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SENATE BILL 461

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Lidio G. Rainaldi

AN ACT

RELATING TO JURIES; CREATING THE LENGTHY TRIAL FUND; INCREASING  
JUROR COMPENSATION; EXPANDING EXEMPTIONS, ELIMINATING EXCUSES  
AND CHANGING POSTPONEMENTS; AMENDING AND ENACTING SECTIONS OF  
THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 38, Article 5 NMSA  
1978 is enacted to read:

"[NEW MATERIAL] LEGISLATIVE DECLARATION.--It is the policy  
of this state that all qualified citizens have an obligation to  
serve on juries and to give truthful information concerning  
attitudes, opinions and feelings about topics relevant to the  
proceeding for which they are called to serve when summoned by  
the courts of this state."

Section 2. A new section of Chapter 38, Article 5 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] POSTPONEMENT OF PETIT JURY SERVICE.--

3 A. A person scheduled to appear for service on a  
4 petit jury may request a postponement of the date of initial  
5 appearance for jury service. The request for postponement  
6 shall be granted if the juror:

7 (1) has not previously been granted a  
8 postponement; and

9 (2) agrees to a future date, approved by the  
10 court, when the juror will appear for jury service that is not  
11 more than six months after the date on which the prospective  
12 juror originally was called to serve.

13 B. A subsequent request to postpone jury service  
14 may be approved by the court only in the event of an emergency  
15 that could not have been anticipated at the time the initial  
16 postponement was granted. Prior to the grant of a subsequent  
17 postponement, the prospective juror must agree to a future date  
18 on which the juror will appear for jury service within six  
19 months of the postponement.

20 C. A court shall postpone and reschedule the  
21 service of a summoned juror, without affecting the summoned  
22 juror's right to request a postponement under Subsections A and  
23 B of this section, if the summoned juror is:

24 (1) employed by an employer with five or fewer  
25 full-time employees, or their equivalent, and another employee

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1 of the same employer is summoned to appear during the same  
2 period;

3 (2) the only person performing particular  
4 services for a business, commercial or agricultural enterprise  
5 and whose services are so essential to the operations of the  
6 business, commercial or agricultural enterprise that the  
7 enterprise must close or cease to function if the person is  
8 required to perform jury duty; or

9 (3) required to attend to an emergency as  
10 determined by the judge."

11 Section 3. A new section of Chapter 38, Article 5 NMSA  
12 1978 is enacted to read:

13 "[NEW MATERIAL] LENGTHY TRIAL FUND CREATED--PURPOSE--  
14 ADMINISTRATION.--

15 A. The "lengthy trial fund" is created in the state  
16 treasury to be administered by the administrative office of the  
17 courts. Interest earned on money in the fund shall be credited  
18 to the fund. Balances in the fund shall not revert at the end  
19 of any fiscal year.

20 B. All balances in the lengthy trial fund are  
21 appropriated to the administrative office of the courts for the  
22 purpose of providing full wage replacement or wage  
23 supplementation to jurors who serve as petit jurors for more  
24 than ten days.

25 C. Except as provided in Subsection D of this

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1 section, a "lengthy trial fund fee" of twenty dollars (\$20.00)  
2 shall be collected from each party who files a jury demand in a  
3 civil case in district court for deposit in the lengthy trial  
4 fund.

5 D. The following parties or civil matters are  
6 exempt from payment of the lengthy trial fund fee:

- 7 (1) actions by governmental agencies;  
8 (2) pro se litigants;  
9 (3) actions brought in forma pauperis;  
10 (4) recoupment actions for government-backed  
11 educational loans or mortgages;  
12 (5) cases seeking child custody or support;  
13 (6) any other filings designated by supreme  
14 court rule that involve minimal use of court resources and that  
15 customarily are not afforded the opportunity for a trial by  
16 jury; and  
17 (7) any other party or civil case exempted by  
18 law from payment of jury fees.

19 E. Payments from the lengthy trial fund shall be  
20 made upon vouchers issued and signed by the director of the  
21 administrative office of the courts or the director's designee  
22 upon warrants drawn by the secretary of finance and  
23 administration."

