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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/09
LAST UPDATED 02/04/09 **HB** 275/aHJC

SPONSOR Gutierrez

SHORT TITLE Create Dona Ana Metro Court **SB** _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NA	\$5,000	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NA	\$414.6	\$0.0	\$414.6	Nonrecurring	General Fund
	NA	\$413.5	\$413.5	\$827	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender (PD)

Bernalillo County Metropolitan Court (BCMC)

SUMMARY

Synopsis of HJC Amendment

The original bill gave municipalities between 2500 and 5000 population in the 1980 federal decennial census and municipalities with a population of less than 15,000 in the last federal decennial census the option not to be included in the jurisdiction of the metropolitan court. The House Judiciary Committee amendment removes this opt-out provision.

The removal of the opt-out provision may truncate terms of elected municipal judges who are not grandfathered in as metropolitan judges. Such a provision may be subject to legal challenges from the judges affected.

Synopsis of Original Bill

The bill creates the “Dona Ana county metropolitan court” (“the court”) in the Dona Ana metropolitan district, which is co-extensive with Dona Ana County. See Section 34-8A-1 NMSA 1978 (1978). The bill creates eight (8) metropolitan court judgeships.

The bill gives the court the same jurisdiction as that given to magistrate courts. In addition the court is given jurisdiction over offenses and complaints relating to ordinances of the county and municipalities within the county. Municipalities between 2500 and 5000 population in the 1980 federal decennial census and municipalities with a population of less than 15,000 in the last federal decennial census are given the option not to be included in the jurisdiction of the metropolitan court. The court is further given jurisdiction over contested violations of state educational institution parking and vehicle operation rules.

Various sections of the metropolitan court statute, Section 34-8A-1, are amended to pertain to any metropolitan court instead of to just the Bernalillo county metropolitan court, such as the mediation fund statute, Section 34-8A-10, and the warrant enforcement fund statute, Section 34-8A-12.

The bill provides certain “grandfathering” provisions for judges of the Dona Ana magistrate district and judges of a municipality within the county with more than fifty thousand persons in the last federal census, which is believed to be Las Cruces. Such judges shall hold positions as metropolitan judges until their current term of office ends.

The bill appropriates \$5 million to the AOC to create the court.

FISCAL IMPLICATIONS

Cost for judges and related staff:

According to the AOC, a metropolitan court judgeship costs \$366.8 thousand in recurring funds. This figure includes salaries and benefits and other recurring costs such as telephone and dues for the judge, a trial court administrative assistant, a court monitor, and two court clerks. The recurring cost for eight metropolitan judgeships is \$2.9 million. Non-recurring initial position costs are \$42.4 thousand per judgeship. For three judgeships this cost would be \$127.2 thousand. For the five current magistrate judgeships converted to metropolitan judgeships, non-recurring initial position costs for a trial court administrative assistant, a court monitor, and one additional clerk (the difference between metropolitan judge staff and magistrate staff) would be five times \$18.4 thousand or \$92 thousand.

A magistrate court judgeship costs \$168 thousand in recurring funds for the judge and one clerk. Recurring costs for the five current magistrate judgeships is five times \$168 thousand or \$840 thousand. The difference between recurring costs for five magistrates and the recurring costs for eight metropolitan court judges is \$1928.4 thousand.

Building

The bill directs AOC to lease a building for the court. AOC leases facilities for the magistrate courts. The AOC currently has a contract with DBA Partners, LLC to build a new magistrate court that the AOC will lease. The structure is being built for the magistrate court but can accommodate the operations of a metropolitan court if needed. The lease costs are about two million a year and the AOC budget has about \$950 thousand in its lease budget to pay for it. The AOC is asking for the additional \$1 million for the FY 10 budget. If this money is not appropriated for FY 10, the AOC plans to use funds from the Magistrate-Metropolitan Facilities Fund to pay for the Las Cruces lease. AOC does not support long-term use of the Facilities Fund for this purpose. The source of the Facilities Fund is docket fees, an uncertain long-term funding source. Moreover the Fund is designated to retrofit and improve facilities all over the state. Tying up this money in Las Cruces would endanger building a courthouse in Mora County, where the magistrate court currently operates out of a portable building with no courtroom. It would postpone needed new or retrofitted facilities in Ruidoso, Aztec, Bernalillo, Deming, Moriarty, Ft. Sumner, Belen, Socorro, Tucumcari, Alamogordo, Clovis, and Springer. Using the funds for Las Cruces would also postpone purchase of needed security systems, safety retrofits, and facility improvements for magistrate courts all over the State. The AOC therefore recommends that all of the money necessary to lease the facility for the Dona Ana metropolitan court should be included in the appropriation for the court.

