

State of New Mexico

Judicial Compensation Commission

2019 Report

To the Legislative Finance Committee
and
Department of Finance and Administration

Introduction

In 2005, the Legislature enacted Senate Bill 263, now NMSA 1978, Section 34-1-10 (2005), creating the Judicial Compensation Commission (“JCC”), an independent six-member commission charged with recommending a compensation and benefits plan for New Mexico judges to the Legislative Finance Committee and the Department of Finance and Administration. 2019 JCC members are:

Sergio Pareja, Dean of the University of New Mexico School of Law, statutorily designated as Chair of the JCC;

Deborah Seligman, appointed by the President Pro Tempore of the New Mexico Senate;

Kathleen “Kay” Marr, appointed by the Speaker of the New Mexico House of Representatives;

Gerald Dixon, President of the State Bar of New Mexico, statutorily designated as a member; and

William F. Fulginiti, Executive Director of the New Mexico Municipal League, appointed by the Chief Justice of the New Mexico Supreme Court.

The position reserved for an appointee by the Governor of New Mexico is vacant.

Statutory Requirement

The New Mexico Judicial Compensation Commission (JCC) must annually “report to the legislative finance committee and the department of finance and administration its findings and recommendations on salaries for judges and justices.” NMSA 1978 § 34-1-10(G). Judicial compensation in New Mexico is set through a statutory formula based on the salary the Legislature sets for the Justices of the Supreme Court. NMSA 1978 § 34-1-9. The Chief Justice salary is set \$2,000 higher than the salary of a Justice. Each judge of the Court of Appeals is paid a salary equal to 95% of the salary of a Supreme Court Justice. Each District Court judge is paid 95% of the salary of a Judge of the Court of Appeals. Each Metropolitan Court judge is paid 95% of the salary of a judge of the District court. Each Magistrate is paid 75% of the salary of a Metropolitan Court judge. Salaries for Chief Judges are set according to the same formula based on the Chief Justice’s salary. Judicial salaries are not adjusted for location. Each judge of the same type of court earns the same amount in any community in the state, regardless of size, docket, cost of living, or judicial experience. In 2015, the New Mexico Supreme Court adopted a policy of endorsing JCC recommendations. The judicial branch supports legislation in the 2019 session to accomplish the recommendations of the Legislature’s Judicial Compensation Commission.

Update on the 2019 Legislative Session

During the 2019 legislative session, the Legislature considered the JCC's recommendations and voted a 6% salary increase for judges in New Mexico. Governor Lujan Grisham approved this increase. The Legislature did not address judicial retirement or the additional compensation provided for the Chief Justice and Chief Judges.

JCC Recommendations for FY 2021

- Increase judicial pay 8% as part of a three-year plan to pay district court judges \$165,000.
- Increase differential for Chief Justice pay from \$2,000 to 5% of Justice salary.
- Amend JCC statute to make JCC salary recommendations effective unless rejected by a majority of the Legislature.
- Reverse trend toward insolvency in judicial retirement funds by combination of:
 - One-time investments
 - Temporary dedication of legislative retirement funding stream to judicial retirements, and
 - Directing filing fees to the general fund instead of judicial retirement while replacing the amount contributed by fees with an equivalent percentage of general fund appropriations to judiciary retirement funds.

2019 Salary Recommendation

1. Increase salaries 8%

The JCC recommends that the salary of Supreme Court Justices be increased 8%, consisting of a real increase of 6% in salary (\$8,892) plus a 2% COLA adjustment (\$2,964), for a total increase of 8% (\$11,857) bringing the Justice salary from \$148,208 to \$160,064. This increase would bring the district court judges' salaries to \$144,458 based on the statutorily mandated salary regression steps in NMSA § 34-1-9. The new salary of New Mexico Supreme Court Justices as increased in July 2019 (\$148,208) ranks 48 out of 55 in the United States based on salaries in other states as of July 2019.¹ The fact that judges are paid less than lawyers with comparable experience as well as local and state employees has significantly reduced the Judiciary's ability to attract and retain judges with proficiency in civil law.²

The 6% increase effective in July 2018 left New Mexico district court judges with a salary ranked 48 of 55 and judges of the Court of Appeals ranked 40 of 43.³ Pay is a significant factor having an impact on the diversity of candidates who seek judicial office. Candidates with only criminal law experience have a steep learning curve when serving in districts where judges are expected to hear a diverse range of civil, family, juvenile, and criminal cases.

As noted in the 2017 and 2018 JCC reports, the judiciary should reflect a diversity of legal backgrounds, including in the private sector and law firms, as well as government experience.

Our court system should be filled with judges who not only are intelligent, thoughtful, and faithful to the rule of law, but also bring diversity of experience and background ... The reality is that all judges bring into the courtroom their unique life experience, tempered by their oath to make decisions based on the law and the constitution. It's the integrity and judgment of those men and women that allow our constitutional democracy to move forward.⁴

In 2017, the New Mexico Bar Association commissioned a lawyer compensation study, as it did in 2012. Survey respondents who identified themselves as a partner/shareholder reported an average salary of \$210,502, with sole practitioners reporting \$184,457.5 The report indicates that attorneys charged the highest per-hour billing rate (a median of \$250) for civil litigation, business, contract law, and estate planning, which could explain why fewer of those performing this work are attracted by the salary offered by the judiciary. With the recommendation to increase salaries 8% in FY 2021, a district judge's pay would be \$144,458, still significantly less than the reported salaries of partners and solo practitioners in private practice.

¹ It is expected that the ranking of New Mexico judicial salaries will decline when salaries are updated by NCSC in January 2020.

² The Economics of Law Practice in New Mexico, *Lawyer Compensation*, May 2017, Research & Polling, Inc.

³ NCSC Annual Survey of Judicial Salaries, July 1, 2019, at <https://www.ncsc.org/~media/Microsites/Files/Judicial%20Salaries/JSS-July-2019.ashx>

⁴ Yvette McGee Brown, former Ohio Supreme Court Justice, Forward to Building a Diverse Bench: A Guide for Judicial Nominating Commissioners, Brennan Center for Justice, 2016.

