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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/13
LAST UPDATED 02/19/13 **HB** _____

SPONSOR O'Neill

SHORT TITLE Independent Redistricting Commission, CA **SJR** 4

ANALYST Cerny

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14*		
	Indeterminate But Significant	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$ 46.0	\$0.0	\$ 46.0**		

(Parenthesis () Indicate Expenditure Decreases)

*Depending on when the amendment is presented to voters, the appropriation could occur in a later fiscal year.

**This represents the cost of publication of the constitutional amendment only (by the SOS)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Secretary of State (SOS)

Department of Finance and Administration (DFA)

Other Responses

League of Women Voters of New Mexico (LWVNM)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 4 (SJR 4) proposes a constitutional amendment to Article 20 of the State Constitution to create an independent, bi-partisan five member Commission with the authority to redistrict the congressional and legislative districts.

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Per SJR 4, the appellate judge nominating commission will create a pool of 20 candidates. The legislative leadership would then appoint 4 members from this pool and these 4 members would select a fifth member as chair.

If enacted, this constitutional amendment will be submitted to voters for their approval or rejection as the next general election or at any special election prior to that date that may be called for that purpose.

A detailed analysis of the bill may be found in attachment 1.

FISCAL IMPLICATIONS

Based on documents provided by the Legislative Council Service, redistricting costs for the 2000 Election Cycle totaled \$5.49 million and for the 2010 Election Cycle \$7.98 million. These costs included pre-census preparation, interim work, a special session, and litigation fees and costs.

Of those amounts, litigation fees and costs totaled \$3.70 million in the 2000 cycle and \$5.76 million in from October 2011 through July 2012, demonstrating a significant increase of 55.7 percent.

Based on experience in other states, results are mixed with regard to challenges arising from redistricting commissions and their work. Costs of litigation may rise, remain the same or decline with the creation of a redistricting commission.

The Secretary of State (SOS) states that in the 2012 general election, the SOS expended approximately \$46,000 for publication, voter guides and Native American translations and broadcast, for each constitutional amendment appearing on the ballot.

The Department of Finance and Administration (DFA) notes that funding will be needed to pay commissioner per diem and mileage as well as to hire staff, consultants and legal counsel. Funding will also be needed to fulfill the commission's procurement and contracting authority.

The League of Women Voters of New Mexico (LWVNM) response argues that the fiscal implications of SJR 4 will be substantial savings to the State, as litigation costs drop. Please see attachment 2 for their submittal.

SIGNIFICANT ISSUES

According to the National Conference of State Legislatures (NCSL), twenty-one states have a redistricting commission that either redistricts the legislative districts, advises the legislature on drawing up the boundaries or acts as a backup if the legislature fails to draw up the maps for legislative districts (refer to <http://www.ncsl.org/legislatures-elections/redist/2009-redistricting-commissions-table.aspx>).

The AGO states, “The purpose behind these various state alternatives—and the purpose of this bill—is to take partisan politics out of the re-districting process. An additional purpose is to eliminate the practice of incumbents drawing district boundaries that preserve their re-election.

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However, the NCSL states “There are pros and cons to removing the process from the traditional legislative process. And the track record of success by commissions is inconsistent in terms of having plans overturned by courts. Reformers often mistakenly assume that commissions will be less partisan than legislatures when conducting redistricting but that depends largely on the design of the board or commission.”

The last several decades have seen the courts ultimately deciding the redistricting boundaries, so this bill bypasses the legislature and immediately proceeds to judicially drawn maps.

ADMINISTRATIVE IMPLICATIONS

The legislation does not anticipate how the independent commission will operate administratively, except to indicate in Section 2, Subsections N and O that the Legislature “shall provide adequate resources for the operation of the redistricting commission in performing its duties” and that the commission “shall have procurement and contracting authority and may hire staff, consultants and legal counsel as necessary to carry out its duties.”

TECHNICAL ISSUES

The AGO notes: The bill does not define the ‘appellate judges nominating commission’ but presumably this is the commission established by Article VI, § 35, of the N.M. Constitution.

OTHER SUBSTANTIVE ISSUES

The NCSL also reports that there have been 185 court cases filed nationwide challenging redrawn district boundaries since 2010. 9 states and parts of 7 are required to get federal approval for redrawn maps.

The NCSL also reports that only six states give first and final authority for *congressional* line drawing with a commission. Those six are Arizona, Hawaii, Idaho, Montana, New Jersey and Washington. Indiana employs a "fallback" commission if the legislature is unsuccessful in passing a congressional plan.

