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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/10

SPONSOR Nunez LAST UPDATED 2/15/10 HB 229/aHJC

SHORT TITLE Establish Metro Court in Certain Counties SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Department of Finance and Administration (DFA)  
 Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee Amendment strikes 350,000 and inserts in lieu thereof 250,000.

**The House Judiciary Committee Amendment defeats the purpose of the original bill and reverts back to current statute. If this bill is amended the State will be required to build a metropolitan court in counties with a population of more than 250,000. The State could be required to build a Metropolitan Court in Dona Ana County which would increase the State's deficit.**

#### Synopsis of Original Bill

The bill amends Section 34-8A-1 to change the population threshold for establishing a metropolitan court from 200,000 persons in the last federal decennial census to 350,000. Dona Ana County is expected to exceed 200,000 persons in the 2010 census.

**This bill will save the state money in that no new metropolitan courts with their concomitant expenses will be created in New Mexico in the immediate future.**

A metropolitan court generally has the same jurisdiction as that given to magistrate courts. In addition the court is given jurisdiction over ordinances of certain municipalities within the county. The court is further given jurisdiction over contested violations of state educational institution parking and vehicle operation rules. Section 34-8A-3 (2001). Unlike magistrate courts, the metropolitan court is a court of record for criminal actions involving driving while under the influence of intoxicating liquors or drugs or involving domestic violence. Section 34-8A-6.C (1993).

The AOC assumes that a metropolitan court in Dona Ana County would include a minimum of eight (8) judges. Currently there are five magistrate judges and a need for four more. There are two full-time municipal judges in Las Cruces, and several part-time municipal judges in Hatch and Mesilla. With the need for four additional magistrates now, the number of judges required could be as many as 12 metropolitan court judges.

### **FISCAL IMPLICATIONS**

**A metropolitan court is more expensive than a magistrate court. In this time of critical state revenue shortfalls, this bill postpones the mandatory creation of a metropolitan court in Dona Ana County.**

According to the AOC, a metropolitan court judgeship costs \$366 thousand. This figure includes salaries and benefits and other recurring costs such as telephone and dues for the judge, a trial court administrative assistant, a court monitor, and two court clerks. The recurring cost for eight metropolitan judgeships is \$2.9 million. The recurring cost for 12 metropolitan court judges would be \$4.4 million. The non-recurring initial position costs are \$42.5 thousand per judgeship. For three judgeships this cost would be \$127.2 thousand. For the five current magistrate judgeships converted to metropolitan judgeships, non-recurring initial position costs for a trial court administrative assistant, a court monitor, and one additional clerk (the difference between metropolitan judge staff and magistrate staff) would be five times \$18.4 thousand or \$92 thousand.

A magistrate court judgeship costs \$168 thousand recurring for the judge and one clerk. Recurring costs for the five current magistrate judgeships is five times \$168 thousand or \$840 thousand. The difference between recurring costs for five magistrates and the recurring costs for eight metropolitan court judges is \$1.9 million. The difference if there are 12 metropolitan court judges is \$3.5 million.

According to the AOC, if a metropolitan court were to be created in Dona Ana County, the Legislature might direct AOC to lease a building for the court. The AOC leases facilities for the magistrate courts. The AOC currently has a contract with DBA Partners, LLC, a Dona Ana partnership, to lease a building with six courtrooms. The structure was built for the magistrate court but was planned to accommodate the additional administrative operations of a metropolitan court if needed. The lease costs are about \$2 million a year and the AOC budget has about \$950 thousand in its lease budget to pay for it. The AOC requested the additional \$1 million for the FY 10 budget. The current General Appropriation Act bill does not appropriate these funds for FY 10. The AOC plans to use funds from the Magistrate-Metropolitan Facilities Fund to pay for the Las Cruces lease. AOC does not support long-term use of the Facilities Fund for this purpose. The source of the Facilities Fund is docket fees, an uncertain long-term funding source. Moreover the Fund is designated to retrofit and improve facilities all over the state. Tying up this money in Las Cruces would endanger building a courthouse in Mora County, where the

magistrate court currently operates out of a portable building with no courtroom. It would postpone needed new or retrofitted facilities in Ruidoso, Aztec, Bernalillo, Deming, Ft. Sumner, Belen, Socorro, Tucumcari, Alamogordo, Clovis, and Springer. Using the funds for Las Cruces would also postpone purchase of needed security systems, safety retrofits, and facility improvements for magistrate courts all over the State. The AOC therefore recommends that all of the money necessary to lease a facility for the Dona Ana metropolitan court should be included in the appropriation for the court, as is the case with the only existing such court, the Bernalillo County Metropolitan Court.

