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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09

SPONSOR Crook LAST UPDATED _____ HB 352

SHORT TITLE Jury Service Exemptions SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 112

SOURCES OF INFORMATION

LFC Files

Responses Received From

Bernalillo County Metropolitan Court (BCMC)
 Aging and Long Term Department (ALTD)
 Administrative Office of the District Attorney (AODA)
 Public Defender (PD)

SUMMARY

Synopsis of Bill

House Bill 352 would amend Section 38-5-2 NMSA to provide a permanent exemption from jury service to any person who is seventy years of age or older who files an affidavit “with a local court” requesting the exemption. In addition, the bill will remove a judge’s discretion (or that of the judge’s designee) and would *require* excusal of the juror, without his or her attendance at court, if (1) jury service would cause a severe physical or financial hardship to the prospective juror or a person under the care or supervision of the juror; (2) the individual has an emergency that renders the person unable to perform jury service; and (3) the person presents other satisfactory evidence to the judge or judge’s designee.

FISCAL IMPLICATIONS

The fiscal implications appear to be minimal. There would be some additional work in processing the excusals. It is also conceivable that there could be some added cost to the courts if trials have to be delayed when not enough potential jurors are available.

SIGNIFICANT ISSUES

According to the AODA, HB 352 allows the freedom of choice for elders age 70 or older who wish to use the age exemption for an exemption to serving on a jury. Some elders have significant mobility and/or transportation issues that may limit their ability to get to court. Elders may also have additional hardships such as bad weather or issues with the availability of caregivers who may not be able to assist them in getting to the court house.

The court system may experience some reduction in the size of the jury pool.

Subjective determinations of, e.g., what constitutes an “emergency that renders the person unable to perform jury service” will require judges and their designees to dismiss from jury service individuals for other than due cause.

ADMINISTRATIVE IMPLICATIONS

Some courts are concerned that removing the discretion of a judge or judge’s designee and requiring the excusal of certain potential jurors will increase the burden on the Court to provide sufficient jury pools for its civil and criminal dockets, resulting in increased expenditures in the jury division in both personnel hours and associated costs.

RELATIONSHIP,

SB 112 provides a permanent exemption from jury service to any person who is seventy years of age or older who files an affidavit “with a local court” requesting the exemption.

OTHER SUBSTANTIVE ISSUES

According to the Public Defender, there are two important changes being made to this bill. Each is addressed separately:

AGE-RELATED EXEMPTION: In 2005, a similar bill attempting to excuse those over sixty-five years of age did not pass. The reason it did not pass appears to be mainly the concern that it would be difficult to put together a panel of eligible jurors. That concern does not change by raising the age to seventy. A significant portion of New Mexicans are senior citizens (12.4% were 65 or older in 2006). Excusing them from jury service with no reason other than their age significantly impacts the ultimate number of eligible jurors and whether they represent the community at large. *See State v. Singleton*, 130 N.M. 583, 586, 28 P.3d 1124, 1127 (Ct.App. 2001) (The New Mexico Constitution does not specifically refer to a “fair cross-section” but the right is implicit in the right to a fair trial); *see also* N.M. Const. art. II, § 14.

Some areas of New Mexico have a higher population of senior citizens than other areas and would be hit especially hard by this near-automatic excusal. According to the Census 13.9% of Santa Feans are 65 or older and 16% of those who live in Roswell are 65 or older.

Finally, as the AOC pointed out in 2005, automatic excusals impact the diversity of jury pools. The reason for needing the excusal is questionable in this time of increasing health and longevity.

REMOVING THE JUDGE’S DISCRETION: This change to the current law would remove the “may” and replace it with “shall” with regard to hardship excusals. The sitting judge would then not have any ability to determine whether the hardship could be dealt with in some other way than excusal or if the extent of the hardship is not so great as to require excusal. The judge would have to take any explanation given to him or her and immediately excuse the person whether or not the judge believed the reason to be a legitimate hardship or not.

This bill is similar to Senate Bill 112; however the Senate Bill does not remove the judge’s discretion and create automatic excusals. The Senate version only adds the age exemption.

According to the Bernalillo County Metropolitan Court, the proposed remedy is far worse than the purported problem. In actuality, few – if any - people are denied a deferral of, or outright excusal from, jury service by judges in the Metropolitan Court when they are able to show that such service will result in actual hardship.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/svb