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## FISCAL IMPACT REPORT

SPONSOR Pirtle ORIGINAL DATE \_\_\_\_\_ LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Repeal of Enacted Laws, CA SJR 10

ANALYST Dick-Peddie

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY20 | FY21    | FY22    | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|---------|---------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | \$125.0 | \$150.0 |                      | Nonrecurring                 | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Secretary of State (SOS)

#### No Response Received

New Mexico Association of Counties

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 10 proposes a constitutional amendment to allow counties to annul and thereby repeal a law enacted by the legislature if three-fourths of the total number of counties by duly passed resolutions of their boards of county commissioners express their objection to the law and assent to the repeal and file those resolutions with the secretary of state.

### FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978, SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$125 thousand - \$150 thousand, depending upon the number and length of the constitutional amendments, number of registered voters, and whether additional ballot printing systems are

needed. The estimated additional operating budget impact table reflects this cost.

In addition to preparing the constitutional amendment, the Secretary of State would be responsible for publishing a certificate stating that the requisite number of county resolutions have been filed and that the law is annulled and repealed and that the repeal revives any law that was the subject of the repeal. It is assumed the Secretary of State can absorb this cost.

Counties may also experience some fiscal impact from producing and filing such resolutions. The New Mexico Association of Counties did not respond with agency analysis for Senate Joint Resolution 10.

## **SIGNIFICANT ISSUES**

The New Mexico Attorney General submitted extensive agency analysis outlining constitutional concerns with SJR10. The Attorney General suggests that counties having equal ability to overturn a law passed by the legislature would weigh the votes of less populated rural counties much heavier than densely populated counties. This would violate the “one person, one vote” principle of the Equal Protection Clause of the United States.

The Attorney General continues:

When considering the actual population of each county, the majority preference of a small or rurally populated county would be over-weighted, while the weight of the majority preference of a comparatively highly populated county would be diluted. Put another way, under the new Amendment, the preference of a small number of individual voters in one county would be given disproportionate weight as compared to the preference of a large number of voters in another county.<sup>1</sup> Accordingly, the Amendment potentially violates the Equal Protection Clause of the United States Constitution insofar as the Amendment unfairly discriminates against citizens whose votes would be diluted under the proposed scenario.

In addition to potentially violating the Equal Protection Clause of the United States Constitution, NMAG suggests that the dilution of voter weight demonstrated above could violate Article 7 of the New Mexico Constitution, which similarly guarantees the rights of New Mexico voters.

The Secretary of State also notes there may be constitutional issues with counties, which are political subdivisions of the state, annulling state laws. This could violate the principle of state supremacy, or the implied power of the state legislature.

NMAG also notes that currently, Article 4, Section 1 of the Constitution of New Mexico excepts certain categories of law, such as laws regarding the preservation of public peace, health or safety, payment of public debt, or creation of funding for public schools or state institutions from annulment. As currently drafted, SJR10 could be interpreted to mean that all laws – including those categories of laws which are currently excepted from repeal by popular referendum – are subject to repeal by the newly proposed mechanism of board of commissioners resolutions. It is unclear if that is the intention of the legislation.

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**TECHNICAL ISSUES**

If the intent of the legislation is not to enable the repeal or annulment of currently exempt state laws (see significant issues section) the legislature may wish to consider amending Section 1 C.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

SJR10 will not be submitted for voter approval in the next general or special election.

**ADP/rl**