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FISCAL IMPACT REPORT

SPONSOR Wirth DATE TYPED 02/01/05 HB 147

SHORT TITLE Recovery of Attorney Fees in Lien Actions SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Offices of the Courts (AOC)
Attorney General (AGO)

SUMMARY

Synopsis of Bill

House Bill 147 allows the award of attorney fees in a mechanics' and materialmen's lien to the prevailing party, whether that party is the lienholder or the property owner. Under current law, only the lienholder can receive attorney fees.

Significant Issues

The AGO provides an explanation of the background and need for House Bill 147:

“The New Mexico Supreme Court held in 1994 that homeowners are not entitled to attorney's fees even if they prevail in mechanics liens enforcement actions. The Court stated that section amended by this bill does not allow recovery of attorney's fees by homeowners and was only meant to protect lien holders. *Tabet Lumber Co. v. Romero*, 117 N.M. 429, 872 P.2d 847 (1994). In that case, the homeowner was protected by the “Stop Notice Act”, having made final payment to their contractor who then failed to make payment to a subcontractor. The case against the homeowner to enforce the lien was dis-

missed. The District Court awarded attorney fees to the homeowner, but that award was reversed by the Supreme Court on appeal. This bill would allow homeowners who prevail in such actions to recover attorney fees.”

ADMINISTRATIVE IMPLICATIONS

AOC notes minor administrative costs for statewide update, distribution, and documentation of statutory changes.

EF/lg