2019 Salary Recommendation (cont.)

Using salaries reported in the Bar's 2017 survey, the average partner in a law firm is paid 42% more than a Justice of the Supreme Court. The average solo practitioner is paid 24% more than a Supreme Court Justice.⁵ The average pay of all 569 lawyers in the 2017 survey, from partners in law firms to legal aid and government attorneys, was \$142,382, putting the 2020 salary for a Justice of the Supreme Court just 3.9% above the average pay of all attorneys in all fields of law practice in New Mexico as reported in 2017.

The experience of Judicial Nominating Commissions during 2018 confirmed previous findings regarding judicial applicants. A 2016 review of all 309 judicial candidates from 2010 to 2015 revealed that 17% were age 39 or younger, although a district court judge must be at least age 35. More striking was that 85% of all applicants had experience in government service. Almost half (44.7%) had ten or more years of government service. Lawyers with experience in the private sector as well as law firms reported that judicial salaries prevent them from applying to be judges. The data also show these lawyers are simply not seeking judicial office. Continuing to improve salaries will help address the need to attract a more diverse mix of experience among attorneys seeking to be judges.

To increase the diversity of judicial candidates and encourage more broadly experienced attorneys to become and remain judges, the Commission recommends that the salary of a district court judge should be \$165,000. That salary should attract more diverse candidates to the district courts including lawyers in mid-career who have experience across the spectrum of civil cases beyond the criminal law experience that dominates among recent candidates. Raising pay to \$165,000 will make district court judge pay higher than the salary reported by the average of all attorneys and less demonstrably below what they might earn in private practice. The target salary would be less than the current salary of executives paid by the government to manage the Legislative Finance Committee, PERA, and Santa Fe (both the city and county) (see page 9).

The Commission recommends the necessary salary level be achieved over three years. To achieve the target pay of \$165,000 for district court judges, the pay of a Justice would have to be approximately \$183,000 under the statutory salary progression. Supreme Court Justices in, for example, Colorado and Utah are already paid above \$183,000 and the national average for a Justice as of July 2019 is \$178,346. A three-year plan to achieve a target district court judge pay of \$165,000 would require an average annual increase of 7.33%. The Commission recommends increases of 8% in FY 2021, 7% in FY 2022, and 7% in FY 2023, which would take Justice pay to \$160,064 in the 2020 legislative session, \$171,268 in the 2021 session, and \$183,257 in the 2022 session.

JCC recommends Justice pay be set at \$160,064 in FY2021, an increase of 6% plus a 2% COLA for a total salary increase of 8%. The total recurring cost for all judges would be \$2,432,436.92.

⁵ The Economics of Law Practice in New Mexico, *supra*, at p. 7.

2019 Salary Recommendation (cont.)

2. Amend Chief Judge Pay Differential from \$2,000 to 5% of Salary

An aspect of judicial pay that has not been addressed by the Legislature since 1993 is pay differentials for Chief Judges and the Chief Justice. In recognition of the added duties and responsibilities that attach to the office, the Legislature in 1993 added \$2,000 to the pay of the Chief Justice.⁶ The same statute provides that Chief Judges are paid 95% of the next higher level court, so that the Chief Judge of the Court of Appeals is paid 95% of the \$2,000 salary differential of the Chief Justice, the district court Chief Judges are paid 95% of the Court of Appeals Chief Judge, the Chief Judge of the Bernalillo County Metropolitan Court is paid 95% of the district court Chief Judge, and the five qualifying Magistrate Court Presiding Judges (who oversee three or more magistrates) are paid 75% of the Metropolitan Court Chief Judge. JCC recommends setting the differential as a percentage of salary and setting the differential at 5%. This would increase the Chief Justice differential from \$2,000 to \$7,929.

At the time the Chief Justice pay differential was set at \$2,000 in 1993, the Justice salary was \$77,250. Although Justice pay has increased since 1993, the compensation differential for the Chief has remained at \$2,000 for the Chief Justice and \$1,805 for the Chief Judges of the district courts. If the work of the Chief Justice and Chief Judges were the same as in 1993, a simple inflationary calculation would suggest the compensation for serving in the higher office should be about \$4,000. However, there have been some significant changes in the role of the Chiefs.

The size and scope of the Judiciary is much greater than in 1993. For example, oversight is required of 47% more district court judges (from 65 in 1993 to 94 today) and 127% more district court employee positions (from 436 in 1993 to 989 today). The general fund budget that Chiefs are required to manage increased by 207% from \$59,684,400 in 1996 to \$183,112,000 today. Courts now oversee more than \$10 million in drug court operations that did not exist in 1993. Programs that require judges' oversight today also include Alternative Dispute Resolution, Court Appointed Attorneys in abuse and neglect cases, almost 100 court interpreters and independent interpreter contractors, and Information Technology unimagined in 1993.

While it is difficult to quantify, it is clear that the responsibilities of the Chief Justice and Chief Judges have increased dramatically in size and scope since the Chief compensation was set at \$2,000 more than 25 years ago. The JCC recommends that the compensation differential for the Chief Justice and chief judges be set at 5% above the pay of judges in each court level.

⁶ NMSA 1978, Section 34-1-9A.

2019 Salary Recommendation (cont.)

FY2021 New Mexico Judicial Compensation Increase including Benefits

**8% increase across the board & 5% additional increase for Chiefs
(effective 7/11/2020 (1st full pay period in FY21))**

Job Title	FTE	Formula	FY2020 Current Annual Rate	Annual Rate - reflecting 8% Increase	Annual Rate - reflecting 5% Increase for Chiefs
Chief Justice	1	AJ + \$2000	\$150,207.08	\$162,063.65	\$168,066.83
Associate Justice (AJ)	4	Target Pay	\$148,207.08	\$160,063.65	\$160,063.65
Chief Court of Appeals	1	95% of Chief Justice	\$142,696.73	\$153,960.46	\$159,663.48
Court of Appeals Judges	9	95% of Associate Justice	\$140,796.73	\$152,060.46	\$152,060.46
Chief District Judge	13	95% of Chief Court of Appeals Judge	\$135,561.89	\$146,262.44	\$151,680.30
District Judge	81	95% of Court of Appeals Judge	\$133,756.89	\$144,457.44	\$144,457.44
Chief Metro Judge	1	95% of Chief District Judge	\$128,783.80	\$138,949.32	\$144,096.28
Metropolitan Judge	18	95% of District Court Judge	\$127,069.05	\$137,234.57	\$137,234.57
Presiding Magistrate Judge	5	75% of Chief Metro Judge	\$96,587.85	\$104,211.99	\$108,072.21
Magistrate Judge	62	75% of Metropolitan Judge	\$95,301.78	\$102,925.93	\$102,925.93
195					
8% Increase Cost* (including Chiefs)					
5% Chief Increase Cost*					
TOTAL COST*					

