

**JUSTICE COURT AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill changes the structure and operations of justice courts, and the selection and retention of justice court judges.

**Highlighted Provisions:**

This bill:

- ▶ provides for a performance evaluation and retention process for all justice court judges;
- ▶ amends the jurisdiction of the District Court;
- ▶ provides that all justice court judges be judicial officers, paid by the state;
- ▶ creates an allocation process for providing judicial resources to existing justice courts;
- ▶ provides for compensation for justice court judges;
- ▶ creates judicial selection committees in each judicial district; and
- ▶ creates a restricted account to pay salaries, benefits, and non-education expenses.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2009.

**Utah Code Sections Affected:**

AMENDS:



- 28           **20A-12-201**, as last amended by Laws of Utah 2001, Chapter 308
- 29           **78-3-4**, as last amended by Laws of Utah 2004, Chapter 201
- 30           **78-5-103**, as last amended by Laws of Utah 1999, Chapter 21
- 31           **78-5-108**, as last amended by Laws of Utah 2004, Chapter 245
- 32           **78-5-127**, as last amended by Laws of Utah 1997, Chapter 215
- 33           **78-5-132**, as last amended by Laws of Utah 1993, Chapter 1
- 34           **78-5-137**, as last amended by Laws of Utah 1996, Chapter 84

35 ENACTS:

- 36           **78-5-141**, Utah Code Annotated 1953
- 37           **78-5-142**, Utah Code Annotated 1953

38 REPEALS AND REENACTS:

- 39           **78-5-102**, as last amended by Laws of Utah 1999, Chapter 21
- 40           **78-5-107**, as last amended by Laws of Utah 1993, Chapters 5 and 227
- 41           **78-5-128**, as last amended by Laws of Utah 2001, Chapter 71
- 42           **78-5-129**, as enacted by Laws of Utah 1989, Chapter 157
- 43           **78-5-134**, as last amended by Laws of Utah 2006, Chapter 16

44 REPEALS:

- 45           **78-5-106.5**, as enacted by Laws of Utah 2003, Chapter 51
- 46           **78-5-135.5**, as renumbered and amended by Laws of Utah 2001, Chapter 46
- 47           **78-5-138**, as last amended by Laws of Utah 1999, Chapter 166



49 *Be it enacted by the Legislature of the state of Utah:*

50           Section 1. Section **20A-12-201** is amended to read:

51           **20A-12-201. Judicial appointees -- Retention elections.**

52           (1) (a) Each judicial appointee to a court [~~of record~~] is subject to an unopposed  
53 retention election at the first general election held more than three years after the judge or  
54 justice was appointed.

55           (b) After the first retention election:

56           (i) each Supreme Court justice shall be on the regular general election ballot for an  
57 unopposed retention election every tenth year; and

58           (ii) each judge of other courts [~~of record~~] shall be on the regular general election ballot

59 for an unopposed retention election every sixth year.

60 (2) ~~[(a)]~~ Each justice or judge ~~[of a court of record]~~ who wishes to retain office shall, in  
61 the year the justice or judge is subject to a retention election:

62 ~~[(i)]~~ (a) file a declaration of candidacy as if a candidate for multi-county office in  
63 accordance with Section 20A-9-202; and

64 ~~[(ii)]~~ (b) pay a filing fee of \$50.

65 ~~[(b) Each county justice judge who wishes to retain office shall, in the year the justice  
66 or judge is subject to a retention election:]~~

67 ~~[(i) file a declaration of candidacy as if a candidate for county office in accordance with  
68 Section 20A-9-202; and]~~

69 ~~[(ii) pay a filing fee of \$25:]~~

70 (3) (a) The lieutenant governor shall, by September 1 of each regular general election  
71 year:

72 (i) transmit a certified list containing the names of the justices of the Supreme Court  
73 and judges of the Court of Appeals declaring their candidacy to the county clerk of each  
74 county; and

75 (ii) transmit a certified list containing the names of judges of other courts declaring  
76 their candidacy to the county clerk of each county in the geographic division in which the judge  
77 filing the declaration holds office.

