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FISCAL IMPACT REPORT

SPONSOR <u>Munoz/Duhigg</u>	LAST UPDATED <u>3/12/2023</u>	ORIGINAL DATE <u>2/24/2023</u>
		Senate Bill
SHORT TITLE <u>Increase Elected Official Salaries</u>	BILL NUMBER <u>442/aSHPAC/aSFC/aSFI#1/aSFI#2</u>	
	ANALYST <u>Simon/Eckberg</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	FY26	FY27	FY28	6 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Gov. Salary and Benefits					\$38.5	\$77.0	\$115.5	Recurring	General Fund
Salaries and Benefits (Lt. Gov, Sec. State, Auditor, Attn.Gen.)	\$14.8	\$384.8	\$384.8	\$384.8	\$384.8	\$384.8	\$1,938.8	Recurring	General Fund
Land Comm. Salary and Benefits	\$3.0	\$77.0	\$77.0	\$77.0	\$77.0	\$77.0	\$388.0	Recurring	Lands Maintenance Fund
Acting Gov. Pay		\$2.0 - \$12.5	\$2.0 - \$12.5	\$2.0 - \$12.5	\$2.0 - \$12.5	\$2.0 - \$12.5	\$10.0 - \$62.5	Recurring	General Fund
Total	\$17.8	\$463.8 - \$474.3	\$463.8 - \$474.3	\$463.8 - \$474.3	\$502.3 - \$512.8	\$540.8 - \$551.3	\$2,452.3 - \$2,504.8		

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

State Personnel Office (SPO)

State Ethics Commission (SEC)

Office of the Attorney General

SUMMARY

Synopsis of SFI#2 Amendment to Senate Bill 442

The Senate Floor amendment #2 to Senate Bill 442 delays the pay raise for the governor until January 1, 2027. Additionally, the amendment makes a technical correction to Senate Floor amendment #1.

Synopsis of SFI#1 Amendment to Senate Bill 442

The Senate Floor amendment to Senate Bill 442 increases the salary of the lieutenant governor in

addition to the other executive officers. The amendment repeals Section 8-3-3 NMSA 1978, the statute currently setting the lieutenant governor’s salary, and adds a new provision to Section 8-1-1 NMSA 1978 setting the lieutenant governor’s salary at \$144,714. The table below lists all the offices with salary increases under SB442, as amended.

Additionally, the amendment removes the exclusion of the secretary of state from the daily rate of pay authorized when a person acts as governor.

Salaries of New Mexico Elected Officials

Office	Current Salary	2021 National Rank	Proposed Salary	Last Increase
Governor	\$110,000	43 of 50	\$169,714	2002 from \$90K
Lt. Governor	\$85,000	31 of 45	\$144,714	2002 from \$65K
Secretary of State	\$85,000	42 of 47	\$144,714	2002 from \$65K
State Auditor	\$85,000	43 of 44	\$144,714	2002 from \$65K
State Treasurer	\$85,000	47 of 49	\$144,714	2002 from \$65K
Attorney General	\$95,000	45* of 50	\$154,714	2002 from \$72.5K
Land Commissioner	\$90,000		\$149,714	2002 from \$72.5K

Source: Council of State Governments, Book of the States 2021

*The attorneys general of Nebraska and West Virginia earn the same salary; only three states pay less.

Synopsis of SFC Amendment to Senate Bill 442

The Senate Finance Committee Amendment removes the effective date of January 1, 2027, and a reference in the title to the 2027 effective date and, as a result, would cause the bill to go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

Synopsis of SHPAC Amendment to Senate Bill 442

The Senate Health and Public Affairs Committee Amendment increases the amount a person acting as governor, other than the secretary of state, receives for each day’s services, from \$250 per day to \$500 per day. In addition, the amendment includes a new section adding an effective date of January 1, 2027.

Synopsis of Original Bill

Senate Bill 442 would raise the salary of elected state officers in New Mexico. The increases are included in the table below.

Salaries of New Mexico Elected Officials

Office	Current Salary	2021 National Rank	Proposed Salary	Last Increase
Governor	\$110,000	43 of 50	\$169,714	2002 from \$90K
Secretary of State	\$85,000	42 of 47	\$144,714	2002 from \$65K
State Auditor	\$85,000	43 of 44	\$144,714	2002 from \$65K
State Treasurer	\$85,000	47 of 49	\$144,714	2002 from \$65K
Attorney General	\$95,000	45* of 50	\$154,714	2002 from \$72.5K
Land Commissioner	\$90,000		\$149,714	2002 from \$72.5K

Source: Council of State Governments, Book of the States 2021

*The attorneys general of Nebraska and West Virginia earn the same salary; only three states pay less.

The title of the bill states the bill would apply to state officers whose terms begin on or after January 1, 2027.

FISCAL IMPLICATIONS

Current law requires salaries from elected officials be paid from the general fund, except for the commissioner of public lands, who is paid from the state lands maintenance fund.

