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FISCAL IMPACT REPORT

SPONSOR SCORC ORIGINAL DATE 03/05/11
LAST UPDATED _____ HB _____
SHORT TITLE NM Mortgage Licensees Requirements SB 411/SCORCS
ANALYST Leger

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*See Fiscal Implication		*See Fiscal Implication		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB573

Relates to SB406, HB174, HB171

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

No Response

Attorney General's Office (AGO)

New Mexico Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of Bill

Senate Corporations and Transportation Committee Substitute for Senate Bill 411 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, records are maintained in the office and in digital format, and adds a new section to the law of to ensure 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 words "and 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.

In the analysis for the duplicate bill (HB 573) 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.

DUPLICATION

HB 573 – NM Mortgage Licensees Requirements

RELATIONSHIP

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.

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.

JLL/bym:svb