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FISCAL IMPACT REPORT

SPONSOR Torraco ORIGINAL DATE 02/26/13
LAST UPDATED _____ HB _____
SHORT TITLE Bail Bonds for Full Amount of Bail SB 544
ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 544 (SB 544) proposes to require a bail bond to secure release of an accused defendant once the court determines that either the defendant's appearance will not be reasonably assured or the defendant poses a threat to the safety of a person or the community if the defendant is released on personal recognizance or an unsecured bond. SB 544 requires the posting of the full amount of the bond, although a licensed bail bondsman may require only a ten percent payment by the defendant.

SIGNIFICANT ISSUES

According to the AOC:

There is a question whether a legislative enactment such as SB 544 that requires one form of security for pretrial release and does not provide for others contained in existing Supreme Court rules would be constitutional.

SB 544 does not provide for some options a court may employ currently under the applicable court rules. In the Rules of Criminal Procedure for District Courts, Rules 5-401 to 5-407 address pretrial release. Rule 5-401B(1) NMRA currently provides for the

same process as is in SB 544, but then permits courts to employ the alternative of a bond secured by property of an uncompensated surety or cash deposit with the court. Rule 5-401B(2) & (3) NMRA. SB 544 does not provide for these alternatives. The rules adopted by the Supreme Court also set forth the factors to be considered in setting pretrial release conditions, addition conditions apart from any bond, and many other requirements relating to pretrial release. Rule 5-401C through P. Numerous provisions strictly govern the posting of bonds by a licensed bail bondsman 5-401B NMRA. Similar rules govern criminal practice in metropolitan and magistrate courts. Rules 60401 & 7-401 NMRA.

The adoption of rules that govern court procedure is the specific province of the Supreme Court, and legislative measures that direct or govern court procedure are void. “In *State v. Roy*, 40 N.M. 397, 60 P.2d 646 (1936), 110 A.L.R. 1 (1937), we held that the power of this court to promulgate rules regulating pleading, practice, and procedure for our district court was a power vested in this court by N.M. Const. art. 6, s 3, in that this section of our Constitution grants this court ‘superintending control over all inferior courts.’” *Ammerman v. Hubbard Broadcasting, Inc.*, 89 N.M. 307, 311, 551 P.2d 1354, 1358 (1976). See *State ex rel. Anaya v. McBride*, 88 N.M. 244, 246, 539 P.2d 1006, 1008 (1975) (“Our constitutional power under N.M.Const. art. 6, s 3 of superintending control over all inferior courts carries with it the inherent power to regulate all pleading, practice and procedure affecting the judicial branch of government”) and *Albuquerque Rape Crisis Center v. Blackmer*, 138 N.M. 398, 402, 120 P.3d 820, 824 (2005) (“[w]hile a statute regulating practice and procedure is not binding on the Supreme Court, it nevertheless is given effect until there is a conflict between the statute and a rule adopted by the Supreme Court”).