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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 01/31/20
LAST UPDATED 02/14/20 HB 259/HJCS
SHORT TITLE Homeowner Association Foreclosures SB _____
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications		Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From (Original Bill)
Administrative Office of The Courts (AOC)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for HB259 amends the Homeowner Association Act to require that certain provisions relating to an association's liens, enforcement of covenants, and dispute resolution attempts comply with the Unfair Practices Act; and adds a new section of the Unfair Practices Act to prohibit certain unfair or deceptive homeowner association (HOA) practices including assessment of an unconscionable fee, fine, assessment or penalty or the failure to provide timely notice of a fee, fine, assessment or penalty to an owner within 30 days.

FISCAL IMPLICATIONS

As opposed to the original HB259, the substitute bill does not establish a threshold amount for accumulated assessments and dues owed to a HOA before foreclosure proceedings could be initiated.

AOC noted in its analysis of the original bill, that there is currently no dollar amount threshold set that limits HOA's from filing for a foreclosure. By not setting a limit, HOA's can file foreclosures for any amount due. This may be adding additional foreclosure cases to the court system, and creating additional hardship to homeowners that owe any amount.

SIGNIFICANT ISSUES

Currently, rules vary by individual HOA's governing foreclosure proceedings as they relate to assessments and dues imposed by the association.

Regarding duties of a HOA, the bill amends Section 47-16-6 NMSA 1978 so a lien imposed against a lot for an unpaid assessment, or fine imposed against that lot's owner, comply with the proposed new section of the Unfair Practices Act. Under the new section, if a HOA fails to provide notice of a fee, fine, assessment or penalty within 30 days, the HOA will not be able to pursue collection and the amount imposed would be removed from a lot owner's balance due.

Regarding enforcement of covenants and dispute resolution, the bill amends Section 47-16-18 NMSA 1978 so any fines levied by a HOA against a lot owner for violations of or failure to comply with the HOA's community documents, and any subsequent suspension by that HOA of that lot owner's right to use common areas, also comply with the new section of the Unfair Practices Act as it relates to timely notice and the prohibition against unfair penalties.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The prohibition of certain HOA practices as it relates to failure to provide timely notice and unfair assessments and penalties against a lot or a lot owner will not be provided for by this bill.

AHO/rl