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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13

SPONSOR Morales LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Transfer Administration of Elections, CA SJR 10

ANALYST Cerny

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY13 | FY14          | FY15          | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|---------------|---------------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | Indeterminate | Indeterminate | Indeterminate        | Recurring                    | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 190

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
Secretary of State (SOS)

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 10 (SJR 10) proposes to amend Article 5 of the Constitution of New Mexico to transfer the administration of state elections to a nonpartisan Office of Elections whose operation is overseen, and whose director is appointed, by an independent election commission ("the Commission").

**Section 1** of SJR 10 creates a new, non-partisan independent "Office of Elections" (OE) in the executive branch as of July 1, 2015. The OE will be responsible for conducting and overseeing state elections and performing duties that pertain to the administration of elections. The director of the office of elections shall be the Chief Election Officer of the State and appointed by the Commission. Section 21 states that the duties and qualifications of the director shall be as provided by law.

The EC would be created as an independent elections oversight commission, consisting of the following members, no more than three of whom may be members of the same political party:

## **Senate Joint Resolution 10 – Page 2**

(1) one from the county clerk offices of the five most populous counties, appointed by majority vote of the county clerks; (2) one from the county clerk offices of the remaining counties, appointed by majority vote of the county clerks; and (3) five public members, with expertise in the area of elections, appointed by the governor from a list of nominees submitted to the governor by the majority and minority leaders of the Senate and the House of Representatives.

Members of the Commission will be appointed for staggered terms of six years, beginning January 1 of the year of their appointment and SJR 10 details how terms will be determined. Vacancies on the Commission will be filled by appointment by whichever individual or group was the original appointing authority for that member's unexpired term. A member may be removed only for incompetence, neglect of duty or malfeasance in office. The State Supreme Court would have exclusive jurisdiction over proceedings to remove a Commission member and its decision is final.

The Commission's duties will be to appoint the director of elections; formulate policies for the operation and conduct of the OE; generally supervise the activities of the OE; approve the annual budget of the office of elections to be submitted to the legislature; and prepare an annual report for the governor and the Legislature on the state of election law and the conduct of elections in the state.

Members of the commission will be entitled to receive per diem and mileage at the Internal Revenue Service per diem rate for the City of Santa Fe and the standard mileage rate while engaged in the performance of their official duties for the Commission.

**SECTION 2** proposes to amend Article 4, Section 1 of the Constitution of New Mexico such that petitions for citizen referenda would now be filed with the OE instead of the SOS and that the OE provides all oversight of elections that result.

**SECTION 3** proposes to amend Article 5, Section 2 of the Constitution of New Mexico which governs the canvass of elections and tie votes such that the Chief of Election Officer of the State will serve on the State Canvassing Board instead of the SOS.

**SECTION 4** proposes to amend Article 19, Section 1 of the Constitution of New Mexico which governs the proposing and ratifying of amendments to the Constitution, such that the OE would be in charge of publicizing such amendments instead of the SOS.

**SECTION 5** stipulates that the constitutional amendment proposed by SJR 10 will be submitted to the voters 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**

SJR 10 states the OE is created as a non-partisan independent agency in the executive branch. Since SJR 10 does not stipulate the details of this administrative relationship the OE, therefore it is not possible to determine that what the operational costs of the OE would be.

The SOS would need to oversee publication of the constitutional amendment related to SJR 10. The SOS states that "In the 2012 General Election, the cost of each constitutional amendment was approximately \$46,000. That included publishing the amendments in newspapers statewide,

publication of the voter guide, and translation and recording of the proposed amendments in Native American languages for radio broadcast.”

## **SIGNIFICANT ISSUES**

To successfully amend the constitution, a majority of legislators in both the house and the senate must vote in favor of the amendment. The SOS must publish the amendment in ways specified by Article 19, Section 1, and then a majority of voters must vote in favor of the amendment in the next general election.

The state constitution delegates certain duties to statewide elected officials, including the Attorney General, Commissioner of Public Lands, State Auditor and the Secretary of State (SOS), who are directly accountable to all the voters of the state. This proposed amendment anticipates a commission which is not directly accountable to the voters. Commission members would serve for six years and there are no term limits. Accountability is difficult to ascertain. The new Chief Election Officer of the state would not answer to the voters and would be accountable only to the Commission, itself outside the purview of the voting public.