The building under construction is expandable. AOC estimates that it will cost an additional \$500 thousand a year in lease payments to build out two new court rooms as would be required for an eight-judge metropolitan court.

While the bill calls for the AOC to lease a facility for the court, it should be noted that it is entirely within the province of the Legislature to decide who is responsible for the court building. The Bernalillo County Metropolitan Court (BCMC), and thus the State, owns its own building. The legislature could treat a new metropolitan court in Dona Ana County in the same way as the BCMC, and direct the new court to purchase its building. That seems unlikely, given the building under construction, and any comparable building, if adequate to house a metropolitan court, would probably cost between \$30 to \$50 million to purchase, and perhaps more.

Counties must provide courthouses for district courts. The legislature could treat any new metropolitan courts other than the existing BCMC as district courts are treated, making the metropolitan court building in Las Cruces a county or even a joint city-county responsibility, since a metropolitan court combines the functions of the municipal and magistrate courts.

Staff

A detailed analysis would need to be done to determine the necessary staffing level. Currently, nearly all of the financial and human resource work is done by the Administrative Office of the Courts for the Dona Ana magistrate court. A metropolitan court has its own internal staff and therefore new positions would need to be created. Assuming the court would have an executive officer, 5 financial staff, 2 human resource staff, 2 IT staff, 3 probation officers, and 3 court security officers, the total recurring cost of the new administration staff is \$888 thousand. Total non-recurring cost would be \$80.4 thousand. The municipal court in Las Cruces currently has 23 employees not tied to the two judges. The staff is composed of a court manager, supervisors,

clerks, compliance officers and other staff. The personnel budget for the 23 staff is \$1 million a year, with an operating budget of \$90 thousand a year, for a total cost of \$1.09 million. It is assumed this staff would be transferred to the metropolitan court because the additional staff will be needed to process the additional cases. No detailed information is available to analyze whether costs for the current municipal staff would increase and by how much when such persons became state employees, but the AOC believes the cost to the State might well exceed \$1.09 million. The costs of computers and equipment for this staff would be about \$115 thousand.

Totals

Additional recurring costs for the court under this bill would be \$1.92 million for judgeship costs, \$1.5 million for facility lease costs, \$887.9 thousand for new administrative staff, and \$1.09 million for new clerical and other staff, for a total of \$5.4 million.

Non-recurring costs would be \$127.2 thousand for the new judgeships, \$92 thousand for the new staff associated with the five judgeships that are presently magistrate judgeships, \$80.4 thousand for administrative staff, and \$115 thousand for new clerical and other staff, for a total of \$414.6 thousand.

District attorney and public defender offices

Presently the Public Defender Department and the Third Judicial District Attorney appear only in the five magistrate courts of the area and do not appear in municipal. Enactment of this bill would require them to staff at a minimum three additional courtrooms fulltime. This would require at least three additional attorneys and one additional support staff person for *both* the PD and DA. The Public Defender Department estimates that passage of this bill would require the following additional funds:

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

Section 34-8A-1, NMSA 1978 (1979), provides that a metropolitan court “is established within the boundaries of a class A county with a population of more than two hundred thousand persons in the last federal decennial census.” The AOC anticipates that Dona Ana County will exceed two hundred thousand in the 2010 census.

Metropolitan court judges are required to be attorneys, Section 34-8A-4(B) (1993), whereas magistrate judges in counties of less than 200,000 population are not. Section 35-2-2 (1979). Magistrate court judges must run for election every four years but are not evaluated by the Judicial Performance Evaluation Commission. Section 35-1-3 (2000); see Section 34-9-18 (2008). Metropolitan court judges run in retention elections after an initial contested election and are subject to the Judicial Performance Evaluation Commission. New Mexico Constitution, Article VI, Section 33; Section 34-9-18.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the new court as any new institution experiences inevitable growing pains.

ADMINISTRATIVE IMPLICATIONS

According to the Public Defender’s Office, Passage of this bill without an increase in funding to the Public Defender Department would simply break the back of what is presently the Department’s most overworked office. There is simply no way that the Department could staff three additional courtrooms without additional personnel – especially with the gaping vacancies left by the hiring freeze that is ongoing. There are statutory and constitutional mandates that any indigent defendant facing the possibility of imprisonment be provided with an attorney, so the State will be required to fund positions for the new courtrooms (which undersigned reviewer believes are presently funded through the municipality).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A Metropolitan Court in Dona Ana County would not be authorized.

POSSIBLE QUESTIONS

Is a court in Dona Ana County Cost efficient?

Will the court benefit the citizens of Dona Ana County?

CS/svb