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F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 02/04/09
SPONSOR Gutierrez **LAST UPDATED** **HB** 249

SHORT TITLE Mobile Home Park Rent Increases **SB**

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$0.1	$0.1		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Regulation & Licensing (RLD)

SUMMARY

Synopsis of Bill

House Bill 249 adds a new section to the Mobile Home Park Act of New Mexico found at N.M.S.A. §§47-10-1 through 47-10-23 protecting mobile home park residents from unjustified rent increases.

This bill requires landlords of mobile home parks to send a notice to all affected residents to be sent no later than 60 days before an increase in rent is effective. The notice requires that the landlord state the reasons, the effective date, and the amount of the increase including any portion of the increase attributable to capital improvements of the mobile home park. Furthermore, the notice must provide names and addresses of all affected residents and a copy of the resident's rights under the Mobile Home Park Act of New Mexico.

HB 249 provides that the increase of rent is unenforceable if the landlord fails to notify the residents of the rent increase as required by this new section.

The majority of the residents affected by the increase may file a mediation request when disputing the increase and must do so no later than 30 days before the effective date of the rent increase. The mediation costs are divided equally between landlord and residents and must be performed by a professionally certified mediator approved by both landlord and residents. The landlord has the burden of showing that the rent increase is reasonable. Finally, the landlord must

submit any documentary evidence supporting rent increase no later than two days before first mediation session.

If the mediation results in a resolution of the dispute, then a binding agreement to all residents will be entered and no other obligation will be imposed on the landlord and the rent increase will be effective as resolved.

If the parties are unable to reach a resolution, the residents may file a claim of abatement in district court no later that two business days before the effective date of the rent increase. Residents must nevertheless pay their rent including the increase rent and the landlord must deposit the disputed portion of the rent increase with the clerk of the court.

The standard that the courts will use to determine the approval or denial of the rent increase will be whether the increase is excessive rent when the increase in unreasonable based upon the landlord's total reasonable or documented expenses, including consideration of debt service, and a reasonable return to the landlord on investment with consideration given to comparable investments.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. 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

The AGO provided the following:

> HB 249 provides for a swift process to effectuate a reasonable, not excessive, rent increase giving a 60-day notice of a rent increase. If proper notice is not given, the rent increase is unenforceable. However, HB 249 does not spell-out a mechanism to challenge the propriety of the notice which is different from a challenge to the rent increase itself.
>
> Under HB 249, the deadlines to file a challenge to the rent increase are tied to the "effective date of the rent increase." This raises an issue of sufficient notice to dispute the rent increase for two reasons:
>
> (1) if the notice of the rent increase is improper and therefore, the rent increase is unenforceable, then the effective date of the rent increase is no longer applicable and unenforceable; and
>
> (2) even if the notice is proper,
>
> (a) the majority of residents may need more than 30 days to submit a rent increase dispute for mediation; and
>
> (b) attempting to mediate the rent increase dispute in less than 30 days while at the same preparing a formal complaint may lead residents to fail to timely file their abatement complaint which must be filed no later than two days before the rent increase becomes effective.

The deadlines to file a challenge the rent increase can meet the notice due process requirements if they are tied to the proper "notice of the rent increase" rather than to the "effective date of the increase**."** An effective way to protect the interests of a rent increase and a dispute is already included in the requirement that residents pay the increase to the landlord who must then deposit that portion of rent with the court. Said action would begin on the date the increase was to take effect and continue until the matter is resolved**.**

HB 249 does not provide for attorney fees in the event of a dispute.

HB 249 provides a standard to determine whether the rent increase is excessive by considering the landlord's reasonable return of the landlord investment. This provision may violate the landlord's right to privacy of its business and its affairs. However, there are already in place in New Mexico regulatory provisions in other industries that require State oversight with respect to increases for the product or services sold. The most notable example is the sale of electricity. The question here is whether the rent increases in mobile home parks passes the same Constitutional scrutiny as electricity increases.

The residents may not be able to file a complaint in court if the mediation efforts extend beyond the effective date of the rent increase.

It may help to define the term "capital improvements" and also, to require that the owner and landlord describe with specificity what capital improvements merit the rent increase. Improvements may be those made in the past, or required in the future.

The notice requirements of HB 249 do not provide for a translation of the notice in a language other than English. If the transaction to rent the space at a particular mobile home park took place in a language other than English, the notice may have to be translated to comply with the provisions of the Unfair Practices Act. Furthermore, AGO has proposed a rule outlining translation requirements for transactions involving the sale of goods or services when negotiated in a language other than English.

The general law of consumer protection in New Mexico is the Unfair Practices Act, N.M.S.A. Section 57-12-1 et seq. With respect to attorney fees, Section 57-12-10 NMSA provides a fair provision for attorney fees in the event of a dispute. Section 57-12-10 provides that: the court shall award attorney fees and costs to the party complaining of an unfair and deceptive trade practice or unconscionable trade practice if the party prevails. The court shall award attorney fees and costs to the party charged with an unfair and deceptive trade practice or unconscionable trade practice if it finds that the party complaining of such trade practice brought an action that was groundless.

ADMINISTRATIVE IMPLICATIONS

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

TECHNICAL ISSUES

The AGO proposed in the section of the bill that requires a notice of rent increase, it may be advisable to include language which sets forth a sample "Notice of Rent Increase." The same "Notice of Rent Increase" form could include a portion that could be used as the written "Notice of Mediation to Dispute the Rent Increase."

DW/mt