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FISCAL IMPACT REPORT

SPONSOR HJC **ORIGINAL DATE** 2/14/2020
LAST UPDATED 2/18/2020 **HB** 64/HJCS/ec
SHORT TITLE Pleadings Pertaining Construction Claims **SB** _____
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications				Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB26

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation & Licensing Department (RLD)

Office of the Attorney General (NMAG)

Administrative Office of the Courts (AOC) (submitted response for SB26)

General Services Department (GSD)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 64 provides that prior to filing a claim in district court for relief against a contractor arising from the defective or unsafe condition of a physical improvement to real property, the owner or claimant may provide notice to the contractor. Information contained in the notice includes:

1. A detailed description of the defective or unsafe condition;
2. A detailed description of the damage arising from the unsafe or defective condition;
3. A description of any known cause of the defective or unsafe condition; and
4. The address of each physical improvement to real property that is alleged to be affected by the defective or unsafe condition.

If a party does not provide notice to the contractor before filing a claim, the district court will require the party to provide the notice before the contractor is required to answer the complaint.

The bill provides that the statute of limitations shall be tolled upon filing of the notice.

HB64 contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

In its analysis of SB26, which is identical to the original HB64, AOC states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and necessary court participation when pleadings are challenged as not being sufficient under HB64's requirements. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

According to AOC, HB64 may be a reaction to a “flurry of lawsuits” filed in and around Albuquerque that have been blamed for increased building costs and negative effects upon the home building industry, including subcontractors. See <https://www.kob.com/albuquerque-news/excessive-litigation-a-threat-to-home-construction/5555862/>. The Home Builders Assoc. of Central New Mexico has claimed that homeowners are being enrolled in lawsuits before it is known whether homeowners have actual construction defects.

GSD comments that HB64 may affect claims filed under Section 41-4-6 of the Tort Claims Act, which is the waiver of immunity for buildings and public parks. The potential overlap would exist where a claim arises from an injury in a state facility caused by an unsafe or defective condition after an improvement. For example, if a state building has a new elevator installed, and someone is hurt when the elevator fails, an injured person might sue the state, and the contractor who installed it, for negligent installation.

GSD refers to the bill's provision stating, “[t]he applicable statute of limitations shall be tolled upon the filing of notice.” If notice is filed before the claim is filed and tolls the limitations period, GSD notes that the bill may effectively give the claimant an unlimited amount of time to file the claim in court. By tolling the statute of limitations before a claim is filed, the bill could burden agencies and contractors who would have to preserve evidence for an indefinite period of time and might create discovery issues if documents were lost and potential witnesses became unavailable over time.

Similarly, RLD notes that the main purpose of a statute of limitations is to “ensure that plaintiffs pursue timely claims.” See *Estate of Brice v. Toyota Motor Corp.*, 2016-NMSC-018. RLD suggests that by tolling the statute of limitations when notice to the contractor is provided, the

bill is inconsistent with the usual tolling provisions in state law because it would require a prospective defendant to remain on guard for a lawsuit indefinitely.

RLD states that the bill's requirement that the notice be provided before a contractor is required to answer a complaint may conflict with the NM Supreme Court Rules of Civil Procedure, which require a defendant to serve an answer within thirty days after being served with the complaint (Rule 1-012(A) NMRA). If a court found a conflict between the time for filing an answer in the bill and that specified in Rule 1-012, the requirement of the rule would likely be given effect. *Albuquerque Rape Crisis Center v. Blackmer*, 2005-NMSC-032, ¶ 10 (“while a statute regulating practice and procedure is not binding on the Supreme Court, it nevertheless is given effect until there is a conflict between the statute and a rule adopted by the Supreme Court”).

For similar reasons, NMAG states that although the HJC Substitute requires a claimant to provide the specified information in a notice rather than in the complaint, the bill may conflict with court rules governing the requirements for pleadings. Specifically, Rule 1-008 NMRA provides that “a short and plain statement of the claim showing that the pleader is entitled to relief” is sufficient to put a defendant on notice of the claim. As with Rule 1-012, if the additional information HB64 requires for a notice related to the defective or unsafe condition of a physical improvement is found to conflict with the pleading requirements of Rule 1-008, the notice requirement may be unenforceable.

PERFORMANCE IMPLICATIONS

AOC states that the courts are participating in performance-based budgeting, and HB64 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

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB64 relates to SB26, titled Pleadings for Construction Defect Claims

BG/rl/al