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FISCAL IMPACT REPORT

SPONSOR Egolf ORIGINAL DATE _____
LAST UPDATED 01/24/12 HB HJR 13

SHORT TITLE Elected Insurance Superintendent, CA SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Secretary of State		\$104.0			Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HJR 11, HJR 14, HJR 16, HJR 17 & SJR 2

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
Public Regulation Commission (PRC)
Public School Insurance Authority (PSIA)
Retiree Health Care Authority (RHCA)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Joint Resolution 13 proposes an amendment to article 11, section 1 of the constitution of New Mexico to place the regulation of insurance companies and others engaged in risk assumption under an elected superintendent of insurance.

The Public Regulation Commission (PRC) shall have responsibility for regulating insurance companies and others engaged in risk assumption as provided by law until January 1, 2015. After this date the PRC shall no longer have regulatory authority over insurance companies and others engaged in risk assumption.

HJR 13 creates the Office of the Superintendent of Insurance. The superintendent shall be elected for a term of four years and shall be ineligible to hold office as superintendent after serving two consecutive terms until one full term has intervened. Terms shall begin on January 1 of the year following the general election of 2014 and every four years thereafter. The superintendent shall regulate insurance companies and others engaged in risk assumption in such

manner as provided by law. The legislature may provide, by law, for qualifications for the superintendent and continuing education requirements for the superintendent.

The superintendent or candidate may not accept anything of value from anyone associated with the business activities regulated by the superintendent.

The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

FISCAL IMPLICATIONS

The SOS reports that in accordance with Section 1-16-4 NMSA 1978, upon receipt of the certified proposed constitutional amendment or other question from the Secretary of State, the county clerk shall include it in the proclamation to be issued and shall publish the full text of each proposed Constitutional amendment or other question in accordance with the constitution of New Mexico.

Although the county clerk includes the proposed amendments in the clerk's proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-13 NMSA 1978, including printing samples of the text of each constitutional amendment in both Spanish and English in an amount equal to ten percent of the registered voters of the state. There are currently 1.7 million registered voters in the state. Voters whose election mail is returned as undeliverable will be sent the proper notice under federal law in 2012, and if they do not vote in the next two federal elections, may be purged in 2015. Under these timelines, the voter roll is expected to increase until the purge in 2015.

The SOS reports that in 2010, the publication cost was \$520,000 for 5 constitutional amendments, or approximately \$104,000 per amendment. Although the SOS is continually seeking ways to reduce publication costs, it believes the 2010 figure is a reasonable projection for 2012 costs, given the increasing number of voter registrations.

SIGNIFICANT ISSUES

HJR 13 does not address the issue of where the Office of the Superintendent of Insurance will reside. The legislature has several options. The legislature can choose to:

- Keep the Superintendent of Insurance where it currently is within the PRC for administrative functions, but have an elected or appointed superintendent independent from the PRC commissioners' oversight.
- Move the Superintendent of Insurance to another agency such as the Regulation and Licensing Department where it could be a division or placed under the Financial Institutions Division.
- The Office of the Superintendent of Insurance could also be a standalone agency with an appointed or elected superintendent.

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The PRC notes that insurance differs uniquely from the other divisions of the PRC in that the Insurance Code gives the Superintendent primary authority for regulating insurance matters. From a managerial perspective, however, the Superintendent functions in the same manner as the other six Division Directors, albeit with a much larger staff and budget. This distinction has, in the past, created some confusion and conflict in operations and oversight. The proposed legislation appears to be an attempt to simplify that situation by allowing the Insurance Department to stand alone, rather than being a part of some other agency.

The PRC also provided the following:

- The PRC Division of Insurance consists of 83 full-time employees. This amounts to \$5,362,800 in salary and benefits.
- The PRC currently utilizes \$1,041,000 of insurance funds to support administrative costs.
- Currently the PRC and the Division of Insurance share computer servers. There will be a projected cost of \$120,000 for migrating to a stand-alone server.

Some restructuring of both the Insurance Department and the PRC will need to follow. Under the current arrangement, many administrative and operational functions are shared between Insurance and the rest of the PRC. This sharing involves the budget of the agency and will need to be addressed if the Insurance Department is split off. Certain efficiencies of administrative services and PRC operations will be affected.

ADMINISTRATIVE IMPLICATIONS

If the Office of Insurance becomes a stand-alone agency, the PRC will request one additional IT Administrator position due to the fact that the current administrator position is funded out of Insurance funds.

A decision will need to be made regarding whether to continue to physically house the Insurance Division and its 83 employees in its current location in the PERA Building in Santa Fe or move it to another location.

RELATIONSHIP

HJR 13 relates to:

- HJR 11, Elected Insurance Superintendent, CA
- HJR 14, PRC Appointment & Retention, CA
- HJR 16, PRC Corporations from PRC to Sec. of State, CA
- HJR 17, PRC Appointed Insurance Superintendent, CA
- SJR 2, Public Regulation Commission, CA

OTHER SUBSTANTIVE ISSUES

The PSIA noted the following:

- About 35 states have appointments rather than elections for insurance superintendents.
- An argument can be made that an elected superintendent has to raise money to pay for a

campaign, which can often make the candidate seem beholden to supporters.

The PRC notes that there are a dozen states that elect their insurance commissioner. There are also a handful of states where the insurance commissioner is appointed by and functions under a larger regulatory body. In the remaining states most insurance commissioners are appointed by the Governor.

The Federal Insurance Office, created by the Dodd-Frank Act, is currently studying the relative merits of electing versus appointing state insurance commissioners.

ALTERNATIVES

The PRC suggest that the title Superintendent of Insurance could be replaced by the title Insurance Commissioner which is used in most of the other states.

DW/lj