

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 1/19/2024
Bill No: SB 70

Sponsor: Joseph Cervantes
Short Title: Supreme Court Justice Salaries

Agency Name and Code 218 AOC
Number: _____
Person Writing Aaron Holloman
Phone: 505-487-6140 **Email** aocash@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
\$527.6	\$3,297.9	Recurring	GF
	FY26 \$3,429.8		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act: HB 113 and HB 141

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Currently, state court judicial salaries are provided by the legislature. Section 34-1-9 sets lower court judges’ salaries as a set percentage, ninety-five percent, of higher court salaries. For example, a Court of Appeals judge’s salary is ninety-five percent of a Supreme Court justice’s salary.

SB 70 amends Section 34-1-9 to set the salary of Supreme Court justices equal to the annual salary of federal magistrate judges. Because the statute links the salaries of lower state court judges to the salary of a Supreme Court justice, this change would increase the salaries of Court of Appeals, district court, and Metropolitan Court judges.

SB 70 removes magistrate court judges from Subsection C, so that the salary of magistrate court judges is no longer required to be ninety-five percent of a Metropolitan Court judge. Under proposed subsection D, the annual salary of magistrate judges is set by the Legislature in an appropriations act.

FISCAL IMPLICATIONS

The FY2025 cost to set Justice pay at the level of federal magistrate judge in New Mexico would be \$3,297,908.94 and the reoccurring cost would be \$3,429,825.29. Federal magistrate salaries have increased by approximately the rate of inflation over the past 20 years, or about 2% per year. This bill does not include an appropriation for salaries. These costs are for non-magistrate pay as SB 70 removes New Mexico magistrate judges from the interrelated pay structure setting magistrate pay as a percentage of Metropolitan Court pay.

This bill does not specify an effective date, therefore if passed the increase in judicial salaries would be effective 90 days after the session ended, or on approximately May 15, 2024. The cost to implement the increases from May 11, 2024, the pay period begin date, through to July 4 2024 would be \$527,655.43.

SIGNIFICANT ISSUES

The 2023 New Mexico Judicial Compensation Committee Report states: “The salary of New Mexico supreme court justices as of July 2023 (\$191,693) ranks 29 out of 54 and district court judges rank 30 compared to salaries in other states and territories.” It goes on to say that “judges

are paid less than lawyers with comparable experience, which significantly reduces the Judiciary's ability to attract and retain judges with proficiency in civil law." These salary ranges therefore affects the ability to recruit new judges. In some counties, there are not sufficient interested, qualified applicants to appropriately fill judicial vacancies, and otherwise interested and qualified candidates are forgoing application for state judge positions in favor of better compensated federal judicial positions. The bill addresses this discrepancy and would allow for the courts to attract more candidates with a broader legal experience to judicial positions.

The bill removes the magistrate judges from the current formula of cascading salaries based on a justice of the Supreme Court. The courts are not currently seeing the same difficulties in attracting candidates for magistrate positions. At present the salary for magistrate judges is at \$123,260 which is adequate to allow recruitment of a broad pool of candidates to those positions.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will continue to face challenges in recruiting and retaining qualified and experienced judges, and judicial salaries will lag well behind the majority of other states in the nation.

AMENDMENTS



STATE OF NEW MEXICO

JUDICIAL COMPENSATION COMMISSION

2023 REPORT

To the Legislative Finance Committee
and
Department of Finance and Administration

Introduction

In 2005, the Legislature enacted Senate Bill 263, now NMSA 1978, Section 34-1-10 (2005), creating the Judicial Compensation Commission (“Commission” or “JCC”), an independent six-member commission charged with recommending a compensation and benefits plan for New Mexico judges to the Legislative Finance Committee (LFC) and the Department of Finance and Administration (DFA). The JCC members for 2023 are:

Camille Carey, Dean of the University of New Mexico School of Law, statutorily designated as Chair of the JCC;

Kathryn Brack Morrow, appointed by the President Pro Tempore of the New Mexico Senate;

Daymon B. Ely, appointed by the Speaker of the New Mexico House of Representatives;

Benjamin I. Sherman, President of the State Bar of New Mexico, statutorily designated as a member;

Patrick Ortiz, appointed by the Chief Justice of the New Mexico Supreme Court; and

Adam Flores, appointed by the Governor of the State of New Mexico.

