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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/20

SPONSOR Candelaria LAST UPDATED _____ HB _____

SHORT TITLE Pleadings for Construction Defect Claims SB 26/ec

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate-Minimal See Fiscal Implications				Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 64

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation & Licensing Department (RLD)
Office of the Attorney General (NMAG)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 26 sets out information required to be included in a pleading that makes a claim for relief arising from the defective or unsafe condition of a physical improvement to real property in addition to any information required by applicable judicial rules. Specifically, the bill requires the pleading to include:

1. a detailed description of the unsafe or defective condition;
2. a detailed description of the injury or damage arising from the unsafe or defective condition;
3. a detailed description of the cause of the defective or unsafe condition;
4. the address of each residence affected by the defective or unsafe condition;
5. a sworn statement by the owner of the residence and alleged injured parties; and

6. a statement of satisfaction of the bill’s requirements for pleadings.

SB 26 states that it does not supersede the statute of limitations for a claim for relief arising out of the defective or unsafe condition of a physical improvement to property.

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

FISCAL IMPLICATIONS

AOC states 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 necessary court participation when pleadings are challenged as not being sufficient under SB26’s requirements. 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

According to AOC, SB26 may be a reaction to a “flurry of lawsuits” filed in and around Albuquerque that have been blamed for increased building costs and negative effects upon the home building industry, including subcontractors. See <https://www.kob.com/albuquerque-news/excessive-litigation-a-threat-to-home-construction/5555862/>. The Home Builders Assoc. of Central New Mexico has claimed that homeowners are being enrolled in lawsuits before it is known whether homeowners have actual construction defects. Requiring detailed pleadings will limit claims to those in which defects are actually known and capable of detailed description.

AOC notes that rules of the New Mexico Supreme Court, including Rule 1-008 NMRA, govern general rules of pleading in New Mexico civil procedure. New Mexico courts have held that a pleading will meet the requirements of the rules if defendants are “given only a fair idea of the nature of the claim asserted against them sufficient to apprise them of the general basis of the claim; specific evidentiary detail is not required at [the complaint] stage of the pleadings.” *Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 12, quoting *Petty v. Bank of N.M. Holding Co.*, 1990-NMSC-021, ¶ 7.

NMAG and RLD believe SB26 may raise an issue related to constitutional separation of powers principles. Under the court rules governing procedure, “a short and plain statement of the claim showing that the pleader is entitled to relief” is sufficient to put a defendant on notice of the claim. Rule 1-008(A)(2) NMRA. The Supreme Court has inherent power to regulate pleading, practice and procedure in the courts. See *Ammerman v. Hubbard Broad., Inc.*, 1976-NMSC-031, ¶ 15. See also *State v. Gutierrez*, No. S-1-SC-36394, 2019 WL 4167270, at *2 (N.M. Aug. 30, 2019) (“This question is one bearing upon practice and procedure and, therefore, is one over which this Court has ultimate authority”). If the additional requirements SB26 mandates for pleadings related to the defective or unsafe condition of a physical improvement to real property are found to conflict with Rule 1-008, the bill, if enacted, may be unenforceable. See *Albuquerque Rape Crisis Center v. Blackmer*, 2005-NMSC-032, ¶10 (“while a statute regulating

practice and procedure is not binding on the Supreme Court, it nevertheless is given effect until there is a conflict between the statute and a rule adopted by the Supreme Court”).

RLD believes SB26 may unfairly single out homeowners with claims related to defective or unsafe conditions. Those homeowners must meet the additional requirements of the bill to have their claims heard by a court, while all other claims need only meet the requirements of Rule 1-008. RLD further points out that the bill appears to apply only to residential construction, which means that claims arising from defective or unsafe conditions of physical improvements to *commercial* real property are not required to meet the bill’s additional pleading requirements. NMAG observes that to avoid a constitutional equal protection challenge, the application of different pleading requirements to the class of plaintiffs affected by SB26 would require at least a rational basis. The rational basis test requires that legislation creating a classification be “rationally related to a legitimate government purpose.” *Rodriguez v. Brand West Dairy*, 2016-NMSC-029, ¶ 23.

PERFORMANCE IMPLICATIONS

AOC states that the courts are participating in performance-based budgeting, and SB 26 may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB26 duplicates HB64, titled Pleadings Pertaining Construction Claims

OTHER SUBSTANTIVE ISSUES

While certain of the pleading requirements imposed by SB 26 refer specifically to residential real property, i.e., Section 1(A)((4), (5), the remainder of the requirements could apply to both commercial and residential real property. To avoid confusion over its application, the bill should make clear whether it is intended to apply only to claims related to defective or unsafe conditions of improvements to residential real property.

RLD notes that SB 26’s requirement for a sworn statement (Section 1(A)(5)) does not specify what should be included in the statement.

BG/rl