78 (b) Each county clerk shall place the names of justices and judges standing for  
79 retention election in the nonpartisan section of the ballot.

80 (4) At the general election, the ballots shall contain, as to each justice or judge of any  
81 court to be voted on in the county, the following question:

82 "Shall \_\_\_\_\_(name of justice or judge) be retained in the  
83 office of \_\_\_\_\_?" (name of office, such as "Justice of the Supreme  
84 Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the  
85 Third Judicial District;" "Judge of the Juvenile Court of the Fourth Juvenile Court District";  
86 "[~~County Justice Court~~] Judge of [~~(name of county) County~~] the Justice Court of the Fifth  
87 Judicial District")

88 Yes ()

89 No ()."

90 (5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge  
91 is retained for the term of office provided by law.

92 (b) If the justice or judge does not receive more yes votes than no votes, the justice or  
93 judge is not retained, and a vacancy exists in the office on the first Monday in January after the  
94 regular general election.

95 (6) A justice or judge not retained is ineligible for appointment to the office for which  
96 the justice or judge was defeated until after the expiration of that term of office.

97 Section 2. Section **78-3-4** is amended to read:

98 **78-3-4. Jurisdiction -- Appeals.**

99 (1) The district court has original jurisdiction in all matters civil and criminal, not  
100 excepted in the Utah Constitution and not prohibited by law.

101 (2) The district court judges may issue all extraordinary writs and other writs necessary  
102 to carry into effect their orders, judgments, and decrees.

103 (3) The district court has jurisdiction over matters of lawyer discipline consistent with  
104 the rules of the Supreme Court.

105 (4) The district court has jurisdiction over all matters properly filed in the circuit court  
106 prior to July 1, 1996.

107 (5) The district court has appellate jurisdiction to adjudicate trials de novo of the  
108 judgments of the justice court and of the small claims department of the district court.

109 (6) Appeals from the final orders, judgments, and decrees of the district court are under  
110 Sections 78-2-2 and 78-2a-3.

111 (7) The district court has jurisdiction to review:

112 (a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b,  
113 Administrative Procedures Act, and shall comply with the requirements of that chapter, in its  
114 review of agency adjudicative proceedings; and

115 (b) municipal administrative proceedings in accordance with Section 10-3-703.7.

116 (8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in  
117 class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

118 (a) there is no justice court with territorial jurisdiction;

119 (b) the matter was properly filed in the circuit court prior to July 1, 1996;

120 (c) the offense occurred within the boundaries of the municipality in which the district

121 courthouse is located and that municipality has not formed, or formed and then dissolved, a  
122 justice court; or

123 (d) they are included in an indictment or information covering a single criminal  
124 episode alleging the commission of a felony or a class A misdemeanor.

125 (9) The district court has jurisdiction of actions under Title 78, Chapter 3h, Child  
126 Protective Orders, if the juvenile court transfers the case to the district court.

127 Section 3. Section **78-5-102** is repealed and reenacted to read:

128 **78-5-102. Offices of justice court judges.**

129 (1) Justice court judges not already appointed on July 1, 2009 shall be:

130 (a) appointed by a judicial selection committee to a judicial district; and

131 (b) assigned by the presiding officer of the Judicial Council to one or more courts  
132 within that judicial district.

133 (2) Justice court judges are also magistrates as defined in Section 78-7-17.5, and have  
134 authority to hear matters as a magistrate within their judicial district.

135 Section 4. Section **78-5-103** is amended to read:

136 **78-5-103. Territorial jurisdiction -- Voting.**

137 (1) The territorial jurisdiction of county justice courts extends to the limits of the  
138 precinct for which the justice court is created and includes all cities or towns within the  
139 precinct, except cities where a municipal justice court exists.

140 (2) The territorial jurisdiction of municipal justice courts extends to the corporate  
141 limits of the municipality in which the justice court is created.

