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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Figueroa/Harper</u>	<b>LAST UPDATED</b> <u>2/1/223</u> <b>ORIGINAL DATE</b> <u>1/27/23</u>
<b>SHORT TITLE</b> <u>Independent Redistricting Commission, CA</u>	<b>BILL NUMBER</b> <u>House Joint Resolution 1/aHGEIAC</u>
	<b>ANALYST</b> <u>Daly</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$150.0-200.0	\$0.0	\$150.0-200.0	Nonrecurring	General Fund
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

Responses Received From  
 Secretary of State (SOS)  
 State Ethics Commission (SEC)  
 Administrative Office of the Courts (AOC)

## SUMMARY

### Synopsis of HGEIAC Amendments

The House Government, Elections and Indian Affairs Committee amendments to HJR 1 amends Article 4, Section 3 of the New Mexico Constitution to authorize (but not require) the Legislature to determine the number of members in its membership one time after publication of each federal decennial census conducted following voter approval of this joint resolution. The amendments also clarify that the SEC appoints three applicants from each of the two political parties with the largest number of registered voters in the state, and that plans developed and approved by the Redistricting Commission determine districts for use in succeeding elections.

### Synopsis of Original House Joint Resolution 1

Section 1 of HJR1 removes language in Article 4, Section 3 of the New Mexico Constitution authorizing the Legislature to reapportion its members (by redistricting).

Section 2 proposes to amend Article 20 of the New Mexico Constitution to create a nine-member

independent Redistricting Commission (Commission) with exclusive authority to redistrict congressional districts, state legislative districts, and districts of other districted state offices.

HJR1 sets out the qualifications for the commissioners. It requires the State Ethics Committee (SEC), through a public application process, to solicit, accept, and evaluate applications from registered electors who are qualified to serve as commissioner. The SEC is required to submit at least 38 nominees, no more than 12 of whom shall be members of the same political party, to the legislative leadership by July 1 of each year ending in the number zero. Each member of legislative leadership may strike up to two applicants (excluding retired judges or justices), and must submit the list of applicants they want stricken no later than July 21. By August 15, the SEC must appoint nine commissioners from the remaining pool of applicants, including three appointees each from the two political parties with the largest number of registered voters affiliated with the party in the state and three members who are affiliated with other political parties or who are unaffiliated voters. One of the nine commissioners is required to be a retired district court judge, appellate court judge, or justice of the Supreme Court to serve as chair of the redistricting commission. To the extent practicable, the SEC must strive to make appointments that are reflective of the population of the state in terms of geography, race, ethnicity, and gender, and select commissioners who commit to conducting the redistricting process in an honest, independent and impartial fashion. The remaining pool of applicants may be used to fill any vacancy.

The Commission is required to develop district plans using the most recent U.S. decennial census bureau data as well as other reliable data sources in accordance with these criteria:

- Keep population across districts as substantially equal as possible, with a total deviation of plus or minus 5 percent;
- Do not dilute protected minority's voting strength;
- Do not split districts;
- Act consistently with traditional redistricting principles;
- Keep contiguous precincts together and reasonably compact;
- Preserve communities of interest and consider political and geographic boundaries; and
- Preserve the core of existing districts, if feasible.

The Commission is prohibited from relying on partisan data (like voting history or party registration data) unless necessary to comply with applicable law. After public hearings, the Commission shall adopt final plans and file them with the SOS by October 1 for use in the succeeding primary and general elections until the next redistricting period.

A commissioner is entitled to mileage and per diem. A commissioner shall serve until a successor is appointed prior to the next succeeding redistricting effort unless removed prior to that time by the Supreme Court for substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office. The Supreme Court has original jurisdiction over proceedings to remove commissioners. A proceeding for the removal of a commissioner shall be commenced by the attorney general upon the request of the commission.

SEC and the Commission must develop an adopt rules governing the authority of each commission at the beginning of each redistricting process. The provisions of Section 2 are self-executing.

HJR1 is to be submitted for approval by the people of the state in the next general election (November 2024) or any special election called for that purpose.

## **FISCAL IMPLICATIONS**

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (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. SOS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending on the size and number of ballots and if additional ballot stations are needed. These costs are reflected in the Operating Budget Impact Table.

In addition, beginning in FY30 and FY31 and every 10 years thereafter, SEC reports it will incur additional costs to conduct a statewide advertising campaign to solicit applications and to evaluate the qualifications of applicants. To perform these roles, SEC advises it will need an additional FTE (or an equivalent contractor) and, considering the costs of the New Mexico Counts statewide advertising campaign leading to the 2020 Census and statewide advertising campaigns related to vaccinations, at least a \$300,000 increase to cover the costs of a minimally effective statewide advertising campaign. Upon appointment of commissioners, the Commission will incur mileage and per diem expenses. These costs are not reflected in the Operating Budget Impact Table because their impact will occur in fiscal years outside the range of that table.

## **SIGNIFICANT ISSUES**

AOC calls attention to the requirement that commissioners disclose any communication with outside persons or organizations attempting to influence the map-drawing process outside of public meetings and public comment periods. See Section 2(P). Failure to disclose the communications shall constitute substantial neglect of duty, and is a basis for removal of a commissioner after proceedings in the supreme court.

Additionally, AOC cites a report by the Legislative Council Service noting that neither the Constitution of New Mexico nor state law mandates redistricting after every decennial census, although Article 4 of the Constitution authorizes it. Historically, challenges to legislative redistricting plans have been filed in both state and federal court. (See “A Guide to State and Congressional Redistricting in New Mexico,” (2011), prepared by the NM Legislative Council Service, <https://www.nmlegis.gov/Redistricting/Documents/187014.pdf> ) Under HJR1, redistricting must occur after every decennial census. See Section 2(A), (H), (K).

## **TECHNICAL ISSUES**

Page 6, line 9: insertion of the phrase “greater than” between “of” and “plus” may clarify the intent of that criteria.

## **OTHER SUBSTANTIVE ISSUES**

SEC points out that in making appointments to an independent redistricting commission, SEC would need to have the consent of two Democratic Commissioners and two Republican

Commissioners. The State Ethics Commission Act requires “Four commissioners consisting of two members of the largest political party in the state and two members of the second largest political party in the state constitute a quorum for the transaction of business. No action shall be taken by the commission unless at least four members, including at least two members of the largest political party in the state and two members of the second largest political party in the state, concur.” Section 10-16G-3(H), NMSA 1978. Accordingly, SEC appointments to the independent redistricting commission necessarily would be bipartisan.

AOC reports that according to the National Conference of State Legislatures, 15 states have a commission with [primary responsibility](#) for drawing a plan for state legislative districts. Six states have an [advisory commission](#) that may assist the legislature with drawing the district lines and five states have a [backup commission](#) that will make the decision if the legislature is unable to agree. (See <https://www.ncsl.org/redistricting-and-census/creation-of-redistricting-commissions>.) With regard to drawing a plan for congressional districts, 10 states have a commission with [primary responsibility](#) for drawing a plan for congressional districts. Five states have an [advisory commission](#) that may assist the legislature with drawing the district lines and three states have a [backup commission](#) that will make the decision if the legislature is unable to agree. (See <https://www.ncsl.org/redistricting-and-census/creation-of-redistricting-commissions>.)

As noted by AOC, the Redistricting Act was enacted in 2021, which creates the Citizen Redistricting Committee and directs the committee to develop district plans for approval by the legislature and governor. See Sections 1-3A-1, et seq, NMSA 1978. HJR1 does not require approval of the Redistricting Commission’s plans by the Legislature and governor.

MD/al/ne/rl