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## FISCAL IMPACT REPORT

SPONSOR Figueroa/Ely ORIGINAL DATE 1/27/22  
LAST UPDATED \_\_\_\_\_ HJR 9  
SHORT TITLE Independent Redistricting Commission, CA SB \_\_\_\_\_  
ANALYST Rees

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

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SJR12 – State Redistricting Commission, CA

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Secretary of State (SOS)

Administrative Office of the Courts (AOC)

#### No Response Received

New Mexico County Clerk's Affiliate (NMCCA)

New Mexico Counties (NMC)

### **SUMMARY**

#### Synopsis of Bill

House Joint Resolution 9 proposes to amend Article 20 of the New Mexico Constitution to establish a constitutionally required independent redistricting commission. The amendment establishes a seven-member redistricting commission (Commission) of which no more than three may have the same party affiliation. The proposed language prohibits individuals who have been elected officials, involved with a campaign, a candidate, or a paid lobbyist from qualifying for the Commission for a period of time.

Section 1 of HJR 9 amends Article 4, Section 3 of the New Mexico Constitution to make stylistic changes and removes the language relating to allowing the New Mexico Legislature to reapportion its membership following the official publication of the official federal decennial report.

The application process is required to be public and the State Ethics Commission (SEC) is required to select an applicant pool of at least 38 nominees for submission to legislative leadership who may strike up to two applicants from the list from their own parties and up to two more from the unaffiliated and minor party applicants. The SEC is then charged with selecting six commissioners to serve from the remaining pool of applicants, ensuring geographic, racial, and gender balance among the appointees. The SEC must also select a retired district or state judge to serve as chair from the remaining pool of applicants. The bill provides for using the remaining pool of applicants to fill a vacancy if needed.

The Commission is required to develop district plans for congressional and state districted offices in accordance with several requirements including: 1) keep population across districts as equal as possible based upon census data, 2) shall not dilute protected minority voting strength, 3) shall not split precincts, 4) shall consider political and geographic boundaries, and 5) may preserve the core of existing boundaries to the extent feasible.

The Commission is also prohibited from relying upon partisan data and the voting address of incumbents when developing plans. After seeking public input, the Commission shall adopt final plans and file them with the Secretary of State by October 1 every 10 year period to be used for all succeeding primary and general elections until the next redistricting period.

## **FISCAL IMPLICATIONS**

The 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, the SOS wishes to inform legislators that, under Section 1-16-4 NMSA 1978, the SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters but can be estimated at \$25 thousand.

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 one newspaper in every county in the state. In 2020, the SOS spent \$351,015 for the required newspaper publications, however, the cost is dependent upon the number and length of the constitutional amendments that are passed. For planning purposes, an estimate of \$20.72 per word may be used to represent the costs realized in the 2020 general election to estimate the cost of publishing each constitutional amendment.

The number of constitutional amendments that pass may also impact the page size of the ballot, or if the ballot size is caused to become greater than one page, front and back, 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 in order to ensure a smooth and efficient voting process within the bounds of national best practices. The additional requirement that the SOS publish a certificate for every law that is repealed by the counties will be an added cost to the SOS, although it is difficult to estimate the cost at this time.

According to the Administrative Office of the Courts, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to passage of this amendment and any resultant state

court proceedings, including proceedings to remove commissioners. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

According to the Secretary of State, HJR9 conflicts with statutory language in the Redistricting Act (Act), Sections 1-3A-1, *et seq.*, NMSA 1978 of the Election Code enacted by Laws 2021, Chapter 79. If HJR9 is ultimately approved by the voters in the next General Election, this act would need to be repealed and replaced.

The Administrative Office of the Courts notes the following issues:

- 1) HJR9 provides that a Commissioner may be removed by the New Mexico Supreme Court for substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office. The New Mexico Supreme Court has original jurisdiction over proceedings to remove Commissioners. Under HJR9, a proceeding for the removal of a Commissioner shall be commenced by the attorney general upon the request of the Commission.

HJR9 requires Commissioners to disclose communication with outside persons or organizations attempting to influence the map-drawing process outside of public meetings and public comment periods. Under HJR9, failure to disclose the communications shall constitute substantial neglect of duty.

- 2) The Legislative Council Service has noted that neither the Constitution of New Mexico nor state law mandates redistricting after every decennial census, although Article 4 of the Constitution of New Mexico authorizes it. Historically, challenges to legislative redistricting plans have been filed in both state and federal court. (See “A Guide to State and Congressional Redistricting in New Mexico,” (2011), prepared by the New Mexico Legislative Council Service, <https://www.nmlegis.gov/Redistricting/Documents/187014.pdf> )

- 3) According to the National Conference of State Legislatures, 15 states have a commission with [primary responsibility](#) for drawing a plan for state legislative districts. Six states have an [advisory commission](#) that may assist the Legislature with drawing the district lines and five states have a [backup commission](#) that will make the decision if the legislature is unable to agree. (See <https://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx> ). With regard to drawing a plan for congressional districts, ten states have a commission with [primary responsibility](#) for drawing a plan for congressional districts. Five states have an [advisory commission](#) that may assist the Legislature with drawing the district lines and three states have a [backup commission](#) that will make the decision if the Legislature is unable to agree. (See <https://www.ncsl.org/research/redistricting/redistricting-commissions-congressional-plans.aspx>. See also <http://www.ncsl.org/research/redistricting.aspx> for more information on redistricting.)

- 4) The Redistricting Act, enacted in 2021, created the Citizen Redistricting Committee, directing the Committee to develop district plans for approval by the Legislature and governor. (See <https://www.nmlegis.gov/Sessions/21%20Regular/final/SB0304.pdf>). The constitutional amendment proposed by HJR9 does not require approval of the Redistricting Commission’s plans by the New Mexico Legislature and governor.

**PERFORMANCE IMPLICATIONS**

The Secretary of State notes that enactment of HJR9 would remove the New Mexico Legislature from the state redistricting process.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SJR12 – State Redistricting Commission, CA.

**AMENDMENTS**

The Secretary of State suggests that the sponsors may want to consider also amending Article IV, Section 3 of the New Mexico Constitution which authorizes the New Mexico Legislature to reapportion its members. Should HJR9 be approved, an independent redistricting commission would perform that function.

CR/acv/al