

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/12

SPONSOR Jennings LAST UPDATED _____ HB _____

SHORT TITLE Home Loan Protection Act and Foreclosures SB 84

ANALYST Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 1, SB 38, SB 70, and SB 75

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 84 amends Section 58-21A-6 NMSA 1978 to add a creditor or creditor’s assignee of a home loan that has the legal right to foreclose shall use judicial foreclosure procedures provided by law “or the nonjudicial foreclosure procedures provided in the Deed of Trust Act.”

SIGNIFICANT ISSUES

RLD provides the following assessment:

Positives –

- The timeline of the foreclosure process from start to finish would be shortened with a trustee sale in place of a foreclosure executed via the judicial process.
- Banks holding non-performing loans would be able to rid their books more expeditiously.
- Banks that are on the verge of being down rated through the examination process due to non-performing loans would now have the ability to purge these non-performing loans and improve their financial standing.
- The housing market crisis could possibly begin to make a correction at a faster pace if the foreclosure timeline is accelerated.

Senate Bill 84 – Page 2

- The overall cost to the lien holders may decrease through the process of a non-judicial foreclosure.

Negatives –

- Currently, the deed of trust holds a clause that states that for a home loan (defined in HLPAs), the rights to cure a default revert to the judicial process outlined by the HLPAs. With the addition of this new amendment consumers may lose that right to judicial process.
- Not only will our community and state chartered banks be able to benefit from this new amendment but the larger servicers/investors such as Wells Fargo, Bank of America, Chase and Citi, will also be able to utilize this same advantage of an accelerated foreclosure process.
- We may see the number of foreclosures spike up as the process goes from judicial to non-judicial
- With an increase in foreclosure activity, the possibility of error (wrongful foreclosure on a property) will increase.
- Title companies may take issue with the verbiage within the actual deed of trust and the allowance of judicial process provided to a consumer per the HLPAs. They may not want to assume the risk of insuring a property that they may deem as having issues of legality.

GAC/svb