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FISCAL IMPACT REPORT

ORIGINAL DATE 2/05/19
LAST UPDATED 3/14/19

SPONSOR Nibert HB 293/aSJC

SHORT TITLE Duplicates For Instruments of Writing SB _____

ANALYST Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Administrative Office of the Courts (AOC)

Responses Not Received From

Association of Counties
Association of County Clerks

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment for House Bill 293 removes usage of the county clerk recording and filing fund by county clerks for operational expenses other than those related to recording, vehicles, technical assistance and training, or for per diem.

The amendment also creates a new section of Chapter 47, Article 1 NMSA 1978, which provides for the creation of authority for certain individuals in business entities to enter into real property conveyances and encumbrances. Those individuals include the president and vice president of any of the following: cooperative corporation, professional corporation, non-profit organization, and a business corporation; the general partner of a limited liability partnership or a limited partnership; or the manager, member manager or president or vice president of a limited liability corporation. Section 3 also provides that the business entity may limit or expand the authority of the aforementioned individuals if it does so by filing a statement with the county clerk in the county where the property is located. That statement is binding until the business entity revokes

or amends it and files the revocation or amendment with the county clerk. Section 3 also establishes that an individual may rely on the authority of the aforementioned individuals to act on behalf of the business entity. It also establishes that the business entity may execute a power of attorney. Finally, Section 3 establishes that an instrument or contract for the transfer or encumbrances of real property that is made by a person not listed above, can still be relied upon and binding on the business entity if the instrument or contract has been recorded for more than ten years. The instrument or contract is not binding if the authority of the individual who executed the instrument or contract is challenged or there is another recorded document that reflects that the person who executed the instrument or contract did not have authority to bind the business entity.

Synopsis of Original Bill

This bill amends Section 14-8-4 NMSA 1978 deleting the current provision that allows a duplicate of an instrument of writing to be filed and recorded to the same extent as the original and creating new requirements for the filing of duplicates of instruments of writing. This bill requires that a duplicate may be filed if the original is unavailable and the duplicate is accompanied by an affidavit providing:

- The name, phone number, and mailing address of the affiant;
- Information regarding the execution of the original instrument to establish that the original instrument would be entitled to be recorded if it were available;
- The reason that the original is unavailable; and
- That the duplicate is a true and correct copy of the original instrument.

This bill also provides that there shall not be an additional fee beyond any fee that would be required for the recording of the original instrument.

FISCAL IMPLICATIONS

The bill does not allow a fee for filing a duplicate to be greater than filing an original instrument, and therefore will no impact current revenues.

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

SIGNIFICANT ISSUES

This bill creates additional requirements to authenticate duplicates of instruments of writing that must be recorded with county clerks. This may create some additional administrative challenges for county clerks but will also ensure that any duplicates recorded in place of the originals will contain information about why the original was not available, which may reduce litigation and administrative problems in the future if a dispute arises about the instrument.

Creating a law that only allows certain individuals to have authority to execute instruments or contracts for the transfer or encumbrance of real property, may be burdensome to a business entity. The business entity would have to create a standardized process that would allow for other individuals to act in that capacity if one of the listed is not available.

TECHNICAL ISSUES

The NMAG notes that it would be helpful to “establish a date after which a duplicate must be accompanied by an authenticating statement in order to substitute for an original document” in order to provide clarification.

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