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FISCAL IMPACT REPORT

SPONSOR SJC LAST UPDATED 3/17/23
ORIGINAL DATE 3/7/23
SHORT TITLE Right to Repair Act BILL NUMBER CS/Senate Bill 50/SJCS/aHJC
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 115.

Sources of Information

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of HJC Amendment to SJC Substitute for Senate Bill 50

The House Judiciary Committee amendments to the Senate Judiciary Committee substitute for Senate Bill 50 (SB50/SJCS) modify the definition of “dwelling” to specify only newly constructed dwellings. The amendments also provide exceptions to the timetables for construction defects that pose an immediate threat to the life or safety of an occupant.

Synopsis of SJC Substitute for Senate Bill 50

The Senate Judiciary Committee Substitute for Senate Bill 50 (SB50/SJCS) would create the Right to Repair Act to set the requirements the purchaser and seller of a residence must fulfill to address deficiencies in the structural integrity or functionality of the dwelling.

Under the proposed act, the purchaser would be required to provide the seller, defined as the party responsible for the construction of the dwelling, with an itemized list of each alleged construction defect. The seller would be required to forward a copy of the notice to the last known address of each construction professional “the seller reasonably believes is responsible for an alleged defect specified in the notice.” Construction professional is defined as a contractor or subcontractor.

The seller and the seller’s construction professional would have the right to inspect the dwelling, with some constraints on timing. The seller would have 60 days to respond, by certified mail, to a notice from a purchaser. In the response, the seller could offer to repair or replace each alleged defect, offer monetary compensation, or invoke any remedies provided for in the construction contract. The purchaser could accept or reject any offer of compensation but must allow the seller or the seller’s construction professional the opportunity to repair or replace the alleged defects within certain timelines.

A purchaser could pursue legal action against a seller who fails to comply with the conditions of the act if no dispute resolution mechanism is provided for in the contract with the seller.

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

FISCAL IMPLICATIONS

SB50/SJCS has no fiscal implications for any state agency.

SIGNIFICANT ISSUES

In analysis of the original SB50, the office of Attorney General (N MAG) concluded the bill was intended to prevent unnecessary construction litigation while still protecting both builders and homebuyers. However, N MAG noted other states with similar acts have seen litigation, despite the laws, over whether repairs are mandated or optional and the impact of the mandates on insurance obligations. SB50/SJCS includes a provision that states the purchaser letter notifying the seller is not a claim to an insurer. From N MAG on the original bill:

In California, courts have disagreed as to whether or not the procedures outlined by the right to repair statute are the exclusive remedy for addressing construction defect claims, precluding plaintiffs from filing suit for common law claims without complying with the right to repair procedures. *See McMillin Albany LLC v. Superior Ct.*, 4 Cal. 5th 241, 408 P.3d 797 (2018).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB50/SJCS is related to House Bill 115, which sets standards for home inspector licensing examinations; House Bill 6, which addresses owner/renter relations; and Senate Bill 77, which would require all new residential construction to include solar systems.

TECHNICAL ISSUES

The Regulation and Licensing Department, which includes the Construction Industries Division, raised concerns with the original bill’s definition of “seller” as “the party responsible for construction of the dwelling” as possibly implying the bill only applied to new construction. However, the definition of “purchaser” in the substitute bill has been changed to include the original purchaser and subsequent purchasers.