The building currently occupied by the magistrate court is expandable. AOC estimates that it will cost an additional \$500 a year in lease payments to build out two new court rooms as would be required for an eight-judge metropolitan court. For a 12-judge court, the additional cost would be at least \$1,000.

While the Legislature might require the AOC to lease a facility for the court, it should be noted that it is entirely within the province of the Legislature to decide who is responsible for the court building. The Bernalillo County Metropolitan Court (BCMC), and thus the State, owns its own building. Bond payments from construction of that facility are \$4.6 million per year. The legislature could treat a new metropolitan court in Dona Ana County in the same way as the BCMC, and direct the new court to purchase its building. The current and any comparable building, if adequate to house a metropolitan court, would probably cost between \$20 to \$50 million to purchase, and perhaps more.

Counties must provide courthouses for district courts. The legislature could treat any new metropolitan courts other than the existing BCMC as district courts are treated, making the metropolitan court building in Las Cruces a county or even a joint city-county responsibility, since a metropolitan court combines the functions of the municipal and magistrate courts.

Additional recurring costs for a metropolitan court with eight judges would be \$1.9 million for judgeship costs, \$500 thousand for additional facility lease costs specifically related to the expansion of the present building, \$887 thousand for new administrative staff, and \$1 million for new clerical and other staff, for a total of \$5.4 million.

Additional recurring costs for a metropolitan court with 12 judges would be \$3.5 million, for judgeship costs, \$4 million for additional facility lease costs specifically related to the expansion of the present building, \$887 thousand for new administrative staff, and \$1.5 million for new clerical and other staff, for a total of \$7 million.

Non-recurring costs would be \$127 thousand for the new judgeships, \$92 thousand for the new staff associated with the five judgeships that are presently magistrate judgeships, \$80 thousand for administrative staff, and \$115 thousand for new clerical and other staff, for a total of \$414 thousand

### **SIGNIFICANT ISSUES**

Without raising the limit to 350,000, significant expenditures will be necessary beginning in FY12 to begin the transition from a magistrate court to a metro court. By FY 15 the State will be spending an additional \$5.4 million to \$7 million. Adopting this bill will save the state millions of dollars.

House Bill 229 effectively delays the creation of a Metropolitan Court in Dona Ana County until the county has reached the population size of 350,000 people. In delaying the formation of a new metropolitan court, will also delay the costs associated with this court. Magistrate courts are administered centrally by the Administrative Office of the Courts while a Metropolitan Court would have to hire several administrative and IT personnel. HB-229 would delay the start of these higher general fund recurring and non-recurring expenditures. In addition, a metropolitan court will affect the amount of revenue collected by a variety of municipal courts in the area. This could lead to the higher costs of a metropolitan court to some degree, which will consequently affect municipal budgets within the area.

### **OTHER SUBSTANTIVE ISSUES**

Metropolitan court judges must be attorneys. Section 34-8A-4B (1993). Magistrate judges are not required to be attorneys except in magistrate districts (which are co-extensive with the counties) of 200,000 or more. Section 35-2-1 (1979). The AOC anticipates that this requirement will apply in Dona Ana County after the 2010 census. There is no statutory provision to pay magistrates who are attorneys more than other magistrates.

Magistrate court judges must run for election every four years but are not evaluated by the Judicial Performance Evaluation Commission. Section 35-1-3 (2000); see Section 34-9-18 (2008). Metropolitan court judges run in retention elections after an initial contested election and are subject to the Judicial Performance Evaluation Commission. New Mexico Constitution, Article VI, Section 33; Section 34-9-18.

The statutory right to trial by jury is different in magistrate and metropolitan court. In magistrate court the right to trial by jury exists only in cases wherein the penalty exceeds ninety (90) days' imprisonment. Section 34-8A-5 (1981). In magistrate court the right to trial by jury exists in any cases where imprisonment of any length is possible. Section 35-8-1 (2009).

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

If the population requirement is not raised to 350,000, it will be necessary in some counties to begin the transition from a magistrate court to a metropolitan court. By FY 15 the State will be spending an additional \$5.4 to \$7 million

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