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FISCAL IMPACT REPORT

SPONSOR Rehm **ORIGINAL DATE** 02/23/11
LAST UPDATED 03/11/11 **HB** 486/aHJC

SHORT TITLE Metro Court Judge Qualification **SB** _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Bernalillo County Metropolitan Court (BCMC)

SUMMARY

Synopsis of HJC Amendment

The amendment adds to the qualifications needed to be a metropolitan court judge.

The amendment requires candidates to have three years of residence in New Mexico prior to assuming the judgeship.

Synopsis of Original Bill

House Bill 486 would amend Section 34-8A-4 NMSA to provide that no person shall be eligible for election or appointment to the office of metropolitan judge unless the person is a member of the bar of and has been in the actual practice of law in this state for at least five years preceding assumption of office.

FISCAL IMPLICATIONS

No significant fiscal impact is identified.

SIGNIFICANT ISSUES

Currently, lawyers licensed in New Mexico are eligible for the position of metropolitan court judge if they have practiced law for **three** years. HB 486 proposes to heighten the eligibility requirement by requiring candidates to have engaged in the actual practice of law for at least **five** years prior to election or appointment.

Section 8 of Article VI of the New Mexico Constitution requires that no person is qualified to hold the office of Supreme Court justice unless, among other things, the individual “*has been in the actual practice of law for at least ten years preceding that person's assumption of office.*” (Italics added.) Similarly, Section 14 of the same Article requires “the actual practice of law for at least six years preceding assumption of office” for district court judges. Amending the Metropolitan Court eligibility statute as set forth in the proposed bill will make the language consistent with that of the constitution for Supreme Court justices, judges of the court of appeals and district court judges.

In Hannett v. Jones, 104 N.M. 392, 722 P.2d 643 (S. Ct. 1986), the Supreme Court addressed language in Article VI, Section 8 of the New Mexico Constitution that required that, in order to qualify to hold the office of justice of the Supreme Court, an individual must be at least 30 years old, learned in the law and “shall have been in the actual practice of law and resided in this state or the territory of New Mexico, for at least three years.” The Court held that, regardless of the plain language in the Constitution, the Constitutional Convention Committee on Judicial Department “clearly intended to require actual practice of law and residence in New Mexico for at least the three-year period immediately prior to taking judicial office, not merely for any periods of time totaling three years.” In 1988, Articles VI and XX of the Constitution were amended to, among other things, revise judicial qualifications to reflect the Supreme Court’s holding in Hannett.

The qualifications to hold the office of metropolitan court judge are statutory and not addressed in the New Mexico Constitution. The 1988 Constitutional amendments affected only the judicial qualifications for Supreme Court justices and judges of the court of appeals and the various district courts. According to the Bernalillo Metropolitan Court (BCMC), the Legislature’s failure to amend Section 34-8A-4 NMSA can be interpreted as a tacit intent to require only that, to qualify to hold the office of metropolitan court judge, an individual need only have practiced law for three years in the State of New Mexico, regardless of the length of time that may have passed since that practice. The Bernalillo County Metropolitan Court believes that such intent is inconsistent with the Supreme Court’s holding in Hannett.

The Bernalillo County Metropolitan Court further believes that, as a court of record for DWI and domestic violence cases, a minimum of five – not three - years of legal practice in this state is a necessary prerequisite for the assumption of office.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/bym:svb