142 [~~(3) The territorial jurisdiction of county and municipal justice courts functioning as~~  
143 ~~magistrates extends beyond the boundaries in Subsections (1) and (2):]~~

144 [~~(a) as set forth in Section 78-7-17.5; and]~~

145 [~~(b) to the extent necessary to carry out magisterial functions under Subsection~~  
146 ~~77-7-23(2) regarding jailed persons.]~~

147 [(4)] (3) [For election of county justice court judges, all] All registered voters in the  
148 [~~county justice court precinct~~] judicial district to which the justice court judge is appointed may  
149 vote at the judge's retention election.

150 Section 5. Section **78-5-107** is repealed and reenacted to read:

151 **78-5-107. Place of holding court.**

152 Justice court judges may hold court in any court facility within the judicial district and  
153 approved by the Judicial Council, or other locations approved by the presiding officer of the  
154 Judicial Council.

155 Section 6. Section **78-5-108** is amended to read:

156 **78-5-108. Trial facilities -- Hours of business.**

157 [~~(1)~~ A justice court judge shall conduct all official court business in a courtroom or  
158 office located in a public facility which is conducive and appropriate to the administration of  
159 justice.]

160 [~~(2)~~] (1) Each county, city, or town shall provide adequate courtroom and auxiliary  
161 space for the justice court. The facility need not be specifically constructed for or allocated  
162 solely for the justice court if existing facilities adequately serve the purposes of the justice  
163 court.

164 [~~(3)~~] (2) [~~County and municipal justice~~] Justice courts shall be open and judicial  
165 business shall be transacted:

166 (a) five days per week; or

167 (b) no less than four days per week for at least 11 hours per day.

168 [~~(4)~~] (3) The legislative body of the county, city, or town shall establish operating  
169 hours for the justice courts within the requirements of Subsection [~~(3)~~] (2) and the code of  
170 judicial administration.

171 [~~(5)~~] (4) The hours the courts are open shall be posted conspicuously at the courts and  
172 in local public buildings.

173 [~~(6)~~] (5) The clerk of the court and judges of county and municipal courts shall attend  
174 the court at regularly scheduled times. If a justice court judge serves more than one court, the  
175 amount of court time allocated to each court shall be set by the state court administrator in  
176 consultation with the judge, presiding justice court judge, and the local governments served.

177 (6) By July 1, 2011, all justice courts shall use a common case management system and  
178 disposition reporting system as specified by the Judicial Council.

179 Section 7. Section **78-5-127** is amended to read:

180 **78-5-127. Required annual training -- Expenses -- Failure to attend.**

181 (1) Prior to assuming office all justice court judges shall attend an orientation seminar  
182 conducted under the direction of the Judicial Council.

183 (2) All justice court judges shall attend the continuing education conducted under the  
184 supervision of the Judicial Council each calendar year.

185 (a) Successful completion of the continuing education requirement includes instruction  
186 regarding competency and understanding of constitutional provisions and laws relating to the  
187 jurisdiction of the court, rules of evidence, and rules of civil and criminal procedure as  
188 indicated by a certificate awarded by the Judicial Council.

189 (b) The ~~[county or municipality creating and maintaining a justice court]~~ Judicial  
190 Council shall assume the expenses of travel, meals, and lodging for the judge to attend  
191 education and training seminars conducted by the Judicial Council.

192 (3) Any judge not obtaining a certificate for two consecutive years may be removed  
193 from office for cause under this section.

194 (4) The Judicial Council shall inform the Judicial Conduct Commission of the names  
195 of justice court judges failing to comply with this section.

196 Section 8. Section **78-5-128** is repealed and reenacted to read:

197 **78-5-128. Compensation -- Limits on secondary employment.**

198 (1) (a) Full-time justice court judges shall be paid a fixed salary equal to 90% of that  
199 paid a district court judge. Benefits shall be the same as for state judges, although retirement  
200 benefits shall be in the form of the defined contribution system provided state employees.

201 (b) Part-time judges shall be paid a salary proportionate to the salary and workload of a  
202 full-time justice court judge, based on a weighted caseload analysis developed by the Judicial  
203 Council. The workload shall be calculated quarterly.

