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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/17

SPONSOR Payne LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Defective Construction Project Actions SB 14

ANALYST Downs

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Regulation and Licensing Department (RLD)

Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 14 pertains to Section 37-1-27 NMSA 1978, which provides that no action shall be brought to recover damages for injury to property, or personal injury or death, after ten years has passed. The section currently provides for one exception to the ten year statute of limitation when the action is based on a contract, warranty, or guarantee that contains express terms inconsistent with this section, but Senate Bill 14 adds an additional exception to the ten year limitation for actions in which the plaintiff claims that the defendant knew or should have known that the construction, design, planning, supervision, inspection or administration involved the use of defective or unsafe construction materials or products.

### FISCAL IMPLICATIONS

According to AOC, there will be a minimal fiscal impact to update and distribute the new statutory changes, but beyond that, any fiscal impact would be proportional to actions filed under the new exception of the ten year statute of limitation. The new exception establishes a new issue of proof as to whether the exception applies and new grounds for appeal which could cause increased workload for district attorneys, and also establishes additional grounds for the courts. AOC states, "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. AOC is currently working on possible parameters to measure resulting case increase.”

## **TECHNICAL ISSUES**

The new exception to the ten year limitation is if “defective or unsafe construction materials or products” were used. RLD noted this means a participant in the construction process not only knew that the construction material or product was unsafe but additionally is held to a, “should have known” standard as to whether the material or product was unsafe, and noted the following issue with that exception:

“Certification of construction products is generally at the manufacturing level. Absent a recall notification, a contractor, inspector or anyone involved in the construction process might not have knowledge if a product loses certification. In the event that a product loses its certification, it would not be published alerting all persons or entities involved. However, pursuant to this bill, persons could be held responsible if evidence proves that they “knew or should have known” of the defect.”

JD/al