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## FISCAL IMPACT REPORT

SPONSOR Griego DATE TYPED 3/3/05 HB \_\_\_\_\_

SHORT TITLE Home Loan Flipping Provisions SB 694

ANALYST McSherry

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

### SOURCES OF INFORMATION

LFC Files  
 Office of the Attorney General (AG)  
 Regulations and Licensing Department (RLD)  
 Economic Development Department (EDD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 694 proposes to amend section 4(B) of the Home Loan Protection Act by inserting the words “high-cost” before each occurrence of the words “home loan” in that section. As a result limits the provisions of the Home Loan Protection Act, subsection 4B to high-cost home loans.

Section 4(B) of the HLP Act prohibits the knowing and intentional act of “flipping a home loan.” “Flipping a home loan” is defined in the current section 4(B) as “. . . the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all the circumstances, including the terms of both the new and refinanced loans.”

The bill also proposes the following new language: “No provision of the Home Loan Protection Act imposing liability applies to an act done or omitted in good faith in conformity with a rule adopted by the financial institutions division of the regulation and licensing department, notwithstanding that the rule may later be amended, repealed or determined by judicial or other authority to be invalid.”

SB 694 includes an emergency clause and proposes that the changes proposed must be taken immediately for the peace health and safety of the public.

### Significant Issues

The effect of SB 694 would be to more narrowly define prohibited conduct, limiting the Home Loan Protection Act's prohibition against mortgage loan flipping to "high cost home loans." High cost home loans are defined in the act as home loans in which the contract rate or the total points and fees exceed thresholds established in the Act (58-21A-3(H), (L), (M) and (N) NMSA 1978).

According to the Attorney General's Office (AGO), any home loan can be flipped, and loans that meet the definition of high-cost home loans only constitute a small proportion of the total home loan market in New Mexico. Because of this, the AGO continues, enactment of this bill would result in a significant reduction in consumer protections for New Mexicans.

AGO points out that a bill with a similar purpose, SB 473, was defeated in 2004 and that proponents of the similar SB 473 urged in 2004 that passage was necessary in part to prevent entities investing in New Mexico home loans from pulling out of the market as a result of fears about assignee liability for flipped loans. AGO reports that the Office is not aware of a reduction in the availability of funding for home loans in New Mexico since the HLPFA went into effect in January 2004.

Section 3(B) of the bill would add language to the HLPFA that would provide for an affirmative defense based on good faith compliance with regulations promulgated under the HLPFA. According to AGO, the use of an affirmative defense is based on a similar provision of the Truth in Lending Act, found at 15 U.S.C.A. 1640(d) was discussed by the New Mexico Supreme Court in Equity Plus Consumer Finance and Mortgage Company, Ltd. v. Howes, 116 N.M. 151 (1993).

### **FISCAL IMPLICATIONS**

There is no appropriation contained in the bill.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Regulations and Licensing Department asserts that a person may be held liable for an act done or omitted in good faith in conformity with a rule adopted by the financial institutions division.

The Home Loan Protection Act would remain in effect as originally passed by the legislature in 2003, with anti-flipping protections for borrowers of all credit levels.

**EM/lg:yr**