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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 02/20/23

SPONSOR Jaramillo

BILL
NUMBER Senate Bill 411/ec

SHORT TITLE Housing & Rent Changes

ANALYST Hitzman

APPROPRIATION* ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Court Costs	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund
Total						

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Duplicates HB6
Relates to SB375

Sources of Information

LFC Files
National Low Income Housing Coalition – *Tenant Protections and Emergency Rental Assistance During and Beyond the Covid-19 Pandemic (2022)*
MFA – *The New Mexico Housing Strategy*
University of Pennsylvania – *The Long Term Health Effects of Eviction on Young Adults (2021)*
Preventative Medicine Reports Journal - *The risk of eviction and the mental health outcomes among the US adults (2022)*

Responses Received From
Mortgage Finance Authority (MFA)
Administrative Offices of the Courts (AOC)
New Mexico Attorney General (NMAG)

No Response Received
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Senate Bill 6

Senate Bill 411 (SB411) amends the Uniform Owner-Resident Relations Act regarding payment of rent, deposits, breach of agreements, notice of termination and damages, owner retaliation,

action for possession by owner, issuance of summons, writ of restitution, appeal stays execution, and renewal of rental agreements during a declared emergency.

Regarding rent, the bill adds new provisions limiting the amount of the maximum late fee applied for residents with subsidized rent to no more than 10 percent of the portion of rent paid for by the resident, not to include the amount paid for by the government agency. For each payment made, owners must provide a written or electronic receipt.

For deposits, the bill provide specific examples of instances in which actual cause may exist for retaining a portion of a deposit, to include nonpayment of rent, late fees, utilities, repairs, cleaning, or other legitimate damages or charges. The bill provides that hand delivering and emailing, not just mailing, of a notice is allowed. Later sections of the bill update language to align with this change, allowing electronic receipts for payments. Additional notices must be provided if the statement and payment is returned as undeliverable if an alternate address was provided. Failure to provide notice of the deductions to a deposit will result in the owner's forfeiture of any portion of the deposit for any charge, including rent other than the minimum period payment due under the lease through the date of termination or resident departure as well as any late fees, utilities, repairs, cleaning or other damages and charges as well as the right to assert an independent action against the resident for those charges. However, nothing shall preclude the owner from pursuing independent action against a resident for those minimum periodic payments due. An owner who retains a deposit or portion of a deposit who knows the retention of which is in violation of this section shall be liable to the resident for civil penalty totaling twice the amount improperly withheld, rather than a flat amount of \$250.

Regarding breach of agreement, the owner cannot terminate a rental agreement until 11 days after the owner has provided written notice of nonpayment to a resident, rather than just three days. The bill allows the resident to either voluntarily deliver the unit, contest the termination in court, or seek redress. Paying the rent within that 11 day notice period, shall bar any action of nonpayment.

Further, the bill provides that judges may issue a judgment, rather than a writ of restitution, regarding the right of the resident to remedy by depositing the judgement amount with the court within 21, rather than the previous three, days. Satisfaction of the judgement, including all rent, costs, fees, and interest accrued as set by the court, within 21 days, the judgement shall be vacated and the petition as to that issue shall be dismissed. If the resident does not satisfy the judgement, the court shall issue the writ of restitution without further order.

Regarding notice of termination and damages, the bill updates language to align with changes in earlier section.

Regarding owner retaliation, the bill notes the resident can prove retaliation if the owner brings or threatens to bring an action for possession, decreases services, increases rent, refuses to renew a rental agreement or serves a notice of termination under earlier sections. The resident must have, in the past six months, acted in good faith to exercise the resident's rights pursuant to the Uniform Owner-Resident Relations Act or other law, order, or regulation governing owner-resident relations, complained to the owner about the functioning or safety of a mechanical device or service of a gas, electric, or water utility appliance, or requested a reasonable accommodation for disability. The resident shall be required to provide that they engaged in such conduct and the owner must articulate a reason as to why the action is not protected. The resident

shall then be required to prove that the reason given by the owner is a pretext for retaliation. Owners can bring action for possession and dispute a claim for retaliation asserted by the tenant and any right of an owner to bring action is subject to the federal Fair Housing Act and other fair housing and human rights laws.

Related to issuance of summons, the bill also provides for trial setting. For any matter brought by the owner for possession, trial shall be set between 14 and 21 days after the service of summons, up from between seven and 10 days previously.

