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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/09
 SPONSOR HJC LAST UPDATED 2/27/09 HB 263 & 542/HJCS
 SHORT TITLE Increase the Civil Case Automation Fee SB _____
 ANALYST Sanchez, C.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
None	\$700.0	\$700.0	Recurring	Supreme Court Automation Fund
None	\$225.0	\$400.0	Recurring	Judicial Education Fund
None	\$900.0	\$1,500.0	Recurring	Jury and Witness Fund

(Parenthesis () Indicate Revenue Decreases)

Estimates provided by AOC

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Bernalillo County Metropolitan Court (BCMC)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

The substitute bill amends the civil filing fees in Section 34-6-40 and 35-6-1 to add an additional \$10 to the Court Automation Fund for all cases in district and magistrate courts (except for domestic relations cases), and the substitute bill also amends the fees paid upon conviction for a traffic citation or misdemeanor in magistrate and metropolitan courts. As to fees paid upon conviction, the substitute bill creates a \$5 fee for the Jury & Witness Fund administered by the AOC to pay jurors, court witnesses and court interpreters, and also adds \$1 to the existing \$2 fee for the Judicial Education Center (JEC) to replace significant cuts in appropriated funds for JEC.

The \$10 filing fee increase is only paid in certain civil cases, while the \$6 fee is only paid in misdemeanor criminal cases and traffic citations. A case cannot be both civil and criminal, so no person would pay more than a \$10 increase (civil filing) or \$6 (criminal penalty) in any single case under the substitute bill. The civil filing fee can be waived for indigence and the criminal penalty fee can be served by community service.

The substitute bill also cleans up language to specifically direct the funds to which the fees are credited (page 8, lines 3 – 11) and replaces “him” with “the court” (page 7, line 4).

FISCAL IMPLICATIONS

According to the AOC, the \$10 civil fee increase will go to the Supreme Court Automation Fund (SCAF) and will be used to finance the continuation of the Judiciary’s ongoing project to replace its case management system. This project has already been funded by the Legislature with an appropriation over two years of almost eight million general fund dollars. Cancellation of this important project is not practical due to the existing investment in the project and the significant progress made thus far toward completion.

This fee increase is proposed as an alternative to the Judiciary’s requested general fund appropriation of \$1,843,000, which would fund the project to completion. According to the AOC, the collections from this proposed increase to the civil filing fee will likely generate between \$700,000 AND \$850,000 annually (depending on the number of cases filed and filing fee waivers that are approved), eliminating the need for the requested \$1,843,000 over the next three fiscal years, which will keep the case management replacement project on track.

In addition to the SCAF funds from civil filings, revenue generated by the substitute bill from fees in criminal and traffic cases will go as follows: \$5 to the AOC’s Jury & Witness Fund (approximately \$900,000 in FY10 and \$1.5 million annually thereafter) and \$1 to JEC (approximately \$225,000 in FY10 and \$400,000 annually thereafter).

SIGNIFICANT ISSUES

COURT AUTOMATION FEE

In its court automation budget recommendations, the LFC recognizes that general fund IT appropriations are unlikely in the current fiscal situation, and states at page 93 that “[t]he Administrative Office of the Courts, Taxation and Revenue Department, and DoIt all assess fees that can be either increased slightly or used under the existing statute to fund the proposed system development or enhancements. In some cases, statutory changes will be needed.” The \$10 fee increase in the substitute bill, which is endorsed by the Supreme Court, makes the required statutory change. Expenditures from the SCAF, including any revenue generated by the proposed fee increase, require approval by the Supreme Court.

JURY & WITNESS FUND \$5 FEE:

New Mexico currently has the highest rate of juror compensation of any state in the country. By statute, jurors are paid the minimum wage, currently \$7.50 per hour (\$60 per day). A 2007 report from the National Center for State Courts indicates that New York, West Virginia and Washington D.C. pay a flat daily rate of \$40, Nebraska pays a daily rate of \$35, four states a daily rate of \$30, three states a daily rate \$25, four pay \$20 and Utah pays \$18.50 on the first day

of jury service. Twenty-three states pay a daily rate at or below \$15, seven at \$0 for the first day and rates ranging from \$12 to \$50 beginning on the second, fourth, or sixth day of service.

