

<b>LFC Requester:</b>	<b>Austin Davidson</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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** January 24, 2024

**Bill No:** SB140

**Sponsor:** George Munoz  
**Short Title:** OVERSIGHT OF JUDICIAL DISTRICT DECISIONS

**Agency Name and Code**    AOC 218  
**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		

(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)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: Senate Bill 140 amends Section 36-1-8.2 NMSA 1978 by adding a provision allowing for the division 1 district attorney (San Juan County) to have oversight over the prosecutorial decisions made by those prosecutors in division 2 (McKinley County).

#### **FISCAL IMPLICATIONS**

##### **SIGNIFICANT ISSUES**

District attorneys are elected by the voters in their respective districts. N.M. Const. Art. VI, Sec. 24. For the Eleventh Judicial District, the district attorney is divided into two divisions based on county, and the constituents of each county elect only the district attorney in their county. NMSA 1978, § 36-1-8.3. By statute, each district attorney in the two divisions is empowered with the duties of a district attorney generally. *Id.*

The bill currently carries a danger of being read to place the prosecutorial decisions of an elected official in the hands of a person who the constituents did not and could not choose via an election, thereby denying the people a say in their electoral politics.

The current split of the office of district attorney in the Eleventh into two divisions separated by county are unique to the Eleventh Judicial District. No other judicial district is so divided. This division was the result of a lawsuit filed in 1991 where citizens of McKinley County alleged that the voting interests of Native peoples were not being represented in the selection of elected positions, including district attorneys. *Complaint for Declaratory and Injunctive Relief, Tsosie, et al. v. King, et al.*, 1:91-cv-00905-ELM (Sept. 9, 1991). The lawsuit was resolved with the compromise that there be two district attorney divisions that are elected by the voters in each county. *Order, Tsosie, et al. v. King, et al.*, 1:91-cv-00905-ELM, ¶ 6 (Jan. 7, 1993). The bill as drafted may lead to litigation where the effect would be to have one elected official subordinate to the oversight of another in apparent contradiction in practice to the *Tsosie* settlement.

##### **PERFORMANCE IMPLICATIONS**

In the courts, the bill may impact the time to resolution of criminal matters if the decisions are subject to oversight by another entity.

##### **ADMINISTRATIVE IMPLICATIONS**

##### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JAN 07 1993

*R. P. Tommich*  
CLERK

LEONARD TSOSIE, et al.

Plaintiffs,

vs.

No. CIV 91-0905-M

BRUCE KING, et al.,

Defendants.

**ORDER**

This action was brought by the Plaintiffs on September 9, 1991, pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, seeking declaratory relief under 28 U.S.C. §§ 2201 and 2202 and injunctive relief. In this matter, Plaintiffs have challenged the manner in which district judges and district attorneys are selected in the Eleventh Judicial District of the State of New Mexico and the manner in which magistrates are selected in San Juan County. The Eleventh Judicial District is composed of San Juan and McKinley Counties. The Defendants are the Honorable Bruce King, Governor of the State of New Mexico, and the Honorable Stephanie Gonzales, Secretary of State. They are officers of the executive branch of the State of New Mexico.

The parties to this action having agreed to resolve this lawsuit by Settlement Agreement, and the Court having reviewed the Settlement Agreement and being otherwise advised in the premises, hereby approves and adopts the Settlement Agreement.

WHEREFORE, it is hereby ordered, adjudged and decreed as follows:

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343(A)(3) and (4).

2. Plaintiffs are proper parties to bring this action.

3. The Defendants are proper parties and have the power and authority to enter into the accompanying Settlement Agreement.

4. In entering into the accompanying Settlement Agreement, the Defendants do not admit any violation of law, and neither the Settlement Agreement, nor this Order may be used as evidence of liability, or as an admission of liability in this or any other legal proceeding.

5. This Order shall be applicable to and binding upon all of the Plaintiffs individually and the officers, agents, employees, assigns and successors of the Navajo Board of Election Supervisors when acting in their official capacities and upon the Defendants in their official capacities as to all of the claims raised in the Plaintiffs' Complaint.

6. The at-large system of electing the two district attorneys in the Eleventh Judicial District as presently composed will no longer be utilized. For district attorney elections after 1992, the Eleventh Judicial District will be divided into two separate election divisions, and the qualified, registered electors in each will elect one district attorney

from that division. One of the divisions will be composed of McKinley County, and the other will be composed of San Juan County. Nothing herein shall be deemed to affect the jurisdiction and powers of the Eleventh Judicial District district attorneys under current law and practice. Enactment by the New Mexico Legislature during its 1993 session and approval by the Governor of legislation sufficient to create the electoral divisions described herein and otherwise consistent with the provisions of this paragraph shall be deemed to meet the requirements of this paragraph. If the Legislature fails to adopt legislation implementing this paragraph by the end of that session that is consistent with this paragraph or if the Governor fails to approve same, the Court will implement this provision of the Settlement Agreement by Court Order.

7. The at-large system of electing the three magistrate judges in San Juan County as presently configured will no longer be utilized after 1992. Future elections will be conducted pursuant to a districting plan in which San Juan County will be divided into three separate election divisions. One magistrate judge shall be elected by the qualified, registered electors in each division. The magistrate judges will not have to reside in the division from which they are elected. At least one of the divisions will contain a voting age population that is at least 70% Native American. Magistrate judges elected from these election divisions will continue to have county-wide

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8. The Plaintiffs' claims challenging the at-large elections for district court judges in the Eleventh Judicial District and challenging the judicial selection system contained in the New Mexico Constitution, Counts I and IV of the Complaint, will be and hereby are dismissed without prejudice. Plaintiffs shall not file any of the same claims or substantially similar claims prior to January 1, 1996.

9. This Order disposes of all claims relating to the alleged liability of the Defendants in this case. The Court retains jurisdiction of this matter, and a final Order will not be entered until after the adoption of the plans as indicated by

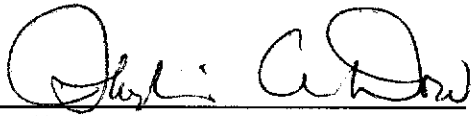
the Legislature and approval by the Governor, by agreement of the parties, or by Court Order in accordance with paragraphs 6 and 7 of this Order.

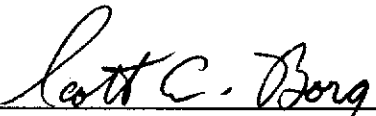
10. This Order does not address the issue of attorneys fees and costs. The parties retain the right to assert whatever positions they deem appropriate with respect to the issue of attorneys fees and costs.

  
UNITED STATES DISTRICT JUDGE

Submitted by:

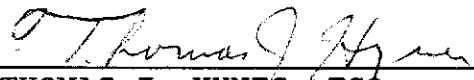
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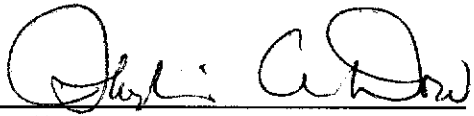
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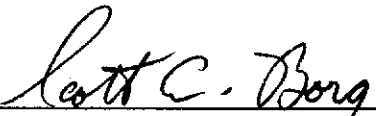
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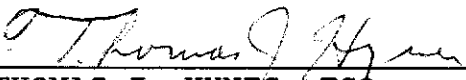
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