F I S C A L   I M P A C T   R E P O R T

SPONSOR Leavell **DATE TYPED** 2-11-04 **HB**

SHORT TITLE Connect Real Property to Right of Redemption **SB** 531

ANALYST Reynolds-Forte

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			Minimal – See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Mortgage Finance Authority
Administrative Office of the Courts
Attorney General
Regulation and Licensing Department
Taxation and Revenue Department

SUMMARY

Synopsis of Bill

Senate Bill 531 changes the right of redemption for real property. The bill prohibits the owner of real property, which is sold at a foreclosure sale, from transferring their right of redemption to a third party other than their heirs or personal representative of their estate; and prohibits the purchaser of real property, which was sold at a foreclosure sale, from assigning to a third party (other than their heirs or personal representative) the purchaser's right to receive the amount paid by another individual to redeem the property.

Section 2 of Senate Bill 531 proposes to significantly shorten the period of time in which the state has to exercise its right of redemption (from 9 months to 90 days) when the state is a junior lien holder in a foreclosure action. This applies where the state has a lien (such as for unpaid income tax or gross receipt tax) and the property was sold in order to satisfy a judgment lien.

ADMINISTRATIVE IMPLICATIONS

In a foreclosure action in which the state is a junior lien holder, the state has approximately three months instead of nine months to exercise its statutory right of redemption. The Taxation and Revenue Department believes that if the state's redemption period is decreased from 9 months to 90 days, it would be very difficult to redeem the real property at issue. Ninety days is too short a time period. The Federal redemption period is 120 days.

OTHER SUBSTANTIVE ISSUES

New Mexico case law has held that the right of redemption is created by statue and does not arise until the property is sold under judgment foreclosing a mortgage (Sun Country Savings Bank of NM v. McDowell, 108 NM 528, 775 P.2d 730 (1989). Because this is a statutory right, the legislature may place restrictions on transfer or "alienation" of this right. However, the proposed amendment would limit the universe of individuals to whom the right of redemption could be transferred. For example, suppose that within one month after the foreclosure sale, an unrelated third party offers to buy the owner's right of redemption, so that the third party may redeem the property (from the new purchaser) by paying the amounts specified in law (price paid by the purchaser, interest, costs of sale, penalties, taxes, ects.). Senate bill 531 would prohibit the owner of the real property from entering into this transaction with a third party.

POSSIBLE QUESTIONS

1. Owners of real property have been freely able to assign their right of redemption since the enactment of Section 39-5-18 NMSA in 1931. Why should this right be taken away?

PRF/dm