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FISCAL IMPACT REPORT

SPONSOR Tallman ORIGINAL DATE 01/24/22
LAST UPDATED _____ HB _____
SHORT TITLE Nonpartisan Open Primary Elections, CA SJR 1
ANALYST Rees

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SJR4, SJR5 & SJR6; HJR5

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SoS)

New Mexico Attorney General (NMAG)

No Response Received

Office of the Governor

New Mexico Municipal League (NMML)

New Mexico Counties (NMC)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 1 proposes to amend Article 5, Section 2 and Article 7, Section 5 of the New Mexico Constitution. The bill would change the current major party or “closed” primary election nomination process for congressional, statewide, and Legislative offices such that candidates from multiple parties or those with no party affiliation would appear on the same primary ballot and voters of all party affiliations would vote on the same ballot.

Additionally, an instant runoff or “rank choice voting” style would be used in the general election for voters to choose between the top four vote getters in a contest from the primary. If four or less candidates file to appear for a contest in the primary election, then a primary election would not be held for that contest and the candidates would be decided during the instant runoff during the general election. Proposed language would also allow for the Legislature to provide

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for additional runoff elections in all statewide elections which would include primary, general, regular local, and special congressional elections.

FISCAL IMPLICATIONS

According to the Secretary of State (SoS), under Section 1-16-4 NMSA 1978 and the New Mexico 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 10 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. The estimated cost per constitutional amendment is \$125 thousand-\$150 thousand depending upon the size and number of ballots and if additional ballot stations are needed.

The SoS also notes that the number of constitutional amendments that pass may also impact the page size of the ballot, or if the ballot size is caused to become greater than one page, front and back, which may increase the cost of producing the ballots for the general election. In addition to the cost of the ballot, there may be time added to the voting process, which would require additional ballot printing systems to ensure a smooth and efficient voting process within the bounds of national best practices.

SIGNIFICANT ISSUES

The SoS notes that the New Mexico Election Code is written to ensure that primary elections are conducted with a separate ballot for each of the major parties and closed to unaffiliated voters at the time of voting. Therefore, if this proposed constitutional amendment passes during the next general election, the New Mexico Election Code would need to be amended to conform to the nonpartisan, open primary ballot.

Furthermore, in the current primary election process, the candidates for governor and lieutenant governor are elected separately for each party and then joined as a “ticket” to appear together on the general election ballot. However, the proposed language requires candidates for governor and lieutenant governor to be “joint candidates” and listed “as a ticket” for the primary election. In the case of multiple candidates for these offices, it is unclear how the candidates would be paired up to become “joint candidates” for the primary election. Clarifying legislation would be required if this constitutional amendment were to pass.

The state of Alaska successfully defended a constitutional challenge to a similar law. Alaska became the first state to adopt top-four primaries for state executive, state legislative, and congressional offices. Under Ballot Measure 2, candidates run in a single primary election, regardless of a candidate's party affiliation. The four candidates that receive the most votes advance to the general election and then the candidates are subject to ranked choice voting at the general election. The Alaska Supreme Court upheld the election system stating that these election changes did not unconstitutionally burden the rights of political parties and voters. A full opinion will soon follow as the Court just ruled on Wednesday January 1, 2022. *Kohlhaas et. al. v. State of Alaska et. al.*, S-18210.

The National Conference of State Legislatures issued a report titled “State Primary Election Types” dated January 5, 2021.

PERFORMANCE IMPLICATIONS

According to the SoS, New Mexico’s current closed primary election allows only voters and candidates affiliated with a major political party to participate in a primary election. SJR 1 proposes to allow candidates and voters with any party designation or no party designation to participate in the primary election which will likely increase voter participation in the primary election and put less of an emphasis on partisan politics. Additionally, one or more of the top four candidates moving on to the general election could be from the same party.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico would continue to have a “closed” primary system in which only qualified voters registered with a major party can vote in a primary election. The New Mexico Supreme Court upheld the constitutionality of New Mexico’s “closed” primary system in Crum v. Duran, 2017-NMSC-013, 390 P.2d 971.

CR/rl