204 (c) The defined retirement contribution will be paid in the same proportion as the  
205 salary, and health benefits will be provided for judges serving half-time or more. Health  
206 benefits shall also be provided to part-time judges whose local governmental entities are  
207 already providing health benefits until February 5, 2012.

208 (2) The salary of a justice court judge may not be diminished during the judge's term of  
209 office.

210 (3) A justice court judge may not hold any office or employment, including contracting  
211 for services, in any justice agency of state government or any political subdivision of the state  
212 including law enforcement, prosecution, criminal defense, corrections, or court employment.

213 (4) A justice court judge may not hold any office in any political party or organization

214 engaged in any political activity, or serve as an elected official in state government or any  
215 political subdivision of the state.

216 (5) A justice court judge may not own or be employed by any business entity which  
217 regularly litigates in small claims court.

218 (6) Any judge who violates this section is subject to removal by the Judicial Conduct  
219 Commission under Title 78, Chapter 8, Judicial Conduct Commission and Supreme Court  
220 Oversight of Judges.

221 Section 9. Section **78-5-129** is repealed and reenacted to read:

222 **78-5-129. Compensation -- Reimbursement by local government.**

223 (1) Each local governmental entity that sponsors a justice court shall compensate the  
224 state for the cost of the judge's salary, benefits, and non-education travel expenses incurred  
225 while serving the governmental entity. The amount shall be calculated by the Administrative  
226 Office of the Courts in accordance with Subsection (2).

227 (2) The Administrative Office of the Courts shall, for each local governmental entity  
228 that sponsored a justice court in the previous year, calculate the quantity of judicial resources  
229 used by that justice court during the year. The usage shall then be converted into a dollar  
230 figure.

231 (3) The amount determined under Subsection (2) shall be paid to the state treasurer by  
232 the local governmental entity not later than June 30 of each year for deposit in the Justice Court  
233 Fund established in Section 78-5-142.

234 Section 10. Section **78-5-132** is amended to read:

235 **78-5-132. Term of office for county court.**

236 (1) Judges certified on or after July 1, 2009 shall serve until the first general election  
237 held more than three years after the effective date of the certification.

238 ~~[(1)(a)]~~ (2) The term of a [county] full-time justice court judge is [four] six years  
239 [beginning the first Monday in February 1991].

240 ~~[(b) Judges holding office when this act takes effect or appointed to fill any vacancy~~  
241 ~~hold office until reappointed or a successor is appointed and certified by the Judicial Council.]~~

242 ~~[(2) (a) The term of office of a municipal justice court judge is four years, beginning~~  
243 ~~the first Monday in February 1992.]~~

244 ~~[(b) Judges holding office when this section takes effect or appointed to fill any~~



245 ~~vacancy hold office until reappointed or a successor is appointed and certified by the Judicial~~  
246 ~~Council.]~~

247 (3) Part-time judges holding office as of the first Monday in February 2011 shall have a  
248 term of office ending February 5, 2012.

249 Section 11. Section **78-5-134** is repealed and reenacted to read:

250 **78-5-134. Justice court judges to be appointed -- Procedure -- Retention.**

251 (1) As used in this section:

252 (a) "Local government executive" means:

253 (i) the chair of the county commission in counties having the county commission form  
254 of county government;

255 (ii) the county executive in counties having the county executive-council form of  
256 government;

257 (iii) the chair of the city council or town council in municipalities having the traditional  
258 management arrangement established by Title 10, Chapter 3, Part 1, Governing Body;

259 (iv) the city manager, in the council-manager optional form of government defined in  
260 Section 10-3-101; and

261 (v) the mayor, in the council-mayor optional form of government defined in Section  
262 10-3-101.

263 (b) "Local legislative body" means:

264 (i) the county commission or county council; and

265 (ii) the city council or town council.

266 (2) By July 1, 2009, and by July 1 of each odd-numbered year thereafter, the Judicial  
267 Council shall determine the number of justice court judges that are required for each judicial  
268 district and make a recommendation to the Legislature for any change in the number or location  
269 of authorized judgeships. This determination shall be based on case filings and other workload  
270 indicators for each district.

