

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/2020

SPONSOR Ely LAST UPDATED \_\_\_\_\_ HJR 3

SHORT TITLE Open Primaries For Unaffiliated Voters, CA SB \_\_\_\_\_

ANALYST Glenn

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

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$150.0			Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SM12

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

### SUMMARY

#### Synopsis of House Joint Resolution

House Joint Resolution 3 amends Article VII of the New Mexico Constitution by adding a new section requiring a political party that participates in a primary election to permit unaffiliated (independent) registered voters to vote in that party's primary election. An unaffiliated voter may vote in only one party's primary election. A political party may choose to follow another nomination process authorized by law that allows the party to limit participation to members of the party if the party pays all the costs of the nomination process.

HJR 3 provides that the proposed amendment shall be submitted to voters for approval or rejection at the next general election or a special election prior to that date.

### FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978, SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the

registered voters in the state. 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. It is estimated that the cost per constitutional amendment is between \$125 thousand and \$150 thousand, depending on the number and length of the constitutional amendments, number of registered voters, and whether additional ballot printing systems are needed.

If the amendment is approved by the state's voters, SOS anticipates additional costs for pre-printed ballots, enhancements to the current election management system, and a new billing structure to assess the cost of a primary held by a party that chooses to allow only party members to participate in its nominating process.

### **SIGNIFICANT ISSUES**

SOS notes that allowing unaffiliated voters to participate in the primary election which will likely increase voter participation in the primary election.

The proposed amendment does not appear to address whether voters who are affiliated with an unqualified political party will be permitted to participate in a primary election.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Related to SM 12, which requests SOS to study open primaries and make recommendations on instituting open primaries in New Mexico.

### **OTHER SUBSTANTIVE ISSUES**

NMAG and SOS observe that the constitutionality of open primaries is still an open question. Although at least 25 states have some form of an open primary, there have been mixed decisions as to whether these laws unconstitutionally interfere with political parties' First Amendment right to association. It is possible that a party wishing to hold a closed primary in New Mexico (and not wishing to comply with the requirements of or pay for administering a closed primary) would file a lawsuit challenging the constitutionality of the amendment proposed by HJR 3.

BG/sb/rl