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FISCAL IMPACT REPORT

SPONSOR Larranaga ORIGINAL DATE 2/5/10
LAST UPDATED _____ HJR 11
SHORT TITLE Recall of Some Elected Public Officers, CA SB _____
ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Appropriation		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Secretary of State (SOS)

Attorney General's Office (AGO)

NM County Clerks Association

SUMMARY

Synopsis of Bill

House Joint Resolution 11 proposes to amend Article 20 of the New Mexico Constitution to provide a procedure for electors to recall an incumbent elected executive or legislative officer on the grounds of malfeasance or misfeasance in office or violation of the oath of office.

Section 1: Subsection A qualified electors of a congressional district or district of a constitutionally created elective office in the executive branch or legislative branch may petition for recall of an incumbent elective officer by filing a petition demanding the recall of the incumbent. Subsection B prescribes the content of the petition and states the petition must be signed by not fewer than 25% of the number of persons who voted in the election for the office at issue. Subsection C provides that prior to circulating the petition, the factual allegations supporting the grounds of malfeasance or misfeasance in office or violation of the oath of office shall be presented to the NM Supreme Court. The Supreme Court shall conduct a hearing which gives the proponents of the recall and the official an opportunity to present evidence. The Court shall then determine whether probable cause exists for the grounds of the recall. Subsections D and E set forth the procedure to be followed for the recall election.

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Section 2: this proposed amendment shall be submitted to the people for approval or rejection at the next general election or at any special election prior to that date called for this purpose.

FISCAL IMPLICATIONS

According to the SOS, the Constitutional Amendments placed on the ballot are very costly. The previous 2008 General Election had 5 Constitutional Amendments that cost the State of New Mexico over \$520,000. Each amendment cost approximately \$104,000. These amendments have to be published in English and Spanish in a major recognized newspaper in every county statewide.

If the requisite number of registered qualified electors is confirmed, the question of recall of the official shall be placed for a special election to be called within ninety days of completion or the next occurring general election. The approximate cost for a statewide special election will be \$1,675,541.55; the approximate cost for an all mail-in ballot election will be \$1,968,179.31.

SIGNIFICANT ISSUES

The AGO identified several issues that should be reviewed and addressed. First, preemption - federal election processes and procedures as related to congressional offices; and second, due process - substantive and procedural due process for elected officials that have no opportunity for notice and hearing before an election may be held to recall him or her from office, considering that the Supreme Court hearing provisions in Section 1(C) of HJR 11 provide for an opportunity for the petitioners to be heard, not the officials. Finally, the proposal contained in HJR 11 may be better situated in either Article VII of the Constitution – Elective Franchise, or through statutory provision in Chapter 1 – Elections or Chapter 8 – Elected Officials.

The County Clerks Association agrees with the AGO over whether or not the State of New Mexico can enact a constitutional provision that would allow recall of U.S. House members, as that process may not be permissible under the US Constitution

EO/mt