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FISCAL IMPACT REPORT

ORIGINAL DATE 01/20/12

SPONSOR Rue LAST UPDATED _____ HB _____

SHORT TITLE Judge Misconduct Hearing Confidentiality, CA SJR 3

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$0.0	\$104.0*		\$104.0	Nonrecurring	General Fund
	\$0.0	\$25.0*	\$10.0*	\$35.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Impact for financial data provided by SOS and JSC.

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

Senate Joint Resolution 3 is a proposed amendment to the New Mexico Constitution (Art. 6, Sec. 32) which, if approved by the voters, would eliminate the confidentiality requirement applicable to hearings for judicial misconduct conducted by the Judicial Standards Commission or a master appointed by the Commission. Those hearings, and all papers related to those hearings, would be public.

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.

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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 these one-time 2012 costs, given the increasing number of voter registrations. That number is set forth in the table above as a nonrecurring expenditure.

In addition, the JSC anticipates a fiscal impact in opening its hearings to the public, should this amendment be approved by the voters. The JSC advises there is little to no seating or space available for the public or any other observers in the Commission's current hearing room. If these hearings become public, the JSC would require either (1) electronic and computer equipment to provide live webcasting of these hearings; or 2) a new hearing room with appropriate furniture, equipment, and seating for the Commissioners, attorneys, judges, witnesses, court reporters, and members of the public and the media. The JSC believes it would be more fiscally appropriate to provide public access through webcasting of its hearings. The numbers set forth in the table above reflect the JSC's estimated costs for the initial purchase of necessary equipment, staff training, and contractor fees for the first year (FY 13), as well as its estimates of recurring costs in future years (like FY 14) to cover equipment and software updates, maintenance and contractor's fees. Live webcasting may also avoid the cost of providing security to commissioners and others involved in a proceeding that might arise if members of the public and the media are physically present.

SIGNIFICANT ISSUES

The JSC advises that if this proposed amendment is approved, New Mexico will join the majority of states in limiting the confidentiality of judicial misconduct (and disability) proceedings. Currently, New Mexico is one of only eight jurisdictions that maintains confidentiality following the issuance of formal charges. The JSC also notes that the American Bar Association (ABA) Model Rules for Judicial Disciplinary Enforcement encourages public trials.

The JSC emphasizes, however, that complaints to the JSC and its investigators must remain confidential. It notes that all states maintain confidentiality during investigations for any number of reasons, including facilitating the investigation, protecting complainants and witnesses, allowing the JSC to encourage retirement and treatment when appropriate, and protecting judges' reputations from unfounded allegations.

PERFORMANCE IMPLICATIONS

Although the JSC anticipates significant increases in the workload of existing staff to handle public information requests and other related matters, it notes that this additional workload could

be handled by and argues that that work provides additional support for its proposed FY 13 budget request for an additional paralegal position.

TECHNICAL ISSUES

The JSC suggests alternative language to clarify the event that triggers the termination of confidentiality. Rather than referring to the Commission ordering a hearing, which could occur months following the issuance of the notice of formal charges against a judge, the JSC recommends the triggering event be the issuance of that notice (which follows a vote of the Commission directing the issuance of such a notice), as it is in California, where the charges and all subsequently filed documents are available for public inspection, and the hearing on the merits (trial) on those charges are also open to the public.

MD/svb