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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/19/08

SPONSOR Cervantes LAST UPDATED 1/30/08 HB 142

SHORT TITLE Judicial Performance Evaluation Fund SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to \$399 thousand appropriated for the Judicial Performance Evaluation Program in the General Appropriation Act.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
State Treasurer

### SUMMARY

#### Synopsis of Bill

House Bill 142 creates a fund for the judicial performance evaluation program. The administrative office of the courts shall administer the fund. Balances in the fund shall not revert to the general fund at the end of any fiscal year.

Money in the fund is subject to appropriation by the legislature and shall be used by the administrative office of the courts for the operation and costs of the judicial performance evaluation commission to perform the duties required by the Supreme Court to evaluate appellate, district and metropolitan court judges.

Payments from the fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or the director's designee upon warrants signed by the secretary of finance and administration.

## **FISCAL IMPLICATIONS**

The number of judges' evaluations fluctuates each year. The creation of the fund allows state general funds appropriated to the administrative office of the courts to be available to cover the costs when a large number of appellate, district, and metropolitan court judges are evaluated.

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

## **SIGNIFICANT ISSUES**

Due to the varying lengths of terms among appellate (8 years), district (6 years), and metropolitan court (4 years) judges, there are certain two-year spans in which the judicial performance evaluation commission is required to conduct interim and/or final evaluations for all judges and justices. This is in comparison to other two-year spans in which only one or two of the different types of judges are being evaluated. A non-reverting fund allows the judicial performance evaluation commission to have the funds necessary to do its work from one fiscal year to the next, without having to revert funds in years with fewer evaluations and request additional funds in busier years.

The administrative office of the courts seeks this non-reverting fund with the direction of the Supreme Court. The Supreme Court's Order of 2/12/97 requires the judicial performance evaluation commission (JPEC) to conduct an evaluation of all appellate, district and metropolitan court judges half way through their terms of office and before their retention election.

## **PERFORMANCE IMPLICATIONS**

Judicial performance evaluation (JPE) programs carry several significant advantages. First, every judge who is evaluated benefits from the feedback of the evaluation, and is given an opportunity for self-improvement. Due to the nature of a judge's professional relationship with attorneys, court staff and litigants, it is often difficult for a judge to get constructive feedback on his performance. JPE allows for anonymous feedback so judges can learn about strengths and weaknesses of which they otherwise might not be aware.

Second, JPE provides a source of information to voters. In many cases, it is the only source of information. Voters typically have no experience with individual judges, much less a sense of which judges are doing a good job on the bench.

## **ADMINISTRATIVE IMPLICATIONS**

The Judicial Performance Evaluation Fund will be managed by the Administrative Office of the Courts; and

Interest earnings on fund cash balances will be distributed to the Judicial Performance Evaluation Fund by the State Treasurer's Office.

**OTHER SUBSTANTIVE ISSUES**

House Bill 142 creates in the state treasury the Judicial Performance Evaluation Fund. Under the Statewide Human Resource, Accounting, and Management Reporting System (SHARE), such funds are established by the Department of Finance and Administration in SHARE. Prior to SHARE, interest-bearing funds were created in the state treasury under the TRACS system. Currently, DFA notifies the State Treasurer’s Office when a fund created by statute is established in SHARE. Although the SHARE system has modified the manner in which funds are “created in the treasury”, the State Treasurer has the same statutory responsibilities and duties of oversight and monthly interest allocations. Unless the creation of the Judicial Performance Evaluation Fund creates an undue administrative burden (e.g.: cost) in the State Treasurer’s Office Investment Division, there will be no fiscal impact to the Cash Management Division.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Without non-reversion language, the Judicial Performance Evaluation Commission will lose its funding in years with fewer evaluations and have to obtain the funding lost to cover the costs when a large number of judges are evaluated the following year. If the lost funding is not recovered, the JPEC will need to decide what evaluations will be cut and what information, if any, will be provided to the voters of New Mexico.

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