

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Egolf ORIGINAL DATE _____
LAST UPDATED 1/21/15 HB 26
SHORT TITLE Foreclosure Fairness Act SB _____
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 26 enacts the Foreclosure Fairness Act. The Act requires a court to award reasonable attorney fees and costs to a defendant (homeowner) who prevails in a foreclosure action on the defendant's primary residence unless the plaintiff (mortgage holder) is an individual bringing the foreclosure claim on the individual's own behalf or on behalf of a sole proprietorship owned by that individual. No such award is required when the defendant exercises the defendant's right to reinstatement or redemption.

FISCAL IMPLICATIONS

AOC suggests that HB 26 might result in a decrease in foreclosure filings in the district courts, but it is not possible to predict the amount of such decrease with any specificity.

SIGNIFICANT ISSUES

Unless altered by statute, parties to litigation in New Mexico pay their own attorneys fees, regardless of income. This is called the "American Rule." In some instances, however, the Legislature has provided for "fee shifting". HB 26 imposes fee shifting in actions to foreclose a

security interest in real property if: (a) the property being foreclosed is a primary residence; (b) the defendant homeowner wins the case; and (c) the losing plaintiff mortgage holder is an entity other than an individual or a sole proprietorship owned by that plaintiff. If the defendant homeowner keeps the residence by exercising a right of reinstatement or redemption, the defendant homeowner is not deemed a “prevailing party” and is not entitled to award of attorney fees or costs.

AOC advises that the number of foreclosures filed in New Mexico district courts has grown significantly in recent years. As a practical matter, most defendants in foreclosure proceedings are not represented by attorneys. If enacted, AOC suggests that HB 26 may provide an incentive for more attorneys to represent defendants (homeowners) in foreclosure actions because the bill mandates that a prevailing defendant be awarded attorney’s fees and costs unless the plaintiff is an individual or a sole proprietorship. Representation ensures that defendant’s rights are protected and that proper foreclosure procedures have been followed. In addition, fewer foreclosure cases may reach the district court if the threat of paying attorney fees encourages mortgage lenders to restructure delinquent loans.

MD/je