The bill does not include an effective date and is assumed to be effective June 16, 2023. As a result, it is expected to have a fiscal impact for one pay period in FY23 and the full annual impact in FY24 and subsequent fiscal years. The fiscal impact assumes the rate of pay specified in the bill, plus the marginal cost of employee benefits, estimated at 29 percent.

The bill would also increase daily pay for a person acting as the governor, usually the lieutenant governor. The number of days someone other than the governor serves in that role can vary from year to year but is generally between 10 and 50 days per year. An additional \$250 in daily pay would cost between \$2,500 and \$12.5 thousand per year.

SIGNIFICANT ISSUES

Current law only allows for the adjustment of elected officials salaries by law. As a result, elected officials do not participate in annual increases provided to state employees generally. Salaries for elected officials were last adjusted in 2002. For comparison, in May 2003, the earliest date for which LFC staff have data, the average hourly rate for state employees was \$16.05 per hour. As of February 1, the average hourly rate for state employees was \$30.10, an increase of 87.5 percent over that time.

Governor's Salary Increase

The bill provides a pay increase for the governor, but delays that pay increase until January 1, 2027, the beginning of the next term for governor. Were a governor to sign a bill to increase pay for that office, effective in the current term, that action could violate provisions of the Government Conduct Act (see, for example, Section 10-16-4 NMSA 1978). For this reason, the bill delays the pay increase for the governor until the beginning of the next term.

Acting Governor Per Diem

The bill would increase the daily rate of pay for a person to act as governor. Currently, the daily rate of pay for acting as governor is \$250; the bill would raise that amount to \$500. This amount was most recently increased in 1999, when the amount was raised from \$150 per day. The line of succession outlined in Article V, Section 7, of the New Mexico Constitution includes four offices: the lieutenant governor, the secretary of state, the president pro tem of the Senate, and the Speaker of the House of Representatives.

Current law excludes the secretary of state from receiving this payment, but the bill would remove that exclusion. The section of law allowing for daily payments for persons acting as governor dates from 1959, a time when three of the four offices in the line of succession were not paid an annual salary. At that time, the law provided the lieutenant governor be paid \$40 per

day when presiding over the Senate and \$50 per day when acting as governor. This likely explains why the statute excludes the secretary of state from payment when acting as governor—the 1959 law provided the secretary of state with an annual salary of \$10 thousand, but no salary for the other officials, including the lieutenant governor. A 1971 law set an annual salary for the lieutenant governor but suspended that salary during legislative sessions or when the lieutenant governor was acting as governor. A 1980 law eliminated the daily rate of pay for the lieutenant governor and removed the suspension of the lieutenant governor’s salary during legislative sessions or when acting as governor.

Notably, paying the lieutenant governor both a salary and an additional amount on days when he is acting as governor effectively compensates the lieutenant governor at a higher rate for acting as governor than the governor receives under the law.

Article IV, Section 27, Issues

Article IV, Section 27 of the New Mexico Constitution provides the following:

No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; **nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution.** [Emphasis added]

This provision has been the subject of numerous opinions, particularly with regard to “except as otherwise provided” clause. Several attorney general opinions have concluded it is impermissible to raise various officials’ salaries during their terms of office (see, for example, Attorney General Opinions 72-45, 81-17, and 94-09); while others have found exceptions (see, for example Attorney General Opinions 73-8, 79-27, and 92-08). Prior analysis of similar bills from the Office of the Attorney General have noted this section of the constitution prohibits a mid-term salary increase, while in analysis of this bill from that office notes, “Current law only allows for the adjustment of elected officials’ salaries by law.”

At least one district court decision has held it is permissible to increase pay for executive officers, citing Article V, Section 12, which sets the annual salaries of executive officers. However, the final sentence of that section states:

The compensation of any of said officers may be increased or decreased by law after the expiration of ten years from the date of the admission of New Mexico as a state.

In 1973, the district court in Santa Fe found this provision to meet the “otherwise provided” exception by tracing the proceeding of the constitutional convention and concluding it was the intent of the framers to give the Legislature the “unqualified authority” over the compensation of executive officers. See *State ex rel. Thompson v. Olmstead* (1973).

In 1998, the New Mexico Supreme Court was faced with a similar case involving county commissioners. In that case, the New Mexico Supreme Court struck down the law allowing mid-term pay raises for county commissioners, citing Article IV, Section 27. See *State ex rel. Haragan v. Harris* (1998-NMSC). In that case, the Supreme Court noted a constitutional provision providing the Legislature the authority to set salaries “by law” does not provide an exception to the general rule that salary increases are not permitted mid-term. However, it may be possible that the court could find the specific text of Article V, Section 12, differs significantly and suggests a different result.

The court's opinion in the 1998 case does go on to note the rationale for Article IV, Section 27. Quoting an earlier case (*State ex rel. Gilbert et al. vs. Board of Com'rs of Sierra County*), the court noted the unfettered ability to change a salary midterms could serve to "harass and cripple the officer by reducing his compensation during his service" or that "strong and powerful lobbying" could "cause the bestowal of an unmerited increase."

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