The Jury & Witness Fund had a deficiency of \$489,000 in FY07 and in FY08 the AOC obtained a supplemental appropriation of \$300,000 and also borrowed \$465,000 to close the funding gap. It is projected that the Jury & Witness Fund will be more than \$1,000,000 short for FY09. To date, New Mexico has not had to suspend jury trials due to the shortage in the Jury & Witness Fund. The constitutional right to a timely jury trial is one of the most significant of our civil rights. Continued underfunding of juror payments jeopardizes these rights and risks case dismissals in criminal cases and very long delays in civil cases, where parties wait years to have a jury decide their case. With no prospect of increased general fund support for the Jury & Witness Fund, it is critical that the AOC obtain funds by the \$5 fee in substitute HB 263.

JUDICIAL EDUCATION CENTER (JEC) \$1 FEE: The JEC provides education and training for all state and local court judges and staff in New Mexico, as well as services to tribal courts, including conferences, publications, and web-based services. Its primary source of funds is the JEC fee, which has remained at \$2 per offense since 2003. The increase proposed by the substitute bill would generate new funds to replace reduced general funds of \$186,000 appropriated to the JEC in HB 2 for FY10. The funding would also provide up to \$45,000 for judicial education programs by the Corrine Wolfe Children's Law Center (CLC), to replace approximately \$45,000 in general fund cuts proposed for FY10 for CLC. Both JEC and CLC reside within the Institute of Public Law, UNM School of Law.

PERFORMANCE IMPLICATIONS

If increased automation increases court efficiency this could increase performance.

The Judiciary participates as a key agency in performance based budgeting. According to the AOC, successful implementation of the case management system that would be funded in part by this \$10 fee increase is critical to the ability of courts statewide to achieve performance goals. The appropriations for this project in FY08 and FY09 (almost \$8 million) required the courts to make a sound case for the value of the system and its critical need. The Judiciary's case management replacement project is proceeding on time and on budget and three district courts in the Fourth Judicial District have already transitioned to the new application. Over several fiscal years, the fee increase in this bill is expected to provide the funds needed to complete the project as scheduled.

According to AOC, failure to enact this substitute will leave the AOC without adequate funds to complete implementation of the new Odyssey case management system on time and with critical training for courts statewide. Failure to enact HB 263, as substituted, will also leave the AOC's Jury and Witness Fund severely short of funds needed to pay the statutory rate to jurors and to pay court witnesses and interpreters, a shortfall of as much as \$1.5 million in FY10. Failure to enact HB 263, as substituted, will also leave the JEC and CLC with a reduced budget in FY10 due to cuts to their general fund appropriations, significantly curtailing training activities for new judges as well as serving judges

ADMINISTRATIVE IMPLICATIONS:

According to the AOC, since all mechanisms for the collection and allocation of the each of the fees in HB 263 as substituted are already in place, this legislation would simply require the courts and the Taxation and Revenue Department to change the amount of the fee collected with each civil filing or criminal fine on their forms and records by July 1, 2009, at nominal cost.

OTHER SUBSTANTIVE ISSUES

The increase in civil docket fees unfairly targets civil filers with the burden of funding a statewide system that includes criminal cases. The revenue generated based on numbers from AOC which include district, magistrate and metro court is \$895 thousand if the civil filings remain equal to FY08 filings. The revenue generated is only about 31 percent of the total judicial IT request from general fund revenue. The bill also has no sunset clause so the increase to civil filing fees to pay for judicial automation will continue to unfairly target civil filers into the future.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

HB 336, Increase Public Employee Per Diem & Mileage, would have an impact on the Jury and Witness Fund as well as the JEC Fund. SB 271, Juror Compensation, and HB 484, No Jury Trial For Certain Offenses, would both have an impact on Jury and Witness Fund costs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Judiciary will not be receiving the requested appropriation of \$1,843,000, needed to complete the case management project. Existing project funds will be completely expended by FY 2011. If HB 263 is not enacted, the project will be jeopardized and, at the very least, the completion of the project will be significantly delayed, training will be limited, and other important information technology needs will be deferred such as the 5-year replacement of equipment, implementation of security infrastructure, and upgrades to transmission capabilities.

POSSIBLE QUESTIONS

How will this bill affect low income civil case filers?

Is a \$10 increase too much?

CS/mt