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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/07  
 SPONSOR Cervantes LAST UPDATED 1/30/07 HJR 5  
 SHORT TITLE Election of Appointed Judges SB \_\_\_\_\_  
 ANALYST Fernandez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
 Administrative Office of the Courts  
 Office of Attorney General

### SUMMARY

#### Synopsis of the Bill

House Joint Resolution 5 proposes to amend Article VI, Section 35 of the constitution of New Mexico to allow a primary election and a general election to be held for certain judicial offices filled by appointment by requiring an appointed judge to serve at least one full year on the bench before an election is held to fill that office.

### FISCAL IMPLICATIONS

Secretary of State may incur additional expenses to place this proposal on the ballot at the next general election. The exact costs are unknown but should be minimal.

### SIGNIFICANT ISSUES

Significant issues identified by Administrative Office of the Courts:

Under current law a judge appointed through the judicial nominating process runs for partisan election at the next general election. Sometimes a judge is appointed after the petitions are due

for running in the primary and the central committee nominates the general election judicial candidates instead of the voters choosing the candidate in a primary. This change will ensure that a judge appointed through the judicial nomination process would serve at least one year on the bench and run in a primary election.

Significant issues identified by Office of Attorney General:

Changes in House Joint Resolution apply to both the appellate court judges and justices, as specifically provided in Article VI, Section 35, and to district court and metropolitan court judges. See Article VI, Sections 36 and 37 (providing that “[e]ach and every provision of Section 35 of Article VI,” with certain exceptions pertaining to composition of the specific nominating committees, apply to district and metropolitan court judges nominating committees). General elections occur in November of each even-numbered year. Article XX, Section 6 of the New Mexico Constitution. Therefore, in circumstances where a vacancy and appointment to fill occur in an even-numbered year, the effect of the proposed amendment would be to extend the appointment for a period of approximately two years, as the upcoming general election in that even-numbered year of appointment would be skipped, for purposes of choosing a successor, until the next succeeding general election.

Because this potential extension of service time for an appointee could overlap into a succeeding term pertinent to that office, in circumstances where the appointment occurs during the last year of a term of office, the resolution further provides that the chosen successor holds that office until the expiration of the term “in effect on January 1 following the election.” This proposed sentence apparently is intended to add constancy to term lengths, which, in the case of overlapping service of an incumbent appointee, may, in effect, create a staggered term length for that office.

## **OTHER SUBSTANTIVE ISSUES**

The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

## **TECHNICAL ISSUES**

Technical issues noted by Office of Attorney General:

Note, as a possible clean-up matter in the event of adoption, inconsistent language in NMSA 1978, § 34-5-4 (1966, as amended in 1973), which provides: “If a vacancy in the membership of the court of appeals other than by expiration of a term shall occur, the governor shall fill the vacancy by appointment of a qualified person to serve until December 31 following the next general election, or for the remainder of the unexpired term, whichever is longer.”

CTF/mt