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## FISCAL IMPACT REPORT

SPONSOR Candelaria ORIGINAL DATE 1/30/17  
LAST UPDATED 2/23/17 HB \_\_\_\_\_  
SHORT TITLE Nonpartisan Judicial Elections, CA SJR 10/aSRC  
ANALYST Downs

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$50.0	\$0.0	\$50.0	Nonrecurring	Public Election Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (OAG)

Secretary of State (SOS)

Judicial Standards Commission (JSC)

### SUMMARY

#### Synopsis of Senate Rules Committee Amendment

The Senate Rules Committee amendment to Senate Joint Resolution 10 struck each appearance of general before election, broadening the nonpartisanship of choosing judges to all types of elections. The amendment maintains the provision that every justice and judge elected to office in a partisan election and holding office on January 1 following the date the amendment is enacted, shall be deemed be eligible for retention or rejection by the electorate, but strikes lines 17-20 on page 2 of the bill which say the judges shall be up for retention, and instead refers back to subsection A.

#### Synopsis of Bill

Senate Joint Resolution 10 proposes to amend Article 6, Section 33 of the New Mexico Constitution to require judges of any court to be elected in a nonpartisan election as provided by law. SJR 10 clarifies that every justice and judge elected to office in a partisan election and holding office on January 1 following the date the amendment is enacted, shall be deemed be

eligible for retention or rejection by the electorate. SJR 10 requires the proposed amendment to be submitted to voters at the next general election or at any special election prior to that.

## **FISCAL IMPLICATIONS**

Section 1-16-13 NMSA 1978 requires the Secretary of State to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. LFC staff estimate each constitutional amendment may cost between fifty and one hundred thousand dollars in printing and advertising costs based on 2016 actual expenditures.

SJR 10 as amended would have little effect on the performance requirements of the Judicial Standards Commission; it could result in a change in the number of election and campaign complaints filed, but it is not possible to predict the effect.

## **SIGNIFICANT ISSUES**

According to AOC, twenty-two states conduct at least a portion of their judicial selection through nonpartisan elections and thirteen conduct all of their judicial selection through nonpartisan elections.

## **TECHNICAL ISSUES**

The OAG stated, “It is unclear exactly what change in the judicial selection process will result from this amendment to statute. Changing the word “partisan” to “nonpartisan” may not achieve the type or extent of change intended or anticipated by the bill’s advocates.” According to a 1995 Attorney General Opinion, “in constructing a constitutional amendment, the true meaning and intent of the amendment as adopted by the people must be determined,” and it expressed concern that though constitutional provisions are to be constructed as a whole, not in isolation, SJR 10 as amended only eliminates the identification of a candidate’s political party affiliation on the ballot.

## **ALTERNATIVES**

The OAG also stated: “Under current law, the mechanisms for inclusion of a judicial candidate’s name on the general election ballot depend upon whether the judicial candidate is (1) a registered member of a major political party; (2) a registered member of a minor political party; or (3) not a registered member of any qualified political party. These mechanisms for a judicial candidate to be included in the general election ballot are not changed or affected by SJR 10 as amended.”

The SOS stated, “Since primary and general elections are partisan elections, legislation would be required to amend the current Election Code to outline the mechanism in which a non-partisan election for judges would be called, conducted, and canvassed. Alternatives include:

1. Hold a separate election for judges;
2. Include the election of judges in the currently proposed Local Elections Act in House

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Bill 104 and House Bill 174, should either of these bills pass.

3. Forgo the current nomination process that occurs in the primary election and, instead, print all judicial candidates on the general election ballot without revealing the candidates' party.

All alternatives listed would have a fiscal and administrative impact at the state and county level.”

JD/sb