

LFC Requester:	Daly, Marty
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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**

Date 2/1/24

Bill No: HJR 10sub

Sponsor: Rep. Natalie Figueroa
Short Title: Independent Redistricting Commission, CA

Agency Name and Code AOC 218
Number: _____
Person Writing Kathleen Sabo
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with SJR 7, also amending Articles 20 and 4 (Section 3) of the Constitution of New Mexico.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: The House Government, Elections and Indian Affairs Committee (HGEIC) Substitute for HJR 10 proposes to amend Article 20 of the Constitution of New Mexico by adding a new section to create a nine-member Redistricting Commission with authority to develop and adopt plans for the redistricting of congressional districts, state legislative districts and the districts of other districted state offices. The commission would be established by September 1st of the year of the federal decennial census. The substitute joint resolution requires the commission to file its adopted plans with the Secretary of State (SOS) within 6 months of the release of redistricting data by the U.S. Census Bureau. Plans adopted by the commission shall determine the districts for use in the succeeding primary and general elections for each respective body.

The HGEIC Substitute for HJR 10 requires the 9 members to be qualified electors of NM, 3 from the largest political party, 3 from the second largest political party, and 3 who are not members of either of the two largest political parties and that, as closely as possible, mirrors the geographic and demographic makeup of the state. The substitute joint resolution provides that two-thirds of members will be randomly selection, using statistically accepted weighting methodology, from applications received by the SOS. To achieve the geographic and demographic makeup of the state, the final third will be selected by majority vote by the randomly selected commission members from among the applicant pool.

The substitute joint resolution requires the legislature to appropriate sufficient funding in an appropriations bill for the operation of the commission.

The HGEIC Substitute for HJR 10 requires districts to be drawn using traditional redistricting principles, to be nonpartisan and incumbent neutral and shall not result in minority vote dilution when a minority group is sufficiently large and geographically compact to constitute a majority in a single-member district and is politically cohesive and the non-minority group votes sufficiently as a block to usually enable it to defeat the minority group's preferred candidate.

The HGEIC Substitute for HJR 10 also makes technical, gender neutral changes to Article 4, Section 3 of the Constitution of NM.

The substitute joint resolution requires the proposed amendment be submitted to voters for approval or rejection at the next general election or at any special election prior to that date.

FISCAL IMPLICATIONS

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 challenges to the amendment. 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

1) The original HJR 10 provided that a commissioner may be removed by the Supreme Court for substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office, and granted the supreme court original jurisdiction over proceedings to remove commissioners. Under the original HJR 10, a proceeding for the removal of a commissioner was required to be commenced by the attorney general upon the request of the commission. The substitute joint resolution does not provide guidance for the removal of a commissioner.

The original HJR 10 required 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 HJR 10, failure to disclose the communications constituted substantial neglect of duty, subjecting a commissioner to removal. There is nothing in the substitute joint resolution requiring disclosure of communication with outside persons or organizations.

The original HJR 10 required the redistricting commission to develop and adopt rules for the scope of their authority at the beginning of each redistricting process. That requirement is not in the substitute joint resolution.

It is likely, however, that these issues will be addressed in Redistricting Commission enabling legislation, should the constitutional amendment be approved by the voters.

2) The original HJR 10 was very specific in the procedures that needed to be followed with regard to selecting commissioners and with regard to the actions required to be undertaken by the SOS. In contrast, the substitute joint resolution references the SOS only with regard to receiving the commission-adopted redistricting plans and receiving applications for commissioner. No other details of the selection process or the removal process are provided. There is not even a statement that commissioners will be selected or removed “as provided by law.”

Article V, Section 17 of the Constitution of NM, establishing the State Ethics Commission, contained “as provided by law” provisions that signaled that additional requirements, details, specifics would be contained in enabling legislation, should the proposed constitutional amendment be approved. There was no language in the constitutional amendment, however, that indicated that the selection and removal process for commissioners would be “as provided by law.” Nevertheless, the State Ethics Commission Act, Section 10-16G-1 NMSA 1978 et. seq., contains great detail regarding the selection process and terms for commissioners, commission vacancies, qualifications for commissioners, commission duties and powers, recusal and disqualification of a commissioner, etc.

3) 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 NM 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 NM Legislative Council Service, <https://www.nmlegis.gov/Redistricting/Documents/187014.pdf>)

4) According to the National Conference of State Legislatures, as of December 2021, fifteen 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/redistricting-and-census/creation-of-redistricting-commissions>.) 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/redistricting-and-census/creation-of-redistricting-commissions>.)

5) 2021’s SB 304 enacted the Redistricting Act and 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 the HGEIC Substitute for HJR 10 does not require approval of the redistricting commission’s plans by the legislature and governor.

6) Media and advocacy organizations and others have reported and opined on the efficacy of redistricting commissions. See, for example:

- *The Rise and Fall of Redistricting Commissions: Lessons from the 2020 Redistricting Cycle*, David Imamura, October 24, 2022 at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economics-of-voting/the-rise-and-fall-of-redistricting-commissions/.
- *Do Independent Redistricting Commissions Really Prevent Gerrymandering? Yes, They Do*, November 1, 2021 at <https://campaignlegal.org/update/do-independent-redistricting-commissions-really-prevent-gerrymandering-yes-they-do> .
- *A fair maps success story or ‘multi-layered stages of Dante’s Hell’? Where redistricting commissions worked – and didn’t work – this cycle*, Tierney Sneed, June 18, 2022 at <https://www.cnn.com/2022/06/18/politics/redistricting-commission-takeaways-success/index.html> .
- *Anti-Gerrymandering Reforms Had Mixed Results*, Michael Li, September 19, 2022 at <https://www.brennancenter.org/our-work/analysis-opinion/anti-gerrymandering-reforms-had-mixed-results> .

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SJR 7, also amending Articles 20 and 4 (Section 3) of the Constitution of New Mexico.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS