

Fiscal Note

BILL # SB 1046

TITLE: arbitrators; appointment requirements

SPONSOR: Kern

STATUS: Senate Engrossed

PREPARED BY: Ryan Fleischman

REVISED

Description

The bill would require the Superior Courts' list of arbitrators to include any person who is qualified by training, experience, or credential. The bill further specifies that the court may not require an attorney to serve as an arbitrator. The Courts' Rules of Civil Procedure effectively limits arbitrators to attorneys at this time.

We have revised the Fiscal Note to incorporate a reference to the fiscal impact projection of the Administrative Office of the Courts (AOC) and Maricopa County. We received this projection after publication of our original Fiscal Note.

Estimated Impact

We cannot determine if the bill would have a state fiscal impact. There could be a state cost if the elimination of mandatory attorney participation in arbitrations reduces the pool of eligible arbitrators. There could also be no cost if the expansion to non-lawyers generates sufficient numbers of qualified arbitrators.

AOC believes that the bill would reduce the number of eligible arbitrators and result in higher costs for counties. Maricopa County also assumes that it would need to institute different procedures for resolving the cases that go through arbitration in the Superior Court. Maricopa County recommends 4 options to replace the arbitration system, 3 of which range in cost from \$4.1 million to \$4.8 million. Their analysis assumes that the expanded pool of qualified arbitrators under SB 1046 would yield no eligible individuals. We lack sufficient information to evaluate the AOC and Maricopa County perspectives.

Analysis

A.R.S. § 12-133 requires arbitration in all civil cases in which the Superior Court finds, or the parties agree, that the amount in question does not exceed the jurisdictional limit (established by each county, but not to exceed \$65,000).

Statute requires the Superior Court in each county to maintain a list of eligible arbitrators to settle disputes under the jurisdictional limit. Arizona's Rules of Civil Procedure (Rule 73) requires that the list of eligible arbitrators include all attorneys in the county who have been active members of the State Bar of Arizona for at least 4 years, all other State Bar members that have agreed to serve as arbitrators in that county, and all members of any other federal court or other state bar who have agreed to serve as arbitrators in that county. The clerk of the court is required to select an arbitrator from the list at random. Statute requires that arbitrators be paid a "reasonable sum" not to exceed \$140 per day paid by county General Fund revenues.

According to data provided by Maricopa County, there were a total of 26,901 new civil case filings in Maricopa County Superior Court in FY 2022, 10,870 of which were placed in mandatory arbitration. The court appointed 3,685 arbitrators who each heard an average of 3 arbitrations in FY 2022. Maricopa County anticipates that no current arbitrators would continue to participate under this bill.

(Continued)



Maricopa County assumes that they would need to institute different procedures for resolving civil cases currently handled by arbitrators. Maricopa County provided 4 potential scenarios and the associated cost. Of those, 3 range in cost from \$4.1 million to \$4.8 million and include either adding new judgeships, commissioners or staff attorneys to replace arbitrators. A fourth option is estimated to cost \$13.8 million on a new "contract attorney program." We lack sufficient information to evaluate the potential need for and details of these alternatives to the current system.

3/9/23