271 (3) When there is a new position created, or when there is a vacancy in an existing  
272 judgeship, the judicial selection committee for that judicial district shall convene to select the  
273 judge. The Administrative Office of the Courts shall provide staff support for the committees.  
274 The procedures for the selection committee shall be provided for by Judicial Council rule.

275 (4) Membership of the judicial selection committees shall be as follows:

276 (a) the presiding judge of the justice courts for that judicial district, who shall serve as  
277 non-voting chair;

278 (b) one local government executive from a municipality within the judicial district;

279 (c) one local government executive from a county within the judicial district;

280 (d) one member of a local municipal legislative body within the judicial district;

281 (e) one member of a local county legislative body within the judicial district;

282 (f) one additional local governmental official designated by a local governmental entity  
283 expected to be served by the judge; and

284 (g) four citizen members who are not elected officials selected by the remaining  
285 members.

286 (5) No more than two of the citizen members may be members of the same political  
287 party.

288 (6) The members described in Subsections (4)(b) through (e) shall be selected by the  
289 Judicial Council from nominations of eligible persons submitted by the appropriate local  
290 entities.

291 (7) The term of office for selection committee members shall be six years.

292 (8) Judicial vacancies shall be advertised in a newspaper of general circulation, through  
293 the Utah State Bar, and other appropriate means.

294 (9) Selection of candidates shall be based on compliance with the requirements for  
295 office and competence to serve as a judge.

296 (10) Once selected by the judicial selection committee, the Judicial Council shall  
297 certify the judge as qualified to hold office upon successful completion of the orientation  
298 program.

299 (11) The selection of a person to fill the office of justice court judge is effective upon  
300 certification of the judge by the Judicial Council. A justice court judge may not perform  
301 judicial duties until certified by the Judicial Council.

302 (12) Upon the expiration of a justice court judge's term of office the judge shall be  
303 subject to an unopposed retention election in accordance with the procedures set forth in  
304 Section 20A-12-201.

305 (13) Before each retention election, each justice court judge shall be evaluated in  
306 accordance with the performance evaluation program established in Subsection 78-3-21(4).

307 Section 12. Section ~~78-5-137~~ is amended to read:

308 **78-5-137. Justice court judge eligibility -- Mandatory retirement -- Service after**  
 309 **retirement.**

310 (1) A ~~county~~ justice court judge shall be:

311 (a) a citizen of the United States;

312 (b) 25 years of age or older;

313 (c) a resident of Utah for at least three years immediately preceding his appointment;

314 (d) a resident of the ~~[precinct]~~ judicial district for which chosen for at least six months

315 immediately preceding appointment; and

316 (e) a qualified voter of the ~~[precinct]~~ judicial district for which chosen.

317 ~~[(2) A municipal justice court judge shall be:]~~

318 ~~[(a) a citizen of the United States;]~~

319 ~~[(b) 25 years of age or older;]~~

320 ~~[(c) a resident of Utah for at least three years immediately preceding appointment;]~~

321 ~~[(d) a resident of the county in which the municipality is located or an adjacent county~~

322 ~~for at least six months immediately preceding appointment; and]~~

323 ~~[(e) a qualified voter of the county of residence.]~~

324 ~~[(3)]~~ (2) Justice court judges are not required to be admitted to practice law in the state

325 as a qualification to hold office but shall have at the minimum a ~~[diploma of graduation from~~

326 ~~high school or its equivalent]~~ Bachelor of Arts or Bachelor of Science degree from an

327 accredited four year college or university. This requirement does not apply to justice court

328 judges holding office on or before July 1, ~~[1989]~~ 2009, who successfully complete continuing

329 education requirements under Section 78-5-127.

330 ~~[(4)]~~ (3) A justice court judge shall be a person who has demonstrated maturity of  
 331 judgment, integrity, and the ability to understand and apply appropriate law with impartiality.

332 ~~[(5) (a) Except as provided in Subsections (b) and (c), a county or municipal justice]~~

333 (4) Justice court [judge] judges shall retire upon attaining the age of 75 years.

