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FISCAL IMPACT REPORT

SPONSOR: Sanchez, M. DATE TYPED: 02/19/03 HB _____

SHORT TITLE: Judges Pro Tempore Fund SB 504

ANALYST: Hayes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
est. \$40.0	Minimal			Recurring	Judges Pro Tempore Fund
(\$40.0)	Minimal			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Administrative Office of the Courts (AOC)

Department of Finance and Administration, State Budget Division

SUMMARY

Synopsis of Bill

Senate Bill 504 creates a non-reverting Judges Pro Tempore Fund in the State Treasury and appropriates an unspecified amount of unrevverted general fund money to the Administrative Office of the Courts (AOC) to pay for the costs of judges pro tempore.

There is an emergency clause in SB 504 so that the provisions of this legislation will take effect immediately.

Significant Issues

1. For the last three fiscal years, the current Judges Pro Tempore Fund has been a reverting fund; its balance is required to be reverted back to the general fund at the end of every fiscal year as are all the other special funds in AOC, such as the Jury & Witness Fee Fund, Court-Appointed Attorney Fee Fund, CASA, Water Rights Litigation Fund and the Supervised Child Visitation Fund. All of these are reverting funds.

2. At the end of FY02, there was approximately a \$40.0 balance remaining in the fund. The last inquiry revealed that AOC had not yet reverted the funding as required by state statute. According to the State Budget Division, AOC has been asked several times dating back to October 2002 to revert the unspent funds. They have not complied with DFA's request or state law.
3. AOC's FY02 year-end independent audit includes a "Due to the general fund" for the fund balance remaining in the Judges Pro Tempore Fund. Therefore, this money is technically not available for re-appropriation.
4. In AOC's analysis, the agency states that the Judges Pro Tempore Fund received a \$39.9 appropriation for FY03. That is incorrect. The AOC is in performance-based budgeting and has three programs. An undesignated lump-sum of money was appropriated to the Administrative Support Program contractual services category where most of the special funds mentioned in #1 above are located. How much AOC decides to place in each of those funds is determined by the AOC, not by the LFC or the Legislature.
5. Clarification is needed among the judiciary as to who is responsible for paying judges pro tempore. Although AOC's Administrative Support has its fund, several other courts budget for and pay for judges pro tempore directly, such as the 2nd district, 6th district and Bernalillo County Metropolitan Court. All of those funds revert to the general fund at the end of the fiscal year. Theoretically, the pro tempore funds from each of these courts could be combined and transferred to the AOC to administer. Perhaps the broader issue is: Should a single, centralized Judges Pro Tempore Fund be utilized by all courts or should each court maintain its own fund? Right now, it is a combination of both with no uniformity of procedure.
6. AOC's budget also includes funding for judges pro tempore in the Magistrate Court Program. Is AOC also requesting that a non-reverting fund be created for this funding? Why not?

FISCAL IMPLICATIONS

The appropriation contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of each fiscal year shall not revert to the general fund.

Continuing Appropriations

This bill creates a new 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.

ADMINISTRATIVE IMPLICATIONS

In its analysis, AOC states that "not being able to use the fund balance in this fund has caused district courts to use their limited resources to pay for judges pro tempore." However, the almost \$40.0 in unspent funds does not support that the amount is insufficient. Moreover, several dis-

district courts regularly budget money in contractual services for judges pro tempore on a yearly basis so that they can function independently.

Under the Significant Issues section of this analysis, the issue regarding uniformity of funds and procedures is highlighted. It appears the judiciary may need to address who should have a Judges Pro Tempore Fund, how much funding is needed, how the funding is requested and who administers it.

TECHNICAL ISSUES

Page 1, line 19, “money in the fund” needs to be clarified to delineate which money, from which fiscal year and how much money is to be appropriated.

POSSIBLE QUESTIONS

1. Is the Judges Pro Tempore Fund in AOC’s Administrative Support Program used only for district courts? How much is designated in contractual services of the Magistrate Court Program for judges pro tempore?
2. Why hasn’t the AOC reverted its fund balance as requested by DFA?

CMH/yr