Statutory Requirement

The JCC must annually “report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices,” NMSA 1978 § 34-1-10(G). Judicial compensation in New Mexico is set through a statutory formula based on the salary the legislature sets for the justices of the supreme court, NMSA 1978 § 34-1-9. The chief justice salary is set \$2,000 higher than the salary of a Justice. Each judge of the court of appeals receives a salary equal to 95% of the salary of a supreme court justice. Each district court judge is paid 95% of the salary of a judge of the court of appeals. Each metropolitan court judge is paid 95% of the salary of a judge of the district court. Each magistrate is paid 75% of the salary of a metropolitan court judge. Salaries for chief judges are set according to the same formula based on the chief justice’s salary. Judicial salaries are not adjusted for location. A judge of the same rank earns the same amount in any community in the state, regardless of size, docket, cost of living, or judicial experience.

In 2015, the New Mexico Supreme Court adopted a policy of endorsing JCC recommendations. The judicial branch supports legislation in the 2024 session to accomplish the recommendations of the legislature’s JCC.

Update on the 2023 Legislative Session

The Commission recommended in its 2022 report that district judge salary be brought to \$185,489. Due to the way judicial salaries are set by statute, the justice salary recommendation was \$205,528, tied to the pay of a federal magistrate judge. The consensus was that this would increase magistrate judge salaries at too high a level that would require an amendment to the salary statute.

House Bill 2 as signed by Governor Lujan Grisham provided all judges with a compensation increase of 6% for FY24. Additionally, the Legislature passed Senate Bill 2, which set justice salaries at the level of a federal magistrate judge (\$205,528) and removed state magistrate judges from the statute that sets state magistrate judge salaries at 75% of metro court judge salaries. The Governor vetoed SB2 which resulted in all judges, including magistrates, receiving the 6% increase. The result is that the compensation of justices in FY24 is \$191,692.80, district judge compensation is \$173,003, and magistrate compensation is \$123,265.

Recommendations for the 2024 Legislative Session

JCC recommends enactment of a statute that sets justice pay at a level that will compete with federal judicial salaries and will make New Mexico district court judge salaries sufficient to compete with federal judge vacancies and attract mid-career New Mexico lawyers to the bench. JCC further recommends removing magistrate judges from the statute that governs judicial pay. Finally, JCC recommends changes to judicial retirement to significantly improve the solvency of the funds and make other changes to improve recruitment and retention of judges.

District Court Judge Pay Should Be \$209,922

Establishing justice pay at \$232,600 will set district court judge pay at \$209,922. The proposed statute would establish this as the pay for FY 2025 and would include a provision to increase pay going forward by the annual rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) as determined on June 30 in the year prior to the legislative session. Both salaries will remain lower than the 2024 pay of federal district court judges in New Mexico. Still, the recommended salary will attract more diverse candidates to the district courts including lawyers in mid-career who have experience across the spectrum of civil cases beyond the criminal law experience that dominates among recent candidates.

Recommendations for the 2024 Legislative Session

(continued)

The salary of New Mexico supreme court justices as of July 2023 (\$191,693) ranks 29 out of 54 and district court judges rank 30 compared to salaries in other states and territories (including the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands).¹ Current pay for New Mexico justices, court of appeals judges, and district court judges fall below the national mean and median. The national average (mean) salary for a justice as of July 2023 is \$197,880 and that average is certain to rise during the states' 2024 legislative sessions. A comparison of judicial salaries with lawyers in government and private employment in New Mexico shows that judges are paid less than lawyers with comparable experience, which significantly reduces the Judiciary's ability to attract and retain judges with proficiency in civil law.²

