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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/11

SPONSOR Anderson LAST UPDATED _____ HJR 21

SHORT TITLE Bipartisan Redistricting Commission, CA SB _____

ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$104.0		\$104.0	Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Administrative Office of the Courts (AOC)

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Joint Resolution 21 proposes constitutional amendments to Article 4, Section 3 and to Article 20 to allow for the creation of a bipartisan redistricting commission. HJR 21 attempts to describe how this commission will be established, and describes how it will operate. HJR 21 also does some gender-neutral language clean-up.

FISCAL IMPLICATIONS

The SOS reports that based on the 2010 general election, the SOS estimates a cost of \$104,000 for each proposed constitutional amendment added to the ballot. The AGO notes Section 2(K) authorizes the commission to determine whether or not to “hire” the AG to defend the commission in the legal defense of a redistricting plan. If the commission were to hire the AG, the AGO would incur additional costs. The SOS cost is used in the table above as a representative cost for publishing the amendment. The potential AGO costs are sufficiently uncertain and are not estimated above.

SIGNIFICANT ISSUES

The AGO comments:

Section 1(D) proposes to remove the redistricting function from the legislature and to place it with a newly created bipartisan redistricting commission.

Section 2 describes how and when a bipartisan redistricting commission would be created, and describes how it will conduct its work. Section 2 describes the number of commissioners, who will appoint them, what work must be done, how vacancies will be filled, when removal of a commissioner may occur, how to engage in the mapping process for redistricting, allows for public comment on proposed redistricting plans, directs the legislature to provide the commission with needed resources, describes the commission's authority over procurement, personnel and legal assistance, prescribes that commissioners will be eligible for per diem and mileage per IRS rules (and not NM law).

According to the AOC:

Recently several states have attempted to take the politics out of the redistricting process in order to create congressional and legislative districts that fairly represent the interests of the state's various communities and minority groups, yet foster a health political environment in races for elective office. Thirteen (13) states have adopted some form of independent redistricting commission, with one of the newest being New Mexico's neighbor, Arizona. These states believe the reapportionment process in 2011 will strengthen public confidence in government after the publication of the results of the 2010 Census.

The criteria for use in redrawing district lines provided in HJR 21's Subsection G seem to fulfill the conditions established by the state district court in 2002 in the two Jepsen v. Vigil-Giron redistricting cases when finally approving the Legislature's several plans. Criteria at that time included equalizing population in each district (one person/one vote); districts compact and contiguous; existing county and municipal boundaries maintained to the extent possible; percentages of effective Hispanic and Native American majority districts kept, subject to Voting Rights Act compliance; and partisan fairness and political competition promoted. The court found it inappropriate for a court "to make radical or partisan changes unless the law requires those changes to be made." (Jepsen v. Vigil-Giron, No. D0101 CV 2001 02177, First Judicial District Court, Santa Fe, January 2 and January 24, 2002)

Redistricting and reapportionment stem from Article 1, Sec. 2 of the US Constitution and Sec. 2 of the 14th Amendment requiring that the decennial census provide statistical data for state-drawn congressional district lines. Since 1962, the US Supreme Court has ruled that legislative and congressional redistricting cases are subject to review by the courts; and cases typically involve the population within proposed districts and the dilution of voter strength in minority districts. In New Mexico, the scope has been expanded beyond race and color to include members of language minority groups in certain jurisdictions.

Redistricting has had a turbulent history in New Mexico, with several constitutional amendments enacted to resolve the problem of drawing boundary lines appropriately.

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Cases have been litigated in both state and federal court since the 1960s, with the exception of the 1990 redistricting plans.

The US Census Bureau indicates it will release census data to New Mexico on March 23, 2011. By law, redistricting must be completed by the next Congressional election in 2012.

RELATIONSHIP

House Joint Resolution 21 is related to House Bill 332 and to Senate Bill 408 which provide for an interim redistricting committee by statute rather constitutional amendment.

TECHNICAL ISSUES

The AGO reports:

Section 2(B) describes the political affiliation of the eight commissioners as four members of the political party “holding a majority in either the house ... or the senate” and four members of the political party “with the second highest number of seats in either house.” A problem could exist if, for example, the Republicans held the majority in the Senate and the Democrats held the majority in the House — four Democrats could be appointed as commissioners (because of the Democratic majority in the House – “either house”), and four other Democrats could be appointed as commissioners (because Democrats hold the second-highest number of seats in the Senate, the “either house.”) If this provision means to say that four commissioners will be members of the political party holding a majority in either the house or the senate, and the other four commissioners will be of the minority political party, it must be reworded. Suggested language: p. 3, line 3 — delete “either” and replace with “the other” house.

Definitions needed: “communities of interest” — first used in Section 2(G)(4); “competitive districts” — first used in Section 2(G)(7).

The AOC comments:

Sec. 3 of the bill calls for an “amendment” to be submitted to voters, although Sec. 1 amends a current Constitutional provision and Sec. 2 creates a new Constitutional provision. Should the word be made plural?

GH/bym