

the Ethics Commission to begin salary-setting work on January 1, 2023. The Ethics Commission estimates it would have salary-setting authority for approximately 330 elected state officers.

The Ethics Commission estimates the following fiscal impact on its operations if it were to take on salary-setting work:

- One additional FTE at an annual cost of approximately \$130 thousand.
- Contractual support (research, analysis, administrative) at an annual cost of approximately \$50 thousand
- Other operational costs, including office space, telecommunications, database access, and printing and publishing at an annual cost of approximately \$20 thousand.

Because the State Ethics Commission would begin its work midway through FY23, it estimates a cost of \$100 thousand in FY23, and \$200 thousand annually thereafter. The fiscal impact table has been updated accordingly.

The amended House Joint Resolution 12 would also amend or repeal several constitutional provisions regarding compensation of district attorneys, magistrate judges, court of appeals judges, legislators, state executive officers, Supreme Court justices, and district court judges.

The State Ethics Commission notes the following about the proposed constitutional amendments:

If the Legislature enacts the joint resolution and the people approve a corresponding constitutional amendment, then the Legislature would need to make several amendments to statute addressing elective state officer compensation. *See, e.g.*, NMSA 1978, §§ 8-1-1 (setting annual compensation of elected state officers); 34-1-9 (setting salaries of justices, judges and magistrates).

Further, Section 34-1-10 NMSA 1978, creates a judicial compensation commission (“JCC”), which is administratively attached to Administrative Office of the Courts and provides findings and recommendations to LFC and DFA on salaries of judges and justices. If the Legislature enacts the joint resolution and the people approve a corresponding constitutional amendment, then section 34-1-10(G) would also require amendment, at the least, to include the State Ethics Commission as a recipient of the JCC’s findings and recommendations.

The amended version of HJR12 includes the same provisions as SJR4.

Synopsis of HFI #1 Amendment

House floor #1 amendment makes changes to the structure of the public officer salary commission, specifying that commissioners should be appointed with regard to geographic diversity, and that commissioners should not have changed their party affiliation within two years of appointment. The governor would appoint two commissioners, who could be from the same political party. The chief justice of the Supreme Court would appoint one commissioner, and the president pro tempore of the Senate, the speaker of the House of Representatives, and the minority floor leaders of the Senate and House of Representatives would each appoint one commissioner. The amendment allows for a commissioner to be a current member of the Public Regulation Commission (PRC).

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The amendment also directs the commission to set salaries for magistrate judges, but removes a provision for the commission to set salaries for PRC members.

Finally, the amendment adds a section amending Article 6, Section 26, to remove reference to magistrate judge salaries being set by law, to conform with the commission's purview.

Because the amendment adds another proposed constitutional amendment to the resolution, the fiscal impact is increased to reflect the cost of an additional amendment.

Synopsis of Original Bill

House Joint Resolution 12 asks voters to amend the New Mexico Constitution to establish a public officer salary commission as a state agency.

Section 1 of the resolution adds a new section to Article 4 of the constitution and establishes the commission. The commission would be directed by seven commissioners, no more than four of whom may be members of the same political party. The makeup of the commission will be as follows:

- Two commissioners appointed by the governor, not from the same political party;
- Two commissioners appointed by the chief justice of the Supreme Court, not from the same political party;
- One commissioner appointed by the president pro tem of the Senate;
- One commissioner appointed by the Speaker of the House of Representatives;
- One commissioner appointed by the six previously appointed commissioners.

Commissioners cannot be a current elected official, employee of state government, current or former lobbyist within the past three years, or close family member of an aforementioned individual.

The commission is tasked with establishing and limiting salaries for the governor, lieutenant governor, attorney general, secretary of state, state treasurer, state auditor, commissioner of public lands, justices of the Supreme Court, judges of the Court of Appeals, district court judges, legislators, Public Regulation Commission members, and other public officers as provided by the legislature. The commission will set salaries for the first full pay period in July 2024 and every two years after that and provide public notice of salaries by December 1 of the year preceding the effective date of a salary change. The commission may also set compensation, perquisites, allowances, or reimbursements other than salary.

Section 2 of the resolution amends Article 6, Section 24, to remove reference to district attorneys' salaries being set by law.

Section 3 of the resolution amends Article 6, Section 28, to remove reference to district court of appeals judges' salaries being set by law.