CAC/bm:svb

Attachment 1: Detailed analysis of SJR 04

Section 1 proposes to amend Article 4, Section 3 of the constitution of New Mexico by removing the term "his" and "he" and replacing it with "the senator's or representative's". The bill also eliminates subsection D which allows the legislature to reapportion its membership following the publication of the official report of each federal decennial census.

Section 2 proposes to amend Article 20 of the constitution of New Mexico by adding a new section/

Subsection A states that by August 1st of the year of each federal decennial census, a redistricting commission shall be established to prepare and provide for the redistricting of congressional districts, state legislative districts and the districts of other state districted offices.

Subsection B states that the redistricting commission shall consist of five commissioners, no more than two of whom shall be members of the same political party. Each commissioner shall be a registered qualified elector of New Mexico who has not changed political party registration within five years immediately preceding appointment. The bill states that a commissioner shall not be a state or local elected officer or employee of either, and shall not have been within five years immediately preceding appointment, a candidate for or served as a federal, state or local public officer, a registered paid lobbyist or an officer of a candidate's campaign committee or served as an officer of or paid consultant to a political party.

Subsection C states that the appellate judges nominating commission shall solicit, accept and evaluate applications from registered qualified electors who are committed to conducting the redistricting process in an honest, independent and impartial fashion and are otherwise qualified to serve as commissioner. The appellate judges nominating commission shall select at least twenty nominees from the applicants, no more than eight of whom shall be members of the same political party, and submit the names in the nominee pool to the Secretary of State (SOS) by July 1st of the year of the federal decennial census for consideration by the legislative leadership for appointment.

Subsection D states that no later than July 21st of the year of each federal decennial census, appointments to the redistricting commission shall be made from the nominee pool as follows: (1) the leader of the party in the majority in the senate shall appoint one commissioner; (2) the leader of the party in the majority in the house of representatives shall appoint one commissioner; and (3) the house and senate floor leaders of the party in the minority shall appoint one commissioner each; provided that, if there is more than one minority party represented in the house or senate, the leaders of the minority party with the largest number of representatives or senators in their respective chambers shall make the appointments.

Subsection E states that the name of each appointee shall be submitted to the SOS. If the appointing authority for a commissioner fails to make an appointment by the July 21st deadline, the appointed members of the commission shall appoint a member from the remaining nominees in the pool.

Subsection F states that by August 15th of the year of the federal decennial census, the four appointed commissioners shall appoint the fifth member of the redistricting commission from the remaining nominees in the pool, who shall serve as chair of the commission.

Subsection G states that a vacancy on the redistricting commission shall be filled by appointment by the original appointing authority for that position.

Subsection H states that a commissioner may be removed by the Governor, with the concurrence of two-thirds of the elected members of the Senate, for substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office. A commissioner shall be given written notice and provided with an opportunity for a hearing before removal.

Subsection I states that the redistricting commission shall develop redistricting plans for congressional and state legislative districts following each federal decennial census and for other districted state offices. Districts shall comply with federal constitutional and statutory requirements and district boundaries shall be contiguous and relatively compact and to the extent practicable, respect communities of interest and follow visible geographic features and municipal, county and other established political boundaries. Districts shall not divide precincts.

Subsection J states that party registration and political performance data shall not be considered in the drawing or evaluation of districts. Racial and ethnic population and voting performance data may be considered to evaluate compliance with federal constitutional and statutory requirements.

Subsection K states that after release of the necessary federal decennial census data to the state, the redistricting commission shall develop proposed plans for the districts and hold public hearings throughout the state on the proposed plans. The commission shall receive public comment on the proposed plans for at least sixty days preceding the development of final plans for the districts. The commission shall make any adjustments to the proposed plans that it deems necessary to meet the redistricting criteria and establish the final district boundaries. The commission shall file with the SOS plans for senate, house of representatives and congressional districts, along with plans for other districted state offices, by September 1 of the year following each federal decennial census.

Subsection L states that approval of a plan shall determine the districts for use in the succeeding primary and general elections for the respective body.

Subsection M states that a quorum of at least three commissioners must be present to conduct business. Approval of any action shall be by majority vote of the entire commission.

Subsection N states that the legislature shall provide adequate resources for the operation of the redistricting commission in performing its duties.