Pay is a significant factor having an impact on the diversity of candidates who seek judicial office. Candidates with only criminal law experience have a steep learning curve when serving in districts where judges hear a diverse range of civil, family, juvenile, and criminal cases. The adverse effect of inadequate judicial salaries in reducing the scope and experience of judicial applicants is acute in New Mexico and is a problem recognized throughout the nation.³

In 2017, the New Mexico Bar Association commissioned its most recent lawyer compensation study. Survey respondents who identified themselves as a partner/shareholder reported an average salary of \$210,502, with sole practitioners reporting \$184,457. At the cumulative inflation rate (CPI-U) for the five years (2018-2022) since the survey at 18.1%, these figures are likely to be closer to \$248,000 for partners and \$218,000 for sole practitioners. Attorneys charged the highest per-hour billing rate (a median of \$250 in 2017) for civil litigation, business law, contract law, and estate planning, which could explain why fewer of those performing this work are attracted by the salary offered by the judiciary. Inquiries among civil practitioners about applying for judicial vacancies supports this explanation.

Raising the pay of New Mexico justices to \$232,600 will still leave the justice salary below the salary of the Santa Fe county manager (\$288,030), the dean of the UNM Law School (\$283,800), and the Bernalillo County attorney (\$262,903). Setting pay for district court

¹ National Center for State Courts (NCSC) Report on Judicial Compensation as of July 1, 2023, accessed at: https://www.ncsc.org/__data/assets/pdf_file/0028/93556/JSS-August-2023.pdf.

² The last published State Bar salary survey was in 2017. The data referred to in this report is taken from that report found at <https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/2017LawyerCompensationSurvey.pdf?ver=kshjH2muXAa8IjwFPWgW9A%3d%3d>.

³ See Jack Karp, *States' Low Judicial Pay Harming Recruitment, Diversity* (February 17, 2023) Law360 Pulse published at: <https://www.law360.com/pulse/articles/1577803/states-low-judicial-pay-harming-recruitment-diversity> (reporting quotes and data from Idaho, Washington D.C., Nevada, Kansas, West Virginia, Alabama, Kentucky, Maine, Puerto Rico, Texas, Arizona, Hawaii, and the National Center for State Courts).

Recommendations for the 2024 Legislative Session

(continued)

judges at \$209,922 will still leave the salary below those officials as well as, for example, the Albuquerque City chief administrative officer (\$212,143). JCC recommends the necessary salary levels be achieved now, at a recurring cost of \$6,048,684, with future growth of about 2.5% per year based on the past two decades of CPI-U average annual growth.⁴

JCC recommends justice pay be set at \$232,600 in FY25 with a statutory increase from the CPI-U as of June 30th the previous year. On average over the past twenty years, CPI-U has averaged 2.5% per year. JCC recommends removing state magistrate judge salaries from the current salary statute and providing for no increase in salary for FY25. The chart below shows the salaries and projected costs.

With the recommendation to increase a district judge's salary to \$209,922 in FY25, the pay still would be less than the salaries of partners and solo practitioners in private practice, but the gap would be sufficiently narrowed to support the hope of attracting more candidates from civil practice to build a Judiciary with more diverse legal experience.

⁴ CPI-U, 2003 – 2012 = 2.48% per year on average. CPI-U, 2013 - 2022 = 2.47% per year on average. Source *US Bureau of Labor Statistics* found at: <https://www.bls.gov/news.release/cpi.t01.htm>

