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FISCAL IMPACT REPORT

SPONSOR <u>Garcia, M</u>	LAST UPDATED <u>03/13/23</u> ORIGINAL DATE <u>02/27/23</u>
SHORT TITLE <u>Responsibility for Sidewalk Repairs</u>	BILL NUMBER <u>House Bill 24</u>
	ANALYST <u>Hitzman</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No Fiscal Impact	No Fiscal Impact	No Fiscal Impact	See Fiscal Implications		

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files
 Albuquerque Journal – *City proposes update to speed up the sidewalk repair process (2020)*
 Redwood City California – *Sidewalk Repair Program*
 New Jersey, Premises Liability – *Residential/Commercial Property Owner Gets By On Sidewalk Liability (NJ)*
 City of Los Angeles – *Sidewalk Repair Program: Ensuring Accessibility Now and Forever*
 United States Postal Service – *Certified Mailing Rates*

SUMMARY

Synopsis of House Bill 24

House Bill 24 (HB24) repeals Section 3-49-4 NMSA 1978 regarding sidewalk repairs, improvements, and construction provisions for municipalities and adds a new, similar section to Chapter 5 NMSA 1978 regarding municipalities and counties. This requires a governing body of a county or municipality to notify the owner of a tract or parcel of land that the municipality will commence repairs on the sidewalk fronting the land within 15 days if the body determines there to be necessary repairs, improvements, or construction to meet existing sidewalk standards. In prior statute, the responsibility for repairs would have been the owner of the land adjacent to the sidewalk. If the owner cannot be provided notice, the body shall post notice to the building, structure, or tract or parcel of land contiguous to the sidewalk.

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.

FISCAL IMPLICATIONS

HB24 requires costs be covered by a county or municipality, not the state, so there is likely no fiscal impact to the state for implementing HB24 because all costs would be incurred at the county or municipal level.

However, for the county or municipality, the fiscal impact of HB24 is indeterminate but likely substantial as costs for sidewalk repairs, improvements, and construction ultimately get shifted from the owner to the municipality. The fiscal impact would include the cost of producing certified mailings to owners of residential land contiguous to sidewalks needing repair as well as the cost of any repairs commenced on residential property.

Although the estimated cost is difficult to determine since there is no data on the number of repairs that will have to be completed annually, there are some assumptions to be made from existing data that could provide a rough estimate of the cost. For example, according to the Albuquerque Journal, Albuquerque alone inspected 1,795 sidewalks in 2019, of which 228 underwent repairs. Sources estimate the average sidewalk repair costs between \$700 and \$2,250, for an average repair cost of \$1,475 per sidewalk.

Further, according to the United States Postal Service, certified mailings generally cost around \$3-\$4 per mailing, but many cities or counties may pay different rates depending on the services used. Therefore, the cost to implement notices is likely less than \$5,000 annually and could probably be absorbed into existing operational budgets.

It should be noted that many other cities or counties have smaller populations than Albuquerque and therefore probably have less sidewalks in need of repair. However, more rural areas may have less developed sidewalk infrastructure than Albuquerque and, as such, may actually experience a higher cost or demand for repairs than the average. On the other hand, other cities or counties with higher average incomes may see a lower demand for repairs if residents are more financially capable of and are maintaining their own sidewalks, so these estimated costs may even out as some counties or cities require more repairs and others require fewer.

It is also unknown the extent to which commercial property is included in the above estimate, and it is unclear how accurately the Albuquerque data can be extrapolated to the rest of the state, but this provides a starting point to estimate the potential fiscal impact to cities and counties statewide.

