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FISCAL IMPACT REPORT



SPONSOR: Beffort DATE TYPED: 02/12/02 HB _____

SHORT TITLE: Transfer TRD Independent Hearing Officer SB SJM 32/aSJC

ANALYST: Hayes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SJC Amendments

Five of the Senate Judiciary Committee's amendments strike the Administrative Office of the Courts as the agency designated to conduct a feasibility study and instead replaces AOC with the New Mexico Legislative Council as the responsible agency. In addition, once the study is completed, the findings must be reported to both the Legislative Finance Committee and the New Mexico Legislative Council prior to the First Session of the Forty-Sixth Legislature.

Synopsis of Original Bill

Senate Joint Memorial 32 requests the Administrative Office of the Courts (AOC) to study the feasibility of transferring the hearing officer function to the AOC or another appropriate agency within state government. The AOC is directed to seek input from the New Mexico Society of Certified Public Accountants, the State Bar of New Mexico and appropriate advocacy organizations representing taxpayers of New Mexico. The AOC is then requested to report its findings to the Legislative Finance Committee prior to the First Session of the Forty-Sixth Legislature (2003).

Significant Issues

The memorial outlines the following reasons to study the feasibility of transferring the hearing officer function:

1. NMSA 7-1-1 et.seq. grants taxpayers the right to protest action taken by TRD to an independent hearing officer.
2. Taxpayers should have a neutral forum with no perceived bias in favor of TRD.
3. New Mexico law places the independent hearing officers at TRD within the Office of the Secretary, Legal Bureau; therefore, the hearing officers are not totally segregated from and share resources with the legal staff which represents TRD during a protest.
4. The hearing officers have been known to assist in the drafting of rules and regulations, the application of which these hearing officers may have to rule on in the course of a protest.
5. The only alternative to the hearing process is to file suit in the district court in Santa Fe County.
6. Many taxpayers cannot afford to hire a professional to advise them or to represent them, so they must represent themselves.
7. There are insufficient numbers of protest cases to justify a separate tax court.
8. The hearing officers of TRD are administrative law judges.

In summary, the hearing officers may not be “independent,” and there may exist a conflict of interest by having the hearing officers housed and directly employed by the Taxation and Revenue Department.

FISCAL IMPLICATIONS

Since this is a Memorial, there is no fiscal impact. If, in the future, it is decided that a transfer of the hearing officer function is necessary, then costs associated with that function will need to be calculated and transferred to the recipient agency.

The AOC believes that there will be costs associated with performing the study proposed although the agency does not indicate what type of costs may be incurred.

CMH/ar:pr