

# FISCAL NOTE

**Bill #:** SB0443

**Title:** Intermediate appellate court based on Nebraska model

**Primary**

**Sponsor:** Mike Halligan

**Status:** As introduced

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Sponsor signature	Date	Dave Lewis, Budget Director	Date
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**Fiscal Summary**

	<b><u>FY2000 Difference</u></b>	<b><u>FY2001 Difference</u></b>
<b>Expenditures:</b>		
General Fund	\$1,064,991	\$1,291,300
<b>Revenue:</b>	\$0	\$0
<b>Net Impact on General Fund Balance:</b>	<b>(\$1,064,991)</b>	<b>(\$1,291,300)</b>

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<b><u>Yes</u></b>	<b><u>No</u></b>		<b><u>Yes</u></b>	<b><u>No</u></b>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts

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**Fiscal Analysis**

**ASSUMPTIONS:**

**Judiciary**

1. Terms of office will begin for five intermediate appellate court (IAC) judges January 1, 2000.
2. Principal administrative office is located in Helena.
3. The five judges will share two secretaries in Helena at a cost of \$31,250 in FY 2000 and \$62,500 in FY 2001.
4. The clerk and administrator of the Supreme Court will require 2.00 FTE and \$37,500 in FY 2000 and \$75,000 in FY 2001 to docket/track cases of the IAC and handle administrative support.
5. Each judge will be paid \$79,372 (95% of \$83,550 salary effective 7/1/99 for a justice of the Supreme Court) plus \$31,233 in benefits. The cost would be \$276,513 in FY 2000 and \$553,025 in FY 2001.

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6. Each judge will require two law clerks at a cost of \$193,750 in FY 2000 and \$387,500 in FY 2001.
7. As per 19-5-103, MCA, if a retired judge is called for duty, the budgeted amount would be \$2,500 in FY 2000 and \$5,000 in FY 2001.

**Department of Justice (DOJ)**

8. The DOJ, Legal Services Division (LSD), handles approximately 200 cases each year before the Montana Supreme Court. Each case, depending on the length of the district court record and the complexity of the issues, requires between one and four weeks for preparation.
9. Under section 4 of the bill, all cases appealed from district court, except capital cases, cases in which a life sentence has been imposed, and cases challenging the constitutionality of a state statute would first be appealed to the intermediate appellate court. All but approximately 15% of the LSD caseload would therefore be subject to an initial appeal in the intermediate appellate court.
10. Section 5 of the bill allows a petition to bypass review by the court of appeals and proceed directly in the Supreme Court under certain conditions. Since the criminal cases and major litigation handled by the Attorney General often involve novel legal questions, questions of state or federal constitutional interpretation, or issues of significant public interest, approximately 75% of the cases handled by the LSD would be candidates for a bypass petition.
11. Section 6 of the bill allows a petition for further review by the Supreme Court in all cases heard and decided by the court of appeals.
12. Over the last several years, the Supreme Court has ruled against the state's position in roughly one-third of the criminal cases brought before it on appeal. Although precise figures are not available, a similar or higher percentage likely applies to civil cases handled by the LSD in which the state is a party. Because of the reversal rate, it is likely that either a bypass petition, a petition for further review following decision by the court of appeals or both would be filed and in most cases handled by the LSD.
13. While it is impossible to make specific estimates, if bypass petitions or petitions for review are filed in half of the appeals handled by the LSD, the staff will prepare an additional 100 written briefs. This will be necessary because a response to each petition for bypass and each petition for further review by the Supreme Court will be required. Briefs will need to address why the case does or does not qualify for review by the Supreme Court. Since the briefs will not address the full legal issues in the case, they will not require as much time for preparation as the actual appeal briefs on the merits of the case.
14. Since section 6 allows the court to establish standards for further review of cases decided by the appeals court, it is impossible to determine how many cases will actually be granted review by the Supreme Court.
15. Section 7 allows the appeals court to hear arguments throughout the state. Currently, most appellate arguments are heard in Helena. It is assumed that at least some criminal cases would be argued in other parts of the state, necessitating additional travel time and expenses for LSD staff.
16. Pending the enactment of rules by the Supreme Court and given the uncertainty in the number of cases in which additional briefing will be required, it is impossible to determine the precise fiscal impact of the bill on the DOJ. It is clear, however, that the bill will increase the LSD workload.

FISCAL IMPACT:

	FY2000 <u>Difference</u>	FY2001 <u>Difference</u>
<b>Judiciary</b>		
FTE	9.50	19.0
<u>Expenditures:</u>		
Personal Services	\$541,513	\$1,083,025

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FISCAL IMPACT:

(continued)	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Operating Expenses	104,138	208,275
Equipment	<u>419,340</u>	
TOTAL	\$1,064,991	<u>\$1,291,300</u>
<u>Funding:</u>		
General Fund (01)	\$1,064,991	\$1,291,300
<u>Revenues:</u>		
	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
General Fund (01)	(\$1,064,991)	(\$1,291,300)

LONG-RANGE IMPACTS:

Creation of an intermediate appellate court would increase the efficiency and accessibility of the judicial process at a cost of about \$1.3 million per year.