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FISCAL IMPACT REPORT

SPONSOR Payne ORIGINAL DATE 03/07/17
LAST UPDATED _____ HB _____

SHORT TITLE Investigate Use of Defective Plumbing Systems SM 136

ANALYST Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total				NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (OAG)

SUMMARY

Synopsis of Memorial

Senate Memorial 136 requests the Office of the Attorney General and the Construction Industries Division of the Regulation and Licensing Department to investigate the use of defective plumbing systems in New Mexico homes that are the subject of class-action litigation and to offer possible remedies for homeowners.

FISCAL IMPLICATIONS

There is no known fiscal impact. SM 136 will require a reallocation of staff from current work assignments of both the Office of Attorney General and Construction Industries Division. This may create a financial strain in administering the research project proposed.

SIGNIFICANT ISSUES

Senate Memorial 136 requests the Office of the Attorney General and the Construction Industries Division of the Regulation and Licensing Department to investigate the use of defective plumbing systems in New Mexico construction projects to determine:

- the approximate number of homes built after 1995 using defective plumbing products;
- the approximate number of homes that were built using defective plumbing products after 2005;

Senate Memorial 136 – Page 2

- if homeowners were notified of the use of defective plumbing system products;
- the approximate number of homeowners who have experienced defective or unsafe conditions stemming from the installation of those plumbing system products; and,
- remedies that have been provided to those affected.

SM 136 tasks the Office of the Attorney General in considering legal remedies for intentional concealment of defective or unsafe conditions relating to home construction projects.

Reports and remedies developed from the OAG and CID collaborative research project is to be sent to the appropriate interim committee of the legislature.

ADMINISTRATIVE IMPLICATIONS

This Memorial may require either a reallocation of work away from current staff assignments or hiring additional staff of the two agencies tasked CID and OAG to complete the investigation and provide the required report.

OTHER SUBSTANTIVE ISSUES

The Office of the Attorney General (OAG) notes that currently in New Mexico there is ten-year limitation on taking action for defective or unsafe conditions of construction projects, NMSA 1978, Section 37-1-27. However, in *Baker v. Wood Metal Concrete, LLC*, 2016 WL 2853884, the New Mexico Court of Appeals found there may be instances where the application of Section 37-1-27 would create an “unreasonably short” period of time to pursue a remedy against a protected party and due process requires the courts to intervene. In other words, the statute cannot be constitutionally applied to bar any cause of action accruing within but close to the end of the ten-year period. *Id.* SM 136 in essence is asking CID and OAG to identify defective construction projects that may be one of those “unusual cases involving exceptional circumstances' resulting in an unusually short period of time within in which to file suit.” *Id.*, (citation omitted).

If statutory changes are to be considered by the legislature as a result of the OAG’s and CID’s report, it may help to effectuate real legislative changes from the group’s recommendation to identify one or more interim legislative committees which will review the requested progress report by a specified deadline.

JMA/al