Formula: Total new cost / 26 pay periods x 25 pay periods* - effective is first full pay period in FY2021

JRA: 25.4% = 2.5% retiree healthcare, 15.25% PERA, 7.65% FICA

MRA: 24.9% = 2% retiree health care, 15.25% PERA, 7.65% FICA

National Salary Comparison 2019

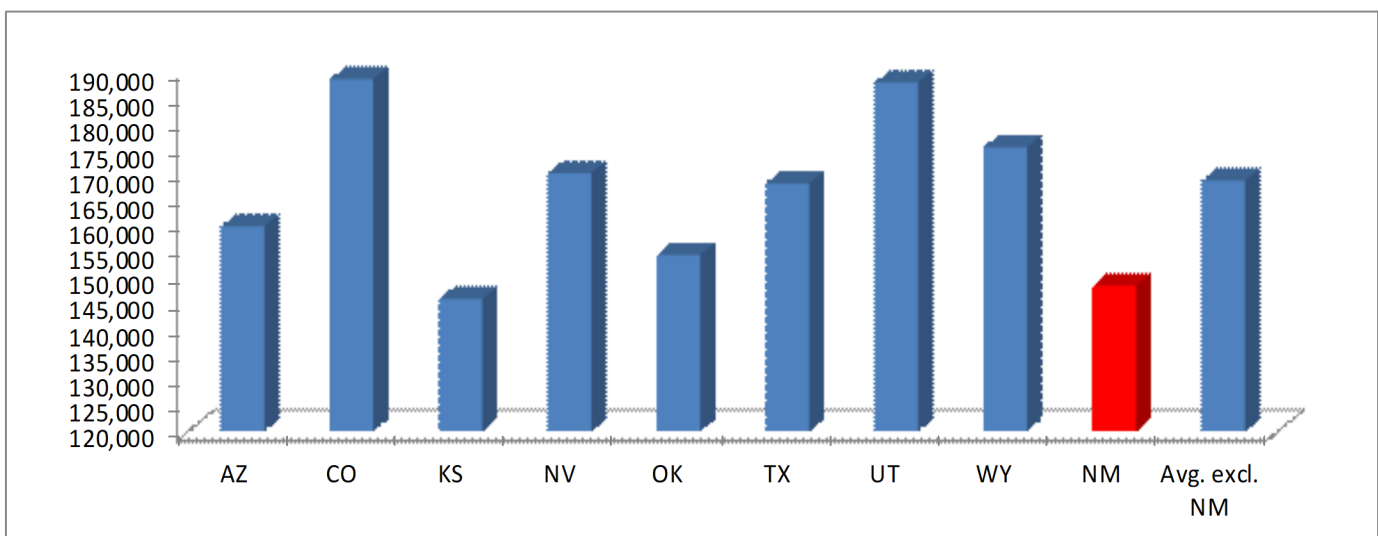
- New Mexico Supreme Court Justice salary ranks 48 of 55 among all state courts as of July 1, 2019.
- New Mexico Intermediate Appellate Court (Court of Appeals) Judge salary is 40 out of 43 (not all states have an Intermediate Appellate Court).
- New Mexico general jurisdiction district trial court judge salary is now 48 out of 55.
- The average national salary of a Supreme Court Justice is \$178,346. The salary of a New Mexico Supreme Court Justice is now \$148,208, or \$30,138 below the national average.

Supreme Court Justice Salaries as of July 1, 2019 in Western Comparison States⁷

AZ	\$159,685
CO	\$188,151
KS	\$145,641
NV	\$170,000
OK	\$154,174
TX	\$168,000
UT	\$187,500
WY	\$175,000
NM	\$148,208

The average Justice salary in the mountain west states excluding New Mexico is \$168,519, or about \$10,000 less than the national average. The New Mexico Justice salary is \$20,311 below the mountain west average and \$30,138 below the national average. The cost-of-living index reported in the NCSC salary tracker for New Mexico is 101.7% (above the national average). Five mountain west states have a higher cost-of-living index than New Mexico and three have a lower cost-of-living index than New Mexico.⁷

New Mexico Justice salaries continue to lag well behind neighboring states in the Mountain West region. States used in the comparison chart report below were selected because they are the designated “Mountain West Region” states by the Hay Group. The Hay Group is a consulting firm whose salary compilation data is used by the Judiciary and many state and private entities, regarding comparative salary data. The Mountain West Region is used by the Judiciary because of states’ similarities in population concentrations and economics.



⁷ NCSC Annual Survey of Judicial Salaries, July 1, 2019.

