# FISCAL IMPACT REPORT

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| **SPONSORS** | Lord/Pettigrew/Scott/ Townsend | **ORIGINAL DATE** **LAST UPDATED** | 1/29/22 | **HJR** | 12 |
| **SHORT TITLE** | Recall of Elected Officials, CA | | | **SB** | |
| | | | **ANALYST** | Rees | |

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

| | FY22 | FY23 | FY24 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | | See Fiscal Implications | | | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HJR 2, HJR 9, and SJR 2 and SJR 12 (Amendments to Article 20 of the NM Constitution):

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Secretary of State (SOS)
Administrative Office of the Courts (AOC)

No Response Received
New Mexico County Clerk's Affiliate (CCA)
New Mexico Counties (NMC)

**SUMMARY**

Synopsis of Bill

HJR 12 would add a new section to Article 20 of the New Mexico Constitution to provide for a mechanism to recall public officers in the executive and legislative branch of government. Proposed language would allow voters to submit a petition for recall citing acts or failures to act which is not open to review. The petition would be circulated for a period of time depending upon whether the position is a statewide or districted position to achieve at least 25 percent of the number of persons who voted in the last preceding general election at which the office was voted upon. The SOS would be required to verify the number and qualifications of the person signing. Upon certification of the petition a recall election would be called within 90 days. The recall ballot would allow for a voter to vote "yes or no" regarding recalling the person from the office and only those voters that voted for the recall would be allowed to vote for a replacement candidate.

**FISCAL IMPLICATIONS**

According to the Secretary of State, the fiscal implications of this bill could be "astounding". There are no limits on the number of recall elections that could be called if HJR12 were enacted. The cost of a recall election would vary greatly depending upon whether the recall election was for a districted office holder or a statewide office holder. The cost of a statewide recall election would be equivalent to the cost of a general election which is approximately $6 million. Since the bill contains no limit to the number of recall elections, election officials could be subject to any number of recalls in a year. Costs would also likely include overtime for SOS staff to "verify" each signature.

The SOS supports and understands the legislature's prerogative to place constitutional amendments before the voters of the state. For the purposes of determining the costs involved, the SOS wishes to inform legislators that, under Section 1-16-4 NMSA 1978, the SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters but can be estimated at $25 thousand.

The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in one newspaper in every county in the state. In 2020, the SOS spent $351,015 for the required newspaper publications, however, the cost is dependent upon the number and length of the constitutional amendments that are passed. For planning purposes, an estimate of $20.72 per word may be used to represent the costs realized in the 2020 general election to estimate the cost of publishing each constitutional amendment.

The number of constitutional amendments that pass may also impact the page size of the ballot, or if the ballot size is caused to become greater than one page, front and back, which may increase the cost of producing the ballots for the general election. In addition to the cost of the ballot, there may be time added to the voting process, which would require additional ballot printing systems in order to ensure a smooth and efficient voting process within the bounds of national best practices. The additional requirement that the SOS publish a certificate for every law that is repealed by the counties will be an added cost to the SOS, although it is difficult to estimate the cost at this time.

**SIGNIFICANT ISSUES**

The Administrative Office of the Courts notes that Article IV, Section 35 of the New Mexico Constitution provides for the power and procedure for impeachment and trial.

Article IV, Section 36 provides that "all state officers and judges of the district court shall be liable to impeachment for crimes, misdemeanors and malfeasance in office…"

There is no definition of "state officer" within the Constitution, but, for example, Section 10-16B-2(E) NMSA 1978, of the Gift Act, provides that "state officer or employee" means "any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage."

The National Conference of State Legislatures (NCSL) notes that, "Recall differs from another method for removing officials from office—impeachment—in that it is a political device while impeachment is a legal process." See "Overview" at https://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx.

There is no penalty for the filing of a recall petition on frivolous grounds or in bad faith.

According to NCSL, as of September 2021, 19 states plus the District of Columbia permit the recall of state officials. NCSL notes that

> In the 19 states that allow recall elections, citizens can attempt to remove an elected official from office at any time. Typically, the recall process consists of gathering a certain amount of signatures on a petition in a certain amount of time. Beyond this, details of the recall process vary by state.

For an explanation of recall processes and a list of each state's laws governing the recall of state officials, see https://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx

The Secretary of State characterizes HJR12 as "a disturbing and aggressive assault on the democratic process". Not only does the bill allow for a small percentage of the voting electorate to petition for a recall election, the recall election could be without legal merit as there is no legal vetting allowed as part of the process. However, the effect of this "anti-democracy" bill gets even worse in that if a recall election were triggered only select voters, those that voted for the recall of the incumbent, would be allowed to participate in voting for a replacement candidate if a recall were successful.

It should also be noted that officers of political subdivisions may be removed from office pursuant to the provisions of Sections 10-4-1, et seq., NMSA 1978. Furthermore, any justice, judge or magistrate of any court may be removed by the Judicial Standards Commission pursuant to Article VI, Section 32 of the New Mexico Constitution and Sections 34-10-1, et seq., NMSA 1978.

## ADMINISTRATIVE IMPLICATIONS

The Secretary of State notes that the Legislature would likely need to enact conforming statutes in order to provide for how candidates can be qualified to appear on a recall election ballot.

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The process of impeachment would continue to be the sole legal mechanism to recall incumbent elective officers elected to a constitutionally created office in the executive or legislative branch of New Mexico state government.

CR/acv