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FISCAL IMPACT REPORT

SPONSOR Ivey-Soto ORIGINAL DATE 3/6/19
 LAST UPDATED _____ HB _____

SHORT TITLE Uniform Owner-Resident Relation Courts SB 563

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 224 and HB 279

SOURCES OF INFORMATION

LFC Files

Responses Received From

Bernalillo County Metropolitan Court (Metro Court)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 563 removes the Metropolitan Court as a court of record for civil actions brought pursuant to the Uniform Owner Resident Relations Act (the act). Parties aggrieved by a judgment rendered by the Metropolitan Court may appeal to the district court in the county in which the Metropolitan Court is located within 15 days after the final decision. The appeal shall be de novo.

This bill also removes the automatic stay of execution on appeal by a tenant of a writ of restitution under the act. The court may grant a stay of such a writ when the dispute solely concerns failure to pay rent pending appeal if the renter continues to pay rent. If the dispute involves an issue other than rent, a stay may be granted on terms set by the court, including a bond or other conditions designed to protect the interests of the owner. An order revoking a stay granted pending an appeal shall not be automatically stayed by the appeal.

HB563 enjoins a tenant and other occupants from reentering leased premises without permission

of the owner for 180 days following the execution of the writ of restitution. The owner continues to have the duty to make personal property belonging to the tenant left in the dwelling unit available to the tenant for three days.

FISCAL IMPLICATIONS

Metro Court reports that approximately one-third of the cases filed in the state are filed there. In particular, the number of restitution cases filed at that court under the Act averaged just over 10 thousand cases for calendar years 2017 and 2018. That court anticipates a cost of at least \$5,719 in new filing materials per year, plus additional programming costs to Odyssey, the court's electronic case management system, in an unquantified amount. In addition, requiring trials de novo in district court would increase caseloads and require additional judicial resources to handle that increase.

SIGNIFICANT ISSUES

BCMC reports it has been a court of record for all civil proceedings since it was established by the Legislature in 1980. See 34-8A-1 and 34-8A-6 NMSA 1978. Since that time, Metro Court has adjudicated tens of thousands of cases under the act.

Under current law, an appeal of any civil case from Metro Court would be reviewed by a district court using the case record, would include the court file proper and any audio recordings made. Relying on the record, a district court conducting an appellate review is required to defer to the factual findings of the Metro Court judge who heard the case, provided the findings are supported by “substantial evidence” found in the records. See *Johnson v. Southwest Catering Corp.*, 1983-NMCA-020 (holding that *substantial evidence* is the standard of review for Metro Court cases on appeal at the district court). As Metro Court explains, this may be a more rapid way to reach an appellate disposition; however, it should be kept in mind that a court's internal administrative and scheduling process may ultimately dictate how rapidly a “typical” case may move forward.

Both AOC and Metro Court contend that requiring an appeal to district court to be de novo (requiring another trial), as SB563 does, will force a duplication of efforts and a waste of judicial resources, given that an appealed case likely has already been through one trial.

Additionally, Metro Court notes that Section 3 of the bill requires that an appeal of a Metro Court final order under the Act would stay the underlying case during the appellate process. However, the stay would only remain in place as long as the tenant continues to pay rent or follows other terms set by Metro Court. Because all landlord-tenant case appeals are required to be tried *de novo* at the district court, Metro Court reads the bill as creating concurrent jurisdiction between Metro Court and the district court in the event of an appeal. This concurrent jurisdictional structure, it warns, could lead to conflicting outcomes, potentially harming parties and creating further conflict. For example, Metro Court suggests if a case is stayed on appeal, but the tenant fails to pay rent and is evicted prior to the *de novo* trial at the district court, there is the possibility that the district court could – even months after the eviction – enter a judgment favorable to the already-evicted tenant. Metro Court believes this type of conflict is a real possibility and is not limited to a purely legal dispute, but could potentially lead to further conflicts as aggrieved parties could hold favorable court orders in hand, with no way to enforce them.

Metro Court also notes HB563 also prohibits the practice of staying an order revoking a previous stay, if the order to revoke is appealed. It suggests this provision would put an end to the possibility of an endless cycle of appeals, and promote the movement of cases toward a final disposition.

NMAG calls attention to the provision requiring the court determine the conditions, including a bond or other condition, necessary to protect the interest of the owner, and points out a conflict that arises when the dispute involves payment of the rent, as the bill requires the tenant to pay the contractual amount of the rent. Currently 39-3-9 NMSA 1978 requires the amount of the supersedeas bond be set in an amount that “will indemnify the appellee for all damages that may result from such supersedeas.” The bond shall pay all damages and costs that may result, including the rental value. NMAG notes HB563 removes the court’s discretion to acknowledge that there may be a difference between rent paid and the rental value of a dwelling unit.

PERFORMANCE IMPLICATIONS

AOC reports the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

RELATIONSHIP

This bill relates to HB224 (making Metro Court a court of record for certain criminal cases or proceedings) and HB279 (providing on-record dispositions of civil, DWI, and domestic relations cases be appealed directly to the Court of Appeals).

MD/sb/gb