State and Local Salary Comparison

The salaries of New Mexico Supreme Court Justices, Court of Appeals judges, and trial judges (highlighted in yellow) compared to salaries paid in local and state government, as well as in higher education.⁸

University of New Mexico Athletic Coach 4 (Football)	\$422,690
University of New Mexico Chief Legal Counsel	\$272,950
Senior Investment Officer, State Investment Council	\$265,267
ERB Deputy Director of Investments	\$254,409
University of New Mexico School of Law Dean	\$249,672
PERA Chief Investment Officer	\$239,700
U.S. Tenth Circuit Judge	\$223,700
U.S. District Judge	\$210,900
Santa Fe County Manager	\$198,750
Bernalillo County Attorney	\$170,000
Santa Fe City Manager	\$170,000
PERA Executive Director Investments/Pensions	\$166,290
Legislative Finance Committee Director	\$165,460
Albuquerque Metropolitan County Detention Center Chief	\$165,000
Rio Rancho City Manager	\$161,408
Los Alamos County Deputy Attorney	\$161,136
Dona Ana County Manager	\$160,000
New Mexico Spaceport Director	\$153,000
New Mexico Supreme Court Chief Justice	\$150,207
New Mexico Supreme Court Justice	\$148,207
Annual salary of all NM attorneys in 2017 State Bar Salary Survey	\$142,382
New Mexico District Court Judge	\$133,757
Senate Chief Clerk	\$127,314
Attorney General's Office Chief of Staff	\$127,607
New Mexico Metropolitan Court Judge	\$127,069
Legislative Education Study Committee Director	\$124,200
State Auditor's Office Deputy State Auditor	\$123,749
San Juan County District Attorney	\$121,000
House Chief Clerk	\$117,300
Santa Fe Municipal Judge	\$113,568
New Mexico Magistrate Judge	\$ 95,302

⁸ Data collected from salaries reported on the New Mexico Sunshine Portal, the University of New Mexico Sunshine Portal, sites published by local governments, & information provided by employees of the institution or government office.

2019 Proposed Change to the Statute Governing the Judicial Compensation Commission

3. Change JCC Statute to Make Recommendations “Opt Out”

As is the case for judicial salary commissions in 14 other states, the JCC is only advisory to the Legislature. JCC has no statutory authority to enforce its recommendations. However, in nine states (AL, AZ, DE, HI, MD, MO, NY, OK, and WA), the salary recommendations of the commission are binding unless affirmatively rejected by the Legislature (or by the voters in Washington). Three of these states (Alabama, Arizona, and Oklahoma) moved from advisory commissions to binding-unless-rejected commissions since 2015. In addition, the Arkansas Constitution provides that its commission’s recommendations are binding and cannot be rejected by the Legislature or Executive.

Some states have addressed this by statute; in others, this authority is granted by their constitutions. For example, the Missouri Constitution in Article VIII, Section 3, paragraph 8 provides that the Salary Commission shall file a schedule of compensation by December 1, which “shall become law unless disapproved by concurrent resolution adopted by a two-thirds majority vote of the general assembly before February 1 of the year following the filing of the schedule.” While Missouri requires a two-thirds vote of its legislature, most states allow override of the recommendation of their compensation commissions by a simple majority vote.

The current statute makes the Commission’s recommendations advisory only. This requires either a stand-alone bill for judicial pay or that the Supreme Court prioritize the JCC’s recommendations over other needs of the courts in the Unified Budget the Court approves for submission in September each year. JCC recommends a statutory change to address this issue. The existing Judicial Compensation Commission statute (section 34-1-10) requires salary recommendations but gives them no effect. Elsewhere in the NM Constitution, the “legislature shall provide by law” for compensation of district court judges, Article VI, Section 17, and magistrates shall be paid “as may be provided by law,” Article VI, Section 26. A statutory amendment could add the following in Section 34-1-10G:

- G. The recommendations shall take effect and have the force of law as of July 1 following submission, unless the legislature shall by joint resolution reject or amend the recommendations during the next regular legislative session following submission of the commission’s recommendations. Sufficient appropriations shall be provided for the salaries of all justices, judges and state judicial officers.

2019 Proposed Change to the Statute Governing The Judicial Compensation Commission *(cont.)*

The effect of this statutory amendment would be to make the JCC recommendations binding unless affirmatively rejected by the Legislature. Additionally, this would:

- Make the recommendations of the independent judicial compensation commission created by the Legislature effective while retaining the Legislature's power to reject or modify its recommendations;
- Reduce judicial lobbying for pay increases in competition with other critical needs of the courts;
- Establish the Legislative Branch as the authority for Judicial Branch salaries, minimizing political interests in establishing pay for judges; and
- Avoid litigation such as occurred in 2014 over veto or partial veto of appropriations for judicial salaries.

Judicial Retirement Funding

4. Improve Judicial Retirement Funding

As JCC has continued to emphasize over the years, adequate compensation for state court judges is tied directly to judicial retirement benefits. Retirement provisions are of particular importance to judges because judicial careers typically start in early middle age, often a very different scenario from other state employees.

In 2015, NCSC conducted a nationwide survey on judicial retirement and benefits. The resulting report shows that New Mexico judges, whose salaries are among the lowest, contribute at the 4th highest rate, behind judges in California, Rhode Island, and Illinois. Judges in the mountain west states of Nevada and Utah contribute nothing. The table below shows salaries and contribution rates of judges in general jurisdiction courts.

Judicial Retirement Funding

<i>State</i>	<i>Salary*</i>	<i>Salary Rank</i>	<i>Judge's Contribution Rate as a % of salary</i>	<i>Required Years of Service **</i>
California	\$253,189	1	15.25%	65 or older, 20 years 70+, 5-19 years Amount varies based on tier of employment
Rhode Island	\$187,149	19	12%	Under 65, 20 years, 65% 65+, 10 years, 65% 65 and 20 years, 80%
Illinois	\$240,016	2	11%	55 with 10 years, reduced benefits 60 or older, 10 years 63 with 8 years, reduced benefits 67, 8 years
New Mexico	\$148,208	48	10.5%	Magistrate, any age with 24 years of service Judge, 60 with 15 years of service or 65 with 8 years
Idaho	\$155,200	41	10.2%	60 with 10 years of service 65 with 4 years of service Any age with 20 years of service
New Hampshire	\$175,837	27	10%	60 with 15 years, 70% 65 with 10 years, 75% 70 with 7 years, 45%
Pennsylvania	\$211,027	7	10%	Superannuation Pension 60 with 3 years Or any age with 35 years

As the chart shows, retirement benefits for New Mexico judges are at best average. The chart also shows that New Mexico judges contribute the fourth highest percentage of salary to retirement while they receive the eighth lowest pay in the nation.*** The answer to the projected insolvency of both JRA and MRA should not include further reducing judge pay by increasing their contributions toward retirement.

* Justice salary as of July 1, 2019.