FY2025 Salary Recommendation

FY2025 NEW MEXICO JUDICIAL COMPENSATION INCREASE INCLUDING BENEFITS

Judicial Compensation ~ FY25 \$232,600—Associate Justice

Job Title	FTE	Formula	FY2024 Current Annual Rate	Benefits Cost 25.15% JRA & 24.65% MRA	TOTAL Cost Per Judge/ Justice Position including Benefits	TOTAL Cost for all Judge/ Justice Positions	Increase Associate Justice to \$232,600	Benefits Cost 25.15% JRA & 24.65% MRA	TOTAL Cost Per Judge/ Justice Position Including Benefits	TOTAL Cost for all Judge / Justice positions
Chief Justice	1	AJ + \$2000	\$193,682.84	\$48,711.23	\$242,394.07	\$242,394.07	\$234,600.00	\$59,001.90	\$293,601.90	\$293,601.90
Associate Justice (AJ)	4	Target Pay	\$191,682.84	\$48,208.23	\$239,891.07	\$959,564.30	\$232,600.00	\$58,498.90	\$291,098.90	\$1,164,395.60
Chief Court of Appeals	1	95% of Chief Justice	\$183,998.70	\$46,275.67	\$230,274.37	\$230,274.37	\$222,870.00	\$56,051.81	\$278,921.81	\$278,921.81
Court of Appeals Judges	9	95% of Associate Judge	\$182,098.70	\$45,797.82	\$227,896.52	\$2,051,068.68	\$220,970.00	\$55,573.96	\$276,543.96	\$2,488,895.60
Chief District Judge	13	95% of Chief Court of Appeals	\$174,798.76	\$43,961.89	\$218,760.65	\$2,843,888.48	\$211,726.50	\$53,249.21	\$264,975.71	\$3,444,684.29
District Judge	89	95% of Court of Appeals Judge	\$172,993.76	\$43,507.93	\$216,501.69	\$19,268,650.81	\$209,921.50	\$52,795.26	\$262,716.76	\$23,381,791.40
Chief Metro Judge	1	95% of Chief District Judge	\$166,058.82	\$41,763.79	\$207,822.62	\$207,822.62	\$201,140.18	\$50,586.75	\$251,726.93	\$251,726.93
Metropolitan Judge	18	95% of District Court Judge	\$164,344.07	\$41,332.53	\$205,676.61	\$3,702,178.98	\$199,425.43	\$50,155.49	\$249,580.92	\$4,492,456.55
	136					\$29,505,842.31				\$35,796,474.06
Presiding Magistrate Judge	5	75% of Chief Metro Judge	\$124,544.12	\$30,700.13	\$155,244.24	\$776,221.22	\$150,855.13	\$37,185.79	\$188,040.92	\$940,204.61
Magistrate Judge	62	95% of District Court Judge	\$123,258.06	\$30,383.11	\$153,641.17	\$9,525,752.36	\$149,569.07	\$36,868.78	\$186,437.84	\$11,559,146.34
	67					\$10,301,973.58				\$12,499,350.95

Total Cost for Judges not including Magistrates
\$6,048,684.38

Total Cost for Magistrate Judges if they are not uncoupled in the 2024 legislative session:
\$2,112,862.85

Formula: Total new cost / 26 pay periods * 25 pay periods
 JRA: 25.15% = 2.5% retiree healthcare, 15.25% PERA, 7.65% FICA
 MRA: 24.65% = 2% retiree health care, 15% PERA, 7.65% FICA

State and Local Salary Comparison

Salaries of New Mexico Supreme Court Justices, Court of Appeals judges, and trial judges⁵

University of New Mexico Athletic Coach 4 (Football)	\$400,000
Senior Investment Officer, State Investment Council	\$317,962
University of New Mexico Chief Legal Counsel	\$314,576
ERB Deputy Director of Investments	\$304,936
Santa Fe County Manager	\$288,030
University of New Mexico School of Law Dean	\$283,800
Bernalillo County Attorney	\$262,903
U.S. Tenth Circuit Judge	\$246,600
U.S. District Judge, New Mexico	\$232,600
U.S. Limited-Jurisdiction Magistrate Judge, New Mexico	\$213,992
Albuquerque City Chief Administrative Officer	\$212,143
Albuquerque Metropolitan County Detention Center Chief	\$196,102
PERA Executive Director Investments/Pensions	\$192,098
New Mexico Supreme Court Justice	\$191,683
Legislative Council Service Director	\$188,746
Dona Ana County Manager	\$185,000
Rio Rancho City Manager	\$184,446
New Mexico Court of Appeals Judge	\$182,108
State Engineer	\$179,790
Santa Fe City Manager	\$174,220
New Mexico Spaceport Director	\$172,875
New Mexico District Court Judge	\$172,003
Legislative Education Study Committee Director	\$171,973
New Mexico Metropolitan Court Judge	\$164,344
Santa Fe Municipal Judge	\$155,688
Attorney General's Office Chief of Staff	\$150,985
State Auditor's Office Deputy State Auditor	\$148,400
House Chief Clerk	\$141,528
Senate Chief Clerk	\$127,200
New Mexico Magistrate Judge	\$123,258

