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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/11

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE Electronic Filing Court Fees SB 328

ANALYST C.Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
\$25.0	\$80.0	\$120.0	Recurring but increasing as new courts are implemented	Electronic Services Fund

(Parenthesis () Indicate Revenue 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 328, if enacted, will repeal sections of Section 34-1-11 NMSA, which in FY 09 established the “electronic services fund,” a fund administered by the AOC, but subject to appropriation by the Legislature. In addition, SB 328 would require that any balance in the Fund be transferred to the General Fund upon the effective date of the Act.

The purpose of the fund is to defray costs associated with maintaining court e-filing services and providing public access to electronic documents. By eliminating the fund and transferring balances to the general fund, SB 328 would effectively end the ability of courts to implement e-filing in New Mexico.

FISCAL IMPLICATIONS

Since November of 2009, when the Judiciary's e-filing pilot began in the Thirteenth Judicial District Court (counties of Sandoval, Cibola and Valencia), 23,000 e-filing envelopes have been filed. Each filing generated at least \$1.00 for the Electronic Services Fund. If the filer chose to use the e-service feature of the Judiciary's e-filing system, the revenue to the Electronic Services Fund was \$2.00; however, during this period, most filers chose not to use the e-service feature. Total revenues collected during the pilot project to date do not exceed \$25,000, and no monies have been expended at this time. The revenue is being reserved to fund expansion of e-filing to criminal cases in the pilot counties and implementation of e-filing in other courts.

According to the AOC, passage of this bill will effectively end civil e-filing in New Mexico. Some of the negative consequences of passage follow:

1. Passage will effectively prevent implementation of criminal e-filing, which is in the planning stages. Criminal e-filing has the potential to speed the criminal process and provide operational efficiencies to prosecutors and courts.
2. E-filing in the Thirteenth Judicial District, since November of 2009, has resulted in significant operational efficiencies in the Court. Now that non-domestic civil filings are required to be e-filed instead of manually filed, fewer clerks are needed to process manual filings and lawyers no longer have to wait in line to file cases. In addition, all e-filed cases are automatically available as digital documents and are now available via the Internet to plaintiffs and defendants on e-filed cases.
3. E-filing in New Mexico will eventually result in a digital repository of e-filed documents, which will offer greater convenience and levels of access to documents for filers, judges and other interested parties. Eventually, e-filing will result in the elimination of paper file rooms and paper distribution of documents, thus virtually eliminating paper costs and physical storage costs.
4. E-filing in New Mexico will inevitably lead to operational efficiencies that will result from reduced human resource needs associated with manual paper filing, storage and retrieval and distribution. Already, the Thirteenth Judicial District is reporting that such operational efficiencies are being realized.
5. If e-filing is discontinued in New Mexico, significant advantages of implementing the Odyssey Case Management System will not be realized. Courts have already undertaken the transition to electronic management of court documents. This allows for retention of thousands of electronic files in a server, instead of requiring storage in rooms full of paper files. E-filed documents can be automatically stored electronically. Paper documents must be processed by clerks and scanned manually in order to store them electronically. The Judiciary has invested several years and more than \$10 million implementing a new electronic case management system ("Odyssey"), electronic filing, and electronic document management. The efficient use of Odyssey is maximized by incorporating electronic filing and document management. The project to implement Odyssey in all New Mexico courts is on budget and will be completed one year ahead of the original project schedule. To date, Odyssey has been successfully implemented in four general jurisdiction court districts and several magistrate courts. During the next five months, two more court districts, the First (counties of Santa Fe, Rio Arriba and Los Alamos) and Second (Albuquerque) Judicial Court Districts, will implement Odyssey, with e-

filing. If SB 328 becomes law, a significant portion of the efforts devoted to the implementation of the Judiciary's new state-of-the-art court case management application over the last few years will be lost.

6. It is clear that courts operate more efficiently and with less cost under Odyssey, with e-filing and e-document management. One of the reasons some courts have managed to keep up with increased filings (averaging 7% per year) in the last several years even as overall general fund appropriations to the judiciary have declined from more than \$153 million to less than \$135 million expected in FY12, while the statewide vacancy rate in the judiciary has averaged more than 11%, is that courts are operating on Odyssey. E-filing leverages the efficiency gains from Odyssey. By contrast, at the Second Judicial District in Albuquerque, which will implement Odyssey in the summer of 2011, filings and vacancies have increased and the court has experienced severe operational difficulties using the current case management system, which is labor intensive. The Second Judicial District is relying on efficiency gains brought by implementing Odyssey, e-filing and electronic document management to close the widening gap between the court's workload and its resources.

7. Some attorneys believe the cost of e-filing is greater than the attorney's cost to file documents in the traditional way (paper filing and mailed copies to other parties). If true, it would still be true that courts gain tremendous efficiencies from e-filing. Although practicing attorneys are in the best position to judge their cost of doing business, the judiciary believes e-filing is less costly to practitioners than traditional filing. The charge for e-filing is \$6, with another \$4 (total of \$10) if the filing is electronically served on the other parties in the case. For \$6, the attorney can hit "send" on a computer and file an "envelope" that includes as many as 10 different documents. With traditional filing, the attorney or staff has to take the time and resources to make copies and get them to court, either with the cost of mailing documents to the court and other parties or the cost and time taken to go to and from court. The cost of traditional filing depends on the compensation rate of the person going to court to file, and the weight of the documents filed, but in most if not all cases the cost will exceed \$6 or \$10.

8. Benefits of e-filed documents that have an incidental fiscal impact but are often considered to have more important non-economic benefits include: the existence of a secure network in which there are redundant back-up copies in the Odyssey system; mistakes are greatly reduced because clerks do not have to type in critical information (Odyssey automatically populates the electronic case file with the e-filed document); and increased speed for both filing and service. In addition, filing and service under deadline does not have to be completed by the close of the court's business day, but are timely if completed before midnight of the deadline day.

SIGNIFICANT ISSUES

The AOC believes, E-filing in New Mexico has the potential to extend justice services beyond the walls of New Mexico courthouses and provide convenience, operational efficiencies and cost savings to courts, attorneys, and citizens. Elimination of e-filing, particularly after investing significant resources over several years, would be inefficient, wasteful, and would shackle courts to antiquated paper processes for years to come.

Hundreds of courts around the country have implemented e-filing. Most state court systems are in the planning stages of expanding to statewide e-filing, and three court systems are actively implementing e-filing statewide (four including New Mexico). One state, Colorado, has fully

implemented e-filing statewide and is enjoying the benefits, both in terms of operation efficiencies and cost recovery.

The National Center for State Courts is actively promoting court e-filing throughout the world as the single most important method for increasing court efficiency, and has recognized the New Mexico Judiciary for its successful pilot program in the Thirteenth Judicial District. To turn back the clock and undo the progress that has been made with e-filing in New Mexico would be most unfortunate.

PERFORMANCE IMPLICATIONS

Elimination of court e-filing in New Mexico will significantly reduce potential automation performance gains through elimination of wasteful, burdensome manual processes through automation.

TECHNICAL ISSUES

Significant technical resources have been devoted to e-filing and the discontinuation of the program would effectively waste these resources, which include investments in digital storage servers, telecommunications upgrades, scanners and other ancillary technical equipment. In addition, significant human resources have been expended on the project.

OTHER SUBSTANTIVE ISSUES

According to the AOC, the elimination of court e-filing, after so much has been invested, may discourage other New Mexico State agencies from implementing technical programs that will provide enhanced services and efficiencies to constituents by greatly increasing the risk of possible program failure as a result of legislation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

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