** From *A Comparative Analysis of Judicial Compensation in the US and Canada: Facts, Figures and Comparisons*, ICM Fellows Program, 2015- 2016 Court Project Phase, May 2016.

*** The seven entities with lower pay than New Mexico are MT, KS, ME, SD, WV, Northern Mariana Islands and Puerto Rico.

Judicial Retirement Funding (cont.)

The Legislature made significant changes to judicial retirements in 2014 by increasing the percentage of salary contributed by judges, reducing annual service credit which effectively extends the required period of judicial service before retirement, lengthening the vesting period, and suspending the retirement COLA for 2 out of every 3 years the funds are not projected to achieve 100% funding. Despite these changes, the funded ratio of the JRA declined from 61.7% at the end of FY17 to 56.3% at the end of FY18. The MRA funded ratio declined from 61.3% at the end of FY17 to 55.6% at the end of FY18. Although figures are not yet final for the end of FY19 further declines will be reported. Current projections provided by PERA show that JRA will be insolvent in the year 2062 while MRA will be insolvent in 2041. It is essential to address the projected insolvency in the JRA and MRA. JCC recommends a three-part approach to reversing the projection toward insolvency in judicial retirement funds.

ONE-TIME INVESTMENT OF FUNDS IN THE JRA AND MRA

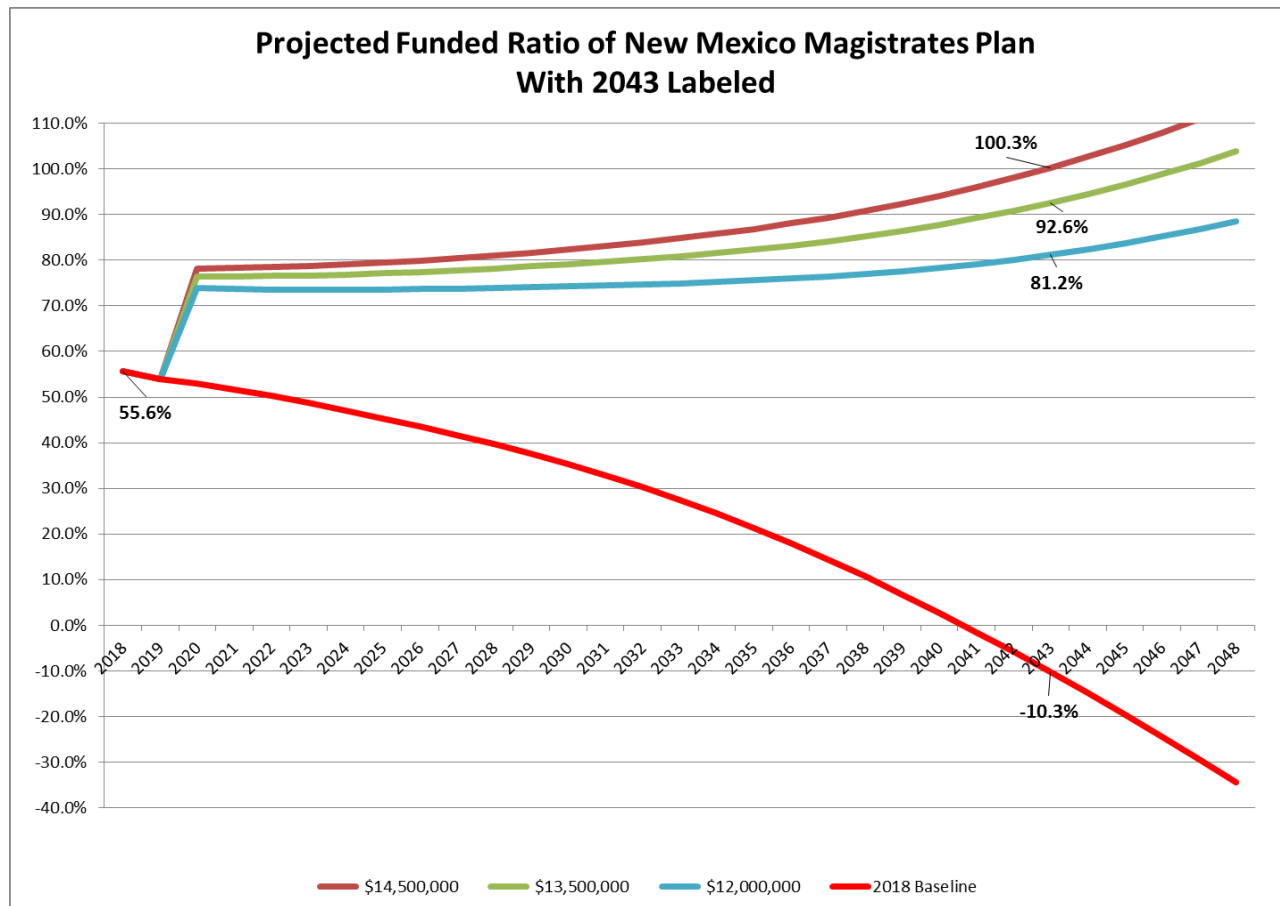
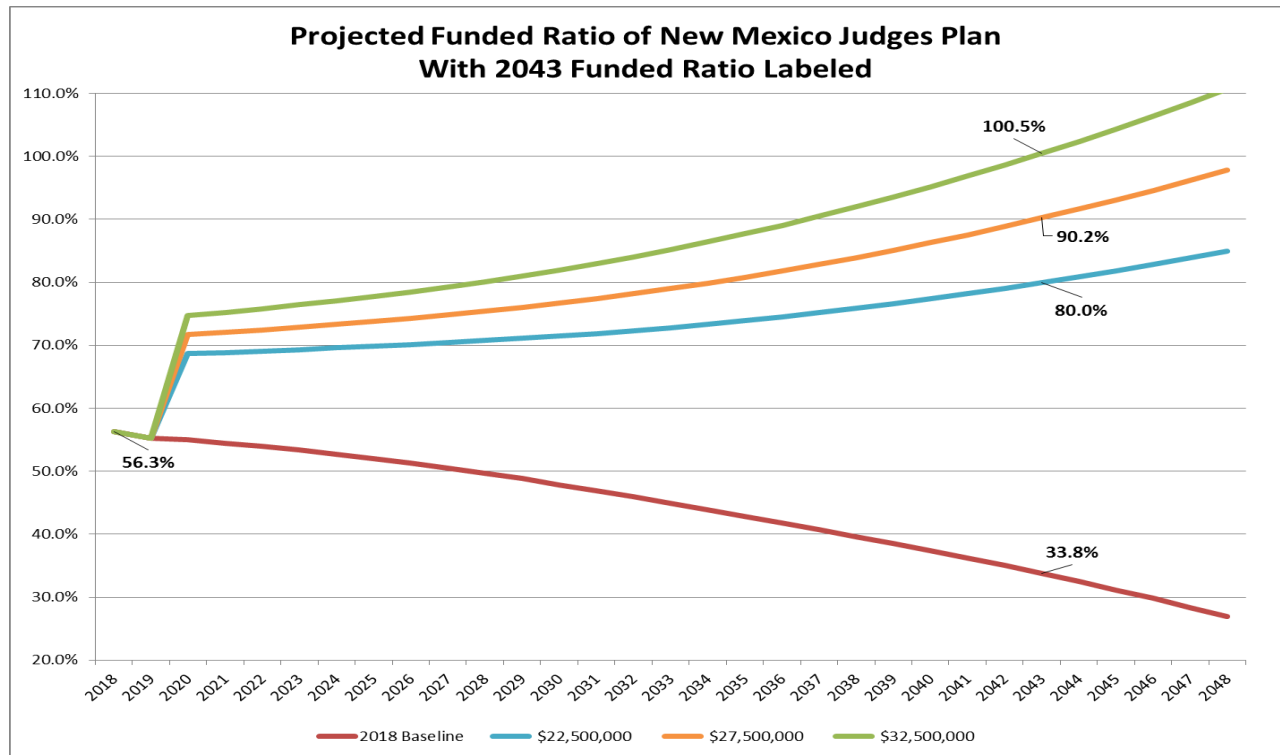
One solution that would achieve 100% funding for both the JRA and MRA within a reasonable projected timeline is a one-time investment of funds. PERA actuaries provided projections showing the solutions to fund insolvencies. The two tables below show the impact of such an investment.

