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FISCAL IMPACT REPORT

SPONSOR <u>Pirtle</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/8/24</u>
SHORT TITLE <u>Secession of Counties, CA</u>	BILL NUMBER <u>Senate Joint Resolution 14</u>
	ANALYST <u>Davidson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
New Mexico	No fiscal impact	Indeterminate	Indeterminate	Indeterminate	Indeterminate	All
Secretary of State	No fiscal impact	\$75.0 to \$85.0	No fiscal impact	\$75.0 to \$85.0	Nonrecurring	Other state funds
Total	No fiscal impact	\$75.0 to \$85.0	Indeterminate but minimal	\$75 to \$85	Nonrecurring	Other state funds

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

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 Department of Transportation (DOT)
 New Mexico Attorney General (NMAG)
 Secretary of State (SOS)

Agency Analysis was Solicited but Not Received From
 Law Offices of the Public Defender (LOPD)

SUMMARY

Synopsis of Senate Joint Resolution 14

Senate Joint Resolution 14 proposes to add a new section to the Constitution of New Mexico that would provide the framework by which the state would be required to consent to the secession of three contiguous counties if the listed conditions are met.

1. No less than 15 percent of the qualified electors in the counties sign a petition that each county hold special elections on whether the counties should secede to be admitted to the union as a new state or join an adjoining state.
2. At least two-thirds of the votes cast in each county favor seceding.
3. The county commission of each of the counties that have voted to secede

- unanimously resolves to join with the other contiguous counties who are also seceding.
4. Each of the seceding counties pay any outstanding debt owed to the state or its instrumentalities.
 5. The U.S. Congress passes a law that is then signed by the president of the United States that gives consent for these counties to secede.

The joint resolution provides the amendment be put before the voters at the next general election (November 2024) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SoS) is required to print samples of the text of each constitutional amendment in both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SoS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$75 thousand to \$85 thousand depending on the size and number of ballots and if additional ballot stations are needed.

If the constitutional amendment were adopted, a range of consequences are possible, all with different fiscal implications.

If no petition attracts 15 percent of the qualified electors, there is no fiscal impact.

If the petition succeeds but favorable votes fall short of a two-thirds majority or it passes and Congress or the president fails to approve, costs would be limited to the expense of the local election. It is not clear if the election would be part of the regular local election, which would mean the secession vote would add a minimal amount to the election costs. However, a run-off election in Bernalillo County in late 2023 cost more than \$1 million.

The most abstract scenario has the largest potential fiscal impact. In this scenario, all the requirements for secession are made, and the counties become an autonomous state or join another state. They pay off their existing debt to the state, a figure difficult to quantify without knowing which counties are seceding. This payment of existing debt could initially prove beneficial to the state, resulting in an initial positive fiscal impact. However, the long-term fiscal impact might be negative for the state, if the taxes originating from the seceding counties is greater than the cost of providing benefits in those counties.

Assigning any value to the cost of secession, should the constitutional amendment pass, is complicated by the many potential consequences, leaving fiscal impact at indeterminate.

The bill does not stipulate how seceding counties would join an adjoining state— if the residents in the adjoining state or the states' governments would also vote or could reject the seceding counties or how the adjoining state and New Mexico would coordinate the handoff. This lengthy process could possibly require lengthy litigation, another potential cost for the state.

SIGNIFICANT ISSUES

Agency analysis provided by the New Mexico Attorney General (NMAG) raises concerns about the proposed legislation and the legal definitions that surround counties. According to the analysis, counties are “creatures of the state,” meaning their existence is tied to the state, even if they secede from it. These conclusions were supported by *Witt v. State Canvassing Bd.*, a 1968 New Mexico Supreme Court case which found,

Political subdivisions of states—counties, cities, or whatever— never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the state to assist in the carrying out of state governmental functions.

Agency analysis from the NMAG also raises concerns about the transferring of property if the proposed legislation were passed and suggests it could result in the dispossession of private landowners.

Analysis from the Department of Transportation (NMDOT) also expressed concern as to how the proposed legislation would disrupt the agency and the services it provides to New Mexicans. The agency stated that if the proposed legislation passed, it would require NMDOT to review “every aspect of its functions.” NMDOT adds, “It is difficult to quantify the time and expense these efforts would have ... The more counties that were to secede, the greater the impact on NMDOT.”

Additionally, analysis from NMDOT notes, due to current state statute that divides New Mexico into six transportation districts, the secession of counties could result in all of these districts being reconfigured.

The possible issues that passage of the proposed constitutional amendment could create are difficult to determine, due to the many steps involved. The questions raised by the NMAG analysis regarding the legal autonomy of counties once they are not tied to the state creates the potential of lengthy court action between the state and the seceding counties. The legislation raises further questions of what happens to state property that resides in seceding counties? What happens if there is federal property in the seceding counties? The questions that the proposed legislation creates related to possible secession could have on the state, on the federal government, on taxes, public infrastructure, are numerous.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This legislation is identical to SJR11 from the 2023 legislative session.

POSSIBLE QUESTIONS

Currently, there is no framework for secession in either the Constitution of New Mexico or the Constitution of the United States. The word itself does not appear in either document nor does it appear in any New Mexico statute. If the proposed legislation were to pass, it would create the potential for lengthy litigation and raise questions that exist outside of the current bounds of constitutional doctrine.