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FISCAL IMPACT REPORT

SPONSOR Kintigh ORIGINAL DATE 01/20/12
LAST UPDATED _____ HJR 3
SHORT TITLE Granting and Denial of Bail, CA SB _____
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.0	\$104.0*	\$0.0	\$104.0*	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Impact for financial data provided by SOS.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Attorney General's Office (AGO)
Public Defender Department (PDD)
Secretary of State (SOS)

SUMMARY

Synopsis of Bill

House Joint Resolution 3 is a proposed amendment to the New Mexico Constitution (Art. 2 Sec. 13) which, if approved by the voters, would eliminate the constitutional right to bail, and instead provide that a court may grant or deny bail based on flight risk, danger to the community, nature and seriousness of the offense and other factors provided by law. It would eliminate the presumption of no bail for capital (first degree) murder cases. It also would require that the least onerous condition of release needed to comply with those factors be imposed.

HJR 3 would continue to prohibit excessive bail, excessive fines, and cruel and unusual punishment. It also would continue to require that an appeal from an order denying bail be given preference over all other matters.

FISCAL IMPLICATIONS

The SOS reports that in accordance with Section 1-16-4 NMSA 1978, upon receipt of the certified proposed constitutional amendment or other question from the Secretary of State, the county clerk shall include it in the proclamation to be issued and shall publish the full text of each proposed Constitutional amendment or other question in accordance with the constitution of New Mexico.

Although the county clerk includes the proposed amendments in the clerk's proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-13 NMSA 1978, including printing samples of the text of each constitutional amendment in both Spanish and English in an amount equal to ten percent of the registered voters of the state. There are currently 1.7 million registered voters in the state. Voters whose election mail is returned as undeliverable will be sent the proper notice under federal law in 2012, and if they do not vote in the next two federal elections, may be purged in 2015. Under these timelines, the voter roll is expected to increase until the purge in 2015.

The SOS reports that in 2010, the publication cost was \$520,000 for 5 constitutional amendments, or approximately \$104,000 per amendment. Although the SOS is continually seeking ways to reduce publication costs, it believes the 2010 figure is a reasonable projection for these one-time 2012 costs, given the increasing number of voter registrations. That number is set forth in the table above as a nonrecurring expense.

Other than the SOS costs summarized above, no agency reported a fiscal impact. As the PDD noted, while it more expensive for the Department to send its attorneys to visit clients in jail, the proposed amendment is unlikely to significantly increase the number of jailed defendants.

SIGNIFICANT ISSUES

As the PDD and the AGO note, amendments to the New Mexico Constitution notwithstanding, the State still must comply with requirements of the federal constitution. The PDD summarized the current status of bail requirements as set out by the United States Supreme Court:

While an accused has a substantive due process right to pre-trial bail, *United States v. Salerno*, 481 U.S. 739 (1987), held that the Bail Reform Act's authorization of pretrial detention on the basis of future dangerousness constituted permissible regulation that did not violate these rights and did not amount to impermissible pre-trial punishment. The Court agreed that "a primary function of bail is to safeguard the courts' role in adjudicating the guilt or innocence of defendants," the Court rejected "the proposition that the Eighth Amendment categorically prohibits the government from pursuing other admittedly compelling interests through regulation of pretrial release."

Currently in New Mexico, in most non-capital cases, the amount of bail is already within the discretion of the courts under the existing New Mexico constitutional provision regarding bail and district, magistrate, metropolitan and municipal court rules. Those rules list factors to be considered that include, among others, the factors listed in the proposed amendment. See, for example the district court rule at 5-401(C) NMRA.

PERFORMANCE IMPLICATIONS

In light of existing court standards and practices, there may be little or no actual impact of the proposed amendment.

MD/svb