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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11  
 LAST UPDATED 03/03/11    HB 573

SPONSOR Gentry

SHORT TITLE Mortgage Loan Licensee Regulations    SB

ANALYST Leger

### REVENUE (dollars in thousands)

| Estimated Revenue |      |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|-------------------|------|------|-------------------------|------------------|
| FY11              | FY12 | FY13 |                         |                  |
|                   | NFI  | NFI  |                         |                  |

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY11 | FY12                        | FY13 | 3 Year<br>Total Cost        | Recurring<br>or Non-Rec | Fund<br>Affected |
|--------------|------|-----------------------------|------|-----------------------------|-------------------------|------------------|
| <b>Total</b> |      | *see fiscal<br>implications |      | *see fiscal<br>implications |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications

Duplicates:

SB 411/SCORC – NM Mortgage Licensees Requirements

Relates to:

SB 406 – Enact “Mortgage Fair Foreclosure Act”

HB 174 – Foreclosure Fairness Act

HB 171– No Mortgage Foreclosure Deficiency Judgments

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General’s Office (AGO)

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 573 amends the Mortgage Loan Company Act calling for a mortgage loan company qualified manager to be a resident of the state, maintain a registered office in the state, ensure

records are maintained in the office and in digital format, and adds a new section to the law of registered office required exemptions.

Section 1, adds language stating at least one qualified manager of a mortgage loan company must be a resident of New Mexico and renumbers the existing paragraphs accordingly.

Section 2, eliminates the word “loan broker” and adds new language that requires records to be kept in a New Mexico office of a registered licensed mortgage loan company or in digital format that can be reproduced in the registered NM office of the licensed mortgage loan company.

Section 3, adds a new section off the Mortgage Loan Company Act stating a licensed mortgage loan company shall have and maintain a registered office in NM and follow certain requirements to change the registered office. An exception is given to those whose only business in NM is to refinance or modify loans they hold or service, relates to mortgages on manufactured housing; only business in NM is a wholesale lender directly or indirectly providing financing for mortgages through another licensed mortgage loan company or is an affiliate of a national bank.

Section 4, the effective date of the provisions in the Act is November 1, 2011.

## **FISCAL IMPLICATIONS**

Agency responses indicate there is no fiscal impact to the state.

## **SIGNIFICANT ISSUES**

RLD reports:

The in-state residency requirements for a qualified manager, and in-state physical location for the purposes of records retention/production, will discourage out-of-state and multi-state mortgage firms from entrance and participation in the origination of residential mortgage loans in New Mexico which will reduce competition and availability of mortgage loans and products for consumers.

The AGO points out the following:

Section (B)(1) of existing Section 58-21-3 may be vulnerable to legal challenge on grounds that the U.S. interstate commerce clause prohibits a state from placing burdens on interstate commerce by such means as discriminating against out of state businesses. Requiring a manager to be a resident of New Mexico creates an unfair competitive disadvantage since there would be an added cost for out of state licensees to have their managers maintain residency in New Mexico. (Granholm v. Heal, 544 U.S. 460)

## **PERFORMANCE IMPLICATIONS**

According to RLD, all licensed Mortgage Loan Companies would be required to keep or produce all records in the registered New Mexico office and give notice and track changes of all registered offices. Given the technological improvements in the mortgage industry, regulators are preparing to obtain records, electronically, for the purpose of examination, investigation, prosecution and enforcement.

## **OTHER SUBSTANTIVE ISSUES**

RLD reports, “Direct Lending” out of state mortgage loan companies without a physical New Mexico office location may curtail or discontinue lending in New Mexico if they are required to invest in a “bricks and mortar” New Mexico office. This will have an indeterminate but significant reduction in the registration and licensing of out of state mortgage loan companies and out of state loan originators. As of February 17, 2011, there were 683 registered mortgage loan companies in New Mexico of which 71 % or 486 were located out of state. This tracks with the historical ratio of many years. A review of the 14 out of state mortgage loan companies with more than 20 licensed mortgage loan originators per company, revealed a total of 825 out of state New Mexico licensed loan originators as compared to the total population of 1616 New Mexico licensed mortgage loan originators. The number of out of state mortgage loan originators would be much larger if the review covered the remaining 472 out of state mortgage loan companies. The potential for significant reduction in the availability and diversity of mortgage credit will be the result of diminished competition and will affect the revenue potential to the division.

## **DUPLICATES**

SB 411/SCORC – NM Mortgage Licensees Requirements

## **RELATIONSHIP**

HB 174, the Foreclosure Fairness Act, provides for the recovery of attorney fees and costs to defendants who prevail in foreclosure actions.

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

SB 406, enacts the “Mortgage Fair Foreclosure Act”; the legislature finds that homeowners should be given reasonable notice prior to the loss of their home and afforded a meaningful opportunity to participate in loss mitigation to prevent the loss of homeownership and to benefit the consumers and businesses operating in New Mexico to facilitate whenever possible the cure of any default on residential mortgage loans and thereby preserve homeownership.

JLL/svb:mew