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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/09  
 LAST UPDATED 2/23/09 HJR 5/aHVEC

SPONSOR Cervantes

SHORT TITLE Judicial Election Requirements, CA SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HVEC Amendment

The Voters and Elections Committee amendment changes the language “following one full year of service in the judicial office” to “following one year after appointment” and replaces the deleted reference to the “original” term. This amendment further clarifies the intent of the bill.

#### Synopsis of Bill

House Joint Resolution 5, introduced for the Courts, Correction and Justice Committee, seeks to amend Article IV, Section 22 of the New Mexico Constitution to require that a judge appointed through the judicial nominating process serve until the next general election following at least one full year of service on the bench. The person who wins the election shall hold the office until the expiration of the term in effect on January 1 following the general election. This change would apply to Justices on the Supreme Court and judges on the Court of Appeals, District and Metropolitan court.

## **FISCAL IMPLICATIONS**

If approved by the Legislature, this resolution will be submitted to voters for approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose. See page 4 of bill, Section 2 for this language.

There will be a minimal administrative cost for statewide update, distribution and documentation of constitutional changes for the judiciary.

## **SIGNIFICANT ISSUES**

To successfully amend the constitution, a majority of legislators in both the house and the senate must vote in favor of the amendment. The secretary of state must publish the amendment in ways specified by Article 19, Section 1, and then a majority of voters must vote in favor of the amendment in the next general election.

1. 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 general election judicial candidates are nominated by the state central committee rather than allowing the voters to choose the candidates in a primary. The change contemplated by HJR5 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.
2. The Chief Judges Council and the Supreme Court support this Resolution.
3. If the amendment to the Constitution were made, the result could be an increased number of candidates applying for judgeship vacancies. Many practicing attorneys hesitate to apply for judgeships, and close down their practices, when they immediately have to run for office.

## **ADMINISTRATIVE IMPLICATIONS**

According to the Attorney General's Office (AGO), a number of "term" cases and amendments to constitutional provisions on "terms" must be carefully scrutinized. A change may stagger or disrupt the current cycle of when Judges stand for election. Also, it appears from the wording that an appointed Judge could serve the one year and miss the general election upon which the vacant office holder would be up for election or retention. For example, Judge X could be appointed early 2010 (to a vacancy whose normal term would require election or retention in that year), they would then serve for one year and not be subject to the general election until 2012, thus resetting the "term" of that vacancy.

## **OTHER SUBSTANTIVE ISSUES**

The issue presented is whether a Judge should be allowed to serve for at least a year before they have to sit for election. There is a real issue in trying to attract qualified candidates for the Judiciary because many of them are not willing to close their practice or quit their job if they have to run for office immediately. This proposal mitigates that concern.

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

Judges could be appointed in a general election year and have to run right away. Many may not risk applying due to the hardship of closing a practice or quitting a job.

CS/mc:mt