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## FISCAL IMPACT REPORT

SPONSOR Pinto LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/26/25  
BILL Senate Joint  
SHORT TITLE Open Primary Elections, CA NUMBER Resolution 13  
ANALYST Hilla

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SOS	No fiscal impact	No fiscal impact	\$35.0 to \$50.0	\$35.0 to \$50.0	Nonrecurring	Other state funds

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 16

### Sources of Information

LFC Files

Agency Analysis Received From  
Secretary of State (SOS)

Agency Analysis was Solicited but Not Received From  
New Mexico County Clerks Affiliate  
New Mexico Counties

## SUMMARY

### Synopsis of Senate Joint Resolution 13

Senate Joint Resolution 13 (SJR13) amends Article VII of the constitution of New Mexico to allow all registered qualified electors, regardless of party preference, affiliation, or lack thereof, to vote in a primary election.

The joint resolution provides the amendment be put before the voters at the next general election (November 2026) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

## 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 required to publish the samples once a week for four weeks preceding the election in newspapers in every

county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$35 thousand to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

Should this proposed constitutional amendment be approved by voters, SJR13 has the potential to impact general fund revenue. Laws 2024, Chapter 24, establishes a new \$15 million maximum distribution from the tax administration suspense fund to SOS's election fund, which would otherwise contribute to the general fund. SOS reports that the 2024 primary election cost approximately \$14 million. The 2028 primary election would be the first open primary if SJR13 is passed and approved by voters. Higher voter turnout under SJR13 would likely increase the need for additional BOD systems, as noted by SOS, which would add an estimated \$4–6 million in nonrecurring costs starting in FY28 but would by extension also increase the recurring costs for new system maintenance, potentially above the \$15 million cap for the election in FY28. Considering the 2024 primary election cost of \$14 million for a closed primary election, this analysis assumes the costs for additional BOD maintenance and other open primary election costs, like additional poll workers, would increase total election costs beyond the election fund's \$15 million cap. SJR13 would create additional recurring costs, however this exact fiscal impact is unknown.

## SIGNIFICANT ISSUES

SJR13 duplicates Senate Bill 16 (SB16), which would allow unaffiliated voters to vote in open primaries, but SJR13 makes this change to the state's constitution as opposed to SB16 making it in statute. SJR13 does not require voters to affiliate with a political party unlike SB16.

In the *California Democratic Party v. Jones*, 530 U.S. 567 (2000), the U.S. Supreme Court ruled that, while states play a role in structuring and monitoring the primary election process, the process by which political parties must select their nominees are not wholly public affairs that states may regulate freely, ultimately ruling that political parties have the constitutional right to determine their own nominees without interference from non-members as per the First Amendment of the U.S. Constitution's right of association.

According to the National Conference of State Legislatures (NCSL), 15 states have completely open primary elections, including Texas, Virginia, and Wisconsin. States with open primaries typically do not disclose the ballot an unaffiliated voter chose to vote on. Seven states are "open to unaffiliated voters" for primary elections, including Arizona and Colorado, meaning that these states allow unaffiliated voters to participate in any party primary they choose, but do not allow voters who are registered with one party to vote in another party's primary.

Changing New Mexico from one of 10 states with closed primary elections to an open system could increase voter participation. SOS notes that as of December 2024, more than 340,000 voters, 24.4 percent of registered voters in New Mexico, were not affiliated with one of the three major parties (Democratic, Republican, and Libertarian).

SOS states that in *Crum v. Duran*, 2017-NMSC-013, the New Mexico Supreme Court observed that state legislatures could not infringe on a voter's right to vote; however, legislatures may reasonably regulate elections and impose voter qualifications. The Supreme Court upheld the Legislature's authority to enact election-related laws. SOS states that *Crum* "does not foreclose a

subsequent legislature from eliminating, altering, or otherwise revising the requirement of major party affiliation designation to vote in a primary election, as long as such subsequent legislation is defensible as a reasonable exercise of ‘manner, place, and time’ authority.”

While *Crum* affirms the Legislature has the power to make open primaries, this ruling does not override First Amendment rights of political parties as ruled in *Jones*, in which minor parties could still challenge a fully open system should SJR13 pass and be approved by voters.

## **ADMINISTRATIVE IMPLICATIONS**

SOS states that a roster of all eligible voters, affiliated or not, would be required for each county, which could pose changes to current BOD systems; SOS does not anticipate this will cause an increase in costs.

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

Relates to Senate Bill 16.

EH/hj/SL2