The bill requires the court to maintain a resource list of nonprofit legal service providers and state and local entities that provide rental assistance to qualifying applicants. A copy of the resource list shall be provided to the plaintiff at the time of filing of the petition and shall be served by the plaintiff along with the summons and copy of the complaint upon the defendant.

Regarding writs of restitution, the bill changes references to writs to instead refer to judgements, similarly as prior sections. The judgement of restitution ordering the resident to vacate by a specified date shall not require the resident to vacate sooner than 15 days but no later than 20 days after entry of judgement. If good cause is shown, the resident may be allowed additional time and for good cause shown in a restitution case based upon grounds involving dangerous or disruptive conduct by the resident, the time allowed may be shortened to seven days. If payments are made prior to the expiration of the court-set period, a petition for writ of restitution shall be dismissed.

Regarding appeals, an appeal by the defendant shall, automatically and without further order of the court, stay the issuance and execution of any writ of restitution. After a notice of appeal is filed, no writ of restitution shall be executed except on order of the court entered after the filing date of the appeal.

If a resident does not pay its monthly rent payment or a partial payment within five days of the filing of a notice of appeal, the owner may issue an 11-day, rather than three-day, notice on the resident. If the resident fails to pay the rent within 11 days, a hearing shall be scheduled within 10 days from the date the court is notified. If an owner refuses or is unavailable to accept a rent payment made, the court shall permit the resident to pay the necessary amount to be held by the court.

The bill adds new material to the Uniform Owner-Resident Relations Act to require, in the event of an emergency that includes quarantine, isolation, or social distancing measures and a moratorium is issued limiting restitution based on nonpayment of rent, an owner cannot refuse to renew or seek to terminate a rental agreement that expires during, or 30 days after the termination of, the declaration of the emergency. Rental agreements renewed during an emergency shall be for a month-to-month residency unless agreed upon for a longer term. However, nothing in this section shall prohibit an owner from refusing to renew an agreement if the owner, in good faith, seeks to use the property for their own personal use and occupancy or for that of an immediate family member.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) notes there will be a small administrative costs for updating, distributing, and documenting statutory changes provided for in SB411. Any additional fiscal impact on the judiciary, AOC notes, would be “proportional to the guidance courts need to provide pro se litigants, as well the court taking and holding monies, holding additional hearings, the filing of petitions and actions for possession, and the compiling of a list of legal service providers. 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.” However, the courts did not provide an estimate for this cost, so it is scored as indeterminate but likely minimal.

There may also be indeterminate but minimal costs associated with compiling and disseminating resource lists in courts. Courts may also have to hold accounts specifically for payments made to the court in alignment with the provisions of SB411, and it is unknown if the courts currently have that capacity to hold and distribute payments in this manner. However, there may be a reduction in the number of eviction cases held as a result of SB411, as the bill changes the conditions under which an owner may file for eviction, so savings resulting from a decreased caseload may offset those costs of publishing statutory changes and holding accounts for payments.

SIGNIFICANT ISSUES

Over the last decade, the number of homeless people in New Mexico has declined by one-third and poverty has decreased by 3.1 percent. Yet, there are still unmet needs for housing support across the continuum of risk for homelessness and housing insecurity. Since 2018, New Mexico has greatly improved in providing emergency shelter options for the homeless. However, a shortage of affordable housing units in New Mexico illustrates a need for some additional long-term solutions, including permanent supportive housing and related support services. Additionally, there is a need for increased transparency and outcomes regarding existing investments in housing support programs. LFC staff have previously recommended expanding existing state-funded supportive housing programs, considering land use and zoning laws to promote increasing affordable units, and additional tracking and transparency for existing funding and programming.

Currently, renters have three days to pay their rent or move out before an owner is able to apply for eviction. Some data shows that New Mexico currently has one of the shortest timelines for filing evictions. Other states may allow five, seven, or 10 or more days, while others allow a landlord to evict for nonpayment with no given notice at all.

Information provided by the Mortgage Finance Authority (MFA) echoes this finding related to notice of eviction and increases to rental costs:

During the development of the New Mexico Housing Strategy, stakeholders from the advocacy community described that apartment communities are increasingly owned by out-of-state owners who commonly increase rents with only 30-days’ notice, which is too little time for tenants to find another, more affordable, unit. When asked to describe the current state of eviction law in New Mexico and related major issues, one stakeholder described the eviction process as “very fast.” They noted that advocates have been trying to slow down the process because “there is not a lot of time to prepare or remedy for an eviction.”

