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## FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 02/21/21  
 LAST UPDATED 03/07/21 HB \_\_\_\_\_

SHORT TITLE Constitutional Revision Commission SB 367/aSRC/aSFI#1/ec

ANALYST Gaussoin

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
\$150.0		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate but minimal	Indeterminate but minimal		Indeterminate but minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Joint Resolution 14

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of SFI#1

The Senate floor amendment to Senate Bill 367 raises the standard by which commission recommendations would move to the Legislature by requiring the approval of three-fifths of the voting members of the commission, instead of the majority required in the original bill.

#### Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 367 adjusts language on the membership of the commission as follows:

- Specifying no two of the three public members appointed by the governor can come from the same political party;
- Increasing the number of members on the 15-member commission who can come from the same party to nine, from eight in the original bill; and
- Expanding the exclusion of members who have switched parties in the prior year to prohibit the appointment of anyone who has switched parties in the prior two years “in such a manner that would make the member ineligible to serve” and providing for the removal of any member who switches parties in such a manner.

The intent of the amendment’s language concerning the party affiliation of the public members is unclear. If no two can be affiliated with same political party, does that require each of the three must come from different parties? Would it be allowable for all three to come from the same party?

### Synopsis of Original Bill

Senate Bill 367 (SB367) appropriates \$150 thousand from the general fund to the Legislature for the creation of a Constitutional Revision Commission responsible for studying the state constitution and making recommendations to legislators before the 2022 legislative session.

This bill contains an emergency clause and would become effective immediately on signature by the governor. It also contains a delayed repeal effective April 1, 2022.

The commission would be composed of 15 voting and two nonvoting members: 12 appointed by the Legislative Council with no more than six from the same political party and three appointed by the governor, with designees from the chief justice of the New Mexico Supreme Court and the New Mexico Attorney General serving as the nonvoting members. The appointments would be coordinated to ensure representation from different areas of the state and different economic, cultural, professional and ethnic backgrounds. Members shall not have changed party affiliation in the year prior to appointment.

The commission would be required to examine the New Mexico Constitution and the constitutions of other states and review the findings of the 1967 and 1994 constitutional revisions commissions and the 1969 constitutional convention and meet at least four times in 2021. The commission would be obligated to report on its findings and recommendations to the members of the Legislature no later than 30 days before the next regular session and, on approval of a majority of commission members, would draft legislation and submit it for consideration during that session.

SB367 requires that the commission would be staffed and the research work conducted by a contractor with additional staffing and research work provided by the Legislative Council Service if needed.

### **FISCAL IMPLICATIONS**

The appropriation of \$150 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY22 shall revert to the general fund. Although SB367 does not specify future appropriations, establishing a new program could create an expectation that the program will continue in future fiscal years, therefore this cost is scored as recurring.

Additional costs are likely to be incurred by the New Mexico Attorney and the Supreme Court though staff serving on the commission. Members would also receive per diem and mileage. These costs are expected to be minimal.

## **SIGNIFICANT ISSUES**

The New Mexico Constitution has been studied for comprehensive revision by two commissions and a constitutional convention, whose 1969 rewrite was narrowly rejected by voters. In the 2016 document *Piecemeal Amendment of the Constitution of New Mexico Since 1911*,<sup>1</sup> the Legislative Council Service reported:

Since statehood, the voters have considered 306 proposed piecemeal amendments and one entire revision of the 1910 constitution. They have altered that document 171 times, all by the piecemeal amendment process. The legislature has been willing to propose amendments to the people, and voters have been willing to look favorably upon them. At the same time, proposals for a new constitutional convention have been looked upon by the legislature with a general lack of enthusiasm that is matched by a lack of concern by the voter.

The piecemeal amendment approach is possibly the result of the relative ease in passing amendments. The 1910 New Mexico Constitution limited the number of amendments that could be on a ballot and required a two-thirds vote of the Legislature and ratification from at least 40 percent of all voters and at least 40 percent of the voters in each county. But Congress rejected that provision and, as a prerequisite to admission as a state, required the people of New Mexico to amend the constitution to remove the limit and provide for approval with a simple majority of the Legislature and the voters.<sup>2</sup>

In 1996, voters again changed the amendment process in the constitution, adding to the piecemeal, single-topic ballot approach and the wholesale constitutional convention approach, a third method that authorizes an independent commission to propose, with approval of the Legislature, constitutional amendments separately or grouped as a single ballot question. From the LCS report: “Presumably, this provision would allow the commission to propose the revision of one or more entire articles as a single ballot issue, thereby effecting constitutional change much as a constitutional convention might do.” However, this option has never been exercised.

Legislators have proposed 31 constitutional amendments this legislative session.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Joint Resolution 14 would ask voters to amend Article 19, Section 1, to increase the burden for placing a proposed constitutional amendment on the ballot by increasing the number of votes needed for it to pass the Legislature from a simple majority vote of all members in each chamber to two-thirds of all members in each chamber.

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<sup>1</sup> [https://www.nmlegis.gov/Publications/New\\_Mexico\\_State\\_Government/Piecemeal\\_Amendment\\_Dec2016.pdf](https://www.nmlegis.gov/Publications/New_Mexico_State_Government/Piecemeal_Amendment_Dec2016.pdf)

<sup>2</sup> *Constituting America*, <https://constitutingamerica.org/new-mexico-constitutional-history-guest-essayist-the-honorable-david-l-robbins/>