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FISCAL IMPACT REPORT

SPONSOR Anyanonu LAST UPDATED _____
ORIGINAL DATE 2/27/2023
BILL _____
SHORT TITLE Revival Of Certain Court Cases BILL NUMBER House Bill 406
ANALYST Gray

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$652.2	\$72.5	\$724.7	Nonrecurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of House Bill 406

House Bill 406 contemplates allowing the refile of every civil claim or cause of action brought in any district court statewide. Cases can be refiled if an action is the subject of a request reconsideration or an appeal that was dismissed for lack of prosecution or delay in service of process when the dismissal occurred after March 11, 2020.

A qualifying revived claim or cause of action is permitted to be refiled by December 31, 2023, and prohibits such revived actions from being dismissed for lack of prosecution, delay in service of process, or as a result of a claim that the revived action is time barred.

The bill also proposes to remove the provision indicating that the new Section 37-1-16(A) “shall not be applicable to any recorded mortgage upon real estate or any interest therein until after three months from the effective date of this act.”

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

HB406 will likely increase the number of cases filed in civil and family court. This analysis seeks to estimate the additional costs borne by the judicial branch resulting from HB406 by estimating the number of cases that will be revived and the personnel required to process a case.

AOC estimates that 37,988 district court civil cases have been dismissed since March 11, 2020. HB406 contains broad language that could apply to all 38 thousand cases filed since March 11, 2020.

This analysis makes three assumptions:

- One-third of civil cases filed in district court since March 11, 2020 will be revived under HB406;
- Each case will require an average of one additional hour of cumulative judge and staff labor that would not otherwise be required; and
- The marginal personnel costs associated with HB406-revived cases—the cost of one additional civil case revival—will be shared by both judges and their staff, and that the distribution of that work will be equivalent to one-third of a judge FTE per hour (20 minutes) and two-thirds of a judicial specialist FTE per hour (40 minutes).

With these assumptions, it is estimated the bill will result in the equivalent staff costs of \$725 thousand that would not otherwise be required if HB406 were not enacted. It's assumed that 90 percent of these costs will be borne in FY24 and 10 percent will be borne in FY25.

These costs may be absorbed into court budgets, but the judiciary may seek appropriations in subsequent fiscal years to cover the additional personnel burden.

It also does not require any good faith efforts to show that service was attempted or that there was good cause for not prosecuting a case especially as the courts have remained open and service has been occurring in cases, including allowing alternate means of service when appropriate, by courts throughout the state.

SIGNIFICANT ISSUES

Court rules. Analysis from the Administrative Office of the Courts (AOC) notes that court rules provides that a case dismissed for lack of prosecution may be reinstated within 30 days after notice of the dismissal for good cause. The rule allows for reinstatement, but the rule leaves discretion so not all abandoned cases are revived and only those cases where a party provides good cause are reopened.

Similarly, HB406 provides that actions are subject to request for reconsideration or appeal are also revived. A motion to reconsider is not dismissed for lack of prosecution; it is decided by an order. The language contemplated in the bill would “add significant confusion as the motion to reconsider occurs after a decision and within 30 days,” AOC analysis writes.

Clarity issues. HB406 provides that actions subject to an appeal would also be revived if they were dismissed for lack of prosecution. AOC analysis notes the language is unclear as cases subject to appeal could mean all orders issued by the district court. Further, district courts lose jurisdiction over final orders after 30 days.

Constitutional concerns. AOC analysis notes that the bill may violate the separation of power doctrine outlined in the constitution.

AOC writes:

The rules set by the court determine timing of motions and orders. This law is in part extending statutes of limitations but also the courts' ability to enter final orders or dismiss cases for failing to prosecute. See *State ex rel. New Mexico Judicial Standards Com'n v. Espinosa*, 2003-NMSC-017 paragraph 12 (“[a]n unconstitutional infringement occurs when the action by one branch prevents another from accomplishing its constitutionally assigned function.”)

TECHNICAL ISSUES

HB406 states that the revived action “may be refiled by December 31, 2023. Any action revived pursuant to this subsection shall not be dismissed for lack of prosecution, delay in service of process or as a result of a claim that the revived action is time barred.” This may present an ambiguity if a party tries to refile an action after December 31, 2023 that has been revived pursuant to HB406.

BG/al/ne