence an election.
Wisconsin	Wis. Stat. §12.05	1973	Prohibits the publishing of false representations of a candidate or referendum to influence an election.

According to NCSL, four pieces of legislation were passed in 2023 in Michigan, Minnesota, and Washington that either require the disclosure of the use of synthetic media or prohibit deceptive media 90 days prior to an election. If the bill were to pass, New Mexico would be joining California, Texas, Minnesota, Washington, and Michigan as one of the few states that have mandates of disclosure of AI-related campaigning and elections.

The Secretary of State (SOS) says that the bill would create the needed transparency to help build trust among New Mexico's voters in the electoral process. By bringing awareness to the use of AI in elections, this would help the democratic process with understanding mis- or disinformation. SOS notes two instances, one from October 2023 and the other from January 2024, of AI-generated voices pretending to mimic former and current presidents without the disclosure of the use of artificial intelligence nor who created or paid for it.

The Office of the Attorney General (NMAG) says that the bill's definition of "distribution platform" does not address all websites because they are not sites that specifically "carry news and commentary of general interest." The department says that it is not clear if websites like Reddit or other social media websites that gather news stories from across the internet and carry ads would meet the distribution platform definition because they are forums on the internet and generally do not publish the general circulation news. The department notes, while these sites might not contain news in their direct publication, the sites can recommend links to news sites that contain election and campaign information.

President Biden signed Executive Order 14110 on *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* to establish responsible engagement with international partners. Both NMAG and the Department of Information Technology note federal laws being developed in regard to the use of artificial intelligence may impact HB182.

ADMINISTRATIVE IMPLICATIONS

The New Mexico Department of Justice notes:

> HB182's purpose is to address the use of artificial intelligence in political advertising and proposes by adding Section 1-19-26.8 into statute that uses already existing methods to enforce violations related to political advertising, such as through the Attorney General, District Attorney, the falsely depicted individual, the candidate for office that is wronged, or any organization that represents the interests of the voters.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB182 relates to Senate Bill 130 (SB130) and House Bill 184 (HB184). SB130 creates an artificial intelligence work group and HB184 creates artificial intelligence transparency in state government.

TECHNICAL ISSUES

NMAG notes the definitions of artificial intelligence should be the same for consistency among HB182, HB184, and SB130. Based on this difference, the department further suggests:

> HB182 proposes a definition for "Artificial Intelligence" in Section 1-19-26(C). Consider whether to broaden this definition with additional terms such as the following: "Artificial Intelligence means a machine-based or computer-based system that, either through hardware or software, can emulate the through the use of data, algorithms, or neural networking, structures and characteristics of input data in order to that generate synthetic or fabricated content, including, but not limited to, images, video, or audio."

> HB182 proposes a definition for "Distribution Platform" in Section 1-19-26(M). Consider whether to broaden this definition with additional terms such as the following: "Distribution Platform" means a website, or a regularly published newspaper, magazine, or other periodical of general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest and that publishes advertisements.

OTHER SUBSTANTIVE ISSUES

NMAG notes the bill could potentially be challenged as "impermissibly infringing on freedom of political speech." See agency analysis for further information.

EH/rl/hg/ss