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

SPONSOR	HJC	ORIGINAL DATE	02/25/11	LAST UPDATED	03/09/11	HB	174/HJCS
SHORT TITLE	Foreclosure Fairness Act	SB					
				ANALYST	Wilson		

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI See Below		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 171 & SB 406

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Regulation & Licensing (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 174 creates the Foreclosure Fairness Act (act). The proposed act mandates that a court shall award reasonable attorney fees and costs to a defendant who prevails in a claim of foreclosure on a mortgage note secured by the defendant's primary residence.

The court shall not award reasonable attorney fees and costs if the plaintiff in such an action is an individual bringing the claim on the individual's own behalf or on behalf of a sole proprietorship owned by the plaintiff.

For the purposes of this bill, a defendant who exercises the defendant's right of reinstatement or redemption shall not be considered a prevailing party.

The effective date of the provisions of this act is July 1, 2011.

### FISCAL IMPLICATIONS

Enactment of this bill may result in a decrease in foreclosure filings in the district courts. The

AOC is currently working on possible parameters to measure resulting change in case load. In addition, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

## **SIGNIFICANT ISSUES**

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. The substitute bill may provide an incentive for more attorneys to represent defendants in foreclosure actions because the bill mandates that prevailing defendants be awarded attorney's fees and costs. 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 banks have additional incentives to restructure loans.

According to the AGO, the bill provides limited post-litigation recovery of attorney fees and costs to defendants who prevail in foreclosure actions. The bill does not provide any pre-foreclosure protections that may prevent or limit foreclosure actions. Pre-foreclosure protections such as notice of creditor's intent to foreclose and requiring creditors evaluate whether debtor qualifies for any loss mitigation programs prior the entering of a foreclose judgment could assist both the plaintiffs and defendants in avoiding unnecessary costs associated with foreclosure proceedings, including proceedings involving right of reinstatement or redemption of the property.

## **ADMINISTRATIVE IMPLICATIONS**

According to the AOC there may be an administrative impact on the courts as a result of an increase in caseload and or in the amount of time necessary to dispose of these cases.

## **RELATIONSHIP**

SB 406, Mortgage Fair Foreclosure Act, requires that homeowners be given 1) reasonable notice prior to the commencement of foreclosure actions and 2) an opportunity to participate in loss mitigation.

HB 171, Prohibiting Deficiency Judgments in Certain Mortgages prohibits deficiency judgments in a foreclosure action against a debtor who has occupied the home as a primary residence for no fewer than 120 days prior to the initiation of the foreclosure action.

## **ALTERNATIVES**

RLD suggests amending the bill to allow defendants that oppose an individual plaintiff in a claim of foreclosure the same benefit as that afforded the defendant in all other cases involving non-natural person plaintiffs.

DW/svb