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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** 1/14/15
LAST UPDATED _____ **HB** _____

SHORT TITLE Settlement Facilitation Before Foreclosure **SB** 141

ANALYST Sánchez

APPROPRIATN (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	\$1,575.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$1,575.0	\$1,575.0	\$3,150.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB27, SB28, SB29, SB30, SB142, and SB143
 May Conflict with SB122
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 141 requires and funds settlement facilitation before a bank or other lender can proceed with foreclosure on a residence. When the lender files a mortgage foreclosure action in district court the settlement facilitation process becomes mandatory unless waived for good

cause upon request by a party. Participation in settlement facilitation by the lender must be by a person with full authority to resolve the matter for the lender. Settlement facilitation includes face-to-face meetings with a foreclosure housing counselor and attendance at a conference that may achieve a voluntary, confidential resolution the case.

Settlement facilitation explores alternatives to foreclosure that may allow the homeowner to remain in the home and reduce vacant properties. Alternatives identified by SB141 include loan modification, deed-in-lieu of foreclosure, cash for keys, short sale, expedited foreclosure if agreed to by the homeowner who does not intend to return to the property and agreements for the homeowner to relinquish title in exchange for an affordable month-to-month or lease to own contract.

During settlement facilitation the foreclosure action is stayed for up to 120 days from the court's referral of the case to settlement facilitation. SB141 requires a settlement facilitation program be available in all district courts, makes an appropriation of \$1.6 million for settlement facilitation in FY16, and requires the AOC to establish additional program requirements.

FISCAL IMPLICATIONS

The AGO reports that funding provided to the Second and Thirteenth Judicial District Courts for foreclosure settlement facilitation pilot projects from funds available to the Office of the New Mexico Attorney General through the 2012 National Mortgage Settlement are nonrecurring, have been largely expended and are insufficient to further fund a statewide foreclosure facilitation project for all district courts.

According to the AOC, SB141 requires foreclosure settlement programs be established during FY16 in each district court statewide through the AOC. This proposal was not presented to the Budget Committee of the Chief Judges Council or to the Supreme Court. As a consequence, it is not included in the Judiciary's Unified Budget. There is a request in the Unified Budget to continue funding of a pilot program in the Thirteenth Judicial District, which seeks \$211.6 thousand to replace lapsing funds from the Attorney General's Office to keep that district's foreclosure program operating in FY16.

Two district courts have been engaged in pilot programs for settlement facilitation before foreclosure. The Second Judicial District Court in Albuquerque and the Thirteenth Judicial District Court in Sandoval County. Funding for the pilot programs in FY14 and FY15 came from the Attorney General's Office, which obtained funds to remediate foreclosure practices through participation in a national settlement with large mortgage lenders. Experience with these pilot programs shows that an effective program requires personnel costs of \$211.6 thousand for a hearing officer (\$129.9 thousand PSEB) and project manager (\$81.7 thousand PSEB), and \$13.4 thousand for program and administrative costs for each program brings the total cost to \$225 thousand.

The judiciary's experience with the pilot programs indicates that it may not be necessary or practical to have a program in every judicial district, although there is a need for such services in every county. With the funding of \$1.6 million proposed in SB141, the AOC says it would attempt to make settlement facilitation before foreclosure available through programs that offered services in seven regions covering the whole state. These regions could be grouped as

follows: (1) Second Judicial District (Bernalillo County); (2) Thirteenth Judicial District (Sandoval, Cibola and Valencia counties); (3) Third Judicial District (Dona Ana County); (4) First and Eleventh Judicial Districts (Santa Fe, Los Alamos, Rio Arriba, San Juan and McKinley counties); (5) Fourth, Eighth and Tenth Judicial Districts (Guadalupe, San Miguel, Mora, Taos, Colfax, Union, Harding, Quay, and DeBaca counties); (6) Fifth and Ninth Judicial Districts (Chaves, Eddy, Lea, Roosevelt and Curry counties); and (7) Sixth, Seventh and Twelfth Judicial Districts (Luna, Hidalgo, Grant, Catron, Sierra, Socorro, Torrance, Lincoln and Otero counties). At a cost of \$225 thousand for each program, the proposed funding in SB141 of \$1.6 million would pay for these seven programs.

SIGNIFICANT ISSUES

According to the AOC, one important issue for the Judiciary is that this proposal is not part of the Unified Budget and has not been placed among the priorities for court funding in FY16. The process the judiciary has in place allows for the evaluation of proposals among competing priorities. The proposal for court programs would require this type of evaluation. Undertaking a statewide foreclosure settlement program would demand careful planning and commitment of judicial resources. A decision to engage in such an undertaking requires approval by the Supreme Court. That approval is lacking for FY16. Other requests prioritized in the Unified Budget for FY16 take priority for the Judiciary. Courts could evaluate this proposal in the Unified Budget process for FY17.

