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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/13

SPONSOR HBIC LAST UPDATED 03/05/13 HB 519/HBICS

SHORT TITLE Discharge of Residential Liens SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	(Minimal)	(Minimal)	(Minimal)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

The House Business and Industry Committee substitute for House Bill 519 (HB 519) amends a section within the Stop Notice Act that governs liens on residential property (containing four dwelling units or fewer) to prohibit the filing for record or recording of any lien without notices of return receipt pursuant to certified mail signed by the property owner or the owners successor in interest and the original contractor, if any. Nor may such a lien be enforced by action or considered of record unless those notices were filed with the recorded lien.

HB 519 also clarifies that the payment, and notice of that payment, of all amounts due by the owner or the owner's successor in interest for any labor or materials furnished or other actions giving rise to a lien shall discharge and render void and unenforceable all liens, even when a lien has been filed for record prior to payment, if a notice of payment or a release of lien is filed for record with the county clerk of the county where all or part of the property is situated.

FISCAL IMPLICATIONS

The AOC notes in a previous analysis that, while new laws, amendments to existing laws and new hearings, generally, have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase, if the number of petitions to cancel liens decreases as the result of the proposed legislation, fewer judicial resources will need to be allocated.

SIGNIFICANT ISSUES

HB 519 adds a new provision requiring that no lien for any labor or materials furnished or other work performed on a residential property can be filed for record or recorded without a notice of return receipt pursuant to certified mail, signed by the owner or the owner's successor in interest, and the original contractor, if any. It is unclear, however, what document is to be mailed to these parties: is it a notice of intent to file the lien indicating the amount yet to be paid, or a copy of the lien itself?

Additionally, HB 519 clarifies language in existing law regarding the effect of payment of all amounts due for labor, materials or other actions that give rise to a lien, which is to discharge and render unenforceable any lien, including those that have been filed prior to that payment.

Under current law, no discharge of a lien by payment is authorized if a person already has filed for record a lien prior to that payment. Instead, Section 48-2-9 NMSA 1978 permits an owner to petition the district court for an order canceling a lien. Subsection B of that section provides that upon the filing of the petition, the court shall examine records and determine an amount sufficient to satisfy the recorded demands and any other damages, court costs or attorney fees that may be recovered by the lien claimant and require security be posted in that amount by the owner or original contractor. Pursuant to subsection C of that section, once the security is deposited, the court shall immediately issue an order canceling the lien and notify the county clerk with whom the lien has been filed. Upon recording the court order, the county clerk shall mark the lien as canceled.

HB 519 renders that petition process unnecessary when payment has been made in full and notice of that payment or a release of lien is filed for record. As a result, a lien claimant who has received full payment after filing and recording a lien will no longer have an opportunity to seek court costs, attorney fees or any other damages.

TECHNICAL ISSUES

On page 1, line 22, following "without", a phrase like "simultaneously recording a" may clarify that the notices described in the new subsection A are to be recorded as well as the lien itself.

A description of the document to be mailed to the owner or the owner's successor in interest and the original contractor, if any, may help clarify what those parties received by certified mail, return receipt requested.

MD/blm:svb