

LFC Requester:

Marty Daly

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original _____ **Amendment** _____
Correction _____ **Substitute** x

Date Prepared: 6 February 2024

Bill No: HJR 10

Sponsor: Figueroa, O’Neill, Sedillo
Lopez

Short Title: Independent Redistricting
Commission, CA

Agency Name and Code Number: 305 – New Mexico
Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Synopsis of Original:

House Joint Resolution (“HJR”) 10 proposes to amend the New Mexico Constitution to provide for the creation of an independent redistricting commission which will develop and adopt redistricting plans for congressional districts, state legislative districts and districts of other districted state offices.

Section 1 of HJR 10 proposes to amend Article 4, Section 3 of the New Mexico Constitution to make stylistic changes and removes language which grants the Legislature the authority to reapportion its membership after official publication of the federal decennial census.

Section 2 of HJR 10, proposes to amend Article 20 of the New Mexico Constitution to create an independent redistricting commission by September 1st of the year of the federal decennial census. The redistricting commission shall be made up of nine (9) commissioners, three of which are members of the largest political party, three whom are members of the second largest political party and three who are not members of either of the largest two political parties. Additionally, commissioners must be “registered qualified electors” and cannot have changed political parties within the two years prior to being appointed. Additionally, commissioners cannot have been federally or state elected officials; gubernatorially appointed state agency heads or a relative in the first degree of consanguinity of any of the preceding public officials or an officer of a political party. Finally, commissioners cannot be local elected officials, employees of the United States congress or the New Mexico legislative branch, candidates for public office, employees or contractors for candidates, a campaign committee or political committee or a registered paid lobbyist.

Section 2 would establish a selection process that requires the Secretary of State to make the applications for commissioner available to the public between January 1st and March 1st of the year of the federal decennial census in a way that encourages public participation for all regions of the state. Applicants are required to submit their applications by June 1st of the year of the federal decennial census; attest that the information provided on their applications is accurate and that they meet all qualifications for commissioner and attest that if they are selected that they will “commit to conducting the redistricting process in an honest,

independent and impartial fashion.”

After all applications are submitted, the Secretary of State is required to eliminate all incomplete applications and use a valid statistical methodology to randomly select 120 applicants. 40 of those applicants must be from each of the two largest political parties and the remaining 40 applicants must be from voters who are not affiliated with either of the two largest political parties. All randomly chosen applicants should, as closely as possible, mirror the geographic and demographic makeup of the state. The Secretary of State is required to submit the selected applications to the President Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the House of Representatives and the Minority Floor Leader of the House. These four legislative leaders can each strike up to three applicants from the selection pool, for a total of twelve strikes, but must do so by July 21 of the federal decennial year.

By August 1 of the year of the federal decennial census, the Secretary of State shall use the same non-governmental entity to randomly select the names of 6 commissioners, two from each of the largest political parties and two who are not affiliated with either of the largest political parties. By August 15 of that same year, the 6 commissioners who were selected must select by majority vote the remaining commissioners. If the 6 commissioners are not able to reach a decision regarding the last 3 members the secretary of state shall fill in the positions using the same method that was used to select the 6 commissioners.

All commissioners must take an oath of office and elect a chair from its members. Any vacancies that occur will be filled by the Secretary of State with an applicant who is from the same political party and is randomly selected from the final pool of applicants. Commissioners will be deemed to resign their position on the commission if they change political parties or the commissioner no longer meets the qualifications for a commissioner. Additionally, a commissioner may be removed from by the Supreme Court for substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office. A proceeding for the removal of a commissioner must be commenced by the Attorney General at the request of the redistricting commission.

Once all commissioners have been selected, the Commission will develop and adopt district plans for congressional districts, state legislative districts, and other districted state offices. The districting plans adopted by the Commission must meet the following requirements: (1) congressional districts shall be as equal in population as practicable, (2) legislative districts and other state office districts shall be substantially equal in population, (3) the commission cannot consider district plans for the legislature and other state offices that have a total population deviation of plus or minus 5%, (4) the commission must use the data generated by the latest federal decennial census and other reliable sources of demographic data, (5) district plans must comply with federal law and cannot dilute a protected minority's voting strength. Race may be considered but it cannot be the predominant consideration and traditional race-neutral principles shall not be subordinated to racial considerations, (6) district plans must use single-member districts and cannot split precincts, (7) district must be drawn consistent with traditional redistricting principles, (8) districts must be composed of contiguous precincts and be reasonably compact, (9) district shall be drawn in an attempt to preserve communities of interest and must take into consideration political and geographic boundaries including the boundaries of Indian nations, tribes, and pueblos and their political subdivisions and (10) to the extent feasible, the commission can preserve the core of existing districts.

The Commission can incorporate suggested changes made via public comment or testimonies it receives. However, in doing so, it should not subordinate the requirements listed above. Party membership and voting history date may be used to assess and revise maps for compliance with federal law and the redistricting criteria that appears in this section. That information cannot be used in the development phase of map drawing.

