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## FISCAL IMPACT REPORT

**SPONSOR** Trujillo, L./ Ivey-Soto      **ORIGINAL DATE** 2/04/2020  
**LAST UPDATED** 2/15/2020      **HJR** 8/aHJC

**SHORT TITLE** Terms of Non-Statewide Elected Officials, CA      **SB** \_\_\_\_\_

**ANALYST** Dick-Peddie

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

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0	\$125.0- \$150.0	\$0	\$125.0- \$150.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)  
 Administrative Office of the Courts (AOC)  
 New Mexico Attorney General (NMAG)

#### No Response Received

Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment for House Joint Resolution 8 strikes “a shortened” on page 2, line 11 and replaces it with “an”, and inserts “a shortened term shall not be counted as a term and shall be disregarded for the purposes of any limitation on the number of terms an officer may serve.”

#### Synopsis of Original Bill

House Joint Resolution 8 proposes a constitutional amendment to permit the adjustment of non-statewide elected officer terms and to standardize the date an officer begins to serve as a way to clarify Election Code changes enacted in the 2019 legislative session.

Any adjustment to terms of office shall require a legislative finding that the adjustment provides consistency in the timing of elections for that office, or balances the number of offices appearing on the ballot. Additionally, the term of any officer affected by such adjustment shall not be

shortened or extended by more than two years.

If approved by the Legislature, this proposed constitutional amendment will appear on the ballot of the next general or special election, to be approved or rejected by voters before enactment.

## **FISCAL IMPLICATIONS**

The HJC amendment does not affect the fiscal impact below.

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. The estimated cost per constitutional amendment is \$125 thousand - \$150 thousand, depending upon the number and length of the constitutional amendments, number of registered voters, and whether additional ballot printing systems are needed.

The Secretary of state submitted the following as context to HJR8:

On August 26, 2019, the New Mexico Supreme Court issued three orders declaring unconstitutional recently enacted provisions of the Election Code and the Nonpartisan Judicial Retention Act. The issue related to shifting certain non-statewide elected officials, primarily district attorneys, county offices, and judicial offices, to a different elections cycle and therefore extending those terms of office. The Supreme Court held that the alteration to these terms of offices was unconstitutional, and directed the Secretary of State to include on the 2020 primary and general elections ballots any county offices that would have been omitted by the implementation of these new provisions.

The court made clear that to alter the constitutionally established terms of office of elected officials, the Legislature must propose a constitutional amendment in which the voters would vote to adopt. HJR8 is the Legislature's attempt to properly extend the terms of these officers to align them on the same ballot on the same election year, which would help the SOS and voters by providing consistency and clarity of the ballot.

The Secretary of State also noted that HJR8 would change the date an individual appointed to a vacancy would begin their term of office to January 1st following the election, which is contrary to the Attorney General's current analysis of the law, which permits an officer to begin serving "when they are duly qualified to assume the position."

## **SIGNIFICANT ISSUES**

The Secretary of State's agency analysis expressed support for HJR8 as a means of clarification of Election Code changes passed in the 2019 legislative session. However, it is worth noting that the Administrative Office of the District Attorneys (AODA) did not submit agency analysis for HJR8. Without input the district attorneys, whose terms of office the bill primarily affects, it is difficult to determine whether or not these changes to non-statewide terms of office would be litigated again.

**TECHNICAL ISSUES**

The New Mexico Attorney General submitted the following technical concerns:

As now written, the first sentence in Section (1)(C) of HJR 8 would allow for the adjustment of “[t]he term of a state, county or district *officer*.” (Emphasis supplied.) It appears from both the heading of, and language in, Article 20, Section 3 of the New Mexico Constitution that the reference should be to the term of *office*.

State ex rel. Ward v. Romero, 1912-NMSC-011, 17 N.M. 88, an early New Mexico Supreme Court case, held that the words “district officer” in this constitutional provision designate the geographical limits within which the officer performed the duties of the office and not the nature and grade of the office, and that an officer appointed or elected for a particular locality, whose duties are of a public or general nature, in the discharge of which the whole state is interested, is a state officer in an enlarged sense. Id, ¶ 20, ¶¶ 23-29. The reference in the heading of HJR 8 to “NON-STATEWIDE ELECTED OFFICERS” may then conflict with that appellate court interpretation of the words “district officer” in Article 20, Section 3 of the New Mexico Constitution.

**AMENDMENTS**

NMAG suggested the following amendment to address concerns expressed under “Technical Issues:”

Line 3 at page 2 of HJR 8 be amended to read: “The term of office of a state, county or district officer,” and that the heading of the house joint resolution reflect the same, as previously noted above.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Elections cycles and terms of office for county officials, district attorneys, and other judicial officers will not be altered to conform to statewide elections.

ADP/al/sb