The pilot programs in the Second and Thirteenth districts, funded through the AGO settlement funds in FY14 and FY15, have yielded promising results. The “Foreclosure Settlement Project” in the Thirteenth Judicial District and the Mortgage Alternative Program (MAP) in the Second Judicial District have involved hundreds of homeowners in workshops and have conducted hundreds of settlement facilitations, with many leading to resolution of foreclosure cases that have in some instances been pending since 2008. Homeowners benefit from a transparent process in which the lender identifies an individual with the authority to resolve the matter. Lenders have a process that facilitates understanding by the homeowner and leads to resolution on a fast track, whether the outcome is foreclosure or a continuation of homeownership under modified terms.

The AGO states in its response that an absolute requirement that the order staying the case end at 120 days will undermine ongoing efforts that could be successful if allowed adequate time. However the bill would be strengthened by modifying the language so that the settlement facilitator could request a good cause extension of the stay based upon ongoing efforts that may lead to settlement. Additionally, although SB141 contemplates an expedited process which is desirable for judicial economy and to get the property back on the market, there are significant consumer protection concerns if this agreement would be obtained by the plaintiff/lender before the homeowner is given the opportunity to participate in settlement facilitation.

The AGO further states that it is not uncommon for banks and their representatives to incorrectly inform homeowners that there are no options and they need to abandon the home before going to court. If the homeowner is going to be given a meaningful option to abandon the home they should be provided with clear disclosures and options, if any, to abandonment. Without this information the homeowner could be subject to unknown deficiency judgments, tax implications, negative credit reporting, and liability for the home until transfer of title, etc. Most importantly, if the abandonment statement was obtained before the settlement facilitation process, the

homeowner may not be provided with information on options to save the home. The act would be strengthened if the fast-track provision was used only as part of and within the settlement facilitation process and where a “deed-in-lieu” of foreclosure agreement with a participating defendant/homeowner or through a motion for summary judgment when the defendant fails to participate or file an answer to the foreclosure complaint. Both of these mechanisms accomplish the desired expediency and would allow the defendant/lender to obtain the home in less than 120 days, while providing adequate protection for the defendant/homeowner.

The AGO points out that although keeping the resolution achieved during a settlement facilitation conference confidential may be beneficial for the negotiations, allowing the settlement agreement to be subject to court filing would also be beneficial should a dispute arise, thus providing the court with greater understanding of the agreement.

ADMINISTRATIVE IMPLICATIONS

According to the AOC, the statewide program proposed in SB141 would require management and direction by the AOC; however no new funding or personnel are proposed for the AOC. In addition, oversight by court staff and judges would be required in each judicial district. It is unclear to what degree these requirements would stress existing resources and thus have an impact on performance measures.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB141 relates to SB27 (Foreclosure Process Task Force), SB28 (Pre-Purchase Homebuyer Education Program), SB30 (Home Loan Loss Mitigation Servicing Standards), SB29 (Foreclosure Deficiency Judgment Time Periods), and SB142 (Foreclosure as Judicial Process), all of which resulted from the Foreclosure Process Task Force in 2014. Although, the provisions of SB30 address the same subject area as SB141, the bills do not conflict or directly overlap. SB141 may conflict with SB122 (Foreclosure of Vacant and Abandoned Property).

ALTERNATIVES

The AGO suggests the following amendments:

C. All parties are required to participate in the settlement facilitation ~~conference~~ process in good faith. In the absence of good faith the settlement facilitator shall inform the court of such. The court, at its discretion, has the option to dismiss the case with or without prejudice and/or hold the parties in contempt.

F. The foreclosure action shall be stayed for no more than one hundred twenty days from the date of the court referral for settlement facilitation, unless the settlement facilitator believes that a settlement agreement is still possible and additional time is needed and makes a recommendation to the court extending the stay.

G. (2) “residential foreclosure action” means foreclosure by a creditor on a home loan originated as an owner occupied residence containing 1-4 residential units; and

G. (3) “settlement facilitation conference” means a conference where discussions and offers are confidential in order to achieve a voluntary, resolution settlement agreement that will be filed with the court regarding ~~of~~ the dispute which:

G. (4) “good cause for waiver of participation by plaintiff” means when the plaintiff files a motion with the court requesting removal from mandatory settlement facilitation participation by providing evidence that the subject loan was not originated as a home loan for an owner occupied residence containing 1-4 residential units.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the AODA, there will be no provision requiring mandatory settlement facilitation conferences in residential foreclosure actions.

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