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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/15
SPONSOR Neville **LAST UPDATED** _____ **HB** _____

SHORT TITLE Creating Water District Courts **SB** 336

ANALYST A. Sánchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	\$1,300.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$446.0	\$49.6	\$495.6	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB143, SB36, SB245, SB334 and SB353
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Department of Finance and Administration (DFA)
 Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

Senate Bill 336 proposes to amend Chapter 34 to increase the number of judges by one each in three judicial districts, creates the northern Rio Grande district water court in the First Judicial District, the lower Rio Grande district water court in the Third Judicial Court, and the San Juan water district court in the Eleventh Judicial District Court and creates a fourth district water court at the direction and discretion of the Supreme Court to handle water-related cases in the

(judicial) districts with high water cases, all civil courts.

The bill also proposes to add a new paragraph to Section 38-3-9 to not allow peremptory challenges of district water court judges when presiding over water cases. The Supreme Court may appoint a judge from another judicial district if there is a perception that the assigned district water court judge has a significant conflict of interest.

The bill appropriates \$1.3 million from the general fund as follows: to the First Judicial District Court \$350 thousand, to the Third Judicial District Court \$350 thousand, to the Eleventh Judicial District Court \$250 thousand, and to the AOC \$350 thousand for salaries and benefits, furniture, supplies and equipment for the new judges and support staff.

The effective date of the bill is July 1, 2015.

FISCAL IMPLICATIONS

The appropriation of \$1.3 million contained in this bill is a recurring expense to the general fund. Any unexpended balances remaining at the end of Fiscal year 2016 shall revert to the general fund. The appropriated amount will have an increase approximately three percent or more annually to the operating budget.

Although two new judgeships were requested in the Judiciary Unified Budget, district water courts are not included in the request. The amount the judiciary identifies in its Unified Budget for additional judges in two courts is \$822.2 thousand. Using that amount as a benchmark for the proposed four courts, the appropriation should be is \$1.6 million. The AOC in its response indicates that the initial appropriation for the four judges, staff and associated furnishings, supplies and equipment is \$1.7 million.

SIGNIFICANT ISSUES

The Judicial Compensation Commission in its 2014 Report stated that “applicants to the Judicial Nominating Commission around the state continue to lack diversity, especially lacking applicants with private practice experience in civil law.”

HB143, endorsed by the Courts, Corrections and Justice Committee, creates two additional judgeships as follows: one additional judgeship each in the Second Judicial District and the Third Judicial District. The new judgeship in the Second Judicial District will be assigned to a criminal docket, and the new judgeship in the Third Judicial District Court will be assigned to the children’s court. The number is supported by the 2007 workload assessment study conducted by NMSC and the National Center for State Courts. Additionally, the Chief Judges Council reviewed the requests for judgeships based on need, cost and additional narrative and testimonial information to provide the number of new judges to the legislature.

The Supreme Court has implemented a district water court structure and designated a statewide water adjudication judge to efficiently manage and resolve water cases. In 2004, the Supreme Court created a water court structure consisting of a designated water judge in each judicial district. The water judges are civil judges that hear civil cases in addition to water cases. The water judges are required to receive ongoing education regarding water law and regional water issues to ensure that they develop expertise.

Additionally, in 2009 the Supreme Court designated a statewide water rights adjudication judge to preside over the adjudications in state court. Unlike local water cases that arise in particular judicial districts, adjudications extend geographically to hydrologic boundaries and therefore generally occur in more than one judicial district. The Supreme Court determined that the unique issues presented by adjudications, including the exceptionally large number of claimants, the long duration of the cases, the essential function of court record tracking and analysis, and effecting meaningful notice and case procedures for all claimants, including unrepresented claimants, are most effectively addressed by a single adjudication judge.

The statewide adjudication judge provides centralized case management and refers specific matters to a special master as appropriate. This practice promotes efficiency because case activity is highly variable, and the adjudication judge can rely upon special masters when warranted by the case activity. This structure has promoted implementation of uniform procedures in all state adjudications, improved claimants' access to information, improved case efficiency, and has ensured consistent judicial decisions in the water rights adjudications. At present, the small water caseloads, particularly in the First and Eleventh Judicial Districts, do not warrant additional judgeships.

The AOC recommends that the statewide adjudication judge continue to preside over all adjudications and the currently designated water judge in individual districts continue to hear other water cases that arise.

The OSE states that SB336 would largely duplicate the NM Supreme Court's already existing structure of water court divisions and water judges in each judicial district. In 2004 the Supreme Court ordered the establishment of Water Court Divisions in all 13 judicial districts, and in 2005 designated one sitting district court judge in each judicial district to hear all water cases in each Water Court division. These district judges do not preside over water rights adjudications, but over other water-related cases, such as appeals from State Engineer decisions and enforcement actions. The water-related caseloads of the existing water judges in the 1st, 3rd, and 11th judicial districts are light, and would seem to be far from the size that would justify the creation of any additional judgeships.

Additionally, OSE opines that SB336 is unlikely to have any effect on pending water rights adjudications. The Supreme Court has appointed a single judge to preside over five of the six water rights adjudication suits currently pending in state court. (There are also six other adjudications currently pending in federal court.) This statewide adjudication judge has been presiding over the water rights adjudications pending in the 1st, 3rd, 5th and 11th Judicial Districts since 2009. The intent of SB336 with respect to pending water rights adjudications is not clear, but the four new district water courts that SB336 would create would not affect the workload or jurisdiction of the current statewide adjudication judge. By statute (Section 72-4-17) the current adjudication judge has exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system that is the subject of each adjudication suit.

RELATIONSHIP

SB336 is related to HB143 (Create Additional Judgeships), SB36 (Second Judicial District Elder

and Disability Court), SB245 (Creating and Changing Judicial Districts), SB334 (12th Judicial District Judge in Lincoln County); and SB353 (Create Additional Judgeships).

OTHER SUBSTANTIVE ISSUES

According to OSE, the provision in Section 4B that the judges of the district water courts would not be subject to peremptory challenges when presiding over water cases is similar to Rule 1-071.5 promulgated by the Supreme Court, which applies Rule 1-088(E) to exclude water judges from being excused peremptorily. Judges can still be excused for cause, or recuse themselves.

Additionally, Section 4E, authorizing a district water court judge to hold informal discussion and planning sessions, seems patterned after Rules 1-071.3 and 1-071.4 of the Supreme Court's Rules of Civil Procedure for water rights adjudications, specifically, which provide for joint working sessions between the court and the parties in water rights adjudications, and communications between the court and the plaintiff (usually the State) on "general problems of administration and management" of the adjudications.

Moreover, the provision in Section 6F – that district water court judges would not be required to be disqualified if they own water rights or property – attempts to create a statutory exception to the provision in Article 6, Section 18 of the NM Constitution, which prohibits judges from sitting in a cause in which they have an interest.

ABS/bb