24 Section 4. Section 38-5-1 NMSA 1978 (being Laws 1969,  
25 Chapter 222, Section 1, as amended) is amended to read:

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1 "38-5-1. QUALIFICATION OF JURORS.--~~[Any]~~ A person who is  
2 at least eighteen years of age, a United States citizen, a  
3 resident of New Mexico residing in the county for which a jury  
4 may be convened ~~[and is not a convicted felon]~~ is eligible and  
5 may be summoned for service as a juror by the district courts  
6 and magistrate courts, unless the person is incapable of  
7 rendering jury service because of:

8 A. physical or mental illness or infirmity ~~[to~~  
9 ~~render jury service]~~; or

10 B. undue or extreme physical or financial  
11 hardship."

12 Section 5. Section 38-5-2 NMSA 1978 (being Laws 1973,  
13 Chapter 150, Section 1, as amended) is amended to read:

14 "38-5-2. EXEMPTION FROM JURY SERVICE.--~~[Persons]~~

15 A. A person who ~~[have]~~ has served as ~~[members]~~ a  
16 member of a petit jury panel or a grand jury in either state or  
17 federal courts within the preceding thirty-six months shall be  
18 exempt from sitting or serving as ~~[jurors]~~ a juror in ~~[any of~~  
19 ~~the courts]~~ a court of this state when ~~[they, at their option,~~  
20 ~~request]~~ the person requests to be ~~[excused]~~ exempted from  
21 service by reason of the exemption granted by this ~~[section]~~  
22 subsection.

23 B. A person who is sixty-five years of age or older  
24 is exempt from sitting or serving as a juror.

25 ~~[Any other]~~ C. A person may be ~~[excused]~~ exempted

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1 from jury service at the discretion of the judge [~~upon~~  
2 ~~satisfactory evidence presented to the judge with or without~~  
3 ~~the person's personal attendance upon the court. The judge, in~~  
4 ~~his discretion, upon granting any excuse, may disallow the fees~~  
5 ~~and mileage of the person excused] of the court for which the  
6 jury has been called for a period of up to twenty-four months  
7 if:~~

8 (1) the person has a mental or physical  
9 condition that causes the person to be incapable of performing  
10 jury service as shown by a certification from a licensed  
11 physician;

12 (2) jury service would cause undue or extreme  
13 physical or financial hardship to the prospective juror or to a  
14 person under the prospective juror's care or supervision; or

15 (3) the person has an emergency that renders  
16 the person unable to perform jury service.

17 D. As used in this section and Section 38-5-1 NMSA  
18 1978, "undue or extreme physical or financial hardship":

19 (1) means circumstances in which a person  
20 would:

21 (a) be required to abandon another  
22 person under the person's care or supervision due to the  
23 extreme difficulty of obtaining an appropriate substitute  
24 caregiver during the period of jury service;

25 (b) incur costs that would have a

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1 substantial adverse impact on the payment of necessary daily  
2 living expenses of the person or the person's dependent; or

3 (c) suffer physical hardship that would  
4 result in illness or disease; and

5 (2) does not exist solely because a  
6 prospective juror will be absent from employment.

7 E. A person requesting an exemption from jury  
8 service shall take all necessary action to obtain a ruling on  
9 the request no later than the date on which the person is  
10 scheduled to appear for jury duty.

11 F. The service upon [any] a jury of [any] a person  
12 disqualified shall, of itself, not vitiate any indictment found  
13 or any verdict rendered by that jury, unless actual injury to  
14 the person complaining of the injury is shown."

15 Section 6. Section 38-5-11 NMSA 1978 (being Laws 1969,  
16 Chapter 222, Section 11, as amended) is amended to read:

17 "38-5-11. QUALIFYING JURY PANELS.--

18 A. The court shall empanel jurors in a random  
19 manner. The district judge or [his] the magistrate judge or  
20 the judge's designee [~~or magistrate or his designee~~] shall  
21 preside over the empaneling of a petit jury panel. The  
22 district judge or [his] the judge's designee shall preside over  
23 the empaneling of the grand jury panel. Jurors who appear for  
24 service shall be questioned under oath as to their eligibility  
25 for jury service by the district judge or [his] the magistrate

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1 judge or the judge's designee [~~or magistrate or his designee~~].  
2 Claims of exemption and requests for [~~excuse from service or~~  
3 postponement of [~~services~~] service shall be ruled upon by the  
4 district judge or [~~his~~] the magistrate judge or the judge's  
5 designee. [~~or magistrate or his designee.~~

6 B. ~~A district judge or his designee or magistrate~~  
7 ~~or his designee may excuse, exclude or postpone the services of~~  
8 ~~any person called as a juror on the basis of:~~

9 (1) ~~physical or mental illness of the person~~  
10 ~~or within his immediate family;~~

11 (2) ~~a written request from the person's~~  
12 ~~employer for excuse on the ground that his services are~~  
13 ~~essential; or~~

