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FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/22

SPONSOR Tallman LAST UPDATED _____ HB _____

SHORT TITLE Primary Election Changes, CA SJR 4

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)

Duplicate to HJR 5 – Primary Election, Voting Eligibility, CA
 Conflicts with SJR 1-Nonpartisan Open Primary Elections, CA
 Relates to SJR 5-Runoff Elections, CA; SJR 6 –Elections for Certain Judges, CA

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SoS)
 New Mexico Attorney General (NMAG)

No Response Received

Administrative Office of the Courts (AOC)
 New Mexico Municipal League (NMML)
 New Mexico Counties (NMC)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 4 (SJR4), if enacted, would add a new section to Article 7 (“Elective Franchise”) of the New Mexico Constitution. The bill would change the current major party or “closed” primary election nomination process to a “state-sponsored,” “state-funded” primary election that would allow registered voters who have not selected a party affiliation to vote in only one party’s primary election except if a political party chooses to limit participation to members of its party in the nomination process by paying all costs of their own nomination process.

If SJR4 passes both Houses of the Legislature during the 2022 Legislative Session, it will be put before the voters for approval or disapproval by a majority vote in the November, 2022 General Election.

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 currently closes primary elections to unaffiliated voters at the time of voting. If SJR4 is enacted into law, the New Mexico Election Code will need to be amended to allow for this type of “open” primary. Voters affiliated with a minor party would still be unable to participate in a primary election unless they change their voter registration to affiliate with a major party or “decline to state” (DTS) a major party.

According to the Office of the Attorney General, Article 7, Section 1(A) of the New Mexico Constitution allows a qualified elector to vote in all State elections, subject in part to “registration requirements provided by law.” Section 1-12-7(B) NMSA 1978 (2003) provides: “A person whose major party affiliation is not designated on his original certificate of registration shall not vote in a primary election.” And Section 1-12-7(C) NMSA 1978 (2003) reads: “A person at a primary election shall not be permitted to vote for the candidate of any party other than the party designated on his current certificate of registration.” The proposed constitutional amendment under SJR4 appears to conflict with existing statutory law.

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

PERFORMANCE IMPLICATIONS

The New Mexico Election Code currently allows registered voters not affiliated with a major party to utilize same day voter registration to change their party affiliation in order to vote in a primary election (See Section 1-4-5.7 NMSA 1978). The SoS believes enactment of SJR4 would “likely” increase voter participation in the primary election by allowing nonaffiliated voters to vote without first requiring them to change their party affiliation.

TECHNICAL ISSUES

According to the Office of the Attorney General, the language in Section 1 of SJR4, “A political

party ... shall allow a qualified elector [without a party affiliation] who is registered to vote, to vote in that party's primary election," apparently requires a political party to allow that person to vote in its primary election. That apparent requirement, however, appears contrary to the title of SJR4 which conversely expresses that a non-party affiliated registered voter would be the one to choose whether to vote in that party's primary election. *See*, N.M. Const. Art. IV, § 16 ("The subject of every bill shall be clearly expressed in its title") and of less immediate import, , Section 12-2A-13 NMSA 1978 (1997) ("Headings and titles may not be used in construing a statute ... unless they are contained in the enrolled and engrossed bill ... as adopted.").

OTHER SUBSTANTIVE ISSUES

The Office of the Attorney General notes in its analysis of HJR5, the duplicate to SJR4, that SJR4 would allow political parties to control who votes in primaries for which they pay privately, but under current law, state appropriations pay for both primary and general elections. (See Section 1-1-19 NMSA 1978 (primaries in elections authorized by the Election Code) and Section 1-19A-13 NMSA 1978 (amount of fund distribution).

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