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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>3/16/2023</u>
SHORT TITLE <u>Eliminating Court Fees</u>	ORIGINAL DATE <u>3/3/2023</u>
	BILL NUMBER <u>CS/House Bill 139/HJCS/aHFI#1</u>
	ANALYST <u>Gray</u>

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
		(\$6,788.7)	Recurring	See Fiscal Implications

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Misc Nonjudiciary entities			\$3,489.0	\$3,489.0	Recurring	General Fund
New Mexico finance authority			see fiscal implications	see fiscal implications	see fiscal implications	General Fund
Judiciary entities			\$4,830.3	\$4,830.3	Recurring	General Fund
Total			\$8,319.3	\$8,319.3	Recurring	General fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 76, House Bill 138.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Children Youth and Family Department (CYFD)

Responses Received From for Original Bill

New Mexico Sentencing Commission (NMSC)

Department of Public Safety (DPS)

University of New Mexico (UNM)
Human Services Department (HSD)
Administrative Office of the District Attorneys (AODA)
Department of Transportation (NMDOT)
New Mexico Finance Authority (NMFA)
Department of Finance and Administration (DFA)

No Response Received From for Original Bill
Crime Victims Reparations Commission (CVRC)

SUMMARY

Synopsis of HFI#1 Amendment to HJC Substitute for House Bill 139

The House floor amendment of the House Judiciary Committee Substitute for House Bill 139 clarifies language in the original bill that provides eligible community service activities undertaken in lieu of fine or fee payment.

Synopsis of HJC Substitute for House Bill 139

The House Judiciary Committee Substitute for House Bill 139 amends statute related to the assessment and collection of court fees, fines, and costs. The bill eliminates state-mandated, post-adjudication fees assessed in criminal and traffic cases. The bill also expands the definition of community service that can be used in lieu of fee and fine payment and increases the credit for community service and confinement in lieu of payment.

HB139 contemplates the elimination of fees, which are imposed as administrative costs to fund government programs. Currently, fees provide revenue to a range of agencies and functions, including domestic violence offender treatment, detention officer training, and for a variety of court uses.

Fines, imposed as a punishment for an offense, are not eliminated, but a person's ability to satisfy fines is changed under HB139.

The funds that receive revenue from fees proposed to be eliminated under HB139 are the:

- Crime laboratory fund;
- Traffic safety fund;
- Brain injury services fund;
- Domestic violence offender treatment or intervention fund;
- Local government corrections fund;
- Metropolitan court warrant enforcement fund;
- Magistrate court warrant enforcement fund;
- Judicial education fund; and
- Juvenile adjudication fund.

The bill proposes a variety of additional measures, including:

- Eliminating the court facilities fee upon the full payment of principal and interest of the bonds used for the acquisition and construction of the Bernalillo county metropolitan

court the adjacent parking facility;

- Allowing the court to eliminate a person's unpaid fees or costs which were assessed prior to the bill's effective date. Under this provision, defendants would be able to petition for the court to waive fees assessed before the bill's effective date;
- Moving the judicial education fund from the University of New Mexico to the Administrative Office of the Courts (AOC), duplicating a proposed amendment made in HB76;
- Directing any remaining fee assessments collected by MVD on penalty assessments after the effective date of the bill to revert to the general fund; and
- Removing language that requires the court to assess and collect fees in criminal and traffic cases.

The bill contains two effective dates:

- As related to the provisions expanding community service definitions and confinement in lieu of credit (Sections 1, 5, and 6), the effective date is June 16, 2023;
- As related to the provisions eliminating post-adjudication fees (2, 4, and 7 through 19), the effective date is July 1, 2024.

FISCAL IMPLICATIONS

Fee funding is an unreliable source of revenue for government programs. Fee revenue changes with cycles unrelated to the programs they fund. For example, fee revenues dropped sharply with the onset of the pandemic while most programs funded with fees maintained the same operating costs. This has an impact on the general fund as additional revenue is often required to stabilize funding. Further, there is a significant administrative burden placed on the courts to assess, collect, track, and process all fees for distribution. These considerations have a significant fiscal impact but are indeterminate and not included in this analysis.

This analysis uses fee revenues from FY17 to FY21. Adjustments were made to FY20 and FY21 to account for the impact of the pandemic on fee revenues.

On March 15, 2023, AOC provided that the agency will not seek to eliminate court facilities fees, which provides revenue to pay off bonds issued to construct the Bernalillo county metropolitan court in Albuquerque and its adjacent parking facility. This analysis originally contained a conservative estimate of the cost to eliminate this fee through a nonrecurring investment. However, after AOC certification that they will not seek to eliminate this fee, the analysis has been revised. See *Elimination of Court Facilities Fee Fiscal Implications* below.

Nonjudiciary Fiscal Implications. HB139 proposes removing eight fees that provide revenue to seven government entities. HB139 would also remove fee revenues to municipalities, which receive revenues from fees collected in those municipalities.

The total estimated revenue and operating budget impact for nonjudiciary entities, not including the New Mexico Finance Authority, is \$3 million per year.

Agencies impacted by fees that provided a response for this analysis are included below. The operating budget impact for all other agencies is estimated based on fee revenue data provided by the Administrative Office of the Courts.

Department of Public Safety

The Department of Public Safety's crime lab receives fee revenue to support the annual salary of 1 FTE and for forensic chemistry analysis. The total operating budget relevant to fee revenue is \$263,800. This analysis assumes this is the magnitude of lost revenue and of the operating budget impact.

The agency notes that fee revenue met most of the need prepandemic, but that fee revenues dropped sharply with the pandemic's onset. Further, the assessed fee amounts have not been raised while operating costs of the crime lab have increased.

