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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Electronic Court Docs. Requirement SB 388

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
(\$25,000.0)	(\$80,000.0) (projected)	(\$120,000.0)	Recurring but increasing as new courts are implemented	Electronic Services Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	N/A	N/A	N/A			

(Parenthesis () Indicate Expenditure Decreases)

Senate Bill 328 is a companion to this bill.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 388 would amend NMSA 1978, § 34-2-10, NMSA 1978, § 34-5-15, NMSA 1978, § 34-6-48, NMSA 1978, § 34-8A-15, and NMSA 1978, § 35-6-10 to provide that while the clerk of the supreme court, the court of appeals, the district court, the metropolitan court and the magistrate court respectively may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule...The court shall not charge an electronic services fee to persons who choose not to use electronic services and shall allow persons to file and access documents without using electronic services.

By requiring that courts not charge “persons” who choose not to file electronically, SB 388 would by legislation overrule rules adopted by the Supreme Court and local district courts to mandate that attorneys in civil cases file electronically.

Specifically, SB388 would require the AOC to allow attorneys to opt out of non-domestic civil e-filing and file paper documents, in person, at a district court’s “clerk’s window.” In addition, the AOC will have to make paper documents available to attorneys who choose not to e-file. The bill would also prohibit the AOC from charging the nominal \$6.00 e-filing fee to attorneys who choose not to e-file. Note: at present, the AOC allows all self-represented filers and attorney and self-represented filers of domestic relations cases to file paper documents, without a fee.

FISCAL IMPLICATIONS

The AOC submitted the following discussion of the fiscal impact of SB388.

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.

The pilot program for e-filing began with a local rule that made civil e-filing, after an initial trial period, mandatory for all attorneys. This rule had the specific approval of the New Mexico Supreme Court. Many cities and counties in other states have implemented e-filing and it has been the clear conclusion of most courts that e-filing succeeds best where it is mandatory. While e-filing is usually less costly for attorneys than paper filing, and e-filing makes it possible for courts to provide the attorneys with electronic access to documents in a case, attorneys tend to resist adoption of new methods, such as e-filing, when they have long experience with mailed or hand-filed paper documents. In February 2003, in recommending that e-filing be made mandatory as one of the Standards for Electronic Filing Processes, the National Center for State Courts recognized the resistance to new processes that supports making e-filing mandatory. See “Standards for Electronic Filing Processes (Technical and Business Approaches,” p.41, Standard 1.3B

Mandatory Electronic Filing Processes, at http://www.ncsconline.org/d_tech/standards/Documents/pdfdocs/Recommended_%20Process_%20standards_02_26_03.pdf. The experience in many jurisdictions shows that a very strong majority of attorneys who have been required to adopt e-filing by the courts conclude after doing so that e-filing has many benefits not afforded by paper filing. Passage of this bill will slow the implementation of civil and criminal e-filing in New Mexico. Some of the negative consequences of passage include:

1. Passage will significantly slow implementation and could 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, public defenders and courts. As currently planned, criminal e-filing will be implemented without cast to other state agencies (district attorneys and public defenders).
2. Passage of the bill will require that more clerks be assigned to accommodate those who opt out of e-filing, and will require courts to maintain two filing systems, one manual (paper) and one digital. 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 available via the Internet to plaintiff and defendant attorneys on e-filed cases. With traditional paper files, attorneys or their employees have to visit the court to get copies of paper documents that, with e-filing, they can view (and print, if desired) at the office or from a home computer.
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. Within a few years, 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. Passage of this bill will prevent the timely establishment of digital file repositories, which offer greater efficiencies to filers, courts and members of the public. If the status quo is preserved, e-filing in New Mexico will lead to operational efficiencies that will result from reduced human resource needs associated with manual paper filing, as well as storage, retrieval and distribution of paper documents. Already, the Thirteenth Judicial District is reporting that such operational efficiencies are being realized.
5. If e-filing in New Mexico is slowed by passage of SB 388, several 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 adoption of mandatory e-filing in the Delaware Chancery Court resulted in an estimate that “this will save more than 3 million pieces of paper annually.” See <http://www.govtech.com/e-government/Delaware-Courts-Lead-Nation-in-Use.html> “Delaware Courts Lead Nation in Use of Electronic Filing.” The Judiciary has invested several years and more than \$10,000,000 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 388 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 delayed or completely lost.

