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FISCAL IMPACT REPORT

ORIGINAL DATE 2/8/17
 SPONSOR HLELC LAST UPDATED 3/7/17 HJR 3/HLELCS
 SHORT TITLE Independent Redistricting Commission, CA SB _____
 ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			<\$100.0*	<\$100.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

***In FY20, the redistricting commission would incur additional costs for per diem and mileage and to hire staff, consultants and legal counsel.**

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

The House Local Government, Elections, Land Grants and Cultural Affairs Committee substitute for House Joint Resolution 3 (HJR3/HLELCS) proposes a constitutional amendment to Article 20 of the state Constitution that creates a five-member commission with the authority to redistrict the congressional, legislative, public regulation commission, and public education commission districts. Racial and ethnic population and voting performance data shall be considered if necessary to evaluate compliance with the federal constitutional and statutory requirements of redistricting.

HJR3/HLELCS would amend Article 4, Section 3 of the New Mexico Constitution by deleting Section 2(D) in its entirety. Section 2(D) authorized the Legislature to reapportion its membership by statute following the publication of the official report of each federal decennial census. There are also technical changes made to Article 4, Section 3.

House Joint Resolution 3/HLELCS – Page 2

HJR3/HLELCS proposes to amend Article 20 of the New Mexico Constitution to create a 5 member Redistricting Commission (“commission”). The commission would be established by August 1st of the year of each federal decennial census. The commission would have the authority to redistrict the congressional, legislative and statewide officer districts.

HJR3/HLELCS authorizes the Appellate Judges Nominating Commission to create a pool of at least 20 candidates who are reasonably representative of the various geographic regions of the state, from which legislative leadership appoints four commissioners. The four members would appoint a fifth member from the remaining nominees in the pool. The fifth member would serve as chair of the commission. No more than two of the five may be from the same party and may not be a public official, employee of a public official, a paid consultant to a political party, or a lobbyist. Each commissioner shall serve until the commissioner’s successor is appointed and qualified in July or August of the next year ending in zero following the commissioner’s appointment.

HJR3/HLELCS provides that the commission shall have standing in legal actions challenging its redistricting proposal.

HJR3/HLELCS requires the proposed amendment be submitted to voters for approval or rejection at the next general election or at any special election prior to that date.

FISCAL IMPLICATIONS

The Secretary of State’s Office (SOS) indicates the bill allows for the redistricting commission to earn per diem and mileage as well as to hire staff, consultants and legal counsel. Any costs incurred will be after the next decennial census taken in 2020.

The Office of the Attorney General could be expected to provide legal resources to the commission, which would result in additional staff and attorney resources.

The Administrative Office of the Courts (AOC) indicates under the provisions of the bill there would be a minimal administrative cost for statewide update, distribution, and documentation of constitutional changes. Any additional fiscal impact on the judiciary would be proportional to passage of this amendment and any resultant state court proceedings. Such proceedings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Section 1-16-13 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. LFC staff estimate each constitutional amendment may cost up to one hundred thousand dollars (\$100,000) in printing and advertising costs based on 2016 actual expenditures.

SIGNIFICANT ISSUES

The Secretary of State’s Office (SOS) indicates the bill requires that the commission submit plans for redistricting to the SOS. It would be helpful if the bill authorized the SOS to define the

House Joint Resolution 3/HLELCS – Page 3

uniform standard of how the maps and data are submitted in order to update and maintain the political jurisdictions and street files in the election management system.

The Office of the Attorney General (OAG) indicates Section 2 (H) (page 5) of HJR3/HLELCS proposes that a commissioner shall be provided with an opportunity for a hearing before removal. It is unclear what individual or body would conduct this hearing and the process that would be followed. If further clarification cannot be provided, perhaps a reference to “as provided by statute” or “as otherwise provided by statute or rule of the commission” (whether the commission has rule promulgation authority is not expressly provided).

As a public policy making body, the commission would be subject to requirements of the Open Meetings Act.

PERFORMANCE IMPLICATIONS

The Office of the Attorney General’ Open Government Division provides legal counsel to state boards and commissions and this commission could require legal assistance from the OAG, especially during its formative years. Any action brought against the redistricting plan may also require assistance from the OAG. HRJ3/HLELCS does not provide any appropriation or additional resources to the OAG, which may impact the agency’s other performance based budget targets.

TECHNICAL ISSUES

The Administrative Office of the Courts (AOC) notes Section 2(A) requires the establishment of the commission by August 1 of the year of each federal decennial census; however, Section 2(F) gives the four legislative leadership appointed members until August 15 to appoint the fifth member of the commission.

The Office of the Attorney General (OAG) states there is no provision in HJR3/HLELCS for deciding how the fifth member of the commission shall be selected if agreement by the four members cannot be reached. HJR3/HLELCS states that the commission shall consist of five commissioners, no more than two of whom shall be members of the same political party. Will the fifth member be required to be from a third party if the two major parties already have two members each?

The Administrative Office of the Courts (AOC) indicates HJR3/HLELCS does not define “Appellate Judges Nominating Commission.” Article 6, Section 35 of the Constitution of New Mexico creates the Appellate Judges Nominating Commission. The bill should define the commission or reference a citation to the constitutional provision.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts (AOC) reports the Legislative Council Service has noted that neither the Constitution of New Mexico nor state law mandates redistricting after every decennial census, although Article 4 of the Constitution of NM authorizes it. Historically, challenges to legislative redistricting plans have been filed in both state and federal court. (See “*A Guide to State and Congressional Redistricting in New Mexico*,” (2011), prepared by the NM Legislative Council Service

<http://www.nmlegis.gov/lcs/redcensus/docs/187014.pdf>)

According to the National Conference of State Legislatures, 23 states have a redistricting commission for state legislative districts that draws up the plan, advises the legislature on drawing up the plan, or acts as a backup if the legislature fails to draw up the plan for legislative districts, and 13 states have a redistricting commission for congressional districts. (See <http://www.ncsl.org/research/redistricting.aspx> for more information on redistricting.)

RAE/al/jle