SIGNIFICANT ISSUES

HB24 would repeal the section of the NMSA governing municipality sidewalk repairs, improvements, and construction and would replace the provision with new but similar requirements for both counties and municipalities for notifying land owners of needed repairs. However, the replacement is not one-to-one; some provisions that previously applied are not included in the new section. For example, the section to be repealed had required the owner or agent in charge of the building or structure to commence repairs or provide a written objection with the municipal clerk within 15 days of receiving notice, whereas the new provisions do not include this requirement and instead requires the municipality to commence the repairs. However, it is unclear whether it is the notice that has to be provided within 15 days or if it is the

repairs that must be completed within 15 days. Further, because HB24 provides for the municipality to commence repairs, HB24 as written would also remove the ability of any person to appeal to the district court if aggrieved by the determination of the municipality, removes provisions requiring the owner to cover expenses of the repairs, improvements, or construction, and removes the municipality's protection from liability in cases where the owner did not complete repairs.

HB 24 has no impact on the Department of Transportation because it only pertains to sidewalks abutting county and municipal properties. HB24 specifically repeals NMSA 3-49-4 from the municipal chapter of laws and adds the same general provisions to chapter 5, a section applicable to both municipalities and counties. Thus, the bill results in no impact to the agency.

HB24 requires cities and counties to take full financial responsibility for sidewalk repairs. In reporting on its Sidewalk Repair Program, the City of Los Angeles¹ found 14 percent of the 85 cities surveyed (from 45 states) had policies in which the city was the sole responsible party for sidewalk repairs. Nearly half (46 percent) of those cities surveyed reported sharing the financial responsibility for sidewalk repairs with the property owner, while the remaining 40 percent fully required the owner to pay for repairs. The City of Los Angeles has historically placed responsibility for repair on the property owner except in cases where the sidewalk was damaged by street tree root growth or in cases where sidewalks were not compliant with the American's with Disabilities Act (ADA).

As written, HB24 would require repair for both commercial and residential properties. The City of Los Angeles cited several reasons as to why it should not be responsible for commercial repairs, including the owners' obligations under ADA and other state laws, the fact that commercial property repairs are usually more expensive to fix, and because commercial property owners have more options to finance costs.

Further, New Jersey² also distinguishes between commercial and residential properties when it comes to sidewalk liability:

A purely residential property owner owes no duty to maintain a sidewalk unless a repair is negligently made. On the other hand, a commercial property owner has a duty to take reasonable care to prevent foreseeable harm. The gray area is where a residential property is not owner occupied but is used for commercial purposes.

HB24 does not seem to clarify when the municipality versus the county would take responsibility for repairs; For instance, it is unclear if all properties should be in compliance with *both* municipal and county sidewalk standards or if one supersedes the other, and it is further unknown if there could be instances in which a county standard may conflict with a municipal standard implemented within that same county that would cause conflict in determining the need for a repair. In cases in which the sidewalk is determined in need of repair but the repairs are not commenced within the specified timeframe, it is unknown who would be the liable party in instance of injury beyond that timeframe. Further, it is unclear who is liable for injuries or other damages taking place between the time that the owner is notified and the time the repairs are commenced.

ADMINISTRATIVE IMPLICATIONS

HB24 expands the sidewalk repair, improvement, and construction requirements beyond just municipalities and provides for new sidewalk repair, improvement, and construction provisions regarding both counties and municipalities. Therefore, the administrative burden of both notifying owners of land and commencing repairs is expanded to counties.

ALTERNATIVES

As an alternative, the bill could require a proportional share of the financial responsibility for repairs, rather than fully requiring a city or county to pay the full cost. For instance, the City of San Diego requires a 75 percent share from the city and only a 25 percent share from the property owner, and the repairs are then made by the city.

Other states implement Sidewalk Repair Programs that implement cost sharing, such as those in the City of Redwood,³ which offers a 50/50 cost share program that is eligible for residential and non-profit property owners but not commercial property owners.

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¹ <https://cao.lacity.org/sidewalks/Final%20Sidewalk%20Presentation%20-%202017-28-2015.pdf>

² <https://www.wcmlaw.com/2017/08/residentialcommercial-property-owner-gets-by-on-sidewalk-liability-nj/>

³ <https://www.redwoodcity.org/departments/public-works/sidewalk-repair-program>