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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Reps. Figueroa and Block/Sens. Jaramillo, Sedillo Lopez, and O’Neill	<b>LAST UPDATED</b>	
		<b>ORIGINAL DATE</b>	2/7/24
		<b>BILL</b>	Senate Joint
<b>SHORT TITLE</b>	Independent Redistricting commission, CA	<b>NUMBER</b>	Resolution 7
		<b>ANALYST</b>	Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS		\$75.0-85.0		\$75.0-85.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

**Note: If voters were to adopt the proposed constitutional amendment, the fiscal impact would include operational costs for the commission. See “Fiscal Implications.”**

Conflicts with CS/HJR 10

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
New Mexico Attorney General (NMAG)  
Secretary of State (SOS)\*

\*On original version of HJR 10, which was a duplicate of SJR 7

## SUMMARY

### Synopsis of Senate Joint Resolution 7

Senate Joint Resolution 7 proposes to amend the New Mexico Constitution to create a nine-member independent redistricting commission with exclusive authority to redistrict congressional districts, state legislative districts, and districts of other districted state offices. A new commission shall be established by September 1 of every year of the federal decennial census.

SJR7 sets out the qualifications and selection process for commissioners. It requires the Secretary of State (SOS) provide applications for commissioner to the general public and randomly select 120 applicants, using a nongovernmental entity with expertise in statistical methodology, in public with immediate public observation, using accepted statistical weighting

methods, to ensure that the selection pool include 40 applicants for each of the two largest political parties and 40 applicants for those voters not affiliated with either of the two largest political parties, and that, as closely as possible, mirrors the geographic and demographic makeup of the state. SOS shall submit the randomly selected applications to the president pro tempore of the Senate, the minority floor leader of the Senate, the speaker of the House of Representatives, and the minority floor leader of the House of Representatives, who each may strike up to three applicants from the selection pool, for a maximum of 12 total strikes.

SOS, using the nongovernmental entity statistical expert, shall randomly draw the names of six commissioners, two each from the two largest parties and two commissioners not affiliated with either of those parties, in public and with immediate public observation. Those six commissioners shall then select by majority vote the remaining three members, ensuring required political party balance and, to the extent practicable, that the entire commission reflects the gender, geographic, racial, and ethnic population of the state. If the commissioners are unable to reach a decision for any of the three positions, SOS is required to fill that position, using random selection, from the remaining pool of applicants for that political party group. The commission shall elect a chair from among its members.

The commission must develop district plans using the most recent U.S. decennial census bureau data as well as other reliable data sources in accordance with these criteria:

- Keep population across districts as substantially equal as possible, with a total deviation of plus or minus 5 percent;
- Do not dilute protected minority's voting strength;
- Do not split districts;
- Act consistently with traditional redistricting principles;
- Keep contiguous precincts together and reasonably compact;
- Preserve communities of interest and consider political and geographic boundaries; and
- Preserve the core of existing districts, if feasible.

The commission is prohibited from relying on partisan data (like voting history or party registration data) unless necessary to comply with applicable law. After public hearings, the commission shall adopt final plans and file them with SOS within six months of the release of redistricting data by the U.S. Census Bureau for use in the succeeding primary and general elections until the next redistricting period.

SJR7 specifies the circumstances under which a commissioner shall be deemed to have resigned from the commission and a vacancy created (to be filled by SOS, with an applicant from the same political party, selected randomly from the final pool of applicants). The New Mexico Supreme Court is granted exclusive original jurisdiction over proceedings to remove a commissioner brought by the Attorney General (NMAG) on the request of the redistricting commission. Commissioners may be removed for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, including failure to disclose communication with outside persons or organizations attempting to influence the map-drawing process outside of public meetings and public comment periods.

Commissioners are entitled to mileage and per diem and may hire staff, consultants, and legal counsel as necessary to carry out their duties. The Legislature shall provide adequate resources for the commission to perform those duties. The commission shall not meet or incur expenses

after the redistricting process is complete except when litigation to a plan is pending, to revise districts if required by court decision, or to maintain and provide public access to records of its proceedings.

