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## FISCAL IMPACT REPORT

SPONSOR Brandt/Moores ORIGINAL DATE 1/25/22  
LAST UPDATED 2/3/22 HB \_\_\_\_\_  
SHORT TITLE Elections for Certain Judges, CA SJR 6/aSRC  
ANALYST Rees

### **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 Impact				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to: None

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Secretary of State (SOS)

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC)

#### No Response Received

New Mexico Municipal League (NMML)

New Mexico Counties (NMC)

### **SUMMARY**

#### Synopsis of Amendment

SJR6 was amended in the Senate Rules Committee (SRC) to delete the language referring to “at the general election” so that the each judge’s retention is not tied to a general election. This would allow judicial retention elections in a non-partisan regular local election or in an entirely separate election devoted exclusively to judicial retention.

#### Synopsis of Bill

Senate Joint Resolution 6 (SJR6) proposes to amend Article 6, Section 33 of the New Mexico Constitution so that all state supreme court justices, and judges of the court of appeals; district courts; and metropolitan courts are elected in nonpartisan elections. The bill also provides that those justices or judges who were elected in a *partisan* election and are holding office on the

next January 1 that follows the adoption of this constitutional amendment are deemed to have fulfilled the requirements described in the proposed amendment.

## **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.

## **SIGNIFICANT ISSUES**

The Administrative Office of the Courts notes:

- 1) To successfully amend the New Mexico Constitution, a majority of Legislators in both the House and the Senate must vote in favor of the amendment. The Secretary of State must publish the amendment in ways specified by Article 19, Section 1, and then a majority of voters must vote in favor of the amendment in the next General Election.
- 2) The proposed amendment does not alter the present Constitutional provisions establishing partisan elections for magistrate judges.
- 3) As of 2017, twenty-two states conduct at least a portion of their judicial selection through nonpartisan elections and thirteen conduct all of their judicial selection through nonpartisan elections.
- 4) In the FIR for SJR 10, a duplicate joint resolution introduced in 2017, the Office of the Attorney General stated:

Under current law, the mechanisms for inclusion of a judicial candidate's name on the general election ballot depend upon whether the judicial candidate is (1) a registered member of a major political party; (2) a registered member of a minor political party; or (3) not a registered member of any qualified political party. These mechanisms for a judicial candidate to be included in the general election ballot are not changed or affected by SJR 10.

The Secretary of State indicates that, if the amendment were to pass, the Legislature would be required to make conforming changes to the New Mexico Election Code. Currently, the first election for judicial offices is partisan, therefore, the office appears on each major party ballot in the primary election and the top vote getter on each major party ballot moves to the general election ballot. If the office were required to be filled in a non-partisan ballot, the Legislature could choose to leave the office out of the primary election and put the qualified judicial candidates on the general election ballot. This would likely result in a large number of judicial candidates on the general election ballot since the primary nomination process would be eliminated adding to concerns of ballot crowding, voter fatigue, and higher costs of conducting elections. Another option would be for the legislature to choose to move the election of these judges to the regular local election, which is already a wholly non-partisan ballot, or to create a separate election all together for impacted judicial offices.

Changing which election judicial officers are elected at could change their terms. Article 6 Section 3 of the New Mexico Constitution guarantees that judges serve for a certain term. *See* Article 6 Section 33 (B.) (C.) (D.) of the New Mexico Constitution. Although, the Legislature has staggered all judicial officer's retention election subject to Article 6 Section 3 of the New Mexico Constitution, in the Nonpartisan Judicial Retention Act, (Sections 1-26-1, *et seq.*, NMSA 1978) conforming changes to the statute will be required if judicial terms are shortened or lengthen to be placed on a Regular Local Election (RLE) ballot, pursuant to the Local Election Act, Sections 1-22-1, *et seq.*, NMSA 1978). Additionally, statewide candidates may not run on the RLE ballot, making a potential conflict for Supreme Court and Court of Appeals judges being placed on the RLE ballot. A new process would need to be legislatively created to achieve the goal of SJR 6.

Also, conforming changes would be required to the Voter Action Act, (Sections 1-19A-1, *et seq.*, NMSA 1978) as public financing for these offices is currently determined based upon the candidate's party affiliation.

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

Supreme Court Justices, Court of Appeals Judges, District Court Judges and Metropolitan Court Judges will continue to be elected in partisan elections.

CR/acv/al/acv