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FISCAL IMPACT REPORT

SPONSOR: Cervantes DATE TYPED: 3/15/03 HB 964/aHBIC
 SHORT TITLE: Mechanics' and Materialmen's Lien Laws SB _____
 ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Minimal— See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

The Construction Industries Division, Regulation and Licensing Department

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industries Committee has amended House Bill 964 to make minor stylistic and grammatical changes that will promote clarity, and to clearly identify from the beginning that original contractors are exempted from the bill's lien limitations.

The amendment also corrects the information in the repealer.

Synopsis of Original Bill

House Bill 964 amends the lien laws of New Mexico as follows:

- Makes the procedures for perfecting a lien applicable to anyone except mechanics or materialmen who contract directly with a property owner. The current law exempts liens made on certain residential property and liens filed by mechanics or materialmen who contract directly with the original contractor.
- Provides that mechanics/materialmen liens in excess of \$2,000 may not be enforced unless the claimant gives preliminary notice of the right to claim a lien no later than the first day of

the second calendar month following the month in which all or part of the claimant's labor was performed or materials delivered. The current law does not apply to liens under \$5,000, and the notice period is not more than 60 days after furnishing the labor or materials.

- Provides that the preliminary notice may be delivered by fax.
- Requires that the preliminary notice be served on a bonding company or corporate surety that is providing coverage on the property, and any subcontractor or other party to whom the claimant furnished labor or materials for the project in addition to the owner and contractor.
- Provides a new definition for "original contractor" and also defines "labor," "materialman," and "owner."
- Adds a requirement that the notice contain a description of the labor or materials furnished by the claimant.
- Deletes the provision in the current law allowing the claimant to give notice at a later time provided that the lien would then only apply to the work or labor provided in the 30 day period prior to the notice.
- Provides that liens filed by anyone, except an original contractor or person who contracted directly with an owner, are limited to \$2,000 unless the notice provisions, added by this bill, are met.

Significant Issues

- HB 964 makes it more difficult to file a lien for claims between \$2,000 and \$5,000 because it requires the claimant to go through this process. Under the current law, these liens are exempt from any process.
- The bill makes it more difficult to file a lien on residential construction because it requires the claimant to go through this process. Under the current law these liens are exempt from any process.
- The bill repeals the law giving the contractor control over payment by the owner of amounts owed for labor or materials, for which the mechanic or materialman has not provided a waiver of lien.
- Contractors and suppliers, who have not contracted directly with an owner, will be subject to more pre-requisites before they are able to perfect a "mechanic's" lien, and these prerequisites will apply to residential liens as well as commercial liens. These prerequisites will give some protection to owners, particularly home owners, against frivolous liens and liens that are not specifically described and timely noticed.
- Liens against residential property will be enforceable, even if the notice requirements of the bill are not followed, up to \$2,000. However, if original contractors are not required to file affidavits regarding unpaid costs on residential projects, the courts may have difficulty in verifying that the mechanic or materialman was not paid for the amount claimed in the lien.

FISCAL IMPLICATIONS

There are no known direct fiscal implications for the state. However, there will be increased administrative costs for the courts in absorbing the filings for additional liens. These costs should not be significant, and the courts can likely manage them within existing budget and FTE resources.

RELATIONSHIP

This bill does not appear to change the provision in Section 60-13-30 B. NMSA 1978, requiring a contractor to be licensed before he/she may file an enforceable lien. This requirement should remain in place.

TECHNICAL ISSUES

The Construction Industries Division notes that the bill is not easy to read or understand, and cites the following examples:

- Paragraph A states that the provisions of the section apply to everyone except materialmen and mechanics who contract directly with an owner. However, paragraph B states that “no lien of a mechanic or a materialman claimed in an amount of more than . . .”
- The word “preliminary,” which apparently means that notice before filing a lien is required or the lien will not be enforced for more than \$2,000.00. It takes careful reading and thought to understand that the word “preliminary” does not indicate a different or additional kind of notice than the one already required. The primary gist of the bill is that the notice requirements now also apply to lower amounts of claims and to residential properties.
- The notice period may be somewhat difficult to calculate for a lay person.

AMENDMENTS

The Construction Industries Division offers the following suggested amendments:

- Page 2 line 4, add the words “who is not in direct contract with the owner” after the word “materialman.”
- Page 2 line 11, use a number of days rather than referring to months.

SJM/njw:yr