

LFC Requester:

Ron Griggs

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X Amendment _____
Correction _____ Substitute _____

Date Prepared: 1/24/2024

Bill No: SJR 13

Sponsor: Ron Griggs and Pat Woods

Short Title: Policymaking Body Voting Requirements, CA

Agency Name and Code Number: 305 – New Mexico Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Senate Joint Resolution (“SJR”) 13 proposes a constitutional amendment that would require that any motion considered by a nonlegislative and nonjudicial policymaking or advisory body receive a majority vote of the total number of authorized voting members, or more than a majority if provided by statute, code, or rule. The principal effect of this amendment would be to prevent motions from being approved by a simple majority vote of a quorum of voting members.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

If enacted, this proposed amendment could significantly impede the ability of some boards to execute their duties. While the proposed amendment appears intended to discourage voting members from missing meetings or abstaining from voting, a perhaps unintended effect of this would be to create scenarios in which a board or committee would be unable to take necessary action. For example, certain licensing boards and commissions initiate discipline through a motion. It is not uncommon for authorized voting members of such a board to abstain from a vote because either (1) they were on a separate complaint committee that reviewed the complaint at an earlier stage, or (2) they are conflicted out due to personal or professional relationships with the complainant or licensee. This could result in the board being unable to pass any motion regarding discipline as to certain licensees even if all members of the board are present for a vote.

PERFORMANCE IMPLICATIONS

The New Mexico Department of Justice provides legal counsel to approximately 70 state policy making boards and commissions that do not have legal counsel on staff or under contract. It is not uncommon for these boards and commissions to take actions based on a simple majority vote, e.g., a majority of the members constituting a quorum. The reasons for that are several.

One reason is that the Open Meetings Act (OMA), which applies to all policy making public bodies, requires that members of the body attend meetings in person, unless it is difficult or impossible for the member to do so. OMA does not specify who is to determine when this standard is met, or under what circumstances. Because of this ambiguity, Boards who take action when one or members participate virtually may have actions challenged based on whether the virtual participants met the standard for excusal. If not, the Board may not have had the number of voting members required for a valid action. Imposing a true majority requirement on boards that already experience challenges finding qualified members who can regularly attend meetings in person may experience even greater challenges governing if this amendment is passed. Any such passage should prompt a reexamination of the OMA requirements for virtual participation.

In addition to the attendance challenges, many of the DOJ's client boards have difficulty maintaining a full complement of qualified members. Indeed, some boards cannot maintain membership levels sufficient to constitute a quorum. This amendment will compound the policy making challenges already confronting the boards and commissions that form so much of the state's day-to-day policies.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS