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FISCAL IMPACT REPORT

SPONSOR Hemphill/O'Neill LAST UPDATED _____
ORIGINAL DATE 2/16/23
BILL
SHORT TITLE Mobile Home Park Act Changes NUMBER Senate Bill 298
ANALYST J. Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal			General Fund AOC

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Mortgage Finance Authority (MFA)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Senate Bill 298

This bill includes extensive amendments to the Mobile Home Park Act and repeals Sections 47-10-6 and 47-10-14 NMSA 1978. Landlords are required to include specific provisions in rental agreements, which may only be terminated under specified circumstances. The written agreements must include detailed information about fees and costs; payment; dispute resolution; and rental termination. Mobile home owners are required to document tenant payments and to provide tenants notice before the sale of mobile home park properties. Rent increases will be based upon cost of living increases. Penalties for violations, as well as private remedies, are also provided in this bill.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

MFA stated that it will have no fiscal impact.

AOC states:

With the increase in the notice and other requirements that must be established before an owner/landlord can evict a resident for nonpayment of rent or violations of the mobile home park's rules, or otherwise as allowed under the Mobile Home Park Act, the enhanced complexity of these cases is likely to result in an increase in the amount of time that it will take for each of these cases to be heard by the court. However, it is difficult to quantify the extent of that increase in time or in any corresponding fiscal impacts to the courts of limited jurisdiction.

Further, as SB298 would now include receiverships and declaratory judgment actions within the Mobile Home Park Act, that are not within the jurisdiction of courts of limited jurisdiction like the Bernalillo County Metropolitan Court. These cases would have to be filed in the district courts consistent with the Receivership Act, NMSA 1978, §44-8-1 to -10 (1995, as amended through 1996) and the Declaratory Judgment Act, NMSA 1978, § 44-6-1 to -15 (1953, as amended through 1975), respectively. Similarly, with the provisions for treble damages and other remedies and relief provided by SB 298, it is likely that the amount in controversy would exceed \$10 thousand, which would mean that these cases would also have to be filed in the district courts. *See* NMSA 1978, § 35-3-3(A) (1953, as amended through 2001) and NMSA 1978, § 34-8A-3(A)(2) (1979, as amended through 2001). However, it is difficult to quantify the increase in the number of cases that would be filed in the district courts or any corresponding fiscal impact to those courts.

SIGNIFICANT ISSUES

AOC states:

Section 1 of the bill that amends NMSA 1978, § 47-10-3 (1983, as amended 1997) would require an affected resident to present evidence as to what a landlord “knew” was prohibited by the law as a condition of recovering damages that resulted from the landlord’s application of an illegal provision in the rental agreement as opposed to simply introducing the rental agreement with the illegal provision into evidence.

Section 2 of the bill that amends NMSA 1978, § 47-10-5 (1983) would only allow a landlord to seek to terminate a rental agreement when a resident has violated the mobile home park’s rules and regulations if the landlord can present evidence that the “rule violation is likely to continue or recur [in the future]” as opposed to simply introducing evidence of the violations that have occurred in the past.

Section 2 of the bill that amends NMSA 1978, § 47-10-5 (1983) also provides that for “disorderly conduct or the commission of a crime” to be grounds for termination of a rental agreement, the landlord would have to present evidence that there is a “likelihood of *future* conduct that would also be grounds for termination of a rental agreement,” as opposed to simply introducing evidence of past conduct. Similarly, if the disorderly “conduct or conviction” was by a member of the resident’s household other than the resident or former member of the resident’s household who is no longer living in the household, the landlord is also required to present evidence that that person is “not likely to return to the household [in the future].”

MFA states:

Mobile home parks are an important source of affordable housing in many communities. Mobile home parks can be structured in a fashion where the mobile homeowner owns the mobile home but is a tenant in the mobile home park where they lease the land. This real estate situation can create housing instability if the tenant is not able to afford the rent payments or unable to comply with other aspects of the agreement.

PERFORMANCE IMPLICATIONS

AOC states:

Section 2 of SB298 amends NMSA 1978, § 47-10-5 (1983) so that a landlord may not terminate a rental agreement for nonpayment of rent until 45 days have elapsed from the date the resident receives notice that rent is delinquent but provided that the resident has not tendered the delinquent payment during that 45 day period. As rent is typically due monthly, requiring 45 days' notice may invite confusion and legal defenses related to waiver and notice when the next month's rent becomes due during a prior 45 day notice period.

Section 7 of SB298 amends NMSA 1978, § 47-10-19 (1978, as amended 1993) so that if a landlord petitions a court for a declaratory judgment action so that it can increase rent beyond the limits for increases provided in the bill, the civil rules of procedure for the district court would apply. Typically, statutes provide whether an action is within the jurisdiction of a district or other court. Then, the court where an action is filed and whether a case is civil or criminal determines which rules of procedure as ordered by the Supreme Court would apply to that action. While actions under the Mobile Home Park Act are typically filed in Courts of Limited Jurisdiction, and the Rules of Civil Procedure for the Magistrate Courts, Rules 2-101 et seq. NMRA or the Rules of Civil Procedure for the Metropolitan Court, Rules 3-101 et seq. NMRA would apply to those actions, declaratory judgment actions are under the jurisdiction of the District Courts. *See* Declaratory Judgment Act, NMSA 1978, § 44-6-1 to -15 (1953, as amended through 1975).

Both magistrate courts in NMSA 1978, § 35-3-3(A) (1953, as amended through 2001) and the metropolitan court in NMSA 1978, §34-8A-3(A)(2) (1979, as amended through 2001) have jurisdiction over civil actions where the debt or sum claimed does not exceed \$10 thousand. With the treble damages and other remedies and relief provided by SB298, it is likely that the amount in controversy would be beyond \$10 thousand, which would mean that these cases would have to be filed in the district courts.

Section 9 of SB298 amends NMSA 1978, § 47-10-23 (1978, as amended 1993) to allow for a court to order a receiver to operate a mobile home park when the court determines that a landlord does not have financial capacity to operate a mobile home park or that a receivership is the most effective means of ensuring compliance with a court order. **Section 10** of SB298 creates a new section of the Mobile Home Park Act entitled "Private Remedies" that would also allow a court to order equitable relief as necessary including the appointment of a receiver to operate the mobile home park. Ordering a receivership would be beyond the jurisdiction of a court of limited jurisdiction and would

be a matter for the district court. See the Receivership Act, NMSA 1978, §44-8-1 to -10 (1995, as amended through 1996).

ALTERNATIVES

AOC states:

Section 1 of SB298 that amends NMSA 1978, § 47-10-3 (1983, as amended 1997) includes remedies for damages to an affected resident if a landlord uses a rental agreement that contains any provision that the landlord knows is prohibited by law. As **Section 4** of SB 298 also proposes to amend NMSA 1978, § 47-10-9 (1983, as amended 1997) entitled “Remedies,” perhaps the remedies provision from **Section 1** of the bill should be moved to **Section 4**.

Section 2 of the bill that amends NMSA 1978, § 47-10-5 (1983) in paragraph E discusses “disorderly conduct or the *commission* of a crime” and then later discusses in that same paragraph “conduct or *conviction*.” As paragraph (A)(1) in **Section 2** of the bill that would amend NMSA 1978, § 47-10-5 (1983) also references “*conviction* of a crime,” it appears that the reference to “*commission* of a crime” in paragraph E may need to be revised to “conviction” to be consistent with the rest of the bill.

As noted by the AOC, the bill’s extensive revisions to the Mobile Home Park Act should be consistent with existing law and procedure in order to best facilitate the mobile home rental and sale process.

JT/al/ne