The National Low Income Housing Coalition (NLIHC), which reports on tenant protections and emergency rental assistance during the Covid-19 pandemic from a variety of other data sources, notes over 130 laws and policies were enacted by states and localities in 2021 to protect tenants from eviction. Some states required landlords to apply for Emergency Rental Assistance (ERA) funding before filing for eviction, some established waiting periods and safe harbors for ERA applicants, and some issued eviction stays to allow time for residents to apply for ERA themselves. Ten other states have implemented policies requiring that ERA program information be shared to tenants before evictions can be filed or throughout the eviction process, as is provided for in SB411. The Texas Supreme Court issued an order requiring the information be provided in both English and Spanish, which SB411 does not require, however, posing potential concerns over equity of access of information given New Mexico's large Spanish-speaking population.

Proponents of the bill may cite the negative impacts housing instability and the risk of eviction may have on individuals' wellbeing. Data published in the Preventative Medicine Reports Journal and others show a higher prevalence of depression, anxiety, and prescriptive medication use among those likely to face eviction in the next two months compared to those not at risk for eviction. Data from the Leonard David Institute of Health Economics at the University of Pennsylvania also show that "eviction is associated with declines in mental and self-reported health as young people age" and, further, "the burden of eviction falls disproportionately on lower-income young adults and those from impoverished communities." SB411 may help reduce eviction filing brought against individuals for nonpayment of rent by expanding the timeline and allowing for additional processes of appeal, which may affect low-income residents the most, as they are generally the most at risk of eviction for nonpayment.

However, others who may be capable of paying their rent but who choose not to would also benefit from the provisions in this bill, allowing additional time for rental payments to be made before evictions could be filed. Opponents of the bill may also note the large amounts of rental assistance funding received by the state during the Covid-19 pandemic to address housing instability and homelessness, which has prevented evictions during the state of emergency without these proposed statutory provisions. Opponents may point to the wide variety of publically funded programs and grants for people experiencing homelessness, at risk of homelessness, or cost-burdened by housing in New Mexico. However, many of these programs and grants are new or have significantly expanded during the pandemic, and are primarily funded by federal and local government sources, so it is unknown if these programs will expand into the near future to continue supporting residents in need of assistance.

Further, despite an increase in the amount of rental and other housing assistance being provided to existing residents, housing units are in short supply across the state, with a 4.6 percent rental vacancy rate and 0.8 percent of owner housing that is vacant for sale. The 2022 New Mexico Strategy report, commissioned by the Mortgage Finance Authority (MFA), indicates that the costs of housing of all types continue to rise for renters and homeowners, largely due to inflation and production challenges. However, incomes have not risen accordingly, which increases cost burden and housing insecurity. According to MFA and National Low Income Housing Coalition (NLIHC) estimates, there is a shortage of 32 thousand to 40 thousand affordable rental units available for extremely low-income renters.

Though important, affordable housing and homeless supports are not federal entitlements nor are

they constitutional requirements in the same way that Medicaid or public education are for the state. As such, until recently, the state has played a relatively limited role in providing housing and homelessness programming, instead leaving the federal and local governments to hold primacy in these areas. However, significant infusions of pandemic-related funding to the state have kindled a new state focus on housing issues. With higher-than-ever recurring resources available at the federal and state level, both the Legislature and executive have signaled their interest in continuing state support for housing into the future. Since the 2020 session, the Legislature has allocated over \$108.7 million in state funds from capital and other appropriations for housing and homelessness efforts, though almost all of it was nonrecurring

Within the \$108.7 million total, the Legislature provided three appropriations of the state's portion of Covid-19-related stimulus funding to the Department of Finance and Administration (DFA) for housing assistance and for assistance for homeless persons: one \$15 million tranche of CARES funding and two separate \$10 million appropriations of state ARPA funds. In addition to state CARES and ARPA funding used for housing and homelessness support, the suite of federal pandemic-related legislation provided new, significant additional funding to support homeless and housing initiatives. CRRSA and ARPA provided over \$400 million dollars in housing, rental, and utility support for New Mexicans. The state and New Mexico's largest local governments received \$352 million of that funding for emergency rental assistance. The other \$55.8 million was disbursed by MFA for statewide homeowner mortgage and utility payments. As of November 2022, DFA reported its emergency rental assistance funding alone had supported over 57 thousand households, and the agency still had \$55 million more to spend by September 2025. MFA also has \$6.4 million in remaining homeowner assistance funds to spend by September 2025

