

<b>LFC Requester:</b>	<b>Undetermined</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

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**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:  
**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date**    12 February 2015  
**Bill No:**    SJR 8

**Sponsor:**    Sen. John C. Ryan  
**Short**    Majority for Constitutional  
**Title:**    Amendments, CA

**Agency Code:**    Attorney General's Office  
**Person Writing**    Luis Carrasco, AAG.  
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**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)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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:

Senate Joint Resolution 8 (“SJR”) is an act that proposes to amend Article 19, Section 1 of the New Mexico Constitution to require a two-thirds vote of the members elected to each of the House of Representatives and the Senate before any amendment to the Constitution can be submitted to the electors of New Mexico for approval or rejection. If adopted by the voters, the new constitutional amendment would require that any future proposed constitutional amendments receive at least 28 votes in the Senate and 47 votes in the House of Representatives, before it can be submitted to the voters. As it exists now, Article 19, Section 1 requires only a simple majority vote of each chamber (22 votes in the Senate; 36 votes in the House) before a proposed constitutional amendment may be submitted to the electors. If a majority of both chambers of the legislature vote in favor of SJR8, then the proposal to increase the number of votes required in each chamber to submit a proposed constitutional amendment to the electors will be placed on the ballot of the next general election, or a special election held for this purpose, for approval or rejection by the voters. If a majority of the voters at such an election vote to approve the proposed constitutional amendment, Article 19, Section 1 will be amended to reflect the two-thirds vote requirement for each chamber.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

Although not directly on point, the New Mexico Supreme Court has previously declared unconstitutional and interpreted certain provisions requiring greater than majority votes to enact constitutional amendments. See State ex rel. Witt v. State Canvassing Bd., 1968-NMSC-017, 78 N.M. 682. In State ex rel. Witt, the Supreme Court declared that a provision within Article 19, Section 1 requiring a two-thirds majority vote by the electors in every county in order to amend the state constitution was contrary to the U.S. Constitution’s Equal Protection Clause because it offended the “one-person, one-vote” principle by giving voters in one county disproportionate weight in the election to amend the constitution. Id. Although the two-thirds majority vote requirement discussed in State ex rel. Witt pertained to electors in the several counties, as

opposed to the vote required in each chamber of the legislature that is addressed in SJM8, the concerns expressed therein as to substantial equality of the vote for disparate segments of the population and making constitutional amendment more difficult may be important here. Specifically, if election of members of the legislature were determined not to comport with the U.S. Constitution's Equal Protection Clause by attributing disproportionate weight to one or more segments of the population of the state, SJM8 may be subject to a challenge similar to that in State ex rel. Witt.

Nevertheless, it is worth noting that Article VI, Section 33 of the New Mexico Constitution, which governs judicial retention elections, requires that Supreme Court justices and judges of the Court of Appeals, the District Courts and the Metropolitan Court obtain at least 57% of the vote cast on the question of retention or rejection. Furthermore, the New Mexico Constitution currently requires a two-thirds vote (of the members present and voting in each house) to override vetoes of bills and to put into immediate effect bills that have an emergency clause, except for the General Appropriations Act, which can go into effect immediately with a simple majority vote. See N.M. Const. Art. IV, §§ 22 and 23. We are unaware of any challenge to the constitutionality of these provisions. In light of these facts, it remains plausible that an amendment requiring a two-thirds vote prior to submission of constitutional amendments to the voters may be valid.

Interestingly, as State ex rel. Witt explains, the original version of Article 19, Section 1 of the New Mexico Constitution required the two-thirds vote in each chamber of the legislature prior to submittal to the electors for constitutional amendments that SJM8 contemplates. However, a 1911 proposal by Congress to amend Article 19, Section 1, which was incorporated in the congressional resolution providing for admission of New Mexico as a state and stipulated that adoption of the amendment should be a prerequisite to admission, was adopted by the people at the first election of state officers on November 7, 1911. The 1911 amendment changed the former two-thirds vote of the legislature required to propose amendments for ratification to a majority vote. The State ex rel. Witt Court noted that the version that was initially submitted for Congressional approval, which required a two-thirds vote of the legislature prior to submitted to the electors, was not looked upon favorably. Id. at ¶ 4. This may counsel against SJM8's enactment.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

See SIGNIFICANT LEGAL ISSUES above.

## **ALTERNATIVES**

N/A

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

The status quo will remain. Article 19, Section 1 of the New Mexico Constitution will require only an affirmative majority vote both chambers of the legislature before a proposed constitutional amendment may be submitted to the voters for approval or rejection. The initial groundwork for amending the state constitution will not be heightened or intensified.

## **AMENDMENTS**

N/A