Subsection O states that the redistricting commission shall have procurement and contracting authority and may hire staff, consultants and legal counsel as necessary to carry out its duties. The commission shall have standing in legal actions challenging its redistricting plans or process, or the adequacy of resources provided for the operation of the commission. The commission shall have sole authority to determine whether the attorney general or counsel hired or selected by the commission shall represent the state in the legal defense of a redistricting plan.

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Subsection P states that commissioners are eligible for per diem and mileage at the internal revenue service maximum federal per diem rate for the city of Santa Fe and the internal revenue service standard mileage rate for travel on redistricting commission business.

Subsection Q states that commissioners shall serve until their successors are appointed and qualified. The redistricting commission shall not meet or incur expenses after the redistricting process is completed except when litigation or any governmental approval of the plan is pending; to revise districts if required by a court decision or to consult with executive and legislative agencies in preparation for the next redistricting cycle.

Subsection R states that the provisions of this section are self executing.

Section 3 states that 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.

Attachment 2: Response from the League of Women Voters New Mexico

Received via email, 2-19-13

To the Legislative Finance Committee, Attention: Charlene Cerny

I'm writing on behalf of the League of Women Voters of New Mexico to request an update the FIR for SJR 4 to reflect the rationale for developing an Independent Redistricting Commission and the potential cost savings to the state if one is approved through a Constitutional Amendment. In addition to changing the way district boundaries are configured to maximize the voices of voters and depoliticize the process*, the attached document corrects the assumption in the current FIR for SJR 4 that it will cost state dollars to implement redistricting reform. Please include some of the following information within the FIR as well as the attached letter as a supplement. SJR 4 is tentatively scheduled to be heard in Senate Rules this Friday, February 22, at 8:30 am.

Background

Though the 2020 Census seems far off, LWVNM has been working to improve redistricting while the memory of how poorly New Mexico's process worked this past time is still fresh. There is widespread consensus among legislators and the public that we need to avoid the inordinate costs in time, money, and effort of the current process.

(Brief history: In the contentious 2011 Special Session, NM's legislative redistricting maps were passed along straight party lines in an effort to protect incumbents. The Governor vetoed those plans, which led to a number of lawsuits, costs of which are borne 100% by the state because of our current process which has the state paying the costs of plaintiffs' costs and court costs as well as the Legislature's. Eventually, the Court appointed a special master to finalize the maps. The Senate map was finalized in January 2012, but the final House map wasn't approved until the end of February 2012, leaving many candidates up in the air until only two months before early voting began for the primary election. The total cost of the New Mexico redistricting was close to \$8 million, when the budget was \$3 million.

Recommendation

The FIR currently states simply that "Of those amounts, litigation fees and costs totaled \$3.70 million in the 2000 cycle and \$5.76 million in from October 2011 through July 2012, demonstrating a significant increase of 55.7%."

The FIR needs to show potential savings as well as the inexplicably high costs estimated by the Secretary of State for having a Constitutional amendment on the ballot.

In addition to saving millions in legislative expenses and litigation costs as I outlined in the attached letter, think of the savings in human capital and the end result. In states where independent commissions exist, voters have a better chance of electing their own governmental representatives not just incumbents and the candidates promoted by the major political parties.

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An independent redistricting commission would be committed to drawing fair districts that reflect the best interests of the people, especially through recognition of communities of interest and common sense geographical boundaries. Experts say that states with redistricting commissions benefit by having more moderate legislators who work together more productively because they must represent diverse communities making elections less partisan.

Thank you very much.

Meredith R. Machen, Vice President
League of Women Voters of New Mexico
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505-988-4523/505-577-6337 c

Supplement to the cover letter:



League of Women Voters of New Mexico

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505-884-8441 leaders@lwvnm.org www.lwvnm.org

Supplement to FIR for SJR 4

February 18, 2013

The League of Women Voters has been working on redistricting reform across the country for many years. We strongly support SJR 4, proposing to amend the Constitution of New Mexico to provide for the creation of an independent redistricting commission to develop and propose redistricting plans for state and Congressional offices. **SJR 4 is of great importance to voters and can potentially save the state millions of dollars in legislative expenses and unnecessary litigation and court costs.**

LWVNM believes that the state must improve the redistricting process to avoid the extensive problems that occurred in 2011 and 2001. If passed as an amendment, an independent redistricting commission as described in SJR 4 would act with integrity and fairness to assure that interests of voters are protected. The commission would be empowered to resolve challenges outside of the courts. An independent redistricting commission would relieve legislators and the Governor from wasting valuable hours better spent on other matters. It would also alleviate the extreme rancor and unproductive partisanship we have witnessed in the past. .