Section 4 of the resolution repeals Article 4, Section 10, of the constitution, which governs compensation of legislators; Article 5, Section 12, which governs compensation of executive officers; Article 6, Section 11, which governs compensation of Supreme Court justices; and Article 6, Section 17, which governs compensation of district court judges.

Section 5 provides the resolution’s proposed constitutional amendments would be submitted for a vote at the next general election or a special election.

If the constitutional amendments are approved, Section 1 of HJR12 would take effect on January 1, 2023, and Sections 2 through 4 would take effect on July 1, 2024.

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 them once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand, depending on the size and number of ballots and if additional ballot stations are needed. HJR12 includes seven proposed constitutional amendments.

The resolution does not provide an appropriation for operations of the commission. While the resolution does not specify how often the commission would meet, it does provide the commission would be created “as a state agency,” so the agency could require at least some minimal funding for administrative support, research support, meeting space, publishing of salary notices, and other costs. Providing per diem to commission members would also impose additional costs.

There could also be cost implications if salaries were changed during the salary review – for example, raising or decreasing salaries for elected officials. Currently, state legislators do not receive a salary. Implementing salaries for 112 legislators would impose an additional cost to the state. According to the National Conference of State Legislatures (NCSL), legislator salaries vary widely by state and range from less than \$20 thousand to over \$100 thousand. Were New Mexico legislators to receive an annual salary of \$20 thousand, for example, the additional cost to the state would be approximately \$2.2 million. Any salary changes would not take effect until FY24.

SIGNIFICANT ISSUES

The commission would set salaries for approximately 240 elected state officers across 12 position types:

- Governor and Lieutenant Governor,
- Secretary of State,
- Attorney General,
- State Treasurer,
- State Auditor,
- Public Lands Commissioner,
- Members of the Senate (42),
- Members of the House (70),
- Supreme Court Justices (5),
- Court of Appeals Judges (10),
- District Court Judges (~100),
- Members of the Public Regulation Commission (5)

The resolution amends statute to remove reference to district attorneys' salaries being set by law but does not indicate the commission would set district attorney salaries.

The resolution establishes a commission, with initial commissioner appointments, but does not set commissioner terms, so it is not clear how and when new commissioners would be appointed.

To successfully amend the constitution, a majority of legislators in both the House and Senate must vote in favor of the amendment. SOS must publish the amendment as specified by Article 19, Section 1, and then a majority of voters must vote in favor of the amendment in the next general election.

PERFORMANCE IMPLICATIONS

Changing salaries for elected officials could affect agency operations, performance, and budgets, but it is not clear how salaries would be set or if there would be any minimum or maximum salary levels set.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Joint Resolution 4 would amend the constitution and authorize the State Ethics Commission to review and establish salaries for all elected state officers every two years.

TECHNICAL ISSUES

AOC notes Section 34-1-10 NMSA 1978, providing for the creation and operation of the Judicial Compensation Commission, which makes recommendations on judicial salaries, and Section 34-1-9 NMSA 1978, governing judicial salaries, are in conflict with the provisions of HJR12 and are not repealed.

In addition, the provisions of Sections 8-1-1 and 8-3-3 NMSA 1978, which set compensation for certain elected officials whose compensation under HJR12 would be set by the new commission, are also in conflict and not repealed by HJR12.

OTHER SUBSTANTIVE ISSUES

Independent salary or compensation commissions are intended to provide a more objective and less political process to set salaries and to give members of the public a greater role in setting salaries for public officials. NCSL notes, across the country, compensation commissions take a variety of forms and roles, with the oldest being Michigan's State Officers Compensation Commission, established in 1968. According to the Washington Citizens' Commission on Salaries for Elected Officials, 23 states have a compensation commission to set elected officials' salaries, with some commissions setting salaries for all elected officials, and some setting salaries only for the judicial branch. See complete list [here](#). Some states have also created temporary compensation commissions at various points.

AOC notes currently a Judicial Compensation Commission (JCC) makes recommendations on judicial salaries and serves in an advisory capacity to the Legislature. JCC consists of the dean of the University of New Mexico School of Law, serving as chair and voting only in case of a tie, and as voting members the president of the state bar of New Mexico (or designee) and additional

members appointed by the governor, the president pro tem of the Senate, the Speaker of the House of Representatives, and the chief justice of the Supreme Court.

AN/al