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## FISCAL IMPACT REPORT

**SPONSOR** Ortiz y Pino/ Roybal **ORIGINAL DATE** 03/02/21  
Caballero **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** Foreclosure and Housing Study **SB** 333  
**ANALYST** Dick-Peddie

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$50.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act of 2021

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Administrative Office of the Courts (AOC)  
 New Mexico Mortgage Finance Authority (NMMFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 333 appropriates \$50 thousand for FY22 and subsequent fiscal years to the Administrative Office of the Courts to contract with a nonprofit community development corporation to study certain housing uses within the state. The purpose of the appropriation is to study the foreclosure process in New Mexico, provide policy recommendations, develop education plans, and study the effects of alternative lending options. Additionally, the bill would create a non-reverting fund for any unexpended balance at the end of each fiscal year.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### FISCAL IMPLICATIONS

Senate Bill 333 appropriates \$50 thousand to the Administrative Office of the Courts to secure a contract for conducting a study on foreclosure in New Mexico, but it is unclear how much of this

appropriation is intended for staff at AOC to monitor and secure the contract, and how much is intended for contracting services.

It's likely that recommendations from the study would result in a fiscal impact to the courts, but it is unknown to what extent. Currently, the state has two district court foreclosure settlement programs, one in the 2<sup>nd</sup> Judicial District (Bernalillo County) and one in the 13<sup>th</sup> Judicial District (Valencia, Cibola, and Sandoval counties). House Bill 2, the General Appropriation Act of 2021, includes \$300 thousand and \$155.7 thousand, respectively, for the 2<sup>nd</sup> and 13<sup>th</sup> judicial district court foreclosure settlement programs from the mortgage regulatory fund. Given these programmatic costs from the two most populous judicial districts, LFC estimates establishing similar programs in other courts across the state could cost between \$100 thousand and \$250 thousand per judicial district, depending on the population of the district and number of foreclosure cases.

The appropriation of \$50 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall not revert to the general fund.

## **SIGNIFICANT ISSUES**

***Community Housing Development Organizations.*** Community Housing Development Organizations (CHDOs) are nonprofit organizations specializing in local affordable housing. The nonprofits operate through the federally funded HOME Investment Partnership program. According to the New Mexico Mortgage Finance Authority, HOME funds are allocated to state and local governments by the United States Department of Housing and Urban Development (HUD), and a minimum of 15 percent of HOME funds must be set aside for CHDOs. The Mortgage Finance Authority designates CHDOs and administers CHDO set-aside funds in all areas of New Mexico except the cities of Albuquerque and Las Cruces, which receive HOME allocations directly from HUD.

The New Mexico Finance Authority grants CHDO awards on a first-come, first-served basis, and mandates that unused funds are not carried over into the next program year. Senate Bill 333 provides that unspent funds shall not revert to the general fund, which, in addition to restricting the Legislature's ability to appropriate all funds each fiscal year, appears to be at odds with the criteria the New Mexico Finance Authority uses for similar projects with nonprofit organizations.

***Federal and State Foreclosure and Moratoria.*** AOC predicts that foreclosure cases in the state will increase in the next year, especially when state and federal foreclosure moratoria lift. AOC notes that according to CoreLogic, an analytics firm, the national homeowner delinquency rate was 3.9 percent in November 2020, three times higher than that of November 2019, but also the lowest rate since May 2020, suggesting that homeowners have been able to take advantage of Covid-19 related relief to help address mortgage delinquency. AOC was not able to provide data on the New Mexico mortgage delinquency rates at the time of this FIR's publication

The New Mexico Supreme Court ordered a stay on eviction cases in state courts in March of 2020 and has not issued an end date for the stay. As of February 17<sup>th</sup>, The Biden Administration extended the federal foreclosure moratorium to the end of March 2021 for mortgages backed by Fannie Mae or Freddie Mac, and through June 2021 for federally backed mortgages. Should the administration further extend the moratorium, the study may be difficult to conduct.

***Foreclosure Settlement Programs.*** The state’s two existing court foreclosure settlement programs were originally established with federal grant awards, and contract licensed attorneys to serve facilitators for discussions between lenders and homeowners early in a foreclosure dispute to offer solutions such as loan modifications or settlements. The success of the foreclosure settlement programs prompted both the 2<sup>nd</sup> and 13<sup>th</sup> judicial district courts to request recurring state funds in FY22 to make the programs a permanent service for the district. Data from the 13<sup>th</sup> Judicial District Court shows the program settled 74 percent of cases in FY20, and of those settlements, 64 percent resulted in the homeowner keeping their home.

Finally, AOC notes that the bill does not specify a scope of work, or a work product for the contractor. The agency notes:

Some of the contractor’s responsibilities under this bill are not particularly clear, which may make it difficult for AOC and the contractor to perform these responsibilities. For example, the contractor is to “study the foreclosure process in New Mexico “but this bill does not specify the goal of this study or particular outcomes. Likewise, the bill requires that the contractor ensure judicial processes are “enhanced and supported for foreclosures and evictions”. It is not clear what supporting judicial processes might mean, nor is it clear what the goal of enhancing existing processes might be. There may be some intentional vagueness in the contractor responsibilities to allow flexibility, however, it may be beneficial to use more precise language to ensure quality results.

This bill does not create an end-date for the contractor’s work and does not specify how the results of the contractor’s work should be presented (e.g. in a report to the Legislature or a particular Legislative Committee or to the judiciary in some form).

## **RELATIONSHIP**

This bill relates to House Bill 111, which addresses evictions, and Senate Bill 349, which addresses foreclosure cases.

ADP/al/sb