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FISCAL IMPACT REPORT

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|---|------------------------------------|
| SPONSOR <u>Maestas</u> | LAST UPDATED _____ |
| | ORIGINAL DATE <u>2/6/24</u> |
| SHORT TITLE <u>Legislative Vacancies, CA</u> | BILL <u>Senate Joint</u> |
| | NUMBER <u>Resolution 10</u> |
| | ANALYST <u>Davidson</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

| Agency/Program | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------------|-------------------------|-------------------------|----------------------------------|-------------------------|---------------------------|--------------------------|
| Secretary of State | No fiscal impact | \$75.0 to \$85.0 | Indeterminate but minimal | \$75.0 to \$85.0 | Nonrecurring | Other state funds |
| Total | No fiscal impact | \$75.0 to \$85.0 | Indeterminate but minimal | \$75.0 to \$85.0 | Nonrecurring | Other state funds |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
Administrative Office of the Courts (AOC)

Agency Analysis was Solicited but Not Received From
Supreme Court (NMSC)

SUMMARY

Synopsis of Senate Joint Resolution 10

Senate Joint Resolution 10 (SJR10) proposes to amend Article 4, Section 4 of the Constitution of New Mexico to create new guidelines for when legislative vacancies occur. If a vacancy occurs, the bill states the vacancy shall be filled:

- If less than six months remains in a term at vacancy, the vacancy shall be filled by appointment for the remainder of the unexpired term;
- If six months or more remains in a term at vacancy and if it occurs during or less than 60 days before the start of a regular session, the vacancy shall be temporarily filled by appointment until the vacancy is filled for the remainder of the unexpired term at an election that shall be conducted no later than 60 days after that session ends; or
- In all other instances, the vacancy shall be filled at an election conducted no later than 60 days after the vacancy occurs and for the remainder of the unexpired term.

The bill also states that nothing prohibits a future appointment from being made in anticipation of an upcoming vacancy and that when determining the start date to fill this vacancy, the designated future appointed shall be treated as a vacancy.

The joint resolution provides the amendment be put before the voters at the next general election (November 2024) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

FISCAL IMPLICATIONS

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 10 percent of the registered voters in the state. SoS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$75 thousand to \$85 thousand depending on the size and number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

Agency analysis provided by the Administrative Office of the Courts (AOC) notes that currently Article 4, Section 4(B) of the Constitution of New Mexico states the filling of legislative vacancies is done by the county commissioners where the vacancy is. These appointments shall be for a term “ending on December 31st, where after the appointment will remain till the next succeeding general election.”

The agency analysis noted that if the proposed legislation were to be enacted, SJR10 would provide guidelines for when an appointment for a legislative vacancy will be made but would not stipulate by whom the appointment will be made. While there is existing statute, Sections 2-7F-4 and 2-8F-4 NMSA 1978 that stipulates appointments are made by county commissioners, SJR10’s removal of county commissioners from the Constitution of New Mexico creates questions as to the process of legislative appointments and to whom that responsibility lies.

Agency analysis also pointed to a National Conference of State Legislatures (NCSL) report from December 31, 2023, that noted the:

Tremendous variation among state legislatures in how they fill a vacancy among their membership when it occurs.

In general, the vacancy is filled either through a special election or by appointment, and the states fall evenly into two groups. Twenty-five states fill legislative vacancies through special elections. These elections may be ordered by the governor or other official after being notified of the vacancy. The time limits for the execution of a special election vary as well. The other 25 states fill legislative vacancies through some form of appointment process, whether it be by the political party of the incumbent legislator, a board of county commissioners, the governor, the legislature or members of the same house and party as the incumbent legislator.

In addition to the variance in these laws, the provisions covering them vary as well. The

vast majority of states have some provision in the state constitution for the filling of legislative vacancies. Some of these provisions state explicitly how they are to be handled while other simply state that the issue will be subject to provisions of law. In addition to constitutional provisions, most states also provide a more detailed process in statute.

POSSIBLE QUESTIONS

Senate Joint Resolution 10's proposed changes to the legislative vacancy process would create more flexibility in regard to how long an appointee may hold the office, but it could create legal questions regarding appointment that could slow the process of legislative appointments. By removing county commissioners from the appointment process in the Constitution of New Mexico, while also leaving them in statute, the proposed legislation creates a gap of responsibility and could create a scenario where a legislative vacancy could be open longer due to this uncertainty.

AD/al/ne/ss