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## FISCAL IMPACT REPORT

SPONSOR Pirtle ORIGINAL DATE 1/24/2021  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Repeal Of Law Enacted By The Legislature, CA SJR 6  
ANALYST Hanika-Ortiz

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$150.0 - \$200.0			Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Relates to SJR2

#### Responses Received From

Secretary of State (SoS)

New Mexico Attorney General (NMAG)

### SUMMARY

#### Synopsis of Joint Resolution

SJR6 proposes an amendment to Article 4 Section 1 of the constitution of New Mexico to allow a law enacted by the legislature to be annulled and repealed with the same effect as if the legislature had repealed the law if, within 90 days of adjournment of the legislative session in which the law was enacted, three-fourths of counties pass resolutions of their boards of county commissioners to express their objection to the law, assent to its repeal, and file those resolutions with the SoS.

If the 90 day deadline is met, SoS shall publish a certificate confirming terms were met, and the law would be automatically annulled and repealed reviving any law the subject of that action.

### FISCAL IMPLICATIONS

As the attorney for the state, NMAG reports it may be called upon by the legislature and the executive to challenge the actions of the various boards of county commissioners and defend the legislation they want to nullify and repeal. This would likely require general fund resources.

Under Section 1-16-4 NMSA 1978 and the New Mexico constitution, 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 to \$200 thousand depending upon the size and number of ballots and if additional ballot stations are needed. The additional requirement SoS publish a certificate for every law repealed by the counties will be an added cost.

## **SIGNIFICANT ISSUES**

SJR6 would be submitted to the people for their approval or rejection at the next general election or at a special election called for the people's approval or rejection of this amendment.

NMAG provided the following comments:

SJR6 may conflict with ARTICLE III, Distribution of Powers, Section 1 of the constitution of New Mexico setting forth the powers of government and dividing them into three distinct departments, the legislative, executive and judicial, by giving the counties by duly passed resolutions of their boards of county commissioners, the right to *sua sponte* repeal and/or annul law already passed by the legislature and signed by the governor.

SJR6 may conflict, overlap and/or be confused with Section 1-17-1 et seq. that allows for referendum petitions to be initiated by a qualified elector who disapproves of any law not excepted by the constitution of New Mexico to initiate a referendum petition to order a referendum vote upon a law enacted at the last preceding session of the legislature.

The publishing of the SoS's certificate that the requisite number of county resolutions have been filed, which may or may not cause existing law to be automatically annulled and repealed and reviving prior law, may cause confusion in the enforcement of the law at issue, while adding uncertainty for the public and the judiciary.

## **PERFORMANCE IMPLICATIONS**

Each county's statutes and regulations would need to be reviewed to ascertain whether the county commissioners have authority to act in the manner proposed in SJR6 to avoid conflicts.

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

Relates to SJR2 Eliminate Pocket Veto, CA

## **TECHNICAL ISSUES**

SJR6 makes the publishing of the SoS certificate automatically annul and/or repeal enacted law depending on the laws enactment date. NMAG cautions it is unclear how the SoS would verify compliance with the terms prior to publishing. How the publishing occurs so everyone knows the specific law was automatically annulled and/or repealed on a specific date is also not clear.

## OTHER SUBSTANTIVE ISSUES

SoS provided the following comments:

Generally, there are constitutional issues with allowing counties, which are political subdivisions of the state, to annul laws that the state legislature has passed and enacted, although the legislature can expressly grant powers to political subdivisions. *See El Dorado at Santa Fe, Inc. v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 1976- NMSC 029, ¶ 12, 89 N.M. 313. A constitutional amendment would be necessary to allow counties to repeal laws.

Even if the proposed amendment passed and is voted into law, the proposed amendment potentially violates the Equal Protection Clause of the United States Constitution insofar as it violates the principle of “one person, one vote” See U.S. Const. amend. XIV (“No state shall...deny to any person within its jurisdiction the equal protection of the laws”); *State ex rel. Witt v. State Canvassing Bd.*, 1968-NMSC-017, ¶ 22, 78 N.M. 682. In other words, the proposed amendment may be unconstitutional because the votes of citizens in certain counties would be “in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.” *Witt*, 78 N.M. 682, 688.

AHO/al