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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 01/28/05 HB _____

SHORT TITLE Create Lengthy Trial Fund SB 64

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	Indeterminate		Indeterminate	Recurring	Lengthy Trail Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	Indeterminate	Indeterminate	Recurring	Lengthy Trail Fund

(Parenthesis () Indicate Revenue Decreases)

This bill relates to HB395, which includes one of the many provisions included in SB64, and to SB461, which includes some of the same provisions as SB64, and some provisions which are not included in SB64.

SOURCES OF INFORMATION

LFC Files
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 64 creates a “Lengthy Trial Fund,” adds an age of excusal (65) for jury service, eliminates language providing for judge-granted excusal from jury service for certain reasons, creates new language for excusal and postponement, creates a limit for time served on a petit jury panel, and provides for “jurors’ rights.”

The “Lengthy Trial Fund,” is proposed to be administered by the Administrative Office of the Courts and appropriated by the legislature. The fund would be financed through fees, to be set by

the supreme court, which would be collected from every attorney filing a civil case (with exception to those instances described below). An attorney's first pleading or any other filing on which an attorney's name appears would be considered "filing a case." Government attorneys in their official duties, pro se litigants, small claims cases, social security disability determinations, recoupment action for government backed educational loans or mortgages, child custody and support, in forma pauperis actions, and other cases designated by rule that involve minimal use of court resources and are not eligible for a jury trial would be exempted from paying into the lengthy fee trial fund.

The funds collected in the proposed fund would be used to pay wage replacement or supplementation to any petit juror in civil litigation that would otherwise be excused from jury service due to severe financial hardship. The bill provides that, on the fourth day of service, a juror may receive up to \$100 per day, and on the tenth day, up to \$500. Based on documentation provided by the juror, or by affidavit if self employed, a juror would be paid their actual wages from the fund, less the state-paid jury fee. All money and interest collected shall be credited to the fund and will not revert at the end of the fiscal year

New language in the bill exempts persons 65 or older from jury service if the juror requests excusal.

Proposed language clarifies limits on jury time for a petit jury panel to be six months, and language that states: in judicial districts with greater than 300 thousand residents jurors would not be required to serve for longer than six weeks unless that panel is engaged in a trial, nor would a juror be required to remain a member of a petit jury panel for more than three months following qualification as a juror.

Language that excuses individuals from service for 36 months after having served as jurors is removed, however §38-5-2, maintains the language and the intent is retained.

Language has been removed which specified the basis for allowing judges to "excuse, exclude or postpone a person from jury service: physical or mental illness of the juror or a juror's immediate family member, written request of juror's employer, or a juror's prior business, professional, or educational commitments. Replacing the removed excusal language, two new sections are proposed "Postponement of Jury Service," and "Excuse from Jury Service." The Postponement of Jury Service section allows up to a six-month postponement of jury service if postponement has not been granted previously, and if an individual requests postponement and provides a date within the following six months that the individual is available for service. A second postponement is allowed only if: an individual has "extreme circumstances," defined as death in the family, sudden grave illness, a natural disaster or a national emergency in which the individual is involved, all of which could not have been anticipated when the individual was granted the first postponement, and if the individual sets a date with the court to make up jury service within the following six months. Automatic postponement is provided for if a person is called to serve at the same time as another employee of the same employer if the employer has 5 or fewer employees. The proposed bill makes failure to appear for jury service without a first or second postponement a petty misdemeanor.

The new Excuse from Jury Service Section allows an individual to be excused from service if the said individual has a mental or physical condition that causes incapability to be a juror, and can provide medical documentation attesting to the medical or physical condition. The provision

also allows excusal if a person under the care of the individual would suffer “undue or extreme physical or financial hardship,” and defines the condition as: lack of appropriate substitute care-giver, incurring costs that would substantial impact ability to pay daily living expenses, or physical hardship resulting in illness or disease. According to the proposed bill, a court could determine whether an individual is excused permanently, or whether the person could be jury service eligible at a later date.

“Rights of Jurors” is a third new section proposed in Senate Bill 64. This section provides for three juror rights: not to be subject to adverse employment actions such as, but not limited to, dismissal, not to have to use sick, annual, or vacation time in order to serve as a juror, and to only attend one court day unless under consideration for, or serving in, a trial.

Significant Issues

The AOC points out that the Lengthy Trial Fund, supported by a fee paid by civil attorneys when the civil case is filed, would include fees paid by civil attorneys in magistrate or metropolitan court where trials last one or two days.

Included in the proposal is a provision that states a juror must submit substantial financial documentation (earnings statement, or affidavit) to the Administrative Office of the Courts (AOC). The Office reports that many jurors may consider this an inappropriate invasion of their privacy and that AOC and trial courts may need to confirm information before paying eligible jurors.

In regards to the proposed limits to wage replacement for jurors who serve on civil trials, the AOC asserts that a juror hearing a six-week death penalty trial in Courtroom A would get no assistance while a juror hearing a contract dispute for two weeks in Courtroom B would be reimbursed. The Office states this would create an inconsistency that jurors would consider inequitable, and that would likely create citizen complaints and confusion.

Currently there is no age exemption for jury service. The AOC maintains that age is not a certain indicator of ability to serve as a juror and that excusals from jury service should be based upon the ability of a juror to serve.

The bill criminalizes failure to report for jury duty as a petty misdemeanor. The AOC relates that creating a crime may be unnecessary because courts already may hold individuals who fail to appear for jury duty in contempt of court.

Section 6 of the bill creates new juror excusal criteria. The AOC cites that this language makes no allowance for individual situations and circumstances and may require a prospective juror to pay for a visit to the doctor to obtain documentation.

PERFORMANCE IMPLICATIONS

FY 06 is the second year the courts will participate in performance based budgeting. This bill may impact the performance based budgeting measures identified for FY 05, which may result in a need for additional resources.

FISCAL IMPLICATIONS

According to the AOC, implementing a one-day/one trial for all state courts would require additional staff and increase printing and mailing costs. The AOC asserts that the Jury and Witness fund is under-funded for FY05 by \$1 million and that implementation of a one day/one trial format would require a substantial funding increase in order to meet current expenses and to implement the proposed statutory change.

There is no appropriation amount included in the proposed legislation.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

The proposed statute would require all trial courts in New Mexico to convert to a one-day/one trial system. According to the AOC, the courts must summon many more jurors in the proposed trial system, because jurors would not be available to be used more than one time. The AOC relays that the proposed system would be a labor intensive process with increased jury costs, printing, mailing, and staff time. Rural courts have a limited number of persons who can serve as jurors and are uncertain if they will have enough jurors to meet their needs in a one-day/one trial system. Once a juror serves, he or she is excused for 36 months.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 395 proposes establishing age 65 as the age a person may be excused from jury service. SB 461 includes the creation of a Lengthy Trial Fund (and sets the fee amount, unlike SB64), removes some of the same language as is removed in SB64, and adds similar postponement and excusal language and similar "juror rights" language as SB64. HB461 also adds a sections including "Legislative Declaration" not included in SB64, and does not include some provisions included in SB64.

TECHNICAL ISSUES

According to the proposal, employers "may" not take action against an employee who is a juror, but a juror who does not report for jury service "shall" be sentenced for violation of a petty misdemeanor.

EM/yr