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

**Election Costs.** 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 required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. 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.

**Operational Costs.** Should the voters approve this amendment authorizing an independent redistricting commission, there will be fiscal impact on state agencies during each restricting cycle. In 2021, an appropriations bill estimated costs of \$300 thousand for a citizen redistricting committee. In addition, SOS reports it will incur expenses for contractual services, including for the nongovernmental entity with expertise in statistical methodology that the resolution requires that office to use when selecting commissioners. No cost estimate is provided. Additionally, NMAG has advised that should it represent the commission in any redistricting litigation, it will need to hire staff with specialized expertise. Although it supplies no estimates on these costs, in its analysis of SB68, NMAG also cited a need for specialized staff and estimated that expense at \$450 thousand. Most if not all of these expenses would be incurred only cyclically, beginning with the release of redistricting data from the U.S. Census Bureau from its 2030 census.

## SIGNIFICANT ISSUES

Senate Joint Resolution 7 would require redistricting by an independent commission after each decennial census. AOC first points out that, as the Legislative Council Service has noted, neither the Constitution of New Mexico nor state law mandates redistricting after every decennial census, although Article 4 of the state constitution currently authorizes the Legislature to do so. Under SJR7, that activity would now be *required* to be performed by the independent commission it creates every 10 years. As AOC comments, this is a different process than that enacted in 2021, which created a Citizen Redistricting Committee and directed it to develop district plans for approval by the Legislature and the governor. (See Laws 2021, Chapter 79.) No legislative or gubernatorial approval is required under SJR7.

As AOC notes, SJR7 requires commissioners to disclose communication with outside persons or organizations attempting to influence the map-drawing process outside of public meetings and public comment periods. Under SJR7, failure to disclose the communications shall constitute substantial neglect of duty, subjecting a commissioner to removal.

SJR7 authorizes the nine-member commission to hire staff, consultants, and legal counsel as necessary to carry out its duties. Because the work of the commission occurs once every 10 years, it is unclear how hiring and other terms of employment of staff would be handled. No enabling legislation appears to be contemplated. Additionally, NMAG points out that under SJR7, the commissioners are entitled to mileage and per diem at the federal rates, as opposed to the state rates authorized in the Per Diem and Mileage Act, which applies generally to all state agencies as well as state boards and commissions.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This resolution conflicts with the committee substitute for HJR 10 in numerous ways, including the selection process for commissioners, the directive that all districts must be “nonpartisan and incumbent neutral” with no further explanation of those terms, and no provision requiring enabling legislation addressing matters such as providing for public input, disclosure of ex parte communications, and compensation of commissioners.

## **TECHNICAL ISSUES**

Page 6, line 5-6: AOC points out that in requiring the six randomly selected commissioners to select the final three commissioners, the resolution does not specify the pool of persons to be considered.

Page 9: NMAG suggests that, in delineating the process in development of the final restricting plans, what is now subparagraph (L) should precede subparagraph (I) so that the role of public comment and testimonies is clarified.

Page 10, line 2: NMAG points out that the phrase “federal decennial census” appears repeatedly, but here, the reference is to “redistricting data from U.S. census bureau”. Whether this phrase is intended to mean the other is not clear.

## **OTHER SUBSTANTIVE ISSUES**

AOC reports that, according to the National Conference of State Legislatures, as of December 2021, 15 states have a commission with primary responsibility for drawing a plan for state legislative districts. Six states have an advisory commission that may assist the legislature with drawing the district lines and five states have a backup commission that will make the decision if the legislature is unable to agree. With regard to drawing a plan for congressional districts, 10 states have a commission with primary responsibility for drawing a plan for congressional districts. Five states have an advisory commission that may assist the legislature with drawing the district lines and three states have a backup commission that will make the decision if the legislature is unable to agree.

MD/rl/hg