6. 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 growth of 7% per year) in the last several years even as overall general fund appropriations to the judiciary have declined from more than \$154 million to less than \$135 million expected in FY12, while the statewide vacancy rate in the judiciary has averaged more than 11.5%, 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 depending on anticipated 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). 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 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. One comparison of the cost of e-filing (at \$6 to file and \$4 more to serve) in a case with a 15-page document and own opposing attorney finds that the savings from e-filing is \$6.33 if USPS were used for service, \$17.50 if FedEx were used, and \$25.50 if a legal “runner” service were used. See <http://www.ncsc.org/topics/technology/electronic-filing/resource-guide.aspx> at “Cost Benefit Analysis.” As reported by the national Law Journal in February 2008, “For lawyers, the key is electronic access to files over the Internet and the ability to file electronically, allowing them to spend less time and money traveling to the courthouse. It also increases predictability in filing a document in court, attorneys said.” See “Patchwork E-Filing Frustrates Lawyers,” at <http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=900005504188&slreturn=1&hbxlogin=1>.

8. Benefits of e-filed documents that have an incidental fiscal impact but which may have more important non-economic benefits include: (1) the existence of a secure network in which there are redundant back-up electronic copies in the Odyssey system; (2) mistakes are greatly reduced because clerks do not have to type in critical information (Odyssey automatically populates the electronic case file with information in the e-filed document); and (3) 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.

The AODA claims the impact is undetermined but potentially significant for a number of reasons, not the least of which is that SB 388 would require all the courts in the state to maintain two filing systems, one digital and one analog.

SIGNIFICANT ISSUES

The AOC offers the following comments in support of e-filing of court documents.

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. Making e-filing voluntary will severely limit the realization of operation benefits. The passage of SB 388, particularly after the legislature has appropriated significant resources over several years for adoption of the Judiciary's new case management application, Odyssey, which allows for electronic documents and e-filing, would be inefficient, wasteful, and could 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 state court systems are actively implementing e-filing statewide (four including New Mexico),. One state, Colorado, has implemented e-filing statewide and is enjoying the benefits, both in terms of operation efficiencies and cost recovery. It should be noted that Colorado started e-filing on a voluntary basis, and because of the voluntary nature of e-filing in Colorado, it took 15 years to get to a 95% adoption rate, which caused the Colorado Judiciary to be forced to maintain redundant systems and spend more money on e-filing than would have been possible had e-filing been mandatory after the initial pilot phase.

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.

According to the AODA, SB 388 would effectively block any effort to convert the New Mexico court system from magistrate court to the Supreme Court to an all-electronic system like the federal courts currently use. Electronic filing has the potential to save the State significant monies.

PERFORMANCE IMPLICATIONS

The AOC states that slowing the adoption of court e-filing in New Mexico will significantly reduce potential automation performance gains through elimination of wasteful, burdensome manual processes through automation. The \$6.00 e-filing fee allows attorneys to file up to ten documents at one time and defrays costs associated with maintaining court e-filing services and providing attorney access to electronic documents. If enacted, this bill will effectively slow the ability of courts to implement e-filing in New Mexico. Enactment will also force courts to maintain two systems, one digital and one manual, to accommodate attorneys who either prefer waiting in a line at a court to file documents, or who cannot seem to get around to establishing an e-filing account and registering for free training.

ADMINISTRATIVE IMPLICATIONS

The AOC, and courts that have implemented e-filing before the effective date of SB 388, would have to reverse mandatory e-filing, issue new rules to govern e-filing, and work with the e-filing vendor to alter the processes presently in place to accommodate non-mandatory e-filing. Courts will have to train or re-train personnel to manage paper filings along with e-filed documents in civil cases where e-filing is now mandatory.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB328, Electronic Filing Court Fees is a companion bill to this bill. SB328 proposes to repeal the statute creating the electronic services fund.

