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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/14

SPONSOR O'Neill LAST UPDATED _____ HB _____

SHORT TITLE Independent Redistricting Commission, CA SJR 11

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Operations		Indeterminate but Significant	Indeterminate but Significant	Indeterminate but Significant	Recurring	General Fund
Publication of Constitutional Amendment		>\$ 46.0	\$0.0	>\$ 46.0*	Nonrecurring	Election Fund
Total		Indeterminate but Significant	Indeterminate but Significant	Indeterminate but Significant	Recurring	Election & General Funds

(Parenthesis () Indicate Expenditure Decreases)

*This represents the cost of publication of the constitutional amendment only (by the SOS)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 11 proposes a constitutional amendment to Article 20 of the State Constitution that creates a five member Commission with the authority to redistrict the congressional, legislative and statewide officer districts (i.e., the PRC).

This resolution authorizes the appellate judge nominating commission to create a pool of twenty candidates, from which the legislative leadership appoints four members (two Democrats and two Republicans). These four members then select a fifth member as chair who is neither a Democrat nor a Republican.

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If enacted, this constitutional amendment will be submitted to voters for their approval or rejection as the next general election or at any special election prior to that date that may be called for that purpose.

A detailed analysis of the bill may be found in attachment 1.

FISCAL IMPLICATIONS

Based on documents provided by the Legislative Council Service, redistricting costs for the 2000 Election Cycle totaled \$5.49 million and for the 2010 Election Cycle \$7.98 million. These costs included pre-census preparation, interim work, a special session, and litigation fees and costs. Of those amounts, litigation fees and costs totaled \$3.70 million in the 2000 cycle and \$5.76 million in from October 2011 through July 2012, demonstrating a significant increase of 55.7 percent.

Based on experience in other states, results are mixed with regard to challenges arising from redistricting commissions and their work. Costs of litigation may rise, remain the same or decline with the creation of a redistricting commission.

Under Section 1-16-13 NMSA 1978 and the NM constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In 2012, the cost for the 2012 General Election ballots was \$46,000 per constitutional amendment. However, if the ballot size is greater than one page, front and back, it would increase the cost of conduction the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

The Department of Finance and Administration (DFA) in prior year analysis notes that funding will be needed to pay commissioner per diem and mileage as well as to hire staff, consultants and legal counsel. Funding will also be needed to fulfill the commission's procurement and contracting authority.

SIGNIFICANT ISSUES

Under the current Constitution of the State of New Mexico, the Legislature apportions its membership following each federal decennial census and is responsible to drawing up the redistricting plan.

According to the National Conference of State Legislatures (NCSL), twenty-one states have a redistricting commission that either draws up the plan, advises the legislature on drawing up the boundaries or acts as a backup if the legislature fails to draw up the plan for legislative districts (refer to <http://www.ncsl.org/research/redistricting/redistricting-process.aspx>)

AGO analysis states that:

“The presumed purpose behind these various state alternatives—and the apparent purpose of this bill—is to take partisan politics out of the re-districting process. To achieve this aim, the bill:

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- Eliminates the practice of incumbents drawing district boundaries that can preserve their re-election;
- Creates a five member redistricting commission that consists of two Democrats, two Republicans, and a fifth member who belongs to neither party; and
- Prohibits drawing district lines based on ‘party registration and political performance.’

There are no known legal obstacles to enacting this approach to legislative redistricting.’

The last several decades have seen the courts ultimately deciding the redistricting boundaries, so this bill bypasses the legislature and put the process in the hands of an independent commission.

ADMINISTRATIVE IMPLICATIONS

The legislation does not anticipate how the independent commission will operate administratively, except to indicate in Section 2, Subsections N and O that the Legislature “shall provide adequate resources for the operation of the redistricting commission in performing its duties” and that the commission “shall have procurement and contracting authority and may hire staff, consultants and legal counsel as necessary to carry out its duties.”

TECHNICAL ISSUES

The AGO notes: The bill does not define the ‘appellate judges nominating commission’ but presumably this is the commission established by Article VI, § 35, of the N.M. Constitution.

OTHER SUBSTANTIVE ISSUES

The NCSL report in 2013 that there have been one-hundred eighty-five court cases filed nationwide challenging redrawn district boundaries since 2010. Nine states and parts of seven are required to get federal approval for redrawn maps.

NCSL analysis also has stated “There are pros and cons to removing the process from the traditional legislative process. And the track record of success by commissions is inconsistent in terms of having plans overturned by courts. Reformers often mistakenly assume that commissions will be less partisan than legislatures when conducting redistricting but that depends largely on the design of the board or commission.”

ALTERNATIVES

AGO analysis suggests that one alternative is to adopt what Connecticut, Illinois, Mississippi, Oklahoma and Texas have done: to create a redistricting commission that is authorized to draw electoral boundaries when the Legislature fails to draw a map or the governor vetoes the maps.