Section 8 vouchers, funded by the U.S. Department of Housing and Urban Development (HUD), are one of the largest housing assistance programs in the state; but one in five federal Section 8 housing vouchers in New Mexico goes unused. HUD provides over 11 thousand families with \$90.6 million worth of housing choice vouchers, also known as Section 8 vouchers, every year in New Mexico. The state's 15 housing authorities manage the federal voucher program, which covers the difference between a low-income person's total monthly rent and their expected rent contribution of 30 percent of their adjusted family income. The value of each voucher is capped at a local fair market amount—the cost of a moderately-priced unit in the local housing market—which HUD updates every year. Housing authorities must allocate 75 percent of vouchers to families earning 30 percent or less of the local area median income. As of 2021, the average family income of persons and families receiving tenant-based Section 8 vouchers was \$12,644. SB411 requires late payments be assessed at an amount no more than 10 percent of what the resident pays, not including the portion paid by the government agency. Those 11 thousand families receiving assistance would directly benefit from SB411 because they would be expected to pay a much smaller total fee for late payment, but owners would lose out on those payments, as nothing in SB411 requires a government agency to replace or pay those late fees to the owner on that government-paid portion of the rent.

Proponents of the bill note, and data from NLIHC show, tenants are not generally represented in evictions and often do not attend court hearings despite having adequate grounds for appeal or redress, noting landlords are more likely to have legal representation (90 percent) than residents (10 percent) in eviction cases. As such, proponents note that “a leading solution to maintaining affordable rents is the development and preservation of affordable housing which are structured to keep rents affordable.”

In regard to the judgement processes and changes in SB411 related to the courts, AOC notes the following areas of concern:

- 1) Increasing the 3-day non-payment of rent to 11 days, under Section 47-8-33 NMSA 1978, allows for a bi-weekly paycheck to come in and thus increase the potential for a remedy. But moving the trial setting from 7-10 days to 14-21, under Section 47-8-43(A) NMSA 1978, seems to provide cumulative relief to the tenant given the previous addition of time from 3 to 11 days.
- 2) The timelines in SB411 are somewhat confusing as they vary greatly. The new timelines may be difficult for court clerks and judges to manage when dealing with pro-se litigants, and require the court to more actively manage the case. Complying with the new timelines may be more manageable for a professional property manager, but may be more challenging for an owner of a small apartment building with few units or a single dwelling home.
- 3) SB411 places additional duties on the court that are beyond the normal scope of the court's duties; e.g., the court taking and holding monies (Section 47-8-46 NMSA 1978), the implied requirement for additional hearings and/or the court needing to await motions from the parties, or the issuance of judgments or writs without additional advisement from the parties.
- 4) Under SB411, the cumulative maximum timeline for an eviction after non-payment of rent is 63 days. That timeline may significantly impact a person who has a mortgage on a rental property or a small apartment complex with few units, but is still responsible for utility and maintenance bills.
- 5) Under SB411, there are at least two opportunities for a judgment to be entered and then vacated with the case dismissed. (e.g. Sections 47-8-33 and 47-8-46 NMSA 1978)
- 6) Some of the changes in SB411 could result in an unintended effect of causing individuals to be more hesitant about having a rental property, or if they do, needing to employ a property manager. If a property manager is employed, the result may be an increase in rental costs.

Additional issues brought up by AOC note that payments may decrease to owners where there are limits on late fees (10 percent of the portion of rent paid by a tenant, excluding amounts paid by a government agency), there is no consequence provided if an owner does not provide receipt, and there is no clarification of what constitutes proof of a “knowing” violation of the law versus an accidental violation, for example.

Further, AOC provides the following assessment regarding retaliation provisions:

Currently, a landlord is not permitted to take certain actions or retaliate against tenant when a tenant exercises a litany of rights. There is currently a presumption of retaliation if within the preceding 6 months, tenant exercised listed rights. Notwithstanding, a landlord could arguably terminate a weekly or month-to-month rental with proper 30-day written notice without being considered retaliation. The SB411

amendment specifically identifies how a tenant may prove retaliation and includes a landlord attempting to terminate weekly or month-to month rental even with proper notice. In addition Section 47-8-39 (A) (2) (c) adds language that a tenant's rights might be related to "any other law, order or regulation governing owner-resident relations". Section 47-8-39 (A) (2) (h) & (i) adds specific claims made by a tenant to the list of rights. Section 47-8-39 (D) outlines a "burden of proof" when claims of retaliation are made by the tenant. Section 47-8-40 clarifies that a landlord may bring an action for possession and dispute a claim of retaliation asserted by the tenant.

