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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/09

SPONSOR S. Beffort LAST UPDATED _____ HB _____

SHORT TITLE Juror Compensation SB 271

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
*Indeterminate	*Indeterminate	*Indeterminate	Recurring	Jury and Witness

(Parenthesis () Indicate Revenue Decreases)

*See Attachment

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorney (AODA)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 271 amends NMSA 35-8-7, Magistrate Civil Jury Fees, by changing the compensation for juror attendance and service from “the highest prevailing minimum wage” to the following: \$10 a day for two hours a day or less of attendance and service; \$20 a day for more than two hours and up to four hours; and \$40 a day for more than four hours of service. It also removes “time-in-travel” as time for which a juror shall be compensated.

SB271 amends NMSA 35-8-15, Mileage and Compensation for Jurors, in the same manner changing the compensation for juror attendance and service from “the highest prevailing minimum wage” to the following: \$10 a day for two hours a day or less of attendance and service; \$20 a day for more than two hours and up to four hours; and \$40 a day for more than four hours of service. It also removes “time-in-travel” as time for which a juror shall be compensated. 35-8-15 pertains to criminal trial juries in Magistrate, Metropolitan, and District Courts.

Additionally, the bill declares an emergency due to the financial limitations of the state’s Jury and Witness Fund, mandating immediate enactment upon passage of the bill.

FISCAL IMPLICATIONS

According to the AOC, adaptations to the jury management software currently used in State Courts will be necessary to implement this change in juror compensation. Costs of these adaptations in are estimated at \$25,000. However, the total saved by changing juror compensation from an hourly rate to a pro-rated daily fee is expected be substantial. Without a change in current law, the shortfall in funding for juror pay will grow dramatically following the increase in the hourly rate to \$6.55 in July 2008 and to \$7.50 per hour on January 1, 2009. Increases in jury usage (the number of jurors who serve) also continue to escalate the cost to compensate jurors. Providing a cap of \$40 per day, along with several other efforts, will help the AOC live within the appropriations to the Jury and Witness Fund.

(See Attachment)

SIGNIFICANT ISSUES

New Mexico currently has the highest rate of juror compensation, beginning on day one of service of any state in the country. At the state’s current minimum wage, jurors are paid \$7.50 per hour or \$60.00 per day. A 2007 report from the National Center for State Courts indicates that New York, West Virginia and D.C. pay a flat daily rate of \$40, Nebraska pays a daily rate of \$35, four states a daily rate of \$30, three states a daily rate \$25, four at \$20, one (Utah) at \$18.50 the first day and \$49 beginning the second day. Twenty-three states pay a daily rate at or below \$15, seven at \$0 for the first day and rates ranging from \$12 to \$50 beginning on the second, fourth, or sixth day of service.

Despite New Mexico’s high rate of juror compensation, New Mexico currently has a juror excusal rate two and a half times that of the national average among state courts surveyed by the National Center for State Courts; 25% excusal rate in New Mexico, 9% nationally. The number of individuals in New Mexico who do not respond to jury summons is more than twice that of the national average, 20% of all those summonsed compared to 9% nationally. It is surprising to note that New Mexico’s high rate of juror compensation does not appear to be an incentive for jury service. Accordingly, little to no impact on requests for excusals is expected due to the proposed change in juror compensation.

What is not surprising, given the state’s ranking at the top of juror compensation in the country, is that appropriations to the Jury & Witness Fund, from which the AOC pays jurors, never keeps up with the required payments. The Jury & Witness Fund had a deficiency of \$489,000 in fiscal year 2007 and in fiscal year 2008 the AOC obtained a supplemental appropriation of \$300,000

and also borrowed \$465,000 to close the funding gap. It is projected that the Jury & Witness Fund will be more than \$500,000 short for the current fiscal year, FY09. To date, New Mexico has not had to suspend jury trials due to the shortage in the Jury & Witness Fund. The constitutional right to a timely jury trial is one of the most significant of our civil rights. Jeopardizing these rights by continuing to pay jurors at a higher rate than any other state in the nation, if cat 33% higher than the next highest paying state, is a tall price to pay, not only in actual dollars and, even more significantly, in responsible stewardship of the public trust.