334 ~~[(b) A county justice court judge serving on July 1, 1996, who is 75 years of age or~~

335 ~~older on July 1, 1996, or who attains 75 years of age on or before the first Monday in February~~

336 ~~1999, may not be a candidate in the 1998 judicial retention elections and shall retire on or~~

337 ~~before the first Monday in February 1999.]~~

338 ~~[(c) A municipal justice court judge serving on July 1, 1996, who is 75 years of age or~~  
339 ~~older on July 1, 1996, or who attains 75 years of age on or before the first Monday in February~~  
340 ~~2000, may not be reappointed and shall retire on or before the first Monday in February 2000.]~~

341 ~~[(6)]~~ (5) (a) A justice court judge whose tenure in office has terminated due to  
342 retirement and who is physically and mentally able to perform the duties of the office may hear  
343 a case as prescribed by rule of the Supreme Court.

344 (b) The retired justice court judge shall take and subscribe an oath of office only upon  
345 the first appointment. ~~[The retired justice court judge shall receive reasonable compensation~~  
346 ~~for services as set by local ordinance of the municipality or county.]~~

347 Section 13. Section **78-5-141** is enacted to read:

348 **78-5-141. Presiding judge -- Associate presiding judge -- Election -- Term --**  
349 **Compensation -- Powers -- Duties.**

350 (1) In judicial districts having more than one judge, the justice court judges shall elect  
351 one judge of the district to the office of presiding judge.

352 (2) In judicial districts having more than two judges, the justice court judges may elect  
353 one judge of the district to the office of associate presiding judge.

354 (3) In districts having five or more full-time judges, the presiding judge shall receive an  
355 additional \$2,000 per annum as compensation.

356 (4) In districts having ten or more full-time judges, the associate presiding judge shall  
357 receive an additional \$2,000 per annum as compensation.

358 (5) The presiding judge has the following authority and responsibilities, consistent with  
359 the policies of the Judicial Council:

360 (a) implementing policies of the Judicial Council; and

361 (b) exercising powers and performing administrative duties as authorized by the  
362 Judicial Council.

363 (6) When the presiding judge is unavailable, the associate presiding judge shall assume  
364 the responsibilities of the presiding judge. The associate presiding judge shall perform other  
365 duties assigned by the presiding judge.

366 Section 14. Section **78-5-142** is enacted to read:

367 **78-5-142. Justice Court Fund -- Restricted account.**

368 (1) There is created within the General Fund, a restricted account known as the Justice

369 Court Fund.

370 (2) The Justice Court Fund shall consist of all funds paid to the state in accordance  
371 with Section 78-5-129.

372 (3) Upon appropriation by the Legislature, funds from the Justice Court Fund shall be  
373 used for:

374 (a) salaries and benefits for justice court judges; and

375 (b) reimbursement for non-educational travel expenses.

376 **Section 15. Repealer.**

377 This bill repeals:

378 **Section 78-5-106.5, Justice court judge administrative responsibilities.**

379 **Section 78-5-135.5, Justice court judge to collect fees before filing action -- Penalty.**

380 **Section 78-5-138, Temporary justice court judge.**

381 **Section 16. Effective date.**

382 This bill takes effect on July 1, 2009.

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**Legislative Review Note**

as of 1-21-08 6:47 AM

**Office of Legislative Research and General Counsel**

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**S.B. 72 - Justice Court Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require \$196,000 per year from the General Fund appropriated to the Courts beginning FY 2010. It will also require \$9,811,500 per year from the newly created Justice Court Fund appropriated to the Courts beginning FY 2009. The bill will also generate \$9,811,500 per year in Restricted Funds beginning FY 2010.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$196,000	\$196,000	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$196,000)	\$0	\$0	\$0	\$0
General Fund Restricted	\$0	(\$9,811,500)	\$0	\$0	\$0	\$0
General Fund Restricted	\$0	\$9,811,500	\$9,811,500	\$0	\$0	\$9,811,500
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$10,007,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$9,811,500</b>

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**Individual, Business and/or Local Impact**

Some localities will experience increased costs; others will have reduced costs.

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