⁵ Data collected from salaries reported on the New Mexico Sunshine Portal, the University of New Mexico Sunshine Portal, sites published by local governments, and information provided by employees of the institution or government office. Information collected as of September 8, 2023.

AMEND COMPENSATION STATUTE TO REMOVE MAGISTRATE JUDGES

The experience of Judicial Nominating Commissions continues to show that pay for district court judges is a hindrance to attracting candidates with diverse legal experience, especially those with civil law experience. Vacancies for non-lawyer magistrate positions attract numerous qualified candidates. The salary of magistrate judges is currently \$123,265. Without removing magistrates from the salary statute, achieving the JCC's target for justice and district court pay would elevate magistrate compensation to \$149,569 at a recurring cost of \$2,112,863 for salaries and benefits. JCC recommends that magistrate judges be removed from the salary statute and remain at the current compensation of \$123,265.

New Mexico Magistrate Pay Compares Favorably with Pay in Comparable States – No two states have the same provisions for limited-jurisdiction judges. A survey of states with non-lawyer, limited-jurisdiction courts identified a few states that provide reasonable comparisons.

New Mexico — Non-lawyer magistrate judges have jurisdiction over misdemeanors and civil cases up to \$10,000. As with most of the other limited-jurisdiction judges listed here, magistrate judges also make probable cause findings in felony cases. Salary is \$123,265.

Pennsylvania – Non-lawyer judges have jurisdiction over misdemeanors and civil cases up to \$12,000. Salary is \$93,338.

Utah – Non-lawyer judges except in the most populous counties have jurisdiction over misdemeanors and civil cases up to \$11,000. Salary is \$87,500.

Nevada – Non-lawyer judges in counties with a population of less than 100,000 have jurisdiction over misdemeanors and civil cases up to \$15,000. Salary is \$40,000 to \$75,000 (some are not full-time).

Delaware – Non-lawyer justice of the peace judges have jurisdiction over misdemeanors and civil cases up to \$25,000. Salaries are \$78,783 to \$83,952.

Arizona – Non-lawyer justice of the peace judges have jurisdiction over misdemeanors and civil cases up to \$10,000. Salaries are \$37,318 to \$104,568 (not all are full-time; salary is set by municipality).

Qualifications – Outside of Las Cruces, the qualifications for a magistrate judge are a high school diploma or its equivalent and residence in the district in which the magistrate would serve. Metropolitan court judges must be lawyers who have practiced law for at least three years. District court judges must be lawyers who are at least age 35 with at least 6 years' experience in the practice of law. At a minimum, appellate judges and justices must be lawyers who are at least 35 and have practiced law for at least 10 years.

AMEND COMPENSATION STATUTE TO REMOVE MAGISTRATE JUDGES

(CONTINUED)

Jurisdiction – Magistrate court jurisdiction is limited to traffic, criminal misdemeanors, and civil cases with an amount in controversy up to \$10,000. District court judges have jurisdiction over all criminal and civil cases, family and juvenile cases, and writs. Appellate judges and justices have jurisdiction over all cases.

Record – There is no written or taped record of magistrate court proceedings. The exception is for preliminary hearings to determine probable cause, which are recorded. Appeals from magistrate court cases are *de novo*, meaning the appeal starts the case anew in district court, with no record of or impact from what occurred in the case in the magistrate court.

