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FISCAL IMPACT REPORT

SPONSOR Maestas/Egolf/ **ORIGINAL DATE** 1/26/22
Martinez/Gallegos **LAST UPDATED** 2/9/222 **HB** 116/aHJC/aHAFC
SHORT TITLE Revisor of Statutes **SB** _____
ANALYST Gaussoin

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
	\$100.0	Recurring	Legislative cash balances

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Compilation Commission (NMCC)
 New Mexico Attorney General (NMAG)

No Response Received

Administrative Office of the Courts (AOC)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to House Bill 116 changes the source of funds from the general fund to legislative cash balances.

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 116 corrects a technical error in the title, adding in the term “Making an Appropriation” as required by legislative rules.

Synopsis of Original Bill

House Bill 116 (HB116) appropriates \$100 thousand from the general fund to the Legislative Council Service for the purpose of employing a “revisor of statutes” to administer a newly created statutory revision program in the Council Service to provide continuous technical

updates to existing statute. Staff would recommend to the Legislature changes to update language and address conflicts, obsolescence, or inoperability with the intent of making state statutes more accessible and understandable. Any proposed revisions would be made in consultation with the Compilation Commission, and the revisor would be a member of the commission.

The effective date of the bill is January 1, 2023.

FISCAL IMPLICATIONS

The appropriation of \$100 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY23 shall revert to the general fund.

The Compilation Commission anticipates additional cost, although it did not identify an amount. These costs likely can be absorbed within the agency's existing budget.

SIGNIFICANT ISSUES

Section 2.3.13.1C NMSA 1978 authorizes the Council Service to address gender-specific language in existing statute when that statute is being amended in proposed legislation. An example of this practice is in HB116, where the phrase "draftsmen" in existing law on the duties of the Legislative Council Service is changed to "drafters." Council Service also uses proposed legislation as an opportunity to update other non-substantive language, such as amending the phrase "shall be" in the Council Service enabling legislation to "are" in HB116. However, Council Service only proposes revisions to language in existing statute when the existing statute is the subject of legislation.

Language is constantly evolving, and while many of these changes do not change meaning (e.g., the Merriam-Webster dictionary now prefers *childcare* over *child care*), some terms do shift in meaning (e.g., the antiquated definition of *awful* was full of awe) and outdated uses can create confusion. In addition, as society evolves so does the acceptability of certain racial and gender terms and terms related to people with disabilities. Existing state statute refers to "idiots" in at least one instance, and a ban prohibiting "idiots" from voting existed until the state constitution was amended by voters in 2010.

Arguably posing a greater threat, ambiguous text is not uncommon in statute. Indeed, the judiciary anticipates lack of clarity in its "plain language" rule, which permits consideration of legislative history, intent, title, and other information when the text's meaning is unclear. The greater clarity of a statute's language, the greater likelihood the court will interpret a law as intended by the Legislature. As important, confusing statutory language creates a barrier between the public and the legislative process. Clear language improves both the accessibility and transparency of government.

From the *Stanford Encyclopedia of Philosophy*: The use of language is crucial to any legal system, not only in the same way that it is crucial to politics in general, but also in [the respect that] ... lawmakers characteristically use language to make law, and law must provide for the authoritative resolution of disputes"

The Attorney General raises concerns about a potential conflict created by having the revisor

serve on the Compilation Commission, noting the revisor would both report to the director of the Legislative Council Service and serve alongside the director as a member of the commission:

This may create the appearance of a conflict of interest, as one Commissioner's employment would directly depend on another Commissioner. (A member of the public could reasonably question whether, while serving on the Commission alongside their supervisor, the revisor of statutes was actually exercising independent judgment.) It would therefore be advisable to have only one of these two officials serve on the Commission.

PERFORMANCE IMPLICATIONS

Greater clarity in state statute will improve both public access to the legislative and legal process and the enforcement of state laws.

TECHNICAL ISSUES

The rules of both legislative chambers require that bills that make an appropriation include the phrase "making an appropriation" in the title. HB116 does not.

OTHER SUBSTANTIVE ISSUES

Numerous states have positions called "revisor of statutes," including Maine, Missouri, Kansas, Nebraska, Colorado, and Minnesota; however, these positions appear to fill the roles filled in New Mexico by Council Service bill drafters and the Compilation Commission.

ALTERNATIVES

The Council Service has existing responsibilities to draft legislation, and the Legislative Council has broad authority to create positions without statute, making it possible for the Council Service to create the revisor position without legislative action and to assign to the position the specific responsibility of looking for technical issues and recommending changes. However, given the language in existing law specifically limiting the revision of gender terms, the council might not have the authority to propose legislation purely to revise non-substantive language.

HFG/acv/rl/acv