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FISCAL IMPACT REPORT

SPONSOR Diamond/Terrazas **ORIGINAL DATE** 2/5/21
LAST UPDATED _____ **HB** _____
SHORT TITLE Probate Judge Substitution **SB** 134
ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	NFI	NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 134 allows a probate judge to designate another probate judge, referred to as a visiting probate judge, to fulfill probate court duties in the event the permanent judge is absent, incapacitated, or otherwise unable to fulfill the court duties. The board of county commissioners of the respective probate court, or other equivalent local governing body, may also designate a visiting probate court judge. The visiting probate judge must conduct official probate court activities in the county seat, and all probate court orders must cite the absence of the permanent probate court judge.

FISCAL IMPLICATIONS

LFC does not anticipate a significant fiscal impact to the state if SB134 were enacted. The bill requires the county in which the permanent probate judge was elected to pay the mileage and per diem costs of the designated probate court judge, which may cause some additional fiscal impact to counties with chronically absent probate judges, but this impact is unlikely to necessitate additional state resources to counties.

The bill provides that either the permanent judge or the county commission may designate a visiting judge, but does not appear to establish which entity has the superior designating authority. This may complicate the fiscal impact to the county, if, for example, a permanent judge designates a visiting judge from a geographically distant area, and the county is responsible for the visiting judge's millage and per diem without the authority to search for a closer available judge.

SIGNIFICANT ISSUES

Current statute only provides probate judges authority in the county they were elected and there is a pro tempore probate judge program. This restriction has resulted in probate court matters halting when a judge is sick or otherwise incapacitated. Current statute allows district court judges to preside over probate matters, but as AOC notes, district court filing fees are five times more expensive than probate court fees, dockets are often booked weeks out, and district courts can be intimidating, especially for self-represented litigants. AOC found self-represented litigants often "delay filing a probate matter until a probate court judge is available, rather than file a matter in the district court." SB134 addresses these issue and is endorsed by all 33 New Mexico probate judges, as well as the counties association.

TECHNICAL ISSUES

NMAG notes as written, SB134 may be inconsistent with existing statute:

Sections 34-7-11 and 45-1-307, altered as proposed, do not match each other as to who may replace an absent or incapacitated probate judge. Section 34-7-11, as amended, permits only a district judge sitting in the same county, or a probate judge from another county. But Section 45-1-307, in addition to permitting the two choices under 34-7-11, also permits a district court in that same county to designate a probate judge pro tem. The presence of a third option in Section 45-1-307, but not in the parallel Section 34-7-11, may generate confusion.

ADP/al