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FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/21

SPONSOR Ivey-Soto/Duhigg LAST UPDATED _____ HB _____

SHORT TITLE Review Of Salaries Every Two Years SJR 4

ANALYST Nichols

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
State Ethics Commission			\$100.0	\$100.0	Recurring	General Fund
Constitutional Amendments		\$150.0 - \$200.0		\$150.0 - \$200.0	Nonrecurring	General Fund
Salaries			Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

National Conference of State Legislatures

Responses Received From

State Ethics Commission (SEC)

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

No Response Received

Legislative Council Service (LCS)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 4 authorizes the State Ethics Commission to review and establish salaries for all elected state officers every two years. The commission must establish salaries by December 1 of the year preceding the establishment or change to the salary of an elected state officer. The resolution authorizes the commission to begin its salary-setting work on January 1, 2023, and review, establish, and provide public notice of salaries by December 1, 2023, with salaries effective for the first full pay period in July 2024.

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To provide the commission with the authority to set salaries, SJR 4 would amend or repeal certain constitutional provisions that deal with setting salaries for district attorneys, magistrate judges, court of appeals judges, legislators, state executive officers, Supreme Court justices, and district court judges.

SJR4 requires the proposed amendments to be submitted to voters for the approval at the next general election or at any special election prior to that date.

FISCAL IMPLICATIONS

SJR4 does not contain an appropriation. However, the State Ethics Commission estimates a recurring cost of approximately \$200 thousand to carry out salary-setting duties. This would include approximately \$130 thousand for an additional FTE, including salary and benefits, approximately \$50 thousand for contracts for research, analysis, and technical support, as well as administrative support, and \$20 thousand for increased operations and overhead costs, including office space and supplies, access to databases, travel costs, and publishing costs.

Because the resolution would take effect midway through FY23, the cost to the Ethics Commission would be \$100 thousand for FY23, and \$200 thousand for following years.

Under Section 1-16-4 NMSA 1978 and the New Mexico constitution, the Secretary of State (SoS) is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. SoS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand-\$200 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

There could also be cost implications if salaries were changed during the salary review – for example, raising or decreasing salaries for elected officials. Currently, state legislators do not receive a salary. Implementing salaries for 112 legislators would impose an additional cost to the state. According to the National Conference of State Legislatures (NCSL), legislator salaries vary widely by state, and range from less than \$20 thousand to over \$100 thousand. Were New Mexico legislators to receive an annual salary of \$20 thousand, for example, the additional cost to the state would be approximately \$2.2 million

SIGNIFICANT ISSUES

The State Ethics Commission estimates that it would have authority to set salaries for approximately 330 elected state officers across 13 position types:

- Governor and Lt. Governor,
- Secretary of State,
- Attorney General,
- State Treasurer,
- State Auditor,
- Public Lands Commissioner,
- Members of the Senate (42),
- Members of the House (70),
- District Attorneys (13),

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- Supreme Court Justices (5),
- Court of Appeals Judges (10),
- District Court Judges (~100),
- Metropolitan Court Judges (~20), and
- Magistrate Court Judges (~70), including the chief judges of the respective courts.

Currently, the legislature has authority to set salaries for elected officials.

The resolution does not specify any criteria that the Ethics Commission would use to set salaries.

PERFORMANCE IMPLICATIONS

Changing salaries for elected officials could affect agency operations, performance, and budgets, but it is not clear how salaries would be set, or if there would be any minimum or maximum salary levels set.

TECHNICAL ISSUES

The Ethics Commission notes that were the legislature to enact SJR4 and voters approve a corresponding constitutional amendment, the legislature would also need to make several amendments to statutes addressing elective state officer compensation, for example NMSA 1978, §§ 8-1-1 (setting annual compensation of elected state officers) and 34-1-9 (setting salaries of justices, judges and magistrates).

The Ethics Commission also notes that Section 34-1-10 NMSA 1978 creates a judicial compensation commission (JCC), which is administratively attached to the Administrative Office of the Courts and provides findings and recommendations to LFC and DFA on salaries of judges and justices. The statute would also likely require amendment to include the Ethics Commission as a recipient of the JCC's findings and recommendations.

Currently, Section 10-16G-5 NMSA 1978, the State Ethics Commission Act, sets out the duties and powers of the commission and does not include setting the salaries of elected officials. The section would likely need to be amended to add setting salaries to the commission's required duties.

OTHER SUBSTANTIVE ISSUES

The Ethics Commission notes that SJR4 proposes to repeal Article IV, Section 10 of the constitution, which provides that a legislator shall receive "no other compensation, perquisite or allowance" other than the per diem and mileage payments authorized in the section. SJR4 also proposes to repeal Article V, Section 12, which provides that executive officers "shall receive no other fees or compensation whatsoever," in addition to the compensation that the Constitution currently fixes. Were those sections to be repealed, the principal constitutional provisions that would continue to constrain elected state officers' ability to receive additional compensation are the Emoluments Clause for state officers (Art. XX, § 9) and the Extra-Compensation Clause (Art. IV, § 27).

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Based on information from NCSL, it appears that only one state ethics commission – the California Fair Political Practices Commission – sets compensation for elected officers and other employees. NCSL also notes that a number of states have created compensation commissions to provide independent recommendations on salaries and benefits for elected officials.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The legislature would continue to set salaries for elected officials.

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