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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 02/12/14
 LAST UPDATED 02/13/14 HB CS/338/aHAFC

SHORT TITLE Public Defender Dept. Personnel Policies SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Narrative	See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Public Defender Department (PDD)
 State Personnel Office (SPO)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to the House Judiciary Substitute to House Bill 338 strikes the \$20 thousand appropriation from the general fund to the PDD for expenditure in FY 15 to develop personnel policies and procedures for the department from the bill.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 338 removes the Public Defender Department from coverage under the State Personnel Act upon implementation by the Public Defender Commission (Commission) of personnel policies and rules. The bill appropriates \$20 thousand from the general fund any unexpended or unencumbered balances remaining at the end of FY 15 revert to the general fund.

FISCAL IMPLICATIONS

The appropriation of \$20 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY 15 shall revert to the general fund.

This bill may not take into account the additional human resources support and staff that may be necessary if the commission chooses to exempt any or all employees of PDD from the Personnel Act, although AOC states that staffing of a grievance or hearing committee and training for staff on new policies and procedures can likely be absorbed and staffed internally.

SIGNIFICANT ISSUES

The HJC Substitute for HB 338 requires the Commission develop and adopt personnel policies and procedures to establish an independent system of personnel administration for PDD. Those policies and procedures must ensure that no employee of the department except the chief, assistant chiefs, appellate defender and district public defenders have fewer rights than under the Personnel Act and under administrative rules applicable to state employees. Upon implementation of those policies and procedures, PDD employees are no longer covered under the Personnel Act.

This bill makes other changes to the Public Defender Act to implement the change in personnel management and oversight. These include removing the limitation that the chief public defender's actions regarding employees are subject to the State Personnel Act; clarifying that the Appellate Division would be headed by an appellate defender; and adding assistant chief public defenders and the appellate defender to the employees not covered by the State Personnel Act, making it consistent with the provisions of that Act (at Section 10-9-4 NMSA 1978).

PDD explains the basis for this bill:

Through voter referendum in 2012, PDD was declared an independent department within the Judicial Branch of government (it was formerly in the Executive Branch). PDD is currently subject to the personnel policies of the State Personnel Office, which is administered by the Executive Branch, and subject to its policies. This bill treats the department consistently with other Judicial Branch departments which have their own personnel rules administered autonomously of any Executive Branch oversight.

PDD further advises:

There is a significant issue regarding the constitutionality of Executive Branch oversight of the operations of a Judicial Branch department. The current structure violates the separation of powers clause of Article 3, Section 1 of the New Mexico Constitution. This bill will correct the issue by allowing the Commission and PDD to function fully as an independent department.

SPO raises the concern that existing vested PDD employees may have a contractual interest in the continuation of their positions as classified, as did those at the Attorney General when its system changed over twenty years ago. The PDD employees who are presently classified (non-

probationary) have a property right in that classification under state law. PDD acknowledges that concern, which it believes is addressed in the bill by its mandate that the personnel policies and procedures developed pursuant to this bill must provide employees of the department (other than the chief, assistant chiefs, district public defenders and the appellate defender) no fewer rights than under the Personnel Act and under administrative rules applicable to state employees generally on the bill's effective date.

ADMINISTRATIVE IMPLICATIONS

PDD anticipates that its Human Resources Division will administer the new PDD personnel policies. SPO points out that unless and until the Commission implements personnel policies and rules for PDD employees, it will still have oversight authority over all PDD employees other than the chief, the assistant chiefs, the district public defenders and the appellate defender.

Further, AGO notes that the Commission will need to ensure that any procurement related to this bill is properly conducted in compliance with the Procurement Code and other applicable law, and that the Commission's meetings and any rule-making hearings are properly noticed and conducted in accordance with the Open Meetings Act and other applicable laws.

ALTERNATIVES

One possible alternative is to fund the creation of a personnel plan, including a compensation schedule, which would be available to next year's legislature, at which point removing the department from the Personnel Act could be considered.

MD/ds