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FISCAL IMPACT REPORT

SPONSOR Wirth **ORIGINAL DATE** _____
LAST UPDATED 01/23/12 **HB** _____

SHORT TITLE Appeals to District Court, CA **SB** SJR 1

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$104.0*	\$0.0	\$104.0*	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications for financial data provided by SOS.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
Attorney General's Office (AGO)
Public Defender Department (PDD)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 1, endorsed by the Courts, Corrections and Justice Committee, contains proposed amendments to the New Mexico Constitution (Article 6) which, if approved by the voters, would provide that appeals from courts inferior to the district court (i.e. probate court, municipal court, magistrate court, and metropolitan court) be "as provided by law". Current law requires all such appeals to be taken to the district court. The amendments would also allow the legislature to determine whether any such appeal should be "de novo"—meaning nothing that happened in the lower court is brought to the higher court, but instead the case starts all over in the higher court—as the Constitution currently requires, or whether to allow for "record review"—meaning review by a higher court of the actions taken in the inferior court—for a particular type of appeal from one or more of these lower courts.

FISCAL IMPLICATIONS

The SOS reports that in accordance with Section 1-16-4 NMSA 1978, upon receipt of the certified proposed constitutional amendment or other question from the Secretary of State, the county clerk shall include it in the proclamation to be issued and shall publish the full text of each proposed Constitutional amendment or other question in accordance with the constitution of New Mexico.

Although the county clerk includes the proposed amendments in the clerk's proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-13 NMSA 1978, including printing samples of the text of each constitutional amendment in both Spanish and English in an amount equal to ten percent of the registered voters of the state. There are currently 1.7 million registered voters in the state. Voters whose election mail is returned as undeliverable will be sent the proper notice under federal law in 2012, and if they do not vote in the next two federal elections, may be purged in 2015. Under these timelines, the voter roll is expected to increase until the purge in 2015.

The SOS reports that in 2010, the publication cost was \$520,000 for 5 constitutional amendments, or approximately \$104,000 per amendment. Although the SOS is continually seeking ways to reduce publication costs, it believes the 2010 figure is a reasonable projection for these one-time 2012 costs, given the increasing number of voter registrations. That number is set forth in the table above as a nonrecurring expense.

The AOC points out that, other than the cost to the SOS, the amendment itself will not result in costs, as it does not result in any change to the existing appeals process. Any change to the existing process would require future legislation, the fiscal impact of which would be analyzed at the time of its introduction. The PDD similarly notes no immediate impact, but advises that any future legislation revising the appellate process will require re-ordering of department resources and might require additional funding.

SIGNIFICANT ISSUES

The amendment contained in Section 1 of the resolution would allow district court appellate jurisdiction over lower courts to be defined by statute. The legislature could in the future decide that certain appeals from lower courts not be heard by the district court, but move directly to a higher, appellate court (typically the Court of Appeals). Such a change, particularly if coupled with legislation that authorized "on record" review, likely would provide for a more streamlined and efficient determination of the final outcome of a case. The AOC comments that the time it may take before reaching the ultimate conclusion of a case that begins in a lower court can be years:

In the limited number of on-record cases from the Metropolitan Court that are appealed to district court, an examination of the time taken to resolve these appeals reveals that delays can stretch for years before the appeal is resolved by the district court, after which there can be a further appeal to the Court of Appeals.

The amendment proposed in Section 2 of the resolution would authorize the legislature to change the *de novo* requirement currently in the Constitution, and addressed in Section 2 of the

resolution to “on record” review of the proceedings that occurred in the lower court. The AOC explains the impact of the existing *de novo* requirement:

The outcomes in trials held before 85 judges in metropolitan and magistrate courts can be erased by the act of filing an appeal in district court. The same is true of trials held before the 95 municipal judges. Because this process is mandated by the New Mexico Constitution, the Legislature is unable to consider whether adjustments to this process would be more efficient and less costly.

The proposed amendment would, if approved by voters, give the Legislature the authority to consider whether inferior courts should be courts of record in some or all matters, as is the case for domestic violence and driving while intoxicated cases in the Bernalillo County Metropolitan Court.

The AOC calls attention to an additional benefit that might arise if the legislature was given the power to authorize appeals from these lower courts to be on the record rather than *de novo*:

Where appeals are *de novo*, a judge in the court that originally ruled in a case, which case might have been tried to a jury, never has the opportunity to have the judge’s ruling reviewed on the record, and never receive the benefit of an opinion from the higher court. In contrast to district court judges, who receive an appellate court opinion in cases appealed from district court, the metropolitan and magistrate judges receive no appellate feedback on their legal rulings or the trial process.

Additionally, the AOC points out that litigants in the types of cases heard by these lower courts, which include misdemeanor criminal cases and small claims civil cases (involving claims of less than \$10,000) often must participate in and persist through more court proceedings than exist for felony criminal cases and district court civil cases such as divorce, medical malpractice, and products liability. For example, a defendant in a first-offense, petty misdemeanor case in magistrate court can have a jury trial there, then obtain a jury trial that requires witnesses to again testify in district court, followed by an appeal to the Court of Appeals, and thereafter a petition for review by the Supreme Court. By contrast, a defendant convicted of first degree murder is entitled to one trial in district court and one review by the state Supreme Court.

The AOC advises that these types of delays and the extra processes involved in cases in the inferior courts caused the New Mexico Reengineering Commission to recommend consideration of changes to this process. However, no change to the mandatory process of *de novo* appeals to the district court can be considered unless first permitted by an amendment to the New Mexico Constitution, as proposed in this legislation.

PERFORMANCE IMPLICATIONS

Both the AOC and the PDD report there will be no immediate impact on the courts if this amendment, which simply would permit but not require any changes from existing practice, is adopted. Any impact on performance is dependent on future actions of the legislature, and could be analyzed at the time a bill is first introduced.

ADMINISTRATIVE IMPLICATIONS

Similarly, the AOC and the PDD report no administrative impact would result from legislative and voter approval of these amendments; any administrative impact would arise from future legislation, and could be analyzed at the time a bill is first introduced.

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