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Final Fiscal Note

Drafting Number:	LLS 21-0614	Date:	September 2, 2021
Prime Sponsors:	Sen. Gonzales; Moreno Rep. Caraveo; Gonzales-Gutierrez	Bill Status:	Signed into Law
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Bill Topic: RIGHTS IN RESIDENTIAL LEASE AGREEMENTS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill provides protections for tenants related to late fees, evictions proceedings, and rental agreements. It increases state expenditures on an ongoing basis, beginning in FY 2021-22.

Appropriation Summary: For FY 2021-22, the bill requires and includes an appropriation of \$15,756 to the Judicial Department.

Fiscal Note Status: The fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under SB 21-173**

	Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	-	-
Expenditures		
General Fund	\$15,756	\$22,373
Centrally Appropriated	\$3,602	\$7,083
Total Expenditures	\$19,358	\$29,456
Total FTE	0.2 FTE	0.4 FTE
Transfers	-	-
TABOR Refund	-	-

Summary of Legislation

The bill makes changes regarding late fees charged by landlords and court procedures for forcible entry and detainer cases as described below.

Late fees. The bill establishes rules regarding late fees charged to tenants or mobile home owners by certain landlords. The bill:

- limits the amount a landlord may charge;
- establishes a grace period for late rent payments;
- prohibits a landlord from initiating eviction procedures on the sole basis of failure to pay late fees;
- exempts the portion of rent paid by a rent subsidy provider from late fees; and
- requires that any late fees be disclosed in the rental agreement.

The bill also limits how late fees may be recouped. Late fees cannot be recouped from rent payments, they cannot accrue interest, and no more than one late fee may be applied to an overdue payment of rent unless the total of the fees is within the legal limit.

A landlord who violates any of these rules is responsible for paying a penalty to the tenant and curing the violation within seven days of being notified of the violation. If any such violation is not cured, the tenant or home owner is entitled to take civil action against the landlord.

Court procedures. In current law, a defendant to a forcible entry and detainer action is required to appear in court at a time between 7 and 14 days from the issuance of a summons. The bill specifies what the summons must contain, including a list of available resources for obtaining legal aid and rental assistance, as provided by the Department of Local Affairs (DOLA). The bill also forbids the court from entering a default judgment for possession before the close of business on the date when the appearance is due.

The bill exempts the requirement that a tenant deposit with the court the amount of rent due in an appeal for a tenant found to be indigent, and it permits the tenant to fulfill a notice of nonpayment until a judge issues a judgment for possession and directs the court to vacate the judgment and dismiss the action with prejudice in such a case. The bill also exempts the bond requirement for the warranty of habitability for a tenant found to be indigent and allows a tenant to assert an alleged breach of the warranty of habitability as an affirmative defense. If a tenant prevails in a judgment of breach of warranty of habitability, the court determines a reduced rental value and denies possession to the landlord, pending the tenant's payment of rent due at the reduced rate, which the bill permits to be paid to the court or to the landlord.

The bill prohibits written rental agreements from assigning a cost to a party stemming from an eviction notice or eviction action from a violation of the rental agreement, and it requires that any fee-shifting clause award attorney fees and court costs to the prevailing party.

State Expenditures

For FY 2021-22, the bill increases state expenditures and workload in several state agencies. It increases state expenditures by \$19,358 and 0.2 FTE in FY 2021-22, and \$29,456 and 0.4 FTE in FY 2022-23, as summarized in Table 2 and described below.

Table 2
Expenditures Under SB 21-173

	FY 2021-22	FY 2022-23
Judicial Department		
Personal Services	\$8,993	\$21,583
Operating Expenses	\$163	\$790
Capital Outlay Costs	\$6,600	-
Centrally Appropriated Costs ¹	\$3,602	\$7,083
Total Cost	\$19,358	\$29,456
Total FTE	0.2 FTE	0.4 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. Workload will increase in the trial courts to review cases and process payments where the bill allows payments to be made to the court rather than to a landlord. Based on recent caseload history, this amounts to 0.2 FTE in FY 2021-22, and 0.4 FTE in subsequent years.

Additional workload is required due to updating forms, increased clerk review, and additional court filings due to the broadened definition of unfair and deceptive trade practices; this workload can be accomplished within existing appropriations.

The bill prohibits landlords from initiating eviction procedures based solely on the basis of late fees, which could cause fewer forced entry and detainer cases from being filed, reducing workload in the Judicial Department. The bill also prohibits certain landlord behavior, which could cause additional civil claims to be filed, increasing workload. In either case, as the change in the number of cases is expected to be minimal, any change in workload is absorbable within existing appropriations.

Department of Local Affairs. Workload will increase in DOLA to maintain a list of civil legal aid and rental assistance resources to be included in a court summons. This can be accomplished within existing appropriations.

Department of Personnel and Administration. This bill may increase the number of cases brought before the Office of Administrative Courts. A small increase in caseload is absorbable within existing appropriations. Should the increase in caseload be larger, the impact will be addressed through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$3,602 in FY 2021-22 and \$7,083 in FY 2022-23.

Effective Date

The bill was signed into law by the Governor on June 25, 2021, and takes effect on October 1, 2021, assuming no referendum petition is filed.

State Appropriations

For FY 2021-22, the bill requires and includes a General Fund appropriation of \$15,756 Judicial Department, and 0.2 FTE.

State and Local Government Contacts

Counties	Judicial	Law
Local Affairs	Municipalities	