CAC/jl

Attachment 1: Detailed analysis of SJR 11

Section 1 proposes to amend Article 4, Section 3 of the constitution of New Mexico by removing the term "his" and "he" and replacing it with "the senator's or representative's". The bill also eliminates subsection D which allows the legislature to reapportion its membership following the publication of the official report of each federal decennial census.

Section 2 proposes to amend Article 20 of the constitution of New Mexico by adding a new section.

Subsection A states that by August 1st of the year of each federal decennial census, a redistricting commission shall be established to prepare and provide for the redistricting of congressional districts, state legislative districts and the districts of other state districted offices.

Subsection B states that the redistricting commission shall consist of five commissioners, no more than two of whom shall be members of the same political party. Each commissioner shall be a registered qualified elector of New Mexico who has not changed political party registration within five years immediately preceding appointment. The bill states that a commissioner shall not be a state or local elected officer or employee of either, and shall not have been within five years immediately preceding appointment, a candidate for or served as a federal, state or local public officer, a registered paid lobbyist or an officer of a candidate's campaign committee or served as an officer of or paid consultant to a political party.

Subsection C states that the appellate judges nominating commission shall solicit, accept and evaluate applications from registered qualified electors who are committed to conducting the redistricting process in an honest, independent and impartial fashion and are otherwise qualified to serve as commissioner. The appellate judges nominating commission shall select at least twenty nominees from the applicants, no more than eight of whom shall be members of the same political party, and submit the names in the nominee pool to the SOS by July 1st of the year of the federal decennial census for consideration by the legislative leadership for appointment.

Subsection D states that no later than July 21st of the year of each federal decennial census, appointments to the redistricting commission shall be made from the nominee pool as follows: (1) the leader of the party in the majority in the senate shall appoint one commissioner; (2) the leader of the party in the majority in the house of representatives shall appoint one commissioner; and (3) the house and senate floor leaders of the party in the minority shall appoint one commissioner each; provided that, if there is more than one minority party represented in the house or senate, the leaders of the minority party with the largest number of representatives or senators in their respective chambers shall make the appointments.

Subsection E states that the name of each appointee shall be submitted to the SOS. If the appointing authority for a commissioner fails to make an appointment by the July 21st deadline, the appointed members of the commission shall appoint a member from the remaining nominees in the pool.

Subsection F states that by August 15th of the year of the federal decennial census, the four appointed commissioners shall appoint the fifth member of the redistricting commission from the remaining nominees in the pool, who shall serve as chair of the commission.

Subsection G states that a vacancy on the redistricting commission shall be filled by appointment by the original appointing authority for that position.

Subsection H states that a commissioner may be removed by the governor, with the concurrence of two-thirds of the elected members of the Senate, for substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office. A commissioner shall be given written notice and provided with an opportunity for a hearing before removal.

Subsection I states that the redistricting commission shall develop redistricting plans for congressional and state legislative districts following each federal decennial census and for other districted state offices. Districts shall comply with federal constitutional and statutory requirements and district boundaries shall be contiguous and relatively compact and to the extent practicable, respect communities of interest and follow visible geographic features and municipal, county and other established political boundaries. Districts shall not divide precincts.

Subsection J states that party registration and political performance data shall not be considered in the drawing or evaluation of districts. Racial and ethnic population and voting performance data may be considered to evaluate compliance with federal constitutional and statutory requirements.

Subsection K states that after release of the necessary federal decennial census data to the state, the redistricting commission shall develop proposed plans for the districts and hold public hearings throughout the state on the proposed plans. The commission shall receive public comment on the proposed plans for at least sixty days preceding the development of final plans for the districts. The commission shall make any adjustments to the proposed plans that it deems necessary to meet the redistricting criteria and establish the final district boundaries. The commission shall file with the SOS plans for senate, house of representatives and congressional districts, along with plans for other districted state offices, by September 1 of the year following each federal decennial census.

Subsection L states that approval of a plan shall determine the districts for use in the succeeding primary and general elections for the respective body.

Subsection M states that a quorum of at least three commissioners must be present to conduct business. Approval of any action shall be by majority vote of the entire commission.

Subsection N states that the legislature shall provide adequate resources for the operation of the redistricting commission in performing its duties.

Subsection O states that the redistricting commission shall have procurement and contracting authority and may hire staff, consultants and legal counsel as necessary to carry out its duties. The commission shall have standing in legal actions challenging its redistricting plans or process, or the adequacy of resources provided for the operation of the commission. The commission shall have sole authority to determine whether the attorney general or counsel hired or selected by the commission shall represent the state in the legal defense of a redistricting plan.

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Subsection P states that commissioners are eligible for per diem and mileage at the internal revenue service maximum federal per diem rate for the city of Santa Fe and the internal revenue service standard mileage rate for travel on redistricting commission business.

Subsection Q states that commissioners shall serve until their successors are appointed and qualified. The redistricting commission shall not meet or incur expenses after the redistricting process is completed except when litigation or any governmental approval of the plan is pending; to revise districts if required by a court decision or to consult with executive and legislative agencies in preparation for the next redistricting cycle.

Subsection R states that the provisions of this section are self executing.

Section 3 states that the amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.