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## FISCAL IMPACT REPORT

SPONSOR: Parks DATE TYPED: 03/09/01 HB 760  
 SHORT TITLE: Arbitration Awards SB \_\_\_\_\_  
 ANALYST: Hayes

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of Bill

This bill enacts a new section of Chapter 34, Article 6 NMSA 1978 which authorizes the district courts to impose costs on an appellant in certain instances following an appeal from an arbitration award. When a *de novo* hearing is held by a district court following an appeal from an arbitration award and the district court order is the same as or less favorable to the appellant than the arbitration award, the district court shall order the appellant to pay the other party's costs incurred during the appeal, including attorney fees and prejudgment interest from the date of the award. The district court may waive this requirement upon good cause shown and upon findings stated on the record.

Effective date for the provisions of this bill is July 1, 2001.

#### Significant Issues

This bill will put into statute the following local rules in both the Second and the Third Judicial District Courts:

1. LR2-603 (D). Award of fees, costs and interest against appellant. If the court makes a decision on the merits which is the same as or less favorable to the appellant than the arbitrator's award, the court shall order that the appellant pay all other parties' expenses incurred during the appeal including but not limited to reasonable attorney fees, costs and pre-judgment interest dating

from the arbitration award. The court may waive this provision for good cause shown. The court shall state the basis for its good cause finding on the record.

2. LR3-710 (D). Award of fees, costs and interest against appellant. The office of the alternative dispute resolution (ADR) coordinator shall file the arbitration award after the court makes a decision on the merits. If the court makes a decision on the merits which is the same as or less favorable to the appellant than the arbitrator's award, the court shall order that the appellant pay all opposing parties' expenses incurred during the appeal, including but not limited to reasonable attorney fees, costs and pre-judgment interest dating from the arbitration award. The court for good cause shown may waive this provision. If the court waives the provisions of this paragraph, the court shall state the basis for its good cause finding on the record. In its determination of an award pursuant to this paragraph, the court shall consider the arbitrator's certification, if any is included as part of the award pursuant to LR3-709(A)(4) of these rules, that a party or parties failed to participate in the arbitration proceedings in good faith.

Questions have been raised as to the appropriateness of the local rules. By adopting this bill, there would be no question that costs and fees could be ordered. The statute would serve as a disincentive to appeal an arbitration award.

#### **FISCAL IMPLICATIONS**

There is no direct fiscal impact to the state.

#### **ADMINISTRATIVE IMPLICATIONS**

The provisions of this bill could have a positive impact by discouraging appeals from arbitration awards.

CMH/jsp