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FISCAL IMPACT REPORT

SPONSOR Rehm/Townsend/ **ORIGINAL DATE** 3/08/19
Montoya **LAST UPDATED** _____ **HJR** 11

SHORT TITLE Recall of Elected Officials, CA **SB** _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$23.6	\$23.6	Nonrecurring	Election Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Secretary of State's Office (SOS)

SUMMARY

Synopsis of Bill

House Joint Resolution 11 proposes an amendment to the New Mexico Constitution to allow qualified electors who have registered to vote to petition for the recall of an incumbent elected officer holding a constitutionally created office in the executive or legislative branch of state government.

A recall petition must cite the grounds for recall based on acts or failures to act occurring during the current term of the officer sought to be recalled. The resolution provides the qualified electors shall be the sole and exclusive judges of the legality, reasonableness and sufficiency of the grounds for recall, which are not subject to review.

The recall petition must be circulated for no more than 180 days for a statewide office and no more than 90 days for a non-statewide office. The recall petition must be signed by no fewer than 25 percent of the number of persons who voted in the election for the office in the last preceding general election. After circulation, the petition is filed with SOS for verification of the signatures, and SOS certifies the petition to the governor. If an officer subject to recall resigns within five days of certification, the vacancy caused by the resignation shall be filled as provided by law. Otherwise, SOS shall publish notice of the recall election. The special election must be held within 90 days or at the next general election, if that election is to be held within 90 days.

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The ballot for the recall election must include the grounds for recall and, at the option of the officer subject to recall, the officer's justification for the officer's actions in office. In addition to the question regarding the recall, the ballot includes the names of people who have been nominated and certified to succeed the person sought to be recalled.

A majority vote is required to recall an official. If the official is recalled and removed from office, the candidate who received the highest number of votes for the vacated office is declared elected to the office and serves for the duration of the term.

FISCAL IMPLICATIONS

SOS states that, if HJR11 is approved, funding will be needed to administer the special recall elections provided by the resolution.

SOS supports and understands the Legislature's prerogative to place constitutional amendments before the voters of the state. For the purposes of determining the costs involved, SOS explains it is required by Section 1-16-13 NMSA 1978 to print samples of 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. To comply with this requirement for the 2018 general election, SOS printed approximately 129 thousand copies of the *Voter Guide* at a total cost of \$26 thousand. The cost of producing the voter guide changes depending on the number and length of the constitutional amendments passed and the number of registered voters.

Additionally, SOS is constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in one newspaper in every county in the state. In 2018, SOS spent \$16 thousand for the required newspaper publications; however, the cost is dependent on the number and length of the constitutional amendments proposed. For planning purposes, SOS advises \$21.13 per word be used to represent the costs realized in the 2018 general election to estimate the cost of publishing each constitutional amendment.

SOS notes the number of constitutional amendments may impact the page size of the ballot or increase the number of pages, which may increase the cost of producing the ballots for the general election. In addition to the cost of the ballot, there may be time added to the voting process, which would require additional ballot printing systems to ensure a smooth and efficient voting process within the bounds of national best practices.

SIGNIFICANT ISSUES

NMAG notes that, under the resolution, voters are the "sole and exclusive judges of the legality, reasonableness and sufficiency of the grounds for recall, and the grounds shall not be open to review." The resolution appears to permit the use of state resources to hold a recall election based on nothing more than the grounds asserted in the petition. NMAG suggests that there should be some process for reviewing the asserted grounds to ensure they have at least a reasonable and good faith basis. For example, a petitioner might be required to swear, affirm or otherwise verify that the grounds for recall are true and are not meant to harass an elected official. NMAG also suggests that there should be consequences for filing a recall petition with frivolous grounds or in bad-faith.

TECHNICAL ISSUES

SOS suggests consideration might be given to reducing the technical details of administering the recall elections under HJR11. Those details might best be included in legislation implementing the resolution, which would enable future modifications of the administrative provisions without the need for a constitutional amendment.

OTHER SUBSTANTIVE ISSUES

According to the National Conference of State Legislatures (NCSL), 19 states plus the District of Columbia permitted the recall of state officers, as of March 2016. Regarding the pros and cons of laws permitting voters to recall state officers NCSL notes supporters view the laws as providing a way for citizens to retain control over elected officials who are not representing the best interests of their constituents or who are unresponsive or incompetent. Opponents contend the threat of a recall election lessens the independence of elected officials, undermines the principle of electing good officials and giving them a chance to govern until the next election, and can lead to abuses by well-financed special interest groups.

BG/al