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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/05/01 HB 767/aSJC
 SHORT TITLE: Civil Legal Services for Low-Income Persons SB _____
 ANALYST: Hayes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
\$	Indeterminate*			Recurring	Civil Legal Services Fund

**Based on actual revenues collected.*

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	\$ 1,400.0	\$ 1,400.0	Recurring	Civil Legal Services Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates/Relates to SB757 and HB624

SOURCES OF INFORMATION

Public Defender Department
 Administrative Office of the Courts (AOC)
 Bernalillo County Metropolitan Court (BCMC)

No Response
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment strikes in their entirety two sections of the bill which require that court fees collected from imposing an “answer fee” be deposited into the newly-created

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Civil Legal Services Fund. Revenue for the Fund will be generated solely from district, metro and magistrate court filing fees which will, in turn, be used to support the Civil Legal Services Commission.

The estimated amount of total revenue generated by the increased filing fee is \$1.4 million maximum, a decrease from the original estimate of \$2.3 million which included the “answer fee.” It is unclear whether this reduced amount will be sufficient to support the Fund, the Commission, or legal services for low-income persons.

Synopsis of Original Bill

HB767 amends Section 34-6-40 NMSA for the purpose of creating a “civil legal services fund” overseen by a “civil legal services commission” and administered by the Local Government Division of the Department of Finance and Administration. The Fund will be supported by the imposition of two court fees: an increase to the current civil filing fee and a new “answer” fee. The amount of the imposed fees is \$25 in district court and \$15 in magistrate and metropolitan courts.

All amounts deposited in the Civil Legal Services Fund are appropriated to the Civil Legal Services Commission and the Local Government Division for the purposes of funding legal services for low-income persons. The fund is non-reverting. No more than 5% of the Fund may be used for administration of the program.

The Civil Legal Services Commission would be composed of five persons: two appointed by the Governor, two attorneys appointed by the Supreme Court and another attorney appointed by the New Mexico State Bar. The members will receive mileage and per diem, but no other compensation.

The Commission shall solicit proposals, pursuant to the Procurement Code, from nonprofit organizations for the purposes of:

- c providing a range of free legal services to New Mexicans living in poverty, or
- c increasing and coordinating statewide access to, or the provision of legal services through, the use of technology. (No more than 50% of the annual expenditures may be used for this purpose.)

Organizations may not use funds disbursed under this legislation to support lobbying, to bring suit against the state, or to represent persons in criminal cases.

Significant Issues

The Judiciary, responding through the AOC, believes that fees should be collected by the courts only for the purpose of supporting direct court operations. Otherwise, there is no difference between a court fee and a direct tax except that this form of taxation falls uniquely upon persons who need the services of the courts. The imposition of higher filing fees as proposed by this bill raises the barriers of access to the court system -- a result directly in conflict with the intent of this bill. Consequently, the Judiciary opposes the imposition of any court fee for the purpose of providing legal services to the poor.

An “answer fee” is a particularly objectionable court fee which does not now exist in New Mexico. An answer fee is imposed on a respondent or defendant in a civil matter who chooses to contest the

petition or complaint filed against him or her. A petitioner or plaintiff – the person who initiates a civil case – has a choice whether or not to file the case. The respondent or defendant is drawn into the process involuntarily. Unless the respondent or defendant wishes to concede the matter and allow a judgment to be entered against him by default, he must file an “answer” or response. The proposed answer fee would tax this basic right to defend oneself against an incorrect or unfair claim. The public would resent the imposition of such a fee, impairing public trust and confidence in the court system.

While the Judiciary agrees with the bill’s intent that New Mexico’s poor citizens need additional publicly-funded legal services in civil matters, it does not agree with the fee methodology proposed for funding this program. As a result, the Chief Judges Council unanimously voted to oppose this bill (02/16/01).

FISCAL IMPLICATIONS

The appropriation to the Local Government Division of DFA and to the Civil Legal Services Commission contained in this bill is a recurring expense to the Civil Legal Services Fund. Any unexpended or unencumbered balance remaining at the end of the fiscal year shall be maintained as a fund balance and not revert to any other fund.

This bill creates a new Civil Legal Services Fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly-created funds. Earmarking reduces the ability of the Legislature to establish spending priorities.

In regards to the earmarked revenue from the two new fees imposed by this bill, the AOC has estimated that approximately \$2.3 million per year may be generated for the support of legal services for low-income persons.

The following table breaks down the revenue estimates by court and by type of fee.

<i>Court type</i>	<i>FY 2000 civil cases</i>	<i>Revenue from increased filing fee</i>	<i>Revenue from answer fee</i>	<i>Total revenue</i>
Magistrate and metropolitan courts	approx 30,000	\$450,000	\$225,000	\$675,000
District courts	approx 38,000	\$950,000	\$712,500	\$1,662,500
Grand totals		\$1,400,000	\$937,500	\$2,337,500

AOC estimates are based on actual numbers of civil filing fees collected in district and magistrate courts in fiscal year 2000 and estimates of the number of civil cases filed in the Bernalillo County Metropolitan Court and of the number of answer fees that would be filed in magistrate and metropolitan court cases (50%) and in district court cases (75%).

ADMINISTRATIVE IMPLICATIONS

Among other issues, creating a new fee rather than increasing an existing fee imposes additional administrative work on court staff who would need to engage in financial transactions with respect to

a new category of filed matters. It would also require redesign of the courts' case management information system to accept and account for this fee. A one-time administrative cost of \$4.0 would be necessary to enhance the case management information system software. Additional resources and costs associated with collecting "answer" fees is indeterminate.

Much coordination among DFA's Local Government Division, the Civil Legal Services Division and non-profit organizations will be needed in order for this legal program to be successful. DFA did not respond to this bill analysis request.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

SB757 duplicates HB767.

Conflicts with HB624 which proposes to create Local Government Correction Fund and generate fee revenue from a \$20.00 assessment on court fees and fines.

TECHNICAL ISSUES

The bill is unclear regarding appropriations to the Local Government Division and the Civil Legal Services Commission. At what percentage or amount does each one receive? Equal portions?

The Civil Legal Services Commission is not a state agency. How is it going to receive an appropriation?

POSSIBLE QUESTIONS

1. Many New Mexico courts are expanding their pro se litigant services for those in need. In what manner will these pro se programs supplement the Civil Legal Services Commission's activities?
2. There are many pro bono services and federal programs that provide legal services to low-income persons. Why is this expansive program being requested? What services will be duplicated in light of these other programs?
3. Who will ensure that the Commission is fulfilling its objective? How will the Legislature measure success of this program?

CMH/ar:prr/njw