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FISCAL IMPACT REPORT

SPONSOR Smith DATE TYPED 02/06/04 HB _____

SHORT TITLE Transfer Bernalillo Judges to 2nd District SB 270

ANALYST Koplik

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			Considerable, See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts

Attorney General's Office

Administrative Office of the District Attorneys

SUMMARY

Synopsis of Bill

Senate Bill 270 proposes that on July 1, 2004, the 16 judges serving in the Bernalillo County Metropolitan Court will transfer to the Second Judicial District, together with all personnel, appropriations, money, records, real property, furniture, equipment, offices supplies and all contracts, liabilities or other obligations attributable to the Bernalillo County Metropolitan Court. Thus, NMSA 1978, §34-6-5 would be amended to include thirty-nine district judges in the Second Judicial District. There is no appropriation in the proposed legislation.

The Bernalillo County Metropolitan Court judges transferring to the Second Judicial District would begin serving as district judges on July 1, 2004, and would serve until succeeded by a district judge elected at the general election in 2006.

Significant Issues

According to the **Administrative Office of the Courts**, this bill brings up a series of problematic issues, including:

The time frame for implementing a significant reorganization of the two largest courts in the state is short. Without adequate planning, it is hard to determine the full financial impact of the consolidation of the two courts.

The current rules of civil and criminal procedure may need to be evaluated for procedural relevance. This is a lengthy task. Other judicial systems have consolidated by county, i.e., California and Missouri, but these courts have spent a significant amount of time planning for the transition.

The New Mexico Constitution Article VI, §14 requires that district court judges have practiced law for at least six years preceding the assumption of office. This qualification would be required of any current metropolitan court judge involved in the consolidation.

Consolidating the courts raises the question of housing the courts. Currently, the county is responsible for housing the Second Judicial District (NMSA 1978, §34-6-24) and the state (general funds) is responsible for the housing of the Bernalillo County Metropolitan Court (a state facility). The Second Judicial District moved into its new building in August 2001. The Bernalillo County Metropolitan Court moved into its new building in January 2004. The statute would need to be changed to give the responsibility to either the state or the county.

Creating sixteen district court judgeships may have an impact on the stability of the district judges' retirement plan. An analysis needs to be done on the impact to the district court judges' retirement.

The consolidated court would have a staff of approximately 570 or about 30% of the judicial branch's employees. A detailed analysis would need to be done to determine the potential cost savings in operating a consolidated court.

There is no appropriation to the Second Judicial District for the increase in judges' salaries. District court judges make \$89.5 thousand and Metropolitan court judges make \$80.5 thousand. An additional \$168.9 thousand is needed for judges' salaries and benefits.

An analysis would need to be done to determine what funds are needed for the Bernalillo County Metropolitan Court and the 2nd Judicial District Court to be configured to the same case management system.

The literature on Court Consolidation supports a "one facility" court. Reorganizing the courts into one court should create an economy of scale, however, savings will be minimized because both courts are in new and separate buildings. Joining the two courts may be difficult.

The **Administrative Office of the District Attorneys** takes an even more exacting view of the proposed legislation. Its criticisms are based on the concept that under this bill, all misdemeanor crimes will be treated in a manner currently reserved for felonies. It states that:

As a practical matter, this bill appears to completely abolish the very existence and all accompanying aspects of the present Metropolitan court. Accordingly, all statutes and rules of procedure presently applicable to Metropolitan Court would be subsumed by existing rules and statutes applicable to District Court, and virtually every aspect of criminal prosecution for misdemeanor and traffic law violations would be dramatically changed.

Even a brief review of this proposed legislation reveals a large number of very significant legal, practical issues that are not addressed in any way in the proposed bill. In the absence of considerable additional legislation and rules of criminal procedure crafted to address the processing and procedures applicable to these thousands of cases, *this bill would mandate that all cases previously filed in Metropolitan Court under Metropolitan court rules and statutes would be processed and tried under District Court statutes and rules.* This will make the thousands of simple traffic violation cases and cases involving only misdemeanor charges vastly more complex, time-consuming and expensive. The following are but a small sample of the types of problems which would flow from the proposed legislation, assuming no specific additional statutes or procedural rules are simultaneously enacted to address the plethora of issues:

Traffic citations could no longer be used to initiate charges against a violator. District Court rules specify that cases can be initiated only through the filing of a criminal complaint, an information filed by a prosecutor, or a grand jury indictment. Police officers can write up citations very quickly, while even the simplest form of charging instrument allowable under District Court rules, the criminal complaint, is more complex and time consuming. This will have a direct effect upon police operations for even the simplest traffic violation, and render them less able to enforce even common traffic laws in a meaningful way.

Under Metropolitan Court rules, traffic violations and the vast majority of the thousands of misdemeanor cases filed each year can be prosecuted by police officers, without the involvement of the District Attorney's Office. There is no such provision in District Court rules, so DA's would have to prosecute all traffic and minor misdemeanor cases in the 2nd Judicial District. The present staff required by the 2nd Judicial DA's office to handle present caseload (approximately 22 ADA's and about 30 support staff employees), would have to be expanded at least four-fold in order to accomplish this task. That would be an extremely expensive expansion, and would be required as a recurring expense. Additionally, present office space which is adequate for present staffing would not be close to sufficient to house this additional staff, requiring the county to spend additional money to obtain adequate work space for these additional employees.

