

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/16

SPONSOR Griggs LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Correction of Errors Affecting Property SB 146

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation & Licensing Department (RLD)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 146 authorizes the use of a "scrivener's affidavit" to correct a drafting or clerical error in an instrument affecting the title to real property relating to: 1) a legal description; 2) a subdivision name; 3) recording information for a plat; 4) a metes and bounds description, as long as the correction does not add or remove land to the land being described; 5) the spelling of a name; 6) an incorrect or missing middle initial; 7) a grantee's address if omitted in a deed; or 8) the type or state of domicile of a corporation or other legal entity.

The affidavit shall be executed only by: 1) for an error on a deed or other legal document prepared in conjunction with a real estate closing, the licensed attorney who prepared the original instrument or the employee of the title insurer or agent who completed the form of the original instrument if still employed by the insurer or agent and licensed under the state's title insurance law; 2) for an error on a mortgage or deed of trust, a licensed attorney representing the mortgagee or beneficiary named in the form of the original instrument or a current employee of the mortgagee or beneficiary; 3) for an error on a power of attorney or easement, a licensed attorney who represents the principal or grantor of the original instrument or the principal or grantor; or 4) for an error on any other writings affecting title to real property, a licensed attorney who represents a party to the original instrument or who prepared the original instrument.

The bill specifies what information must be contained in a scrivener's error affidavit, and provides the form in which it must be prepared. It prescribes the recording and indexing of such an affidavit, and declares it admissible as evidence in any action involving the original instrument to which it relates or to the property affected by the original instrument. SB 146 also provides that nothing in the bill shall be deemed to prohibit another manner of correcting errors in writing affecting title to real estate by any other lawful means, or to require a change to the records of the county assessor or the county treasurer.

**FISCAL IMPLICATIONS**

No fiscal impact to the state is anticipated.

**SIGNIFICANT ISSUES**

The bill provides a clear listing of the errors that may be corrected with a scrivener's affidavit. It is unclear, however, why the requirement contained in Section A(4) that a correction to a metes and bounds description cannot add or remove land to the land described also does not apply to any correction in a legal description permitted in Section A(1).

Further, SB 146 does not specify when a scrivener's affidavit is effective, either relating back to the time of filing of the original document or at the time the affidavit is recorded.

MD/jle