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FISCAL IMPACT REPORT

SPONSOR Cadena **LAST UPDATED** _____
ORIGINAL DATE 2/9/2023
BILL
SHORT TITLE Flexibility In Fine And Fee Payments **NUMBER** House Bill 138
ANALYST Gray

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	Up to (\$2,700.0)	Up to (\$2,700.0)	Recurring	See synopsis for list of funds

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Misc Nonjudiciary entities		\$1,500.0	\$1,500.0	\$3,000.0	Recurring	General fund
Judiciary entities		\$2,400.0	\$2,400.0	\$4,800.0	Recurring	General fund
Total		\$3,900.0	\$3,900.0	\$7,800.0	Recurring	General fund

Conflicts with House Bill 139

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

New Mexico Sentencing Commission (NMSC)

Department of Public Safety (DPS)

New Mexico Department of Transportation (NMDOT)

SUMMARY

Synopsis of House Bill 138

House Bill 138 proposes to amend statute related to the assessment and collection of court fees, fines, and costs. HB138 proposes to require courts to assess a person's ability to pay,

standardizes payment plan schedules, expands the definition of community service, and increases the credit for community service and confinement in lieu of payment.

The bill authorizes judges to waive, defer, or suspend costs and only allows those costs to be assessed once. HB138 would also create a new section that prohibits fees from being imposed on an indigent person convicted of a traffic violation or a criminal offense.

The funds that receive revenue from fees that will see decreased revenue under HB138 are:

- The crime laboratory fund,
- The domestic violence offender treatment or intervention fund,
- The local government corrections fund,
- The traffic safety education and enforcement fund,
- The DWI prevention fund,
- The judicial education fund,
- The juvenile adjudication fund.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Fee funding is an unreliable source of revenue for government programs. Fees revenue changes with cycles unrelated to the programs they fund. For example, fee revenues dropped sharply with the onset of the pandemic while most programs funded with fees maintained the same operating costs. This has an impact on the general fund as additional revenue is often required to stabilize funding. Further, there is a significant administrative burden placed on the courts to assess, collect, track, and process all fees for distribution. These considerations have a significant fiscal impact but are indeterminate and not included in this analysis.

HB138 contemplates disallowing fees to be assessed on low-income defendants. This will contribute to uncertainty of fee funding, and operating budgets of impacted entities will need to be replaced to continue program operations. Most court fee revenues go to judiciary entities. However, non-judiciary entities receive court fee revenues, including:

- The Department of Public Safety,
- The New Mexico Finance Authority,
- The Children Youth and Family Department,
- The University of New Mexico,
- The Department of Transportation,
- The Crime Victims Reparation Commission,
- The Human Services Department,
- Municipalities and counties.

Under HB138's proposed changes, courts would be unable to assess fees on indigent defendants, meaning these entities will receive less revenue and will require increased operating budgets to replace fee funding.

HB138 defines indigence as enrollment in:

- Temporary assistance for needy families,

- General assistance,
- The supplemental nutrition assistance program,
- Supplemental security income.

This analysis uses the enrollment rate of the supplemental nutrition assistance program (SNAP) to estimate the impact to revenue and operating costs. According to the Center on Budget and Policy Priorities, 25 percent of New Mexico residents received SNAP assistance. Because those involved with the criminal justice system are more likely to be low-income and to fully capture the range of possible fiscal implications, it is assumed that 50 percent of all cases where fees were previously assessed would be waived.

SIGNIFICANT ISSUES

Court fees place an oversized burden on the poor, who require more time to pay off fees and must spend more time involved with the court. The poor have a greater likelihood to miss payments and, therefore, are more likely to receive failure to pay summons or warrants.

There is little evidence that fees contribute to public safety, and fees also work against efforts for rehabilitation. Upon release from jail or prison, individuals may face hundreds of thousands of dollars in administrative fees. That debt leads to prolonged engagement with the justice system and could result in additional jail time, making it more difficult to find a job or secure housing.

Significant issues were raised by several agencies.

AOC stated:

This bill presents a separation of powers issue by directing court process in statute. When and how to conduct failure to pay assessments and hearings, is a procedural matter which should be left to the Rule making authority of the New Mexico Supreme Court.

AOC further noted that converting fees to community service and jail time does not generate revenue and instead enacts a punishment for a policy designed to raise revenue.

The bill was a product of the New Mexico Sentencing Commission's Reform Committee and was approved by the Sentencing Commission.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with House Bill 139 which contemplates eliminating post-adjudication fees assessed in criminal and traffic cases.

BG/al/ne