AOC notes a lack of clarity regarding which other applicable fair housing and human rights laws must be taken into consideration. The agency notes "this is very broad and vague language with no specific reference to which 'other applicable fair housing and human rights laws' are intended. If every landlord/tenant case becomes a fair housing claim or 'human rights' violation claim, more time for proceedings and resources will be required, taxing court resources."

AOC provides the following regarding trial court judgements:

Currently, if judgment is entered against a tenant, the tenant has 3 to 7 days to vacate property before a writ of restitution will be issued. Under the SB411 amendment, if judgment is entered, a tenant will have "not less than 15 or more than 21 days" to vacate property or more time for "good cause" shown by tenant. This period can be shortened to 7 days for "good cause" shown by the landlord "involving dangerous or disruptive conduct" by the tenant. The amendment provides a great deal of discretion to trial court judges except that eviction cannot occur less than 7 days even when someone is dangerous.

[Further,] "in cases filed based on nonpayment of rent" the tenant is given a right of redemption "prior to entry of judgment or prior to expiration of the period set by the court...or for any longer period as ordered by the court". Payments can be made to landlord or court and held in escrow by court. The SB411 amendment provides a great deal of discretion to trial court judges and courts may have to become involved in negotiations between parties. Courts will have to maintain escrow accounts.

If all magistrate courts become courts of record, then all appeals will be handled by the Court of Appeals. Thus, the Court of Appeals will have to create escrow accounts and conduct hearings related to rent and eviction while the case is on appeal.

Relating to emergencies, the bill allows a landlord to refuse to renew a rental agreement if the owner, in good faith, seeks to take possession of the property for personal use and occupancy for themselves or immediate family members. With some exceptions, AOC notes "these provisions resemble Supreme Court Orders during our most recent emergency." However, it is unclear how an owner must prove "good faith" in these cases or what the consequences would be if an owner was found to take possession of a property in bad faith against the provisions of the bill.

PERFORMANCE IMPLICATIONS

AOC notes a potential impact on its performance measurement, as it participates in performance based budgeting. AOC notes this bill may have an impact on the measures of the district courts in the areas of cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

As noted above, having the courts maintain payments and distribute resources may place an additional administrative burden on those courts, but the estimated impact is likely minimal.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB411 conflicts with SB375 (also amending Section 47-8-15 NMSA 1978), which limits the amount of rent increases in a 12-month period and requires landlords maintain air conditioning. This bill also duplicates SB411.

TECHNICAL ISSUES

AOC notes:

The language in Section 47-8-18 (D) (1) attempts to clarify the landlord's forfeiture of the right to withhold any portion of the deposit, however, this provision includes an exception, "other than" language, which can be read to include all damages suffered by the landlord. Thus, the landlord would not be subject to any forfeiture. The placement of a comma in the sentence may determine its meaning and potential limitations. The language in Section 47-8-18 (D) (4) replicates the potential for confusion with some effort to clarify that this provision does not limit the landlord from retaining the deposit for any past due rent.

The amendment attempts to clarify landlord forfeiture provision if notice is not timely provided. It should be noted that the language in Section 47-8-18 (D) (1) attempts to clarify the landlord's forfeiture of the right to withhold any portion of the deposit, however, this provision includes an exception, "other than" language, which can be read to include all damages suffered by the landlord. Thus, the landlord would not be subject to any forfeiture. The placement of a comma in the sentence may determine its meaning and potential limitations. The language in Section 47-8-18 (D) (4) replicates the potential for confusion with some effort to clarify that this provision does not limit the landlord from retaining the deposit for any past due rent. The amendment provides slight changes in current process and some initial confusion about interpretation.

AG notes “some aspects of the bill rely upon the federal Fair Housing Act, and may be subject to amendments in federal law.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Urban Institute, and as noted in recent LFC reports on housing and homelessness, an individual experiencing homelessness can cost taxpayers between \$30 thousand and \$50 thousand per year. Without this bill, eviction filings will continue to be made under existing law and within the shorter timeframes currently established. Without SB411, additional evictions may be made under existing law that may result in an additional number of

homeless or housing insecure individuals. However, without SB411, landlords would be able to maintain their existing level of payments for late fees and would have additional opportunities for keeping deposits and other payments or fees that otherwise would be limited under SB411.

JH/al/ne