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FISCAL IMPACT REPORT

ORIGINAL DATE 3/3/09

SPONSOR Rehm LAST UPDATED _____ HB 871

SHORT TITLE Mortgage Foreclosure Deficiency Judgments SB _____

ANALYST Leger

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 651 – Mortgage Fair Foreclosure Act

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total		\$0.1 undeterminable	\$0.1 undeterminable	\$0.1 undeterminable	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of Bill

House Bill 871 prohibits deficiency judgments against a debtor who has occupied the home that is the subject of the loan obligation or real estate security interest as the debtor's primary residence for at least 120 days prior to the initiation of the foreclosure action. The bill provides that the prohibition applies to foreclosure proceedings instituted on or after July 1, 2009.

FISCAL IMPLICATIONS

According to AOC, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and potential anti-deficiency judgments proceedings averted, as well as constitutional challenges to the law. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The converse is also true.

SIGNIFICANT ISSUES

AOC reports the following:

- 1) A deficiency judgment is the imposition of personal liability on a borrower for the unpaid balance of mortgage debt after a foreclosure has failed to yield the full amount of the debt which was due and owing at the time of the foreclosure.
- 2) Article 2, Section 19 of the NM Constitution provides that no ex post facto law, bill of attainder, nor law impairing the obligation of contracts shall be enacted by the legislature. It is possible that an anti-deficiency judgment statute may be challenged as unconstitutional under this section.

PERFORMANCE IMPLICATIONS

AOC participates in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- 1) Cases disposed of as a percent of cases filed.
- 2) Percent change in case filings by case type.

RELATIONSHIP

HB 871 relates to sections in SB 651 prohibiting deficiency judgments and providing for application of the act.

TECHNICAL ISSUES

As reported by AOC, Article 2, Section 19 of the NM Constitution provides that no ex post facto law, bill of attainder, nor law impairing the obligation of contracts shall be enacted by the legislature. It is possible that an anti-deficiency judgment statute may be challenged as unconstitutional under this section.