The EC is created as a “nonpartisan” office, yet SJR 10 stipulates that the in the membership of the Committee no more than 3 of the 7 individuals serving “may be members of the same political party.” The governor appoints 5 of the members from a list of nominees submitted by the majority and minority leaders of the Senate and House of Representatives.

Further, although this bill states that it is creating a "non-partisan independent office" for elections, it creates a board that is appointed by officials who are all elected in partisan elections.

Since the members serve for terms of six years, their terms may extend beyond the terms of the Governor or county clerks who appoint them.

This joint resolution leaves significant matters to be decided in subsequent legislation. The duties of the Office of Elections would have to be delineated in statute, as would the duties and qualifications of the elections director. Since the board members would be required to be appointed no later than March 1, 2015, the appointments would be required to be made before the completion of the legislative session at which the enabling legislation would be considered.

## **PERFORMANCE IMPLICATIONS**

Current IT staff and equipment used for the bureau of elections are also used for other functions within the SOS office, including support for business operations. Additional IT staff and equipment would be required for the newly created election bureau.

## **ADMINISTRATIVE IMPLICATIONS**

SJR 10 states in section 1A that the OE “is created as a non-partisan independent agency in the executive branch.” It is unclear in SJR 10 what relationship the OE will hold to the executive branch under this scenario. The Attorney General’s Office (AGO) and the State Auditor’s office have autonomy from other agencies of state government, but each is headed by an elected official.

## **TECHNICAL ISSUES**

SJR 10 states that the director of the OE shall be the “Chief Election Officer” of the state, appointed by the EC and that the duties and qualifications of the director shall be “as provided by law.” Currently, the Election Code in 1-2-1(a) stipulates that the SOS is the Chief Election Officer of the state and there are no cited qualifications for that job.

## **OTHER SUBSTANTIVE ISSUES**

According to Doug Lewis, the executive director of The Election Center, a non-profit that trains local election officials, nine states have independent election commissions: Delaware, Hawaii, Illinois, Maryland, New York, North Carolina, South Carolina, Virginia, and Wisconsin. Arkansas, Indiana and Kentucky have commissions that have some kind of reporting relationship with the SOS.

According to the National Conference of State Legislatures, some of these states have bills under consideration in 2013 that would change their existing election commissions. They are:

Hawaii: S921 and HI S1333--both would dismantle the Existing Elections commission

South Dakota: S82 would make the position of the SOS a non-partisan one

Virginia: S122 would enlarge the state Board of Elections

South Carolina: H3197 would dismantle the existing Elections Commission and put those functions under the SOS

Wisconsin’s Election Board consists of former judges chosen by the governor from a list selected by current appeals court judges who must then be confirmed by the State Senate. However, in Wisconsin, judges cannot be affiliated with a political party.

## **AMENDMENTS**

The proposal directs the exact extent to which a partisan makeup of the commission may exist. The SOS analysis states that “with the language of the resolution as it is, the title may be misleading for the voters.” It would be more accurate to change the title, deleting “nonpartisan” and inserting either “bipartisan” or multi-partisan” before “Office of Elections,” (p. 1, line 1) and also where it appears on p. 1, line 20.

The term “expertise” should be defined in terms of the eligibility of nominees to be provided by the majority and minority leaders (p. 2, line 15).

## **ALTERNATIVES**

An article published by the Center for Democracy and Election Management at American University examined non-partisan election administration. It suggests an answer to often stalemated bi-partisan election committees lies in the nomination process, stating that “Instead of nominating people from each party, the parties should nominate people who need to be acceptable to all parties. In other words, the parties can veto but not promote candidates, and the candidates should not be beholden to any party.” Model legislation is included. (Reference: <http://www1.american.edu/ia/cdem/pdfs/NonpartisanModelLegislation08-2009.pdf> ).

**QUESTIONS**

The number of nominees to be submitted by the majority and minority leaders is not addressed. Are they to submit only five, thus making the governor's appointment merely a pro forma exercise? Do they submit a greater number, such as 15, from which the governor chooses the most qualified? Are they limited in terms of party affiliation of the nominees?

CAC/svb