

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR	<u>Larrañaga</u>	ORIGINAL DATE	01/29/11		12/aHJC/aHVEC/
		LAST UPDATED	03/14/11	HJR	<u>aHFL#1</u>
SHORT TITLE	<u>Recall of Certain Public Officers, CA</u>			SB	
				ANALYST	<u>Graeser</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	FY14	4 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			\$104.0	\$1,676.0	\$1,780.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

The FY 13 impact assumes the constitutional amendment is presented to the voters at the next general election in November 2012. The FY14 impact assumes one statewide special recall election. There would be a further impact of a separate replacement election within 90 days of the recall election, if the voters decided to recall the official. There might be more (or fewer) elections, or elections appertaining to a non-statewide district that would modify these costs.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

SUMMARY

Synopsis of House Floor Amendment #1

The House Floor amendment to House Joint Resolution 12, as amended, eliminates congressional offices from the recall provisions. This addresses one of the AGO concerns.

Synopsis of HVEC Amendment

House Voters and Elections Committee amendment to House Joint Resolution 12 slightly modifies the HJC amendment discussed below. Where the HJC amendment changed the required petition numbers for a statewide office to 20% and to 30% for a non-statewide office, this amendment increases the required petition numbers to 33.3% for both statewide and non-statewide offices. Otherwise, the bill as amended by HJC was not changed.

Synopsis of HJC Amendment

House Judiciary Committee amendment to House Joint Resolution 12 changes the petition numbers from 25% for a statewide office to 20% and from 25% for a non-statewide office to 30%. The amendment establishes a timeline for the actions pursuant to the provisions of the resolution:

- Proponents draft and present a brief listing factual allegations of malfeasance or misfeasance or violation of oath of office to the State Supreme Court. The official named in the action has the opportunity to present evidence;
- If the court determines that probable cause exists, then the proponents may circulate petitions;
- Proponents have 120 days after the determination of probable cause to collect signatures and present the petitions to the Secretary of State for validation;
- The SOS verifies the number and qualifications of the signatures on the petition; no time frame is provided in the amendment for this verification;
- The SOS schedules a special recall election within 90 days of the verification of the signatures on the petition;
- If a majority of the voters at the statewide or district special recall election vote to recall the official, then the office is considered vacant;
- If the recall election produces a vacancy, the amendment requires a subsequent special election to be held to fill the vacancy.

Synopsis of Original Bill

House Joint Resolution 12 proposes a constitutional amendment to Article 20 of the New Mexico Constitution for consideration “at the next general election or at any special election prior to that date that may be called for the purpose of voting on the proposed amendment.”

HJR 12 proposes to add a new section to Article 20 allowing for the recall of an incumbent public officer in a congressional or constitutionally created office upon the filing of a petition for recall, evidentiary hearing before the Supreme Court wherein both the proponents and special election for recall upon a finding of probable cause by the Court.

FISCAL IMPLICATIONS

The SOS notes that, “...in accordance with Section 1-16-4 NMSA 1978, upon receipt of the certified proposed constitutional amendment or other question from the Secretary of State, the county clerk shall include it in the proclamation to be issued and shall publish the full text of each proposed Constitutional amendment or other question in accordance with the constitution of New Mexico.”

“Although the county clerk includes the proposed amendments in his/her proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-11 NMSA 1978. The approximate cost per constitutional amendment is \$104,000.”

“If the requisite number of registered qualified electors is confirmed, the question of recall of the official shall be placed for a special election to be called within ninety days of completion or the next occurring general election. The approximate cost for a statewide special election will be \$1,675,541.55; the approximate cost for an all mail-in ballot election will be \$1,968,179.31.”

Both the specific additional cost for advertising the constitutional amendment and one special statewide recall election are included in the operating budget table above, assuming that the question is presented to the voters at the next general election, not at a special election called for the specific issue. As noted above, there may be more or fewer special recall elections than assumed in the table, and the scope of the recall could be either statewide or non-statewide.

SIGNIFICANT ISSUES

At the constitutional convention at the time of statehood and in 1969's "Con Con", delegates failed to agree to embed conventional populist controls over the political process in the State Constitution. These populist measures include the right to petition, referendum, initiative and recall. In fact, New Mexico's populism is expressed in unusually strong and accessible representative government. Realistically, as evidenced by the success of conservatives in the November regular election, New Mexico probably does not need additional populist measures, including the recall proposed by this joint resolution.

SIGNIFICANT LEGAL ISSUES

The AGO reviewer notes the following as potential legal problems: "...key issues that should be reviewed and addressed are (1) ~~preemption—federal election processes and procedures as related to congressional offices~~ [LFC comment: HFL amendment removes congressional offices from the recall provisions]; and (2) ~~due process—substantive and procedural due process for elected officials that have no opportunity for notice and hearing before an election may be held to recall him or her from office, considering that the Supreme Court hearing provisions in Section 1(C) of HJR 12 provide for an opportunity for the petitioners to be heard, not the officials.~~" [LFC comment: page 2, lines 23 and 24 allow the official to present evidence at the Supreme Court hearing on the recall.]

The AGO also notes that the "proposal contained in HJR 12 may be better situated in either Article VII of the Constitution – Elective Franchise, or through a statutory provision in Chapter 1 – Elections or Chapter 8 – Elected Officials."

ADMINISTRATIVE IMPLICATIONS

The amendment proposed by this resolution if approved, will be placed on the next general election ballot.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will continue to function with its representative democracy, free of conventional populist measures.

LG/mew:svb