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FISCAL IMPACT REPORT

SPONSOR Cervantes & Egolf ORIGINAL DATE 02/07/14
LAST UPDATED _____ HB _____

SHORT TITLE Legislative Power to Compel Witnesses, CA SJR 21

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		>\$ 46.0		>\$ 46.0	Nonrecurring	Election Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

Senate Joint Resolution 21 proposes a constitutional amendment to clarify that the Legislature and its committees have subpoena powers and may exercise these powers pursuant to procedural rules. The memorial provides “the power to compel the attendance and testimony of a witness...or to command a person to produce documents, electronically stored information or tangible items in that person’s custody or control.”

FISCAL IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the NM constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In 2012, the cost for the 2012 General Election ballots was \$46 thousand per constitutional amendment. However, if the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

SIGNIFICANT ISSUES

While the Legislature and its standing committees do have subpoena power under statute, Section 2-1-10 NMSA 1978, SJR 21 establishes this as a constitutional power and extends it to

interim committees.

Currently, the Legislature or its committees may exercise this power “upon request of a standing committee of either house of the legislature and approval by a majority vote of the elected members of the house of which such committee is a part”. Not complying with such a request is subject to a fine of up to \$500 or up to six months in county jail, or both. By implication, the Legislature’s statutory subpoena power does not extend to interim committees other than the Legislative Finance Committee and even this is granted in a separate statute, Section 2-5-5 NMSA 1978. SJR 21 clearly provides that “any committee of either house or a joint committee of both houses” shall have subpoena power, extending the power to interim committees. Thus, statutory amendments are necessary if the proposed constitutional amendment is ratified by voters because the statute is narrower, and conflicts with, the language in SJR 21.

A 2007 Legislative Council Service report by the Legislative Structure and Process Task force (<http://www.nmlegis.gov/lcs/fileExists/interimreports/LSPS07.pdf>) recommended strengthening the legislature's ability to oversee the executive branch by providing the Legislative Council with subpoena power. The task force’s report included draft legislation to accomplish this.

In 1978, the Supreme Court of New Mexico ruled that an agency may exercise statutorily granted subpoena power, but must follow certain guidelines in doing so. The court ruled in *State ex rel. Governor's Organized Prevention Commission v. Jaramillo*, 1978-NMSC-022, 91 N.M. 516, 577 P.2d 414 (S. Ct. 1978), that if the body issues a subpoena that is accusatory in nature, then the body must comply with Fourth Amendment probable cause requirements. However, an investigatory body (in this case the Governor's Organized Crime Prevention Commission) does not need to show probable cause to issue a subpoena. Still, the investigatory body must follow the usual procedural due process safeguards as well as constitutional guarantees of freedom of speech and association and the privilege against self-incrimination. The court discussed these safeguards further and stated, based on federal case law, that “(a) the inquiry must be within the authority of the agency; (b) the demand must not be too infinite; and (c) the information must be reasonably relevant to the purpose of the investigation.” 1978-NMSC-022 ¶ 4.

While the Legislature is a branch of government rather than an agency, as a generally investigatory body these same constitutional restrictions apply to almost any legislative exercise of subpoena power. In the rare case that the Legislature acts as an accusatory body, i.e. an impeachment proceeding, the body must comply with Fourth Amendment probable cause requirements. These rules apply regardless of whether the power is established through statute or constitutional provision because the safeguards themselves are constitutionally based. That is, one constitutional provision, in this case legislative subpoena authority, cannot strip others, the safeguards, of their effect.

Finally, although SJR 21 states that the Legislature shall exercise the granted subpoena authority pursuant to procedural rules, such rules do not yet exist and must be drafted before exercising the power. Thus, the Legislature could not create a penalty because there is not an expressly stated penalty for not complying with a legislative subpoena in SJR 21 and the Legislature may not create such penalties by rule. It is possible that courts would then look to existing statutory penalties for not complying, specifically Section 2-5-5 NMSA 1978, which are a fine of up to \$500 or up to six months in county jail, or both.