JUDGES	Insolvency	80%	90%	100%
Baseline	2062	NA	NA	NA
+\$22,500,000	NA	2043	2053	2061
+\$27,500,000	NA	2034	2043	2050
+\$32,500,000	NA	2028	2037	2043

MAGISTRATES	Insolvency	80%	90%	100%
Baseline	2041	NA	NA	NA
+\$12,000,000	NA	2042	2049	2054
+\$13,500,000	NA	2031	2042	2047
+\$14,500,000	NA	2026	2038	2043

The graphs below show the relative impact of an investment of \$22,500,000, \$27,500,000, or \$32,500,000 in JRA as well as the relative impact of investments of \$12,000,000, \$13,500,000, or \$14,500,000 in the MRA.

Judicial Retirement Funding (cont.)



Judicial Retirement Funding (cont.)

Even with the lowest charted level of investment (\$22,500,000 in JRA and \$12,000,000 in MRA, a total of \$34,500,000), both JRA and MRA would achieve a funded ratio above 80% by the year 2043 and 100% funding by the year 2060. Under either approach, both funds would reverse the current negative projection toward insolvency into an upward projection toward full funding.

INVESTMENT OF THE LEGISLATIVE RETIREMENT FUNDING STREAM TO JRA AND MRA

In 2014 the Legislature passed SB 304. The bill directed 50% of the funding stream that funds legislative retirement, or \$1,200,000 of the annual funding stream of \$2,400,000, to JRA and MRA. Governor Martinez vetoed SB 304. In the first special session of 2017, HB 2 on page 9 reduced the annual revenue to the legislative retirement fund to \$900,000 beginning in FY20. Both this amount (\$900,000) and an additional \$1,500,000 from the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act that funds legislative retirement could be directed to JRA and MRA without harming legislative retirement funding. PERA actuaries provided projections of several proposals to direct this funding to JRA and MRA for a period of five years. As the charts below show, the impact of various distributions of the \$2,400,000 is to retard but not reverse the downward trend toward insolvency of both funds.