Children, Youth and Family Department

Several funds relevant to CYFD receive revenue from fees that would be eliminated under HB139, including:

- The domestic violence offender treatment or intervention fund;
- The local government corrections fund for purposes related to juvenile detention; and
- The juvenile adjudication fund.

The agency anticipated a revenue loss of \$207 thousand per year and an equivalent operating budget impact.

University of New Mexico

In FY22, the University of New Mexico received \$692.4 thousand in judicial education fees for the Judicial Education Center (JEC). This analysis assumes this is the magnitude of lost revenue and of the operating budget impact.

Department of Transportation

The Department of Transportation's (NMDOT) Traffic Safety Bureau estimates a potential revenue loss as high as \$857 thousand. NMDOT notes that this would eliminate most funding to the Traffic Safety Bureau's DWI program. These funds would need to be replaced with general fund.

Human Services Department

The Human Services Department (HSD) estimates it receives about \$603.2 thousand in fee revenue for the brain injury services fund (BISF), which offers short-term, non-Medicaid services to about 119 people with traumatic brain injuries statewide.

Estimates from AOC provides that the fee revenue to HSD's brain injury fund is closer to \$250 thousand, with a five-year average (FY17-FY21) of \$265.8. Revenues for this program dropped by about 21 percent in FY21 due to the pandemic. This analysis uses a conservative estimate of \$325 thousand which follows prepandemic averages.

Other Nonjudiciary Entities

Several other nonjudiciary entities are impacted by HB139, including:

- The Crime Victims Reparation Commission; and
- Municipalities and counties.

The total estimated revenue and operating cost to these entities is \$1.5 million.

Judiciary Fiscal Implications. HB139 proposes removing three fees that currently provide

revenue to AOC. The proposal to eliminate the bench warrant fee is analyzed later in this section because it has different fiscal implications.

The revenue impact to AOC is estimated to be \$1.3 million. These fees fund juror costs and administrative functions within AOC and will continue, meaning the operating budget impact is also \$1.3 million.

Elimination of Bench Warrant Fee Fiscal Implications. HB139 proposes removing the bench warrant fee, a \$100 fee assessed upon the issuance of a bench warrant in any magistrate or the metropolitan court. Eliminating this fee will have a revenue impact on AOC of \$3.05 million. However, the operating budget impact may be as high as \$3.5 million depending on AOC implementation.

Currently, bench warrant fee revenues are deposited into the warrant enforcement fund in magistrate courts and the metropolitan court to aid in the collection of fines and fees. HB139 will eliminate fees and, therefore, eliminate the need to collect fees.

However, instead of removing the infrastructure for fee collection, AOC intends to continue these functions but transition them from the status-quo of *back-end* compliance—which seeks to reinstate compliance when it has been broken—to *front-end* compliance, which seeks to prevent noncompliance in the first place. Under AOC’s proposal, staff currently funded with warrant revenue would be funded with general fund revenue. Those staff would transition from sending out notices and making collections to reminding individuals of court dates, ensuring they have transportation to court, and liaising with the court if they need a hearing rescheduled.

General fund revenues would also be needed to support other administrative functions in AOC funded by the bench warrant fee, including the judiciary’s statewide customer service center and the centralized citation processing system.

The operating budget impact is estimated to be \$3.05 million. This may vary depending on the way AOC intends to structure this front-end compliance program. To capture the full range of impacts, this analysis assumes the operating budget will be at most \$3.5 million.

Elimination of Court Facilities Fee Fiscal Implications. HB139 amends the provisions of the court facilities fee, which provides revenue to pay off bonds issued to construct the Bernalillo county metropolitan court in Albuquerque and its adjacent parking facility. Statute requires that the fee must continue to be assessed as long as the bond debt is outstanding. HB139 would allow for general fund appropriations to replace the court facilities fund. The bill would also create a new provision that would eliminate the fee once the principle and interest of the bonds have been paid off.

The estimated annual revenue generated by the court facilities fee is \$1.5 million.

Because HB139 does not contemplate eliminating the facilities fee, there are two ways the operating budget impact could be estimated. First, it could be estimated as zero if appropriators choose to continue paying debt service with fee revenue. Second, it could be estimated as the total cost to satisfy the remaining principle and interest as of FY25. This would be a nonrecurring operating cost of approximately \$5.5 million, assuming the fee pays down the balance by \$1.5 million in FY24.

This analysis originally used \$5.5 million because it is at the high end of the estimated fiscal impact. However, on March 15, 2023, AOC certified in a written memorandum that the agency would not seek to eliminate the fee, and that the Legislature would not need to satisfy the remaining principle and interest of the bond debt. Accordingly, this analysis now uses an estimated fiscal impact of zero.

The New Mexico Finance Authority analysis notes the agency is comfortable with the amendment contemplated in HB139.

SIGNIFICANT ISSUES

Court fees place an oversized burden on the poor, who require more time to pay off fees and must spend more time involved with the court. The poor have a greater likelihood to miss payments and, therefore, are more likely to receive failure to pay summons or warrants. The court cannot collect fees from people who cannot or will not pay them, and most fees cannot be waived by judges. When individuals are unable or unwilling to pay, courts credit those fees by either converting them to community service or jail, neither of which generate revenue and instead impose a punishment.

There is little evidence that fees contribute to public safety, and fees also work against efforts for rehabilitation. Upon release from jail or prison, individuals may face hundreds of thousands of dollars in administrative fees. That debt leads to prolonged engagement with the justice system and could result in additional jail time, making it more difficult to find a job or secure housing.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 138 which contemplates providing flexibility in fee payments but does not eliminate them.

HB139 would move the judicial education fund from the University of New Mexico to the Administrative Office of the Courts, duplicating a proposed amendment made in HB76. HB76 contains an appropriation.

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