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FISCAL IMPACT REPORT

SPONSOR Rainaldi DATE TYPED 02/24/05 HB _____

SHORT TITLE Create a Lengthy Trial Fund SB 461

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
NFI	NFI	NFI	(0-\$850.0)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	\$30.0	\$30.0	Recurring	Lengthy Trail Fund

Relates to House Bill 395 and Senate Bills 64, 240, 288 and 461.

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the Courts
 Bernalillo County Metropolitan Court

SUMMARY

Synopsis of Bill

Senate Bill 461 proposes to add new sections to NMSA Chapter 38, Article 5, "Drawing and Empanelling Jurors" and to amend seven sections in the same Chapter.

The three new sections to be added would include: a legislative declaration explaining the obligation of all qualified citizens to serve on juries;

A new section "postponement of petit jury service" would allow a person to request various postponements of jury service if the juror agrees to a future date of jury service and a subsequent postponement in the case of an emergency. The new section would also allow for postponement of cases in which an employer of 5 or fewer employees has two employees called to jury service and for persons called for jury service who performs a service that would cause an enterprise to close if the said person was made to serve as a juror.

A new section creating a “lengthy trial fund” would provide wage replacement or supplementation for jurors serving as petit jurors for ten (10) or more days. In order to fund the lengthy trial payments, the Bill proposes that a “lengthy trial fund fee” of twenty dollars (\$20.00) be collected from each party who files a jury demand in district court civil cases. Some parties would be exempt from this fee :governmental agencies, pro se litigants, forma pauperis actions, recoupment actions for government-backed educational loans and mortgages, child custody and support cases, and others designated by the Supreme Court to as using minimal resources.

Amendments to the “Qualifications of Jurors,” would allow exemption from capability for jury service to citizens who would experience undue or extreme physical or financial hardship.

Amendments to the “Exemption of Jury Service” Section would:

Allow certain citizens, upon request to be temporarily exempt from jury service if for physical, financial, mental, or emergency hardships.

Exempt persons over age 64 from jury service.

Allow judges or judges’ designees to empanel jurors in a random manner, and allow parties to inspect jury questionnaires no later than seventy-two (72) hours before voir dire

Amendments to the “Petit Jury Panels – Number to be Qualified –Period of Service – Time for Summoning” section would:

Allow for a person not to be required to remain available for service on a jury panel for more than six weeks after being qualified as a panel member

Amendments to the Drawing and Qualifying Trial Jury would:

Provide that a District Court shall make available to parties the names and order of jurors drawn for trial no later than seventy-two (72) hours before voir dire

Amendments to the Milage and Compensation for Jurors would:

Providing a “lengthy trial payment” for jurors serving on a trial for more than ten (10) days

Prohibiting an employer from requiring that an employee use sick, vacation, or annual leave for their time spent serving on a jury

Significant Issues

The exemption for persons age 65, and over, may make it more difficult for courts to assemble the requisite number of persons to serve on a panel of eligible jurors.

Many parts of New Mexico are considered retirement destinations. According to Bernalillo County Metropolitan Court (BCMC), people over the age of sixty-four represent a significant portion of the community. Age is not a certain indicator of a person’s ability to serve as a juror. According to AOC, automatic excusals would limit the diversity of the jury based on a group of persons, not the person’s actual ability to serve.

The bill allows courts to postpone a juror’s service one time to a date certain no more than six months out. Courts can do this, but jurors must be randomly selected. The AOC questions if it would be appropriate to postpone jurors to a date certain when jurors are required to be randomly selected.

A two-year postponement will allow many people to serve as jurors in the future, however some jurors will never be able to serve. A person with a severe physical or mental health condition may never be able to serve. AOC asserts that courts should be able to permanently exempt these people on a case-by-case basis.

The bill requires randomly drawing the jury panel at least 72 hours before voir dire (jury selection) begins. The jury panel and the juror questionnaires must be made available to the parties at that time. AOC asserts that his change would substantially increase costs for the courts and may be difficult to implement.

According to AOC, many jurors do not return the questionnaire by mail, or request an excusal or postponement until the first day of jury service. AOC predicts that in order to comply with this provision, courts would have to call in jurors before the jury term begins to finalize the list of jurors and to have jurors complete questionnaire and that the process would add a day of jury service for each juror, incurring another day of fees paid to jurors.

According to ACO, creating jury panels 72 hours in advance of voir dire is inefficient because many cases settle or become a plea on the day of trial; AOC continues preparing jury panels 72 hours in advance will only increase jury fees and staff costs, increasing the fund deficit.

The bill limits jury terms to no more than six weeks; and at the end of that time, the juror is exempt from jury service for 36 months. According to the Magistrate program, in low population counties and most magistrate courts, no cases may go to trial in six weeks and that because of criminal speedy trial requirements, skipping or delaying calling jurors is not feasible. The magistrate program further cites that courts in low population counties are very concerned that they will not have enough eligible jurors to meet their needs for three years.

AOC asserts that the language in the bill conflicts about which jurors will qualify for compensation from this fund, creating 38-5-15(B) which states; “only a juror who serves on a petit jury for more than ten days qualifies for payment from the lengthy trial fund,” and §38-5-15(C) states “the court may pay ... wages from the lengthy trial fund ... per day per juror beginning on the eleventh day of jury service.” AOC questions if juror days would accumulate over multiple trials or if juror days based on the length of each trial.

In order to be paid from the lengthy trial fund, jurors must submit financial documentation to the court. This will include the juror’s most recent earnings statement. It would create work for the courts and AOC to verify and process these requests

FISCAL IMPLICATIONS

There is no appropriation included in this bill. However there could be increased costs associated with the proposed changes. Bernalillo Metropolitan Court and the Administrative office of the Courts predict workload increased to necessitate anywhere from no new funding to \$851.0 thousand in personnel expenses.

With current trends in case filings, it is estimated by the AOC that the “Lengthy Trial Fund” would collect \$30 thousand dollars annually.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

BCMC predicts any increased workload can be absorbed by the existing number of FTEs and that if not, more FTEs to process the additional excusals and select replacements from the remaining, available and eligible population of potential jurors would be the court's need.

According to AOC, Implementing this legislation for all state courts would require additional staff and will increase printing and mailing costs. AOC asserts that the Jury and Witness Fee Fund is currently under-funded for FY 05 by \$1 million and that the state courts would not be able to implement the legislation without a substantial funding increase to meet current expenses and to implement this statutory change. AOC estimates that 18.75 judicial specialists will need to be added statewide. AOC estimates FY 06 costs to be \$851.0 (one-time and recurring costs) and FY 07 costs to be about \$828.0 (recurring costs only).

ADMINISTRATIVE IMPLICATIONS

The bill proposes multiple changes that would have an impact on administrative duties in the courts. It is not known what the magnitude of the change would be.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 395 and Senate Bills 64, 240 and 288 address related topics.

TECHNICAL ISSUES

BCMC suggests addressing the uncertainty of the language on lines 13 to 15 of pg. 9. The Court questions if the bill intent is to authorize a Judge's calling of an additional/replacement jury panel, just before a panel is to be seated for a given case, or if it merely authorize the submission of additional questions for the originally designated panel that go beyond those contained in the standard questionnaires that are to be disclosed at least 72 hours before the start of the trial of a given case? The Court reports that in some instances, and under current practices and procedures, there may not be a replacement panel available at that particular time.

ALTERNATIVES

Consider the numerous Bills addressing jurors: HB 395, SBs 64, 240, 288 and 461

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

One of the other jury bills could be enacted with a wide range of consequences, or the current statutes regarding jury service would remain.

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