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FISCAL IMPACT REPORT

SPONSOR: Carraro DATE TYPED: 02/14/01 HB _____
 SHORT TITLE: Election of Justices and Judges SB SJR6
 ANALYST: Hayes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	\$ 0.0		\$ 30.0	Recurring*	General Fund

*Funding needed during election years only.

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC files
 Administrative Office of the Courts (AOC)
 Bernalillo County Metropolitan Court (BCMC)
 Attorney General's Office
 Secretary of State
Report and Recommendations of the Task Force on Judicial Selection (1997)

SUMMARY

Synopsis of Bill

SJR6 proposes an amendment to Articles 6 and 20 of the New Mexico Constitution to eliminate the selection and retention of judges, and instead requires they be elected to their positions.

This bill proposes amendments to Article 6, sections 4, 12, 26, 28, and 33 through 37 and to Article 20, section 4 of the Constitution as outlined below.

Section 1 of the bill proposes to amend Article 6, section 4 of the New Mexico Constitution by providing that justices of the supreme court are elected at the general election for representation in congress for a term of eight years.

Section 2 of the bill proposes to amend Article 6, section 12 of the Constitution by providing that district judges are elected at the general election for representation in congress for a term of six years.

Section 3 of the bill proposes to amend Article 6, section 26 of the Constitution by providing that metropolitan judges are elected at the general election for a term of four years.

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Section 4 of the bill proposes to amend Article 6, section 28 of the Constitution by providing that the court of appeals are elected for a term of eight years.

Section 5 of the bill proposes to amend Article 6 by repealing Sections 33 through 37. Those sections are as follows: 33. Retention or rejection at general election; 34. Vacancies in office; date for filing declaration of candidacy; 35. Appellate judges nominating commission. 36. District court judges nominating committee; and, 37. Metropolitan court judges nominating committee.

Section 4 of the bill proposes to amend Article 20, section 4 of the Constitution by providing that the governor shall fill a vacancy in the office of justice of the supreme court, judge of the court of appeals, judge of the district court, and magistrate and metropolitan court judge.

The amendments proposed by this resolution shall be submitted to the people for their approval or rejections at the next general election or at any special election.

Significant Issues

As a general background, the current judicial selection process in New Mexico is a unique hybrid system created in 1988. Prior to 1988, most judges were appointed and few incumbents were ever defeated in election. In an attempt to implement a more merit-based system, a 1988 constitutional amendment created a unique system of judicial selection in New Mexico, one combining both appointment and election (a “hybrid system”). When a judgeship vacancy occurs, a judicial nominating commission submits nominees to the governor who appoints one of the nominees. At the next general election after appointment, the judge runs for a full term position in a partisan, contested election. The elected judge runs for subsequent terms in uncontested retention elections.

This system is augmented with an evaluation process. The Judicial Performance Evaluation Committee (JPE) reviews and conducts performance evaluations of judges and then makes a recommendation regarding retention of the judges. This recommendation is disseminated to the public prior to an election. By making recommendations on retention, judges who the JPE does not find qualified could be voted out of office. The goal is to have the most-qualified judges in place.

In brief, the standard arguments **in favor** of election of judges are:

- Greater accountability may result from bringing elected officials closer to their constituents.
- Representation of minority voters may be improved.
- Increased public interest in judicial contests.
- Eliminates favoritism and/or partisanship by the governor.

The arguments **against** election of judges include:

- A judiciary is less likely to resist popular pressure when interpreting the law. Judges do not represent a district’s interests; they interpret the law which affects everyone’s interests.
- Judges should not be in the business of partisan, political campaigning.

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- Because electoral districts are usually determined by state legislatures, there can be undue influence of the legislative branch over the judiciary and, therefore, increased politicization of the judicial process.
- Political science research indicates that judicial elections do not result in more minority judges on the bench.

In summary, New Mexico has instituted a unique hybrid system for its appointment, retention and election of judges— one that combines aspects of both methods. By definition, the judiciary is independent; its function is not one intended to represent the views for groups of voters, or districts, or special interests.

FISCAL IMPLICATIONS

The Bureau of Elections estimates that the cost to the Office of the Secretary of State would be **\$30.0** in order to comply with requirements set forth in Article 19, Section 1 of the New Mexico Constitution if this bill is passed. That is, amendments to the Constitution as SJR6 proposes, must be published in both English and Spanish for four consecutive weeks in one newspaper in each New Mexico county. Because General Services Department sets the rate for legal publication charges, increases may occur without legislative approval or the ability of the Secretary of State to anticipate costs for budgeting.

Included in the publication cost is the printing of amendment booklets in English and Spanish (including Spanish language translation costs) and their distribution to New Mexico's 33 county clerks. During the 2000 general election, for example, 100,000 booklets were printed for local voters.

Besides the publication requirements set forth by the Constitution, each amendment must be orally translated and radio broadcast into the following Native American languages: Tewa, Tiwa, Towa, Keres, Zuni, Mescalero Apache, Jicarilla Apache and Navajo. The Secretary of State bears the financial burden for costs incurred.

RELATIONSHIP

HB215 (Saavedra), also referred to as the “judgeship bill,” is being cited here to note the various new judgeships being proposed at the district, metropolitan and magistrate levels. The eleven additional judges requested in HB215 *may* be subject to election if SJR6 is enacted. On the other hand, the date of the “next general election” or any “special election” (SJR6 language) could be after HB215's effective date of July 1, 2001, and, therefore, superceded..

TECHNICAL ISSUES

- < SJR6 does not address the Addendum to Article VI of the Constitution entitled “Judicial Nominating Commission – Adoption of Rules Governing the Judicial Nominating Commission of New Mexico.” If judges and justices hold position through election as proposed by this bill, then the nominating committees established in the Constitution must be abolished. Language needs to be included in this bill to amend the Constitution accordingly.
- < Sections 1 and 2 of the resolution specify that the covered justices and judges shall be elected at the general election for representatives in congress. Section 3 provides that magistrates and metropolitan judges shall be elected at general elections. Section 4 states that the election of court of appeals judges “shall be as provided by law.” Section 6 provides that a person

appointed to fill a vacant judicial office shall hold such office “until the next general election.” The reason for the differences among the provisions is unclear. Absent necessity, it would be more consistent and less confusing simply to require all affected judicial offices be filled at general elections, without any further limitation.

For example, here are proposed changes:

Section 1 [page 1, line 22]. Delete phrase “*for representatives in congress.*”

Section 2 [page 2, lines 5-6]. Delete the phrase “*for representatives in congress*” and insert the word “*general*” before the word “*election.*”

Section 4 [page 3, lines 3-6]. After the word “*judges*” in line 3, add the words “*who shall be elected at a general election for terms of eight years*” and delete the phrase “*and election for terms of eight years*” in lines 5-6.

CMH/njw