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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/27/12  
**LAST UPDATED** 02/14/12     **HJR** 17/aSRC  
**SPONSOR** Saavedra  
**SHORT TITLE** Appointed Insurance Superintendent, CA     **SB** \_\_\_\_\_  
**ANALYST** Wilson/Chabot

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

|                    | FY12 | FY13    | FY14 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------------|------|---------|------|----------------------|------------------------------|------------------|
| Secretary of State |      | \$104.0 |      |                      | Nonrecurring                 | General Fund     |

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HJR 13  
 Relates to HJR 14, HJR 16, HJR 17 & SJR 2

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Public Regulation Commission (PRC)  
 Secretary of State (SOS)

### SUMMARY

#### Synopsis of SRC Amendment

The Senate Rules Committee amendment to House Joint Resolution 17 removes the governor as the appointing authority of the insurance superintendent and establishes the insurance nominating committee as the appointing body. It strikes language on vacancies and terms and replaces it with "as provided by law."

#### Synopsis of Original Bill

House Joint Resolution 17 proposes to amend article 11 of the constitution of New Mexico to remove the regulation of insurance companies and others engaged in risk assumption from the public regulation commission and place it under a Superintendent of Insurance appointed from nominees submitted to the governor by the insurance nominating committee.

## **House Joint Resolution 17/aSRC– Page 2**

The eight members of the insurance nominating committee would be appointed by the following legislative leaders:

Two by the Senate President Pro Tempore

Two by the Senate Minority Leader

Two by the Speaker of the House

Two by the House Minority Leader

No more than four members may be members of the same political party.

The governor shall appoint a Superintendent of Insurance with the consent of the senate for terms of four years from a list of nominees submitted to the governor by the insurance nominating committee.

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.

### **FISCAL IMPLICATIONS**

The SOS reports 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 the clerk's proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-13 NMSA 1978, including printing samples of the text of each constitutional amendment in both Spanish and English in an amount equal to ten percent of the registered voters of the state. There are currently 1.7 million registered voters in the state. Voters whose election mail is returned as undeliverable will be sent the proper notice under federal law in 2012, and if they do not vote in the next two federal elections, may be purged in 2015. Under these timelines, the voter roll is expected to increase until the purge in 2015.

The SOS reports that in 2010, the publication cost was \$520,000 for 5 constitutional amendments, or approximately \$104,000 per amendment. Although the SOS is continually seeking ways to reduce publication costs, it believes the 2010 figure is a reasonable projection for 2012 costs, given the increasing number of voter registrations.

### **SIGNIFICANT ISSUES**

In most states the insurance commissioner is appointed by the Governor, although in a dozen states the insurance commissioner is elected and in several other states the insurance commissioner is appointed by and functions under a larger regulatory body. The Federal Insurance Office, created by the Dodd-Frank Act, is currently studying the relative merits of appointing versus electing state insurance commissioners.

HJR 13 does not address the issue of where the Office of the Superintendent of Insurance will reside. The legislature has several options. The legislature can choose to:

- Keep the Superintendent of Insurance where it currently is within the PRC for administrative functions, but have an appointed superintendent independent from the PRC commissioners' oversight.
- Move the Superintendent of Insurance to another agency such as the Regulation and Licensing Department where it could be a division or placed under the Financial Institutions Division.
- The Office of the Superintendent of Insurance could also be a standalone agency with an appointed or elected superintendent.

The PRC notes that insurance differs uniquely from the other divisions of the PRC in that the Insurance Code gives the Superintendent primary authority for regulating insurance matters. From a managerial perspective, however, the Superintendent functions in the same manner as the other six Division Directors, albeit with a much larger staff and budget. This distinction has, in the past, created some confusion and conflict in operations and oversight.

### **ADMINISTRATIVE IMPLICATIONS**

The AGO notes that the current *de facto* overlap between the staffs of the PRC and the Superintendent of Insurance will make separating the agencies a difficult task. However with the right planning and legislative guidance, it could be accomplished with a minimum of disruption.

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

HJR 17 conflicts with HJR 13, Elected Insurance Superintendent, CA and relates to:

HJR 11, PRC Commissioner Qualifications, CA  
HJR 14, PRC Appointment & Retention, CA  
HJR 16, PRC Corporations from PRC to Sec. of State, CA  
SJR 2, Public Regulation Commission, CA

### **TECHNICAL ISSUES**

The AGO provided the following:

The number of four year terms a Superintendent of Insurance may serve is not defined.

While the insurance nominating committee shall evaluate, there is no affirmative duty imposed to actually recommend a nominee to the governor.