ADMINISTRATIVE IMPLICATIONS

Because of the financial hardship jury duty creates people will be more reluctant to sit on juries. Magistrate courts may need to summon a larger pool to get the requisite number of jurors.

TECHNICAL ISSUES

Section 3 of the bill indicates an emergency making it necessary for the bill to take effect immediately, following passage and signature by the Executive.

OTHER SUBSTANTIVE ISSUES

Citizens summoned for jury duty would be paid a flat rate statewide for jury service rather than be reimbursed at a rate determined by a minimum wage. Formerly, the reimbursement for jurors was set at the 'highest prevailing minimum wage'. The highest minimum wage is found in Santa Fe at \$9.50 per hour. The state minimum wage is approximately \$6.50 per hour. The bill provides that persons summoned for jury service and those persons serving as jurors will be reimbursed for time and travel at a consistent rate.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Appropriations to the Jury and Witness Fund will continue to fall far short of the expenses required to be paid, the largest part of which is juror pay. This will require the AOC to continue to seek supplemental appropriations and emergency loans to avoid either eliminating jury trial in the last few months of a fiscal year or delaying payments to jurors until the start of the following fiscal year.

CS/mc

SB 271 - IMPACT ON ESTIMATED JUROR PAYMENTS IN FY 2010

Existing law provides that jurors are paid the higher minimum wage, state or federal, for each hour of jury service. For an eight-hour day, this means New Mexico pays jurors \$60. No other state pays jurors by the hour, and only two states (New York and West Virginia) and the District of Columbia pay as much as \$40 for the first day of jury service. SB 271 would cap juror pay at \$40 per day.

The spreadsheet below shows the number of jurors paid, broken down as set forth in SB 271 by service of 2 hours, between 2-4 hours, and more than 4 hours, for jurors who served in 2008. The numbers for the Second Judicial District and the Bernalillo County Metropolitan Court are actual juror hours broken down in 2-hour increments, while the numbers for other courts are derived from juror payments made in 2008 that were not specifically tracked in 2-hour increments. The AOC believes these provide a basis for a reasonable estimate of the impact of SB 271 if adopted for FY 2010. In summary:

2008 Jury Payments at current minimum wage \$7.50 per hour-	\$6,159,490
2008 Juror Payments under SB 271 (\$10/\$20/\$40) -	<u>\$5,230,990</u>
Reduced Jury Payments in FY10 if SB 271 is adopted -	\$ 928,500

The derived numbers relied upon in the above estimate include a percentage of jurors, estimated at 20%, who are government employees who will be paid by their employer and not the Jury & Witness Fund in FY 2010. Accounting for the estimated number of jurors (20%) who are paid by government employers and so are not paid by the Jury & Witness Fund in FY 2010, the savings would be \$792,673.

Thus, a reasonable estimate of the impact of SB 271 on juror payments in FY 2010, based on jurors paid in calendar year 2008, is a reduction of between \$800,000 and \$900,000.

Calendar Year 2008 Juror Hours

Hours Per Day Served

CourtType	Jury Type	<2 Hours / day	<4 Hours / day	>= 4 Hours / day
District	Grand	920	3213	5655
District	Petit	68547	34924	44228
2nd District	Both	8067	3939	12023
Magistrate	Petit	25076	12481	3997
Bern. Metro	Petit	3	18420	2730

Payment Estimate

CourtType	Jury Type	<2 Hours/day @ \$10/day	<4 Hours / day @ \$20/day	>= 4 Hours/day @ \$40/day	Total Payment	Current @ \$6.50/hr	Current @ \$7.50/hr	
District	Grand	\$9,200	\$64,260	\$226,200	\$299,660	\$342,897	\$400,926	Calculated
District	Petit	\$685,470	\$698,480	\$1,769,120	\$3,153,070	\$3,195,757	\$3,736,577	Calculated
2nd District	Both	\$80,670	\$78,780	\$480,920	\$640,370	\$788,454	\$921,885	Actual
Magistrate	Petit	\$250,760	\$249,620	\$159,880	\$660,260	\$558,845	\$653,419	Calculated
Bern. Metro	Petit	\$30	\$368,400	\$109,200	\$477,630	\$382,031	\$446,682	Actual
Statewide		\$1,026,130	\$1,459,540	\$2,745,320	\$5,230,990	\$5,267,985	\$6,159,490	