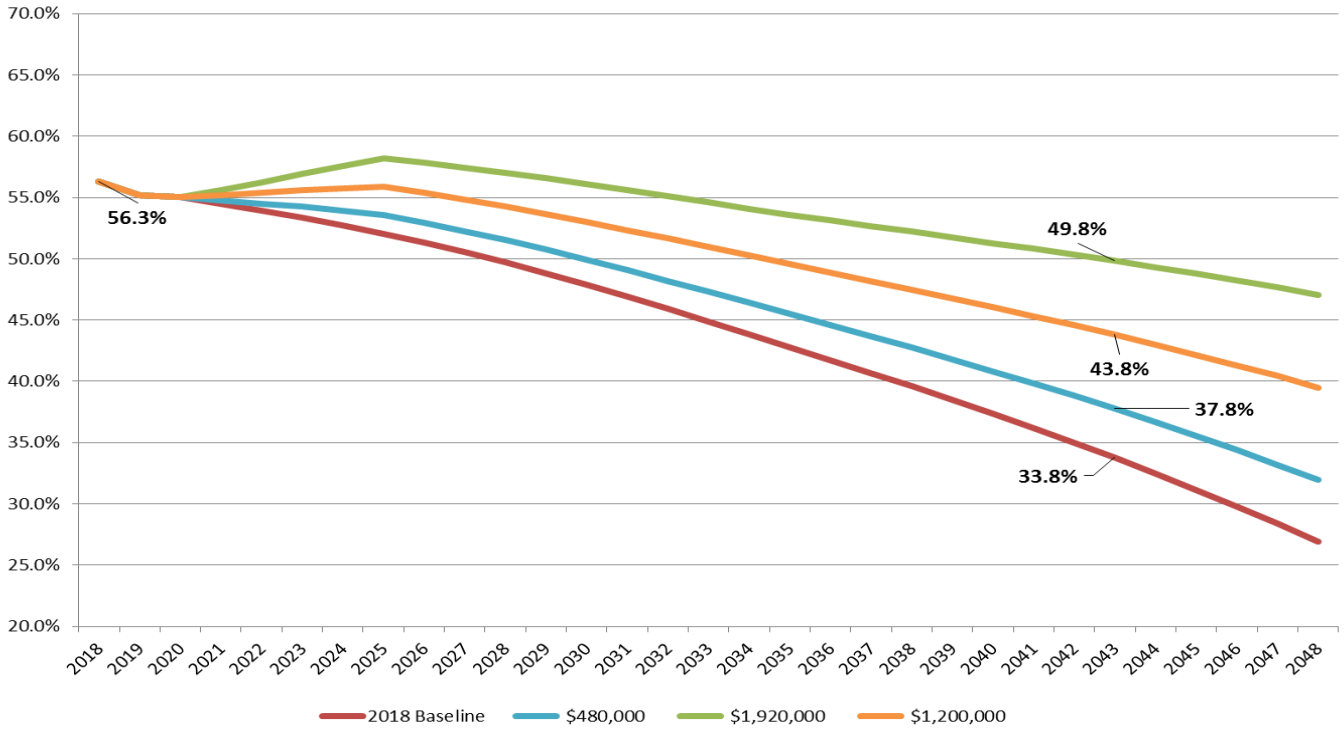
JUDGES	2020	2025	2030	2040	2043	2050
Baseline	55.0%	52.0%	47.9%	37.4%	33.8%	23.8%
+\$480,000	55.0%	53.6%	49.9%	40.8%	37.8%	29.3%
+\$1,200,000	55.0%	55.9%	53.0%	46.0%	53.8%	37.6%
+\$1,920,000	55.0%	58.2%	56.1%	51.3%	49.8%	45.8%

MAGISTRATES	2020	2025	2030	2040	2043	2050
Baseline	53.1%	45.4%	35.3%	2.7%	-10.3%	-44.8%
+\$480,000	53.1%	50.0%	41.7%	15.0%	4.6%	-22.5%
+\$1,200,000	53.1%	56.9%	51.2%	33.5%	27.0%	11.0%
+\$1,920,000	53.1%	63.8%	60.7%	52.0%	49.3%	44.5%

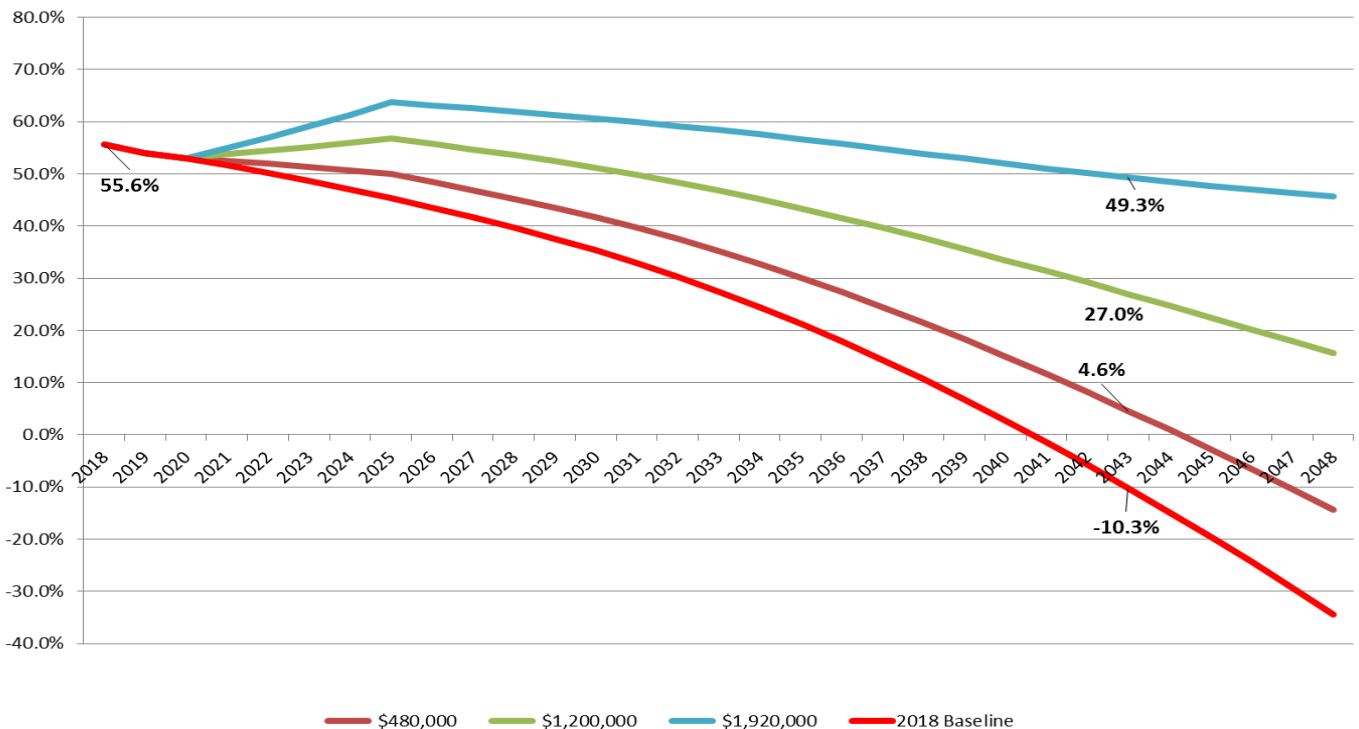
In considering these proposals it is important to know that, as stated by PERA (emphasis added), **“Based on the actuaries’ assumptions, the legislative plan could withstand no State contributions for up to 5 years and still be fully funded.”** At the end of FY 2018 the Legislative Retirement Fund funded ratio was 137.7% and the funded ratio should increase with the report issued for the end of FY 2019. Without threatening the legislative retirement fund with falling below 100% funding, redirecting the \$2,400,000 would delay the insolvency of the JRA and MRA significantly. For example, sending the funds 50% to each fund, thus providing JRA with \$1,200,000 per year and also MRA with \$1,200,000 per year, the impact at the 25-year mark in 2043 is a projection of JRA at 43.8% funded and MRA at 27.0% funded. The graphs below illustrate the impact of dedication of various proportions of the legislative funding stream to the JRA and MRA.