Recruitment and Election – Vacancies in magistrate courts routinely have applicants that provide the governor with qualified candidates for appointment. The Judicial Nominating Commission does not vet magistrate court applicants. Magistrate judges run for election every four years that require a majority vote. Other state judges must run in one contested race and win by majority vote, after which they face a retention election in which they must achieve 57% of the votes cast. Magistrates never have to obtain the 57% supermajority vote required for other judges. Before running for retention, non-magistrate judges are evaluated by the Judicial Performance Evaluation Commission (JPEC), which publishes recommendations to retain or not retain. Magistrates are not evaluated by JPEC.

Administration - Magistrate judges do not manage magistrate court personnel nor do they administer the court's budget. The chief judge of metropolitan and district courts manages personnel and budgets for their courts.

In summary, the differences in qualifications, jurisdiction, magistrate courts not being courts of record, the difficulty in recruiting non-magistrate judges that do not occur with magistrate judge vacancies, and the additional management responsibilities of judges in metropolitan and district courts, present significant difference in the compensation needed to attract and retain magistrate and non-magistrate judges. Mandating the same pay increases for magistrates as for non-magistrate judges creates barriers to increasing district court judge pay to \$209,922 under the current statute. For all of these reason, the JCC recommends amending the statute to remove magistrate judges from NMSA 1978, Section 34-1-9D(4) (2017).

AMEND JUDICIAL RETIREMENT TO ACHIEVE SOLVENCY

PERA manages two judicial retirement funds, one for non-lawyer magistrates (MRA) and one for lawyer judges (JRA). Both funds are substantially below a trajectory toward 100% funding. JCC recommends increasing contributions to move both funds toward solvency along with other changes that will help attract and retain qualified judges. In summary, JCC supports statutory changes as outlined here. Actuarial analysis of the proposals is from PERA.

Proposed changes to the JRA which assume a 15% increase in pay for justices and non-magistrates:

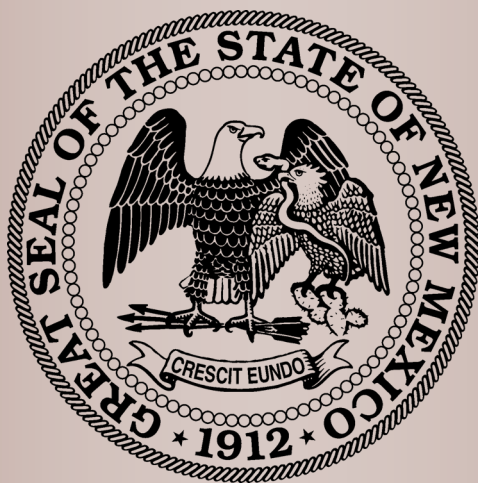
1. For judges who currently have 10 years of service or less, increase service credit for service earned on or July 1, 2024 from 3.25% to 4% per year for the first 10 years of service and 3.5% for any year accumulated beyond 10 years;
2. Reduce the vesting period from 8 years to 5 years;
3. Increase to the maximum pension a member would be permitted to earn from 85% to 100%;
4. One time 15% increase to compensation for all non-magistrate judges;
5. Increase member contribution rates from 10.50% to 12.50% of pay;
6. Increase employer contribution rates from 15.00% of pay to 21.50% of pay.

Impact to JRA solvency is to reduce the projection for the JRA to be 100% funded from 107 years currently to 31 years.

Proposed changes to the MRA, which assume no increase in pay for magistrates:

1. Reduce the vesting period from 8 years to 5 years;
2. Increase to the maximum pension a member would be permitted to earn from 85% to 100%;
3. Increase member contribution rates from 10.50% to 12.50% of pay;
4. Increase employer contribution rates from 15.00% of pay to 21.50% of pay.

Impact to MRA solvency is to reduce the projection for the MRA to be 100% funded from "infinite" (never) currently to 21 years.



JUDICIAL COMPENSATION COMMISSION

c/o Administrative Office of the Courts

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