14 (3) ~~the person's prior business, professional~~  
15 ~~or educational commitments which conflict with jury service,~~  
16 ~~proven to the satisfaction of the district judge or his~~  
17 ~~designee or magistrate or his designee.~~

18 G.] B. The district judge or [~~his~~] the magistrate  
19 judge or the judge's designee [~~or magistrate or his designee~~]  
20 shall submit questionnaires to prospective jurors to:

21 (1) obtain any information that will aid the  
22 court in ruling on requests for exemption [~~or excuse~~] from  
23 service or postponement of service; [~~or that will~~]

24 (2) aid the court [~~or~~] and the parties in voir  
25 dire examination of jurors; or [~~in determining a juror's~~

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1 ~~qualifications to serve on a particular petit jury~~  
2 ~~panel, trial jury or grand jury]~~

3 (3) aid in the determination of challenges for  
4 cause and peremptory challenges.

5 C. The district judge or ~~[his]~~ the magistrate judge  
6 or the judge's designee ~~[or magistrate or his designee]~~ shall  
7 certify a numbered list of the jury panel members' names when  
8 qualified. The certified list of jurors and the questionnaires  
9 obtained from jurors shall be made available for inspection and  
10 copying by ~~[any]~~ a party to [any] a pending proceeding ~~[or~~  
11 ~~their attorney or to any person having good cause for access to~~  
12 ~~the list and the questionnaires]~~ no later than seventy-two  
13 hours before voir dire. The court may require additional  
14 questionnaires that relate to the specific case for which  
15 jurors are called."

16 Section 7. Section 38-5-12 NMSA 1978 (being Laws 1969,  
17 Chapter 222, Section 12, as amended) is amended to read:

18 "38-5-12. PETIT JURY PANELS--NUMBER TO BE QUALIFIED--  
19 PERIOD OF SERVICE--[EXEMPTION] TIME FOR SUMMONING.--The  
20 district judge shall determine the number of jurors to be  
21 summoned for service, the date and time for the appearance of  
22 jurors for qualification, the number of jurors to be qualified  
23 to provide panels of jurors for trial service and the size of  
24 trial jury panels ~~[and the length of time jurors are retained~~  
25 ~~for service]~~. A person shall not be required to remain

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1 available for service on a jury panel for more than six weeks  
2 after being qualified as a panel member. Procedures such as  
3 the use of alternate jury panels should be established where  
4 appropriate to lessen the burden of jury service on persons  
5 retained on petit jury panels. [~~No person may be required to~~  
6 ~~remain as a member of a petit jury panel for longer than six~~  
7 ~~months following qualification as a juror in any year and in~~  
8 ~~any judicial district having a population of more than three~~  
9 ~~hundred thousand persons in the last federal decennial census,~~  
10 ~~no person may be required to remain as a member of an actual~~  
11 ~~jury panel for longer than six weeks in any calendar year~~  
12 ~~unless the panel is engaged in a trial, nor shall he be~~  
13 ~~required to remain as a member of a petit jury panel for longer~~  
14 ~~than three months following qualification as a juror in any~~  
15 ~~year. Persons who have served as members of a petit jury panel~~  
16 ~~or a grand jury in either state or federal courts within the~~  
17 ~~preceding thirty-six months shall be exempt from sitting or~~  
18 ~~serving as jurors in any of the courts of this state when they,~~  
19 ~~at their option, request to be excused from service.] Jurors~~  
20 may be drawn, summoned and qualified by the district judge at  
21 any time to supplement jury panels requiring replacement or  
22 augmentation. Petit jury panels may be qualified and may serve  
23 as the trial needs of the district court require without regard  
24 to court terms."

25 Section 8. Section 38-5-13 NMSA 1978 (being Laws 1969,

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1 Chapter 222, Section 13, as amended) is amended to read:

2 "38-5-13. [~~JURY LOT SLIP CONTAINER~~] DRAWING AND  
3 QUALIFYING TRIAL JURY.--[A.] The district court of each county  
4 shall [~~provide one jury lot slip container to hold the juror~~  
5 ~~lot slips for the selection of trial juries. The container~~  
6 ~~shall be constructed in a manner that allows the juror lot~~  
7 ~~slips to be securely locked within and shall have a transparent~~  
8 ~~window of sufficient size to permit the juror lot slips to be~~  
9 ~~clearly visible. The clerk of the district court of each~~  
10 ~~county is responsible for the safekeeping of the jury lot slip~~  
11 ~~container.~~