After release of the federal decennial census, the Commission must hold public hearings throughout the state to develop proposed district plans and subsequently approve district plans. The Commission has the authority to make adjustments to the proposed plans to meet the redistricting criteria and establish final district boundaries. The Commission must file its approved plans for the senate, house of representatives and congressional districts and other districted state offices within six months of the release of redistricting data by the U.S. Census Bureau. These plans will determine the districts which will be used in the succeeding primary and general elections.

HJR 10 will also require the Legislature to provide adequate resources for the Commission to perform its duties. In addition to the authority to establish and adopt redistricting plans, the Commission also has procurement and contract authority; the ability to hire staff, consultants, and legal counsel; standing to challenge the redistricting plans or process or the adequacy of resources that are allocated for the operation of the commission. The commission also has the authority to determine whether the Attorney General or counsel hired or selected by the commission will represent the state in defense of a redistricting plan.

Commissioners are eligible to receive per diem and mileage at the federal general service administration maximum for the city of Santa Fe for travel on commission business and cannot receive any other compensation for service on the commission. Commissioners are required to disclose any communications with any outside persons or organizations who attempt to influence redistricting process. Any failure to disclose such communications will constitute substantial neglect of duty.

Commissioners are required to serve until a qualified successor is appointed. Commissioners cannot meet or incur any expenses after the redistricting process is complete unless litigation to a plan is pending, a revision of districts is required by court order or to maintain or provide public access to records of its proceedings. The commission has the authority to adopt rules at the beginning of the redistricting process.

Section 3 establishes that HJR 10 be submitted to the people for their approval or rejection at the next general election or at any special election.

Synopsis of Substitution:

The House Government, Elections[,] and Indian Affairs Committee Substitute for House Joint Resolution 10 simplifies the proposed constitutional amendment. It proposes to remove the subsection that provides that electoral reapportionment shall be conducted pursuant to statute.

HJR 10 subsequently proposes a new structure for an independent redistricting commission. The proposed commission would be composed of three members of the largest political party, three members of the second-largest political party, and three members of no political party affiliation. Six members would be randomly selected from applications to—as closely as possible—reflect the geographic and demographic makeup of the state. The remaining

three members are to be selected from the applicant pool by the initial six members. The districts are to be drawn using traditional redistricting principles and may not engage in minority vote dilution.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Original:

If the New Mexico Department of Justice (NMDOJ) represents the Commission in any redistricting litigation, additional funding for legal counsel, staffing, expert witness services and costs will likely be needed. The NMDOJ does not currently have a team dedicated to such litigation, which is highly specialized, fact and expert witness intensive.

Substitution:

The substitution does not provide for the same explicit responsibilities of the Attorney General or the Department of Justice. However, it is plausible that NMDOJ may represent the commission in litigation challenging the redistricting. The above issues may still apply.

SIGNIFICANT ISSUES

Original:

It is unclear why Federal mileage and per diem rates are proposed when NM has established its own Per Diem and Mileage Act that applies to the operations of all state agencies and boards and commission in the state. To the extent that the two rates diverge, this will present an administrative complexity.

Substitution:

No such mileage/per diem issues exist in this substitution.

PERFORMANCE IMPLICATIONS

Original:

Most of the responsibility, particularly in the selection of commissioners, falls under the Secretary of State.

Substitution:

As stated above, NMDOJ may have to represent the constitutionality of the redistricting in litigation.

ADMINISTRATIVE IMPLICATIONS

Original:

The NMDOJ is mentioned twice in HJR 10. The first is under Section 2, Paragraph G, where the Attorney General is granted authority to commence a proceeding for the removal of a commissioner at the request of the commission. The second is under Section 2, paragraph P which allows the commission to determine whether the Attorney General or outside counsel will represent the state in any redistricting litigation. Thus, the NM Department of Justice may be called on to handle and litigate redistricting matter for the commission which can include removal of a commissioner. There is no separate appropriation for the Attorney General or NM Department of Justice to litigate such requests.

Substitution:

The substitution makes no reference to the Attorney General or NMDOJ. However, election litigation is frequently handled by NMDOJ. The substitution amends the constitution to require that the legislature “shall appropriate sufficient funding in an appropriations bill for the operation of the commission.” This may be a sufficient grant of authority to require the legislature to appropriate funding for NMDOJ to handle litigation on behalf of the commission.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**Original:**

None.

Substitution:

SJR 7 mirrors the text of original version of HJR 10. No such substitution has been made for SJR 7.

HB 122 proposes to appropriate \$250,000 to the Secretary of State to convene a county redistricting task force to “study and develop recommended redistricting procedures for New Mexico counties.”

TECHNICAL ISSUES**Original:**

Paragraph L under Section 2 should precede Paragraph I to provide clarity that the commission is required to hold public hearings and may incorporate the comments and testimonies given at those hearings into its final redistricting plans.

The term federal decennial census is used throughout HJR 10. However, under Section 2, Paragraph M the terms “redistricting data from U.S. census bureau” is used. It is not clear whether that phrase is intended to mean “federal decennial census”.

Substitution:

The comments concerning Paragraph L and Paragraph I do not apply to the substitution.

The use of “redistricting data by the United States census bureau” creates no confusion in the context of the substitution.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.