

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: **Date** January 19, 2016
Original **Amendment** **Bill No:** HJR 1
Correction **Substitute**

Sponsor: Rep. Carl Trujillo **Agency Code:** Attorney General's Office
Short Independent Redistricting **Person Writing** Nicholas M. Sydow, AAG
Title: Commission, CA **Phone:** 505-222-9088 **Email** nsydow@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: House Joint Resolution 1 is a proposed amendment to the New Mexico Constitution that would create an independent redistricting commission for congressional, state legislative, and other state districted elections. Specifically, House Joint Resolution 1 proposes the following amendments to the New Mexico Constitution:

- Article IV, Section 3: The Resolution would delete paragraph D of this Section, which allows the legislature, by statute, to reapportion its membership following each federal decennial census. The Resolution would also amend this section to make the language gender-neutral.

- Article XX: The Resolution would create a new section of Article XX that establishes an independent redistricting commission. This commission would determine districts for the U.S. Congress, state legislature, and other state districted offices after each federal decennial census. The independent redistricting commission would consist of five members, with no more than two from any political party. The appellate judges nominating commission would select twenty nominees from the applicants for the commission. From this pool of nominees, the five members of the commission would be selected as follows:
 - One member selected by the leader of the party in the majority in the senate;
 - One member selected by the leader of the party in the majority in the house of representatives;
 - One member selected by the floor leader of the party in the minority in the house of representatives;
 - One member selected by the floor leader of the party in the minority in the senate; and
 - A fifth member selected from among the remaining nominees by the other four members of the commission.

The independent redistricting commission would develop redistricting plans for congressional, legislative, and other state districted offices. The commission would begin each redistricting with the existing districts, and make adjustments as necessary to accommodate federal constitutional and statutory requirements, to ensure district

boundaries are contiguous, relatively compact, and do not divide precincts, and to the extent possible, to respect and follow communities of interest, geographical features, and established political boundaries. In redistricting, the commission would not consider party registration and political performance data. The commission would be permitted to consider racial and ethnic population and voting performance data as necessary to comply with federal law. Before adopting a redistricting plan, the commission would be required to hold public hearings throughout the state on the proposed plan.

FISCAL IMPLICATIONS

As drafted, House Joint Resolution 1 would allow the independent redistricting commission to request that the attorney general defend redistricting plans against legal challenges. The Resolution would not provide any appropriation to the attorney general for additional staff or other litigation costs.

SIGNIFICANT ISSUES

Although it does not appear to be an impediment to the Resolution, it is worth noting that House Joint Resolution 1 is modeled after Arizona's constitutional amendment that created an independent redistricting commission. Arizona's constitutional amendment was challenged as violating the Elections Clause of the U.S. Constitution, which states that state legislatures shall determine the times, places, and manner of holding elections for U.S. senators and representatives. The U.S. Supreme Court held that Arizona's law did *not* violate the Elections Clause by allowing the public to establish a redistricting commission by popular vote. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015).

There are a few potential issues with the Resolution. First, in defining the qualifications for applicants to serve on the commission, the Resolution states that the appellate judges nominating commission shall accept applications from persons "who are committed to conducting the redistricting process in an honest, independent and impartial fashion." Section 2, paragraph C. This standard may be too vague and subjective to be enforceable as law, because it makes the intent and commitment of applicants part of their legal qualification for office.

Second, there is no provision in the Resolution determining how the fifth member of the commission shall be selected by the other four members. This could be a particular concern if the four members – which are likely to consist of two members from each major political party – cannot agree upon a fifth member.

Finally, paragraph O of section 2 states that the independent redistricting commission shall determine whether the attorney general or other counsel will represent the state in the legal defense of a redistricting plan. To the extent that this paragraph interferes with the attorney general's independent authority and discretion to make litigation decisions pursuant to an attorney's ethical responsibilities, it may be unenforceable.

Note that House Joint Resolution 1, if adopted as a constitutional amendment, would abrogate existing redistricting statutes, including Sections 1-15-15.2, 2-7E-1, and 2-8E-1 NMSA.

PERFORMANCE IMPLICATIONS

As drafted, House Joint Resolution 1 would allow the independent redistricting commission to request that the attorney general defend redistricting plans against legal challenges. Because the Resolution would not provide any appropriation to the attorney general for additional staff or other litigation costs, it may affect the attorney general's ability to complete other tasks.

ADMINISTRATIVE IMPLICATIONS

As drafted, House Joint Resolution 1 requires the attorney general to defend redistricting plans against legal challenges, when requested by the independent redistricting commission. This may result in staff time and office resources devoted to such new litigation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

- The last sentence of Section 2, paragraph B is confusing given the large number of clauses it contains. I would consider, at a minimum, rewriting the end of the sentence to state "a registered paid lobbyist, an officer of a candidate's campaign committee, or an officer of or paid consultant to a political party."
- Section 2, paragraph L is confusing in its reference to the "approval of a plan" determining new districts. I would consider changing the subject of the sentence to a "final plan" or "approved plan." Alternatively, the sentence could be written to state, "Once a plan is approved, that plan shall determine...."
- I would suggest limiting Section 2, paragraph Q(1)'s reference to litigation to be limited to litigation related to the plan.
- I would suggest changing the reference in Section 2, paragraph Q(2) from a "court decision" to a "court order."

OTHER SUBSTANTIVE ISSUES

- Section 2, paragraph C does not account for the possibility that fewer than twenty qualified applicants exist for the commission. It could be rewritten to account for this contingency.
- Section 2, paragraph Q(2), unlike Arizona's constitutional amendment, does not account for the possibility that the number of electoral districts changes outside of the census process.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None, other than technical issues noted above.