

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date January 22, 2014
Bill No: HB135-305 Jan 23

Sponsor: Rep. Paul C. Bandy **Reviewing** Attorney General's Office
Short Additional 3rd and 11th District **Person Writing** Rick Word, AAG
Title: Judgeships **Phone:** 827-6029 **Email** rword@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: House Bill 135 is identical Senate Bill 113 introduced by Senator Neville.

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: House Bill 135 (HB 135) is similar to House Bill 475 that was introduced by Representative Bandy in the 2013 regular session. HB 135 would create one new district judge in the Third Judicial District and one in the Eleventh Judicial District.

The Bill would add a new section of NMSA 1978, Chapter 34, Article 6 that would create a new type of court termed a “District Water Court” in Dona Ana and San Juan counties. The new District Water Courts would handle all the water cases, as well as other civil matters as its dockets allowed. The new district water judges would be appointed and subject to elections as provided for in Article 6 of the New Mexico Constitution. This new section includes a residency requirement that the district water judge reside in the designated county before or immediately upon appointment. The new water judges would be required to study water law and water-related subjects, and would be expressly authorized to hold informal discussion and planning sessions with interested parties, including the public and government agencies, with “appropriate advance notice to the public.” In water cases, the Bill would expressly exempt the new water judges from parties’ statutory right of peremptory challenge created by NMSA 1978, Section 38-3-9 and implemented by Rule 1-088.1 NMRA. The Bill further provides that in matters where they might be perceived to have a significant conflict of interest, a district water judge could request that a special master or a district water judge from another district be appointed, or that the Supreme Court appoint a judge.

The Bill contains an emergency clause and would take effect immediately.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

None noted for this Agency.

SIGNIFICANT LEGAL ISSUES

The Code of Judicial Conduct (Rules 21-100 through 21-406 NMRA), adopted by the New Mexico Supreme Court, sets forth the standards for the ethical conduct of judges, and identifies circumstances where a judge should disqualify or recuse him or herself from a matter. *See, e.g.* Rule 12-211 NMRA. Section 3 of the bill states that a district water judge may request a special master or other another judge be assigned or appointed to hear a matter in which the district water judge “might be perceived to have a significant conflict of interest.” Page 3, lines 12-16. To the extent that this provision of Section 3 contradicts or contravenes Rule 12-211 or any other rule in the Code of Judicial Conduct, it would violate Article 3, Section 1, of the New Mexico

Constitution (separation of powers.) New Mexico courts have held that only the judicial branch of government has the power to promulgate rules regulating pleading, practice and procedure for the courts, which includes testimonial privileges and discovery rules. See Ammerman v. Hubbard Broad. Co., 89 N.M. 307, 312 (1976); Lovelace Med. Ctr. v. Mendez, 111 N.M. 336, 338-39 (1991); Sw. Comm. Health Servs. v. Smith, 107 N.M. 196 (1988); Miller & Assoc. v. Rainwater, 102 N.M. 170 (1985).

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None noted for this agency.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None noted for this agency.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

House Bill 135 appears identical Senate Bill 113 introduced by Senator Neville.

TECHNICAL ISSUES OR DRAFTING ERROR

None noted.

OTHER SUBSTANTIVE LEGAL ISSUES

None noted.

ALTERNATIVES TO ENACTING THIS BILL

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

The issue identified above could be eliminated by striking the entire sentence, beginning on line 12 of page 3 and ending on line 16 of that page.