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FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 3/08/03 HB 983

SHORT TITLE: Writ of Replevin Requirements SB _____

ANALYST: Chavez

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 New Mexico Corrections Department (NMCD)
 LFC Files

SUMMARY

Synopsis of Bill

House Bill 983 amends Section 42-8-5 NMSA 1978 requiring that *before* the writ of replevin is issued, notice and an opportunity to be heard shall be afforded the defendant. House Bill 983 provides that a writ of replevin may be issued before notice is given and the defendant is afforded an opportunity to be heard only if a plaintiff or a creditable person in his stead files in the district court an affidavit stating:

1. the plaintiff is *lawfully* entitled to possession and *specific facts* that support the plaintiff's statement;
2. the property was wrongfully taken or detained by the defendant;
3. the plaintiff has reason to believe the defendant may conceal, dispose of or waste the property or the revenues from it or remove the property from the jurisdiction along with *specific facts* that support the plaintiff's statement;
4. plaintiff has complied with all applicable rules of civil procedure;
5. a hearing to determine whether the writ was properly issued is scheduled within 10 days *after* issuance of the writ; and prior to the hearing, the defendant is served with notice of the hearing and a copy of the writ of replevin.

The bill further amends the form of the affidavit contained in Section 42-8-16 NMSA 1978 to include a section where the plaintiff can provide facts that support his/ her statement.

Significant Issues

Section 42-8-1 NMSA 1978 states that *any person having a right to the immediate possession of any goods or chattels, wrongfully taken or wrongfully detained, may bring an action of replevin for the recovery thereof and for damages sustained by reason of the unjust caption or detention thereof.*

The United States Supreme Court in *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 94 S. Ct. 1985, 40 L. Ed. 406 (1976), established the *minimum due process requirements* that a replevin statute must meet in order to be constitutional. The requirements are as follows:

1. the law requires plaintiffs to show facts indicating a right to the property sought to be replevied, and the allegations must be verified;
2. an application for replevin without notice must be presented to a judge;
3. the facts alleged must show the necessity for replevin, which is sufficiently shown if the debtor is in possession of the property and the applicant establishes that there is a possibility of waste, concealment or transfer of the property, or that the debtor is in default on his payments;
4. the plaintiff must post a bond to protect the debtor from mistaken repossession; and
5. the debtor must be entitled to an immediate hearing on the issue of possession.

The Supreme Court of New Mexico in *First Nat'l Bank v. Southwest Yacht & Marine Supply Corp.* 101 N.M. 431, 684 P.2d 517 (1984) held that the present New Mexico replevin statutes complied with the due process standards established by the United States Supreme Court in *Mitchell v. W.T. Grant Co.*

This bill would provide more due process to the defendant against whom the writ of replevin is issued.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. However, the Administrative Office of the Courts states that the hearing required by the bill to determine whether the writ was properly issued may require additional judicial and administrative resources and may increase the caseload in district courts.

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

ADMINISTRATIVE IMPLICATIONS

There may be some administrative implications to the district courts to fulfill the requirements provided by the bill.