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## FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 1/28/22  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Appointed Appellate Judge Requirements, CA SJR 3/aSf1#1  
ANALYST Mulvaney

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

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

### **SUMMARY**

#### Synopsis of SFL#1 Amendment

The Senate Floor #1 amendment strikes the word “Appellate” on page 1, line 12.

The title now reads: “PROPOSING TO AMEND ARTICLE 6, SECTION 35 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE THAT AN APPOINTED JUDGE SERVE AT LEAST ONE YEAR BEFORE A GENERAL ELECTION IS HELD FOR THE OFFICE TO WHICH THE JUDGE WAS APPOINTED.”

#### Synopsis of Original Bill

Senate Joint Resolution 3 proposes one substantive change and several technical changes to Article 6, Section 35, New Mexico Constitution.

SJR3 proposes to amend Article 6, Section 35 to not require a general election for a seat to which a judge is appointed until after that judge has served on the appellate court for one year following appointment by the governor.

Article 6, Section 35 of the New Mexico Constitution creates the “appellate judges nominating commission” and governs the judicial succession process for appellate court vacancies. The

appellate judges nominating commission is required to meet within 30 days of an actual vacancy on an appellate court to nominate persons to submit to the governor for appointment to fill the vacancy. The governor then has 30 days to appoint one of the nominees. Currently, the person nominated fills the vacancy until the next general election.

It also proposes to amend Article 6, Section 35 to use gender neutral language, i.e. changing “his application” to “the application” and “chairman” to “chair.” It also replaces the term “committee” with “commission” in several instances for consistency.

## **FISCAL IMPLICATIONS**

The SOS supports and understands the Legislature’s prerogative to place constitutional amendments before the voters of the state. For the purposes of determining the costs involved, the SOS wishes to inform legislators that, under Section 1-16-4 NMSA 1978, the SOS is required to print the full text of each proposed constitutional amendment, in both Spanish and English. The cost of producing the voter guide will change depending upon the number and length of the constitutional amendments passed and the number of registered voters but can be estimated at \$25 thousand.

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 one newspaper in every county in the state. In 2020, the SOS spent \$351,015 for the required newspaper publications, however, the cost is dependent upon the number and length of the constitutional amendments that are passed. For planning purposes, an estimate of \$20.72 per word may be used to represent the costs realized in the 2020 general election to estimate the cost of publishing each constitutional amendment.

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 in order to ensure a smooth and efficient voting process within the bounds of national best practices. The additional requirement that the SOS publish a certificate for every law that is repealed by the counties will be an added cost to the SOS, although it is difficult to estimate the cost at this time.

Per AOC:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the passage and approval of the proposed constitutional amendment and any challenges to the same. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

Per AOC:

A change to a constitutional provision of “terms” may stagger or disrupt the current cycle of when judges stand for election. HJR 15, introduced during the 2011 legislative session, did not amend language regarding how long the appointed judge’s successor shall hold office, and provided that the successor shall hold the office until the expiration of the original term. In analyzing 2011’s HJR 15, the Attorney General’s Office noted

...a number of “term” cases and amendments to constitutional provisions on “terms” must be carefully scrutinized. A change may stagger or disrupt the current cycle of when Judges stand for election. Also, it appears from the wording that an appointed Judge could serve the one year and miss the general election upon which the vacant office holder would be up for election or retention. For example, Judge X could be appointed early 2010 (to a vacancy whose normal term would require election or retention in that year), they would then serve for one year and not be subject to the general election until 2012, thus resetting the “term” of that vacancy.

See the FIR for 2011’s HJR 15 at

<https://www.nmlegis.gov/Sessions/11%20Regular/firs/HJR15.pdf>.

Under the SJR 3 amendment, the language is amended to provide that the appointee’s successor shall hold the office until the expiration of the term in effect at the time of the election. If this language does not reset the “term” of the vacancy, then the cycle of when judges stand for election will not be disrupted. It does seem, using the example put forth by the AGO, above, that the *start* of the term could still be disrupted, if the term had expired before the general election, but that the expiration of the successor’s term would occur as if there had been no disruption, and that the term of that vacancy would not be reset.