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FISCAL IMPACT REPORT

SPONSOR Sanchez, M. ORIGINAL DATE 2/15/07
LAST UPDATED _____ HB _____
SHORT TITLE Judicial Nominations to Governor SB 1075
ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Bernalillo County Metropolitan Court (BCMC)

SUMMARY

Synopsis of Bill

Senate Bill 1075 sets forth guidelines for the nomination and appointment of judges to fill judicial vacancies. The bill requires judicial nominating commissions, as defined in the act, to recommend by a majority to the governor the names of at least two qualified and recommended persons for judicial office, and provides that a list of nominees shall not be valid unless a majority of the members of the commission concurs.

SB 1075 requires judicial nominating commissions to actively solicit applications and provides that a commission may commence solicitation and recruitment efforts prior to an actual vacancy. Judicial nominating commissions must continue to actively solicit applications from qualified persons until a commission is able to recommend to the governor the names of at least two qualified persons prior to the expiration of the 30-day time period following the occurrence of an actual vacancy in the office of justice of the supreme court or judge of the court of appeals, and as provided in Article 6, Sections 35 through 37 of the Constitution of New Mexico. SB 1075 requires judicial nominating commissions to consider potential nominees beyond those whose names have been submitted to them or who have expressed a willingness to serve.

SB 1075 provides that the governor may make one request of a judicial nominating commission for the submission of additional names pursuant to Article 6, Sections 35 through 37 of the New Mexico Constitution. The bill allows a commission, in evaluating the governor's request, to actively solicit additional applications and requires that the commission give due consideration to each application. SB 1075 requires the governor to fill a vacancy or appoint a successor to fill an impending vacancy within 30 days after receiving a list of final nominations by appointing one of the persons recommended.

SB 1075 provides that the act shall apply to all vacant judicial positions for which judicial nominating commissions submit nominations to the governor, including any vacant positions pending on the effective date of the act.

SB 1075 contains an emergency clause.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the participation of members of the judiciary in nominating commissions and committees.

SIGNIFICANT ISSUES

Sections 35 through 37 of Article 6 of the Constitution of New Mexico govern nominating commissions for appellate, district court and metropolitan court judges. Section 35, governing the appellate judges nominating commission, requires the commission to “actively solicit, accept and evaluate applications from qualified lawyers...” Section 35 also requires, upon the occurrence of an actual vacancy in the office of justice of the supreme court or judge of the court of appeals, that the commission meet within 30 days and “submit to the governor the names of persons qualified for judicial office and recommended for appointment to that office by a majority of the commission.” Section 35 also requires the commission, in response to a request from the governor for submission of additional names, to “promptly submit such additional names *if* a majority of the commission finds that additional persons would be qualified and recommends those persons for appointment to judicial office.” (Emphasis added.) In no instance do the provisions of Section 35, Article 6 of the Constitution of New Mexico require the submission of more than one name. (Sections 36 and 37 adopt the provisions of Section 35, with the exception of certain provisions governing the makeup of each committee.)

Additionally, Rules of the Judicial Nominating Commission are attached as addenda to the constitution. Section 1(C) of the rules provides that a judicial nominating commission may adopt additional rules consistent with the Rules Governing Judicial Nominating Commissions, Article VI of the New Mexico Constitution and state law. Section 9 of the Rules governs recommendation to the Governor, and provides that a commission chair shall send names of the applicants recommended by the commission to the Governor.

To the extent that the provisions of SB 1075 repeat Article 6, Section 35 provisions, they may be unnecessary. To the extent that they alter Article 6, Section 35 provisions, they may require a constitutional amendment. To the extent that the provisions of SB 1075 expand upon or infringe upon the Rules Governing Judicial Nominating Commissions, they may need to be adopted by the judicial nominating commissions.

Senate 1075 does not resolve the issue that is presented if, after actively soliciting qualified lawyers, the Judicial Nominating Commission has fewer than two applicants or fewer than two applicants that can be submitted to the Governor consistent with the duties imposed by the Constitution and by the Rules Governing Judicial Nominating Commissions.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. It is unknown if enactment of this bill would impact performance measures as they relate to judicial budgeting.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/csd