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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/12

SPONSOR Nuñez LAST UPDATED _____ HJR 19

SHORT TITLE Unaffiliated Voters in Primary Election, CA SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$104.0*	\$0.0	\$104.0*	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications for financial data provided by SOS.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Joint Resolution 19, if approved by the voters, would require if public money is used to conduct a primary election, the state must conduct that election. Additionally, it would allow registered qualified electors who are unaffiliated with a political party to vote for candidates for any one political party participating in any state-sponsored primary election.

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

The AGO calls attention to potential constitutional issues concerning political parties' rights of association and a voter's right to associate with other political parties that arise in the context of primary elections. It categorizes the type of primary outlined in HJR 19 as "open" (in contrast with the "closed" primary currently authorized in New Mexico law), and advises:

Partisan affiliation has been analyzed under several recent court decisions which have suggested that mandatory open primaries may or may not meet constitutional muster. In *California Democratic Party v. Jones*, 530 U.S. 567 (2000), the Court determined that a blanket primary system (in which the names of all the candidates for all the parties are on one ballot, voters pick one candidate for each office without regard to party lines, and the candidates with the highest votes by party for each office advance to the general election as the respective party's candidate) was unconstitutional, where the nominees were designated as party nominees (and thus the non-party voters might determine the party's candidate).

However, because an open primary is qualitatively different from a blanket primary, it is unclear whether such a system would also be found to be unconstitutional. The question becomes whether the act of choosing a party's primary is itself an act of affiliation substantial enough to favor constitutionality. The Supreme Court's opinions in *Clingman v. Beaver*, 544 U.S. 581 (2005) and subsequent cases provide some guidance but not a bright line. *Clingman* followed the Court's earlier decision in *Tashjian v. Republican Party*, 479 U.S. 208 (1986), and illustrates that even the Supreme Court is split between finding party affiliation the defining factor of association between parties and voters, and a more functional view that considers voting with a party to be of the same associational value regardless of the voter's formal affiliation.

Both the AOC and the SOS point out that if the resolution is approved by the voters, the state's current election laws likely would need to be amended to implement the open primary proposed by the resolution. Absent such change, the SOS fears the process may not be fair and balanced:

Unless the statutes were also changed, it appears this resolution could have the effect of allowing minor party and independent voters to have a significant influence on which major party candidates appear on the general election ballot. If open primaries were allowed without changes to the existing statutes, it would

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appear that major party candidate primary races could be influenced by non-party members, but independent and minor party candidates would still be able to get on the general election ballot (by following existing nominating petition procedures).

MD/svb