An independent commission will result in a better system than we have now, plus costs will be significantly reduced. Voters do not want to spend state dollars on extraordinarily expensive, unnecessary legal fees on redistricting lawsuits, especially when our educational, health care, and social services needs continue to escalate. The Supreme Court will have the final say if lawsuits are filed as they have been these last two cycles, but there will be fewer challenges when challengers have to pay for their own lawsuits rather than suing at the expense of the state for both offense and defense. For more information on the \$5.714 million New Mexico spent in 2011 settling lawsuits when the court drew the final lines, please see <http://www.capitolreportnewmexico.com/2012/09/the-7-9-million-redistricting-bill-the-lawyers-did-very-well-nm-taxpayers-not-so-good/>

Attached below is Raul Burciaga's memo of September 25, 2012 giving the Legislative Council Services' breakdown of costs for the 2010 Redistricting Cycle. His analysis indicates the tremendous costs the state has had to pay in plaintiff and court expenses because of our current broken process. Please also consider that if the Legislature is not involved in the redistricting process about \$1 million will be saved by not having the costs related to holding a Special Session for redistricting. The cost of having an independent redistricting commission should reduce costs in 2021 from nearly the \$8 million spent in 2010 to the equivalent of \$3 million in today's dollars when adjusted for inflation.

Thank you for your attention to this important matter.

Meredith Machen, Vice President, Leadership Team
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Richard Mason, Action Chair, Leadership Team
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Legislative Council Service**Information Memorandum**

DATE: September 25, 2012

TO: Members of the New Mexico Legislative Council

FROM: Raúl E. Burciaga

SUBJECT: REDISTRICTING COSTS — 2010 CYCLE

The New Mexico Legislative Council at its July 31 meeting requested a report on various costs related to the 2010 redistricting process, a breakdown of those costs by the various stages of the process and a comparison of those costs to the 2000 cycle costs. The following is provided in response to that request.

PRE-CENSUS PREPARATION	2010 Cycle Feb. 2008-June 2010	2000 Cycle
Research and Polling, Inc.	\$ 390,882.31	\$ 307,098.17
SUBTOTAL	\$ 390,882.31	\$ 307,098.17

INTERIM WORK	2010 Cycle Nov. 2010-Aug. 2011	2000 Cycle
Research and Polling, Inc.	\$ 584,141.50	\$ 427,491.96
Legislative Legal	\$ 76,449.90	\$ 83,409.96
Interim Redistricting Committee	\$ 84,708.11	\$ 108,089.00
SUBTOTAL	\$ 745,299.51	\$ 618,990.92

SPECIAL SESSION2010 Cycle
Sept. 2011

2000 Cycle

Legislative Council Service (LCS)	\$ 80,010.00	\$ 119,324.00
House	\$ 400,501.00	\$ 300,286.00
Senate	\$ 278,137.00	\$ 235,414.00
Research and Polling, Inc.	\$ 171,454.03	\$ 105,812.50
Legislative Legal	\$ 117,874.50	\$ 106,974.97
Hardware and Software (LCS)	\$ 31,249.95	
SUBTOTAL	\$1,079,226.48	\$ 867,811.47

LITIGATION2010 Cycle
Oct. 2011-July 2012

2000 Cycle

Egolf Plaintiffs	\$1,005,917.19	
Executive Defendants	\$1,022,724.93	\$ 917,442.78
James Plaintiffs	\$ 533,752.48	
Legislative Defendants	\$ 895,606.72	\$ 730,321.41
LULAC Plaintiffs	\$ 20,222.50	
Maestas Plaintiffs	\$ 881,550.16	
Multi-Tribal Plaintiffs	\$ 809,802.63	
Navajo Nation Plaintiffs	\$ 312,836.61	
Sena Plaintiffs	\$ 175,477.80	
Plaintiffs' Fees and Costs — 2000 cycle		\$2,055,217.36
Judicial Branch Costs — 2010 cycle	\$ 56,093.70	
SUBTOTAL	\$5,713,984.72	\$3,702,981.55

GRAND TOTAL	\$7,929,393.02	\$5,496,882.11
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Sources: Legislative Council Service; Judgment and Final Order on Attorney's Fees, July 31, 2012, *Egolf et al. v. Duran et al.*; General Services Department report, August 1, 2012; Administrative Office of the Courts, LCS Information Memorandum .147870.