Cases presently eligible for jury trial in Metropolitan Court would remain eligible for jury trial in District Court, but instead of the 6 jurors required for a Metropolitan Court jury trial, District Court jury trials require 12 jurors. This will considerably increase the number of jurors needed to try even minor cases in Bernalillo County, and increase the costs of trials on an ongoing basis. Since twice the present number of jurors would be needed to try the same number of cases, twice the present number of citizens in the community would need to be summoned for jury duty, at considerable expense for the state and for the citizens themselves, together with the employers of the extra jurors needed.

In Metropolitan Court, only domestic violence and DWI cases are cases heard "on the record"---recorded by a court monitor and preserved for use upon appeal. All other cases (thousands of other misdemeanors and tens of thousands of traffic violation cases) are not heard on the record in Metropolitan Court. All cases in District court are record cases, and require the services of ei-

ther a court monitor or court reporter for every hearing. Making traffic violation cases into cases which require a court reporter, paid for by the state, would vastly increase costs and would take considerably longer to complete. Cases would become even more backlogged than at the present time unless a large number of additional judgeships, District Attorney personnel and Public Defender personnel increases were made to accommodate this problem.

Virtually every stage of criminal case processing is more complex and time consuming for all parties under District Court rules than under Metropolitan Court rule. Requirements for discovery, the filing of various pleadings and conduct of trials take more time, are more labor intensive, and accordingly more expensive for the parties in District Court.

Substantive differences between the rules of Metropolitan Court and District Court will dramatically change time limitations for criminal cases. The Metropolitan Court rules regarding the 6 month rule are considerably different from those applicable in District Court. The 6 month rule cannot be extended by a judge under present rules, but it can in District Court, upon application and the existence of good cause. While the 6 month rule is often a barrier to the successful prosecution of Metropolitan Court cases and may very well be something that should be changed, at least for certain types of cases and circumstances, the rule does have the practical effect of culling out older cases to make room for new criminal and traffic cases to be handled by the court. The present procedure to apply for a rule extension in District Court or from the Supreme Court is labor intensive for prosecutors in particular. If an extension of the 6 month rule is a legal possibility, as it is in District court, yet the procedure that must be followed is extremely labor intensive, it may become more burden than blessing for prosecutors and the court itself. The volume of rule extension petitions filed in both District Court and before the Supreme Court would undoubtedly go up, and that will not enhance the functioning of either court.

Appeals out of Metropolitan Court are taken in District Court. If Metropolitan court ceases to exist, then all traffic violations and misdemeanor cases presently appealed into District Court will have to be appealed into the Court of Appeals. This volume of cases certainly could not be handled by the Court of Appeals as presently structured, and would undoubtedly require considerable expansion of that court (court personnel, judgeships, office and courtroom space, etc.) Since all District Court cases are heard "on the record", those appeals could also be "record appeals" rather than new trials (trials de novo), but would require additional staff attorneys and other personnel to review the recorded records of trial and prepare decisions for the signature of the judges on the Court of Appeals.

FISCAL IMPLICATIONS

The **Administrative Office of the District Attorneys** states that: An extreme increase in costs for even simple traffic violation cases would follow the enactment of this bill (in the absence of very detailed and thoroughly considered new laws and rules to address the concerns listed above.)

The salary set by statute for District Court judges is significantly higher than that assigned to Metropolitan Court judges. This increase represents a recurring increase in costs to the state, both for salaries (of \$168.9 thousand recurring) and for retirement funds for 16 judges.

Additionally, certain statutorily created fee assessments and treatment programs which presently exist in Metropolitan court may not “carry over” to District Court absent changes in the statutes which created them. This may well reduce or eliminate the flow of some revenues presently coming in to Metropolitan Court, and eliminate some beneficial programs.

Additionally, the proposed legislation does not include an appropriation to pay for basic expenses that would precipitate from a reorganization of this magnitude, e.g., paperwork and stationary changes, vendor contract modifications, and inevitable staff overtime.

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP

There are considerable differences between existing statutes and rules of procedure in Metropolitan Court and District Court.

ADMINISTRATIVE IMPLICATIONS

As mentioned in detail above, a complete analysis is recommended to determine the full impact of the proposed consolidation.

TECHNICAL ISSUES

The following laws would have to be repealed or amended in some way: NMSA 1978, Section 34-6-5 (Amend); NMSA 1978, Section 34-6-24 (Amend); NMSA 1978, Section 34-8A-1 (Repeal); NMSA 1978, Section 34-8A-2 (Repeal); NMSA 1978, Section 34-8A-3 (Repeal); NMSA 1978, Section 34-8A-4 (Repeal); NMSA 1978, Section 34-8A-5 (Repeal); NMSA 1978, Section 34-8A-6 (Repeal); NMSA 1978, Section 34-8A-7 (Repeal); NMSA 1978, Section 34-8A-8 (Repeal); NMSA 1978, Section 34-8A-9 (Repeal).

ALTERNATIVES

An alternative to the bill would be to first examine the issue of consolidating the two courts in Bernalillo County. The Metropolitan Court asked for \$50 thousand for such a study in its FY 2005 budget request. This was rejected by both LFC and DFA because the 2nd District Court was unaware of the request.

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