Judicial Retirement Funding (cont.)

**Projected Funded Ratio of New Mexico Judges Plan
5 Year Annual Diversions from Legislative Fund
With 2043 Funded Ratio Labeled**



**Projected Funded Ratio of New Mexico Magistrates Plan
5 Year Annual Diversions from Legislative Fund
With 2043 Labeled**



Judicial Retirement Funding (cont.)

This proposal would benefit both JRA and MRA but both plans would ultimately face insolvency if only this proposal were adopted.

Projections for various alternative combinations of these two proposals can be obtained. For example, directing 80% of the funding stream to JRA would reduce the amount of a one-time investment needed to achieve 100% funding in 2043 from \$32,000,000 to a lower figure (an actuarial analysis is required to make actual projections of the amount). Similarly sending the remaining 20% of the funding stream to the MRA would reduce the amount of a one-time investment needed to reach 100% funding in 2043 from \$14,500,000 to a lower figure (again an actuarial analysis is required to make actual projections of the amount).

The JCC recommends the Legislature pass legislation to accomplish the following:

1. Dedicate one-time investments needed to achieve 100% funding in JRA and MRA by 2043, a total of approximately \$38,000,000 with the actual figure to be based on projections by the PERA actuaries of the required amount if there is also a dedication of the \$2,400,000 legislative retirement funding stream between JRA and MRA.
2. Dedicate the funding stream of \$2,400,000 from legislative retirement to JRA and MRA for 5 years.

FEE FUNDING OF JUDICIAL RETIREMENT SHOULD BE REPLACED WITH GENERAL FUNDS

Fees paid when civil cases are filed provide about \$3 million each year toward funding of judicial retirements in the Magistrate Fund and the Judicial Fund. The fees are static, and will on average contribute \$3 million toward judicial retirements. However, as salaries rise, there is a growing gap between the static fees and the dynamic salaries, which is why fees are not a sound funding mechanism for retirement funds. A deficit is built in that grows any time salaries rise.

In 2011, the House and Senate passed HB 58 by combined votes of 98 yes and 0 no to replace \$3,051,000 (the average amount of fees collected for judicial retirement in the previous three years) with a general fund appropriation of like amount. In place of depositing the fees into retirement funds, the bill required the employer's (the state) contribution rate in the MRA to rise from 11% to 24.06% because historically the fees contributed 13.06% toward Magistrate retirement and raised the employer contribution rate in the JRA from 12% to 30.49% because the fees historically contributed 18.49% to JRA, and made general fund appropriations in the proportionate amount required to replace the \$3 million in fees collected.

Judicial Retirement Funding (cont.)

Although HB 58 would have had no general fund impact unless and until judicial salaries were increased (they were not), Governor Martinez vetoed HB 58 stating, “substantive reform of the State’s multiple pension funds is best achieved if they are all reviewed concurrently” and the future gap between fees and general fund appropriations as a percentage of salaries “has the potential to impact the State’s general fund adversely.”

The 2012 Legislature passed an identical bill, HB 72, by combined votes of 105 yes to 0 no, which Governor Martinez vetoed without a message. The three-year average fee revenue for the general fund “swap” in HB 72 was \$2,996,000.

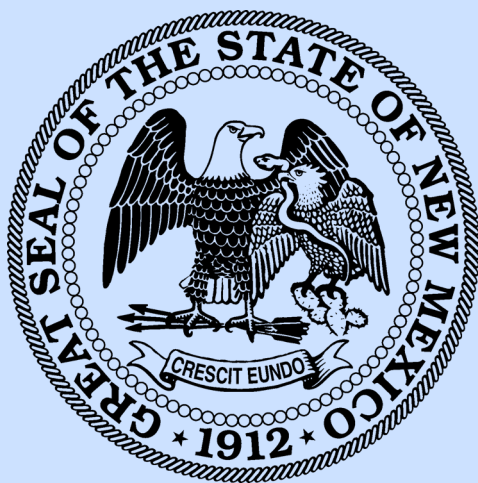
The Retirement Systems Task Force, the Investments and Pensions Oversight Committee, the Courts, Corrections and Justice Committee, PERA, and the Judiciary’s Unified Budget all endorsed both HB72 and HB58. It remains as true today as it was in 2011 and 2012 that funding retirement with a flat fee is unsound actuarial practice and guaranteed to underfund retirement by a gap that widens with any salary increase. Replacing fees with a percentage of salary contribution by the employer is an essential step in promoting the funding stability of judicial retirements. JCC endorses legislation similar to HB58 and HB72 to replace fees with general fund dollar-for-dollar in FY20 with an employer contribution set as a percentage of salary to replace fee funding.

In FY 2018 fees contributed \$2,466,505, or 15.14% of salary, to the JRA and \$402,932, or 6.69% of salary, to MRA. With no impact to the general fund in FY 2021 the Legislature could increase the State’s (employer) contribution rate from 15.0% to 30% in JRA and from 15.0% to 22% in MRA, while directing docket fee collections that totaled \$2,869,437 in FY 2018 to the general fund. Updated figures from collections and contributions during FY 2019 will be available in late 2019 and could be used in any such legislation instead of using the FY 2018 figures.

In sum, the three-part approach recommended by JCC to reverse the projected insolvency of the JRA and MRA is:

- One-time investments = \$32,500,000 in JRA and \$14,500,000 in MRA;
- Dedicate the legislative retirement funding stream and funds from the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax (\$2,400,000 annually) to judicial retirements for five years without reducing the legislative retirement funding level below 100%;
- Direct filing fees to the general fund instead of judicial retirement while replacing the amount contributed by fees with an equivalent percentage of general fund appropriations to judiciary retirement funds, approximately \$3,000,000 (net impact on the general fund in FY2021 is \$0).

NOTES



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