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FISCAL IMPACT REPORT

ORIGINAL DATE 2/24/17

SPONSOR Baldonado LAST UPDATED _____ HB 413

SHORT TITLE Rental Property Writs of Restitution SB _____

ANALYST Romero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total				NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department
Office of the Attorney General
Administrative Office of the Courts

SUMMARY

Synopsis of Bill

House Bill 413 amends the Uniform Owner-Resident Relations Act by removing the automatic stay of execution on an appeal by a resident of a writ of restitution and now allows a Court to require an appellant to post bond pending the appeal.

Section 1 of the bill adds language that would enjoin a tenant/defendant from reentering leased premises without permission of the owner for 180 days following the execution of the writ of restitution. This would not affect the owner’s duty to make personal property of the “defendant” left in the unit available for three days.

Section 2 removes language allow the defendant to stay the execution of a write of execution pending an appeal of the decision unless the defendant pays a bond and/or further complies with a judicial requirement pending the appeal. Section 2 also adds language that the resident has no right to abate the rental payments required of the resident during the appeal.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

The Office of the Attorney General notes the following:

“HB 413 would not allow a tenant to stay in possession of the property while he/she appeals a writ of restitution without the Court’s approval. This is a change from the current right tenants [have] pursuant to the statute. It should be noted, however, that courts in New Mexico allow equitable arguments to be heard from a tenant to be permitted to stay in the premises pending an appeal under the Act. *See Navajo Academy, Inc. v. Navajo United Methodist Mission Sch.*, 1990–NMSC–005, ¶ 16, 109 N.M. 324, 785 P.2d 235 (upholding the district court’s exercise of its equitable powers to allow the tenant to retain possession of the property for a limited period of time, and noting that the “trial court ... considered the equities in the case before it and found that the Academy had come before the court with clean hands”).”

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