12 B. ~~The lot slips bearing an identification number~~  
13 ~~and] maintain a list of the names of the jurors duly empaneled~~  
14 ~~and present for the trial of a case [~~folded to conceal the name~~~~  
15 ~~and number, shall be placed in a trial jury wheel]. The judge~~  
16 ~~shall cause the [~~lot slips to be drawn singly from the~~~~  
17 ~~container] names to be randomly selected until sufficient names~~  
18 ~~have been drawn to provide the number of jurors required for~~  
19 ~~the trial. [~~The container shall be shaken or rotated to cause~~~~  
20 ~~the lot slips to be mixed.] The name and number of each juror~~  
21 ~~shall be announced [~~as it is called and recorded]. Twelve or~~~~  
22 ~~six jurors shall compose a petit jury in the district courts~~  
23 ~~for the trial of civil causes. Twelve jurors shall compose a~~  
24 ~~petit jury in criminal and children's court cases. [A~~  
25 ~~programmed computer may be used in lieu of a jury lot slip~~

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1 ~~container to randomly select trial juries.]~~ The court shall  
2 make available to the parties the names of jurors and the order  
3 of jurors drawn for trial no later than seventy-two hours  
4 before the voir dire. Magistrate jury court selection shall be  
5 conducted in accordance with supreme court rules."

6 Section 9. Section 38-5-15 NMSA 1978 (being Laws 1969,  
7 Chapter 222, Section 15, as amended) is amended to read:

8 "38-5-15. MILEAGE AND COMPENSATION FOR JURORS.--

9 A. Persons summoned for jury service and jurors  
10 shall be reimbursed for travel from their place of actual  
11 residence to the courthouse when their attendance is ordered,  
12 at the rate allowed public officers and employees per mile of  
13 necessary travel. Persons summoned for jury service and jurors  
14 shall be compensated for their time in travel, attendance and  
15 service at the highest prevailing state minimum wage rate.

16 B. Only a juror who serves on a petit jury for more  
17 than ten days qualifies for payment from the lengthy trial fund  
18 as set forth in this section if the jury service commenced on  
19 or after September 30, 2005. Payment shall be limited to the  
20 difference between the jury fee set forth in Subsection A of  
21 this section and the actual amount of wages a juror earns up to  
22 the maximum level payable and minus any amount the juror  
23 receives from an employer during the same time period.

24 C. The court may pay replacement or supplemental  
25 wages from the lengthy trial fund of up to three hundred

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1 dollars (\$300) per day per juror beginning on the eleventh day  
2 of jury service. In addition, if the court finds that lengthy  
3 jury service poses significant financial hardship for a juror,  
4 even in light of payments made after the tenth day of service,  
5 the court may award replacement or supplemental wages of up to  
6 one hundred dollars (\$100) per day from the fourth to the tenth  
7 day of jury service.

8 D. A juror may submit a request for payment from  
9 the lengthy trial fund on a form provided by the court. The  
10 request shall disclose the juror's regular wages, the amount  
11 the employer pays during the term of jury service starting on  
12 the eleventh day and thereafter, the amount of replacement or  
13 supplemental wages requested and any other information the  
14 court deems necessary.

15 E. Prior to payment from the lengthy trial fund, a  
16 juror shall submit documentation verifying the wage information  
17 provided to the court, including most recent earnings  
18 statements.

19 F. If a juror is self-employed or receives  
20 compensation other than wages, the juror may provide a sworn  
21 affidavit attesting to the juror's approximate income, together  
22 with other information or documentation as the court may  
23 require, to verify income."

24 Section 10. Section 38-5-18 NMSA 1978 (being Laws 1979,  
25 Chapter 47, Section 1) is amended to read:

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1 "38-5-18. EMPLOYER PROHIBITED FROM PENALIZING EMPLOYEE  
2 FOR JURY SERVICE.--

3 A. An employer shall not deprive an employee of  
4 [his] employment or threaten or otherwise coerce [him with  
5 respect thereto] the employee because the employee receives a  
6 summons for jury service, responds [thereto] to the summons,  
7 serves as a juror or attends court for prospective jury  
8 service.

9 B. An employer shall not require or request an  
10 employee to use annual, vacation or sick leave for time spent  
11 responding to a summons for jury service, participating in the  
12 jury selection process or serving on a jury. Nothing in this  
13 subsection requires an employer to provide annual, vacation or  
14 sick leave to employees who are not otherwise entitled to those  
15 benefits under company policies."

16 Section 11. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is September 1, 2005.