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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/09  
 LAST UPDATED 03/20/09

SPONSOR HJC HB CS/300/aSJC

SHORT TITLE Clarify Lien Claims & Invalid Lien Damages SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Senate Judiciary Amendments

The SJC amendment extends the period for which the lien provided for in sections 48-2-1 through 48-2-17 NMSA 1978 can remain valid, from one year to two years.

#### Synopsis of Original Bill

House Bill 300 modifies the mechanic's liens statutes to promote clarity in liens filed with the county clerk, provide a cause of action for owners of property subject to an invalid or excessive lien to obtain court-ordered cancellation of the lien and recovery of damages and costs.

Under the current mechanic's law, described in Section 48-2-6, mechanic's or contractor's liens must state the name of the property owner, the person(s) who employed the contractor, the contract terms, and a description of the property charged with the lien. HB 300 expands the required contents of the lien to include a statement describing the circumstances of nonpayment, and a statement that the lien is filed timely according to this section.

**FISCAL IMPLICATIONS**

According to the AOC, 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 commenced prosecutions. 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**

A mechanics and material men’s lien is granted to persons supplying services or materials to certain construction projects. NMSA Section 48-2-2. The lien applies to the improvements made using those services or materials, and to the land upon which the improvement is constructed. NMSA Section 48-2-4. Current law provides that a prevailing party in a dispute arising out of or relating to a lien action is entitled to recover from the other party the reasonable attorney fees, costs and expenses incurred by the prevailing party. NMSA Section 48-2-14.

According to the AGO, The bill appears to address the circumstance of frivolous or excessive liens against real property and its improvements. The remedy could cut both ways as the property owner, etc. may win and extinguish the lien on the property owner, etc. may lose and thus penalize the property owners, etc. attacking a valid lien in court by awarding attorney fees, costs, and expenses to the lien claimant.

The bill does not provide a mechanism for service of the order to show cause, or require proof of service.

**ALTERNATIVES**

The court could be given discretion to order appropriate relief, and not required be to grant the relief described in the bill.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Current law will govern actions to enforce mechanics and material men’s liens.

CS/mt:svb