TECHNICAL ISSUES

The AOC notes that significant technical resources have been devoted to e-filing and slowing the program would effectively waste 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

The AOC is concerned the slowing 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. In this regard, the AOC submits for consideration an article published on February 17, 2011, detailing the failure of voluntary e-filing in Seminole County, Florida, at a cost of more than \$1 million,

ALTERNATIVES

By Order issued on Wednesday, February 16, 2011, the Supreme Court executed an Order, approving in principle the “adoption of a procedure by which attorneys may petition this Court for an exemption from electronic filing requirements in any judicial district within this state upon a showing of good cause” and requiring, not later than March 16, 2011, that the AOC present to the Court proposed rule changes to implement such an exemption procedure. A copy of Supreme Court Order No. 11-8500 is attached.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

According to the AOC, if this Bill is not enacted, the Judiciary will continue with its quick adoption of nationally recognized efforts to implement court e-filing throughout the State. This implementation will increase operational efficiencies and will reduce the overall costs of interacting with courts for attorneys and citizens.

JCH/sec

Attachments:

Supreme Court Order No.11-8500
Article on Florida Electronic Court Filing System

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 11-8500

**IN THE MATTER OF EXEMPTIONS
FROM ELECTRONIC FILING REQUIREMENTS**

ORDER

WHEREAS, this matter came on for consideration by the Court upon the request of the Administrative Office of the Courts to adopt a procedure for granting exemptions from electronic filing requirements, and the Court having considered said request and being sufficiently advised, Chief Justice Charles W. Daniels, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, the Court APPROVES, in principle, the adoption of a procedure by which attorneys may petition this Court for an exemption from electronic filing requirements in any judicial district within this state upon a showing of good cause;

IT IS ORDERED that this Court's Chief Counsel shall work with the Administrative Office of the Courts and this Court's relevant rules committees and information technology committees to develop proposed rule

amendments for consideration to implement such an exemption procedure;

IT IS FURTHER ORDERED that proposed rule amendments shall be submitted for consideration on or before **March 16, 2011**.

IT IS SO ORDERED.

WITNESS, Honorable Charles W. Daniels, Chief
Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 16th day of February, 2011.

(S E A L)

Kathleen Jo Gibson, Chief Clerk of the Supreme Court
of the State of New Mexico

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Florida Electronic Court Filing System No Field of Dreams

New System Sees Disappointing Adoption Without Court Mandate

By Eric Winkler

"If you build it, they will file." Well, not necessarily.

Seminole County in Florida built a new electronic records system enabling eFiling to move its court to a paperless system. The system, which cost nearly \$1 million, was intended save time, storage space and paper. And it would...if it was used by judges and lawyers.

The problem is the eFiling system is not mandated for use by attorneys or judges and they are continuing to use paper...lots and lots of paper.

"I might as well take ten \$100,000 bills and light them on fire," said Seminole County Clerk Mary Ann Morse to local television station [WFTV](#).

The clerk reports that the court's new servers, software and three employees to work on programming for several months are seeing little return on their time and investment. What is getting a lot of use is a warehouse in neighboring Orange County, Fla., where 20,000 square feet of case files fill the building from floor to ceiling.

"The taxpayers of the State of Florida really have wasted a lot of money," said Morse.

What is a bit ironic to this observer is that where Orange County, Fla., is the location of the courts' massive document storage facility, the county of the same name in California is providing an example of just how much efficiencies can be gained through a successful eFiling implementation. Perhaps there might be some benefit to getting the two Oranges talking to each other.

In California, eFiling resulted in a faster return of all document types from the Court. Since the Court switched to eFiling in June of 2010, the majority of documents are processed in less than two hours. In the case of paper filings, processing time had taken days and, occasionally, even longer. According to a case study done by the Court and One Legal, 95 percent of court filings submitted through eFiling were processed in under 24 hours. More than 9,000 documents were brought into the Orange County Superior Court via eFiling in the first 60 days alone.

We think eFiling adoption at courts is going to occur from both a top-down and bottom-up approach. From the top, courts will need to demonstrate that eFiling helps them tackle budget issues and makes it possible for them to process filings more quickly. From the bottom, attorneys and their support staff are going to have to find first-hand that eFiling saves them time and expense. As they have illustrated in Seminole County, if attorneys and their staffs don't understand how eFiling is going to make their days a little less stressful, then they'll continue cranking out the paper.

More resources

- <http://www.wftv.com/countybycounty/26878984/detail.html>
- <http://community.onelegal.com>

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