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FISCAL IMPACT REPORT

SPONSOR Gonzales & Cotter **ORIGINAL DATE** 01/22/14
LAST UPDATED 01/31/14 **HB** 31/aHJC

SHORT TITLE Affordable Housing Act Violations and Penalties **SB** _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General Office (AGO)
 Administrative Office of the Courts (AOC)
 Regulation and Licensing Department (RLD)
 Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 31 makes the following changes:

1. On page 2, line 3, after the period, strike the remainder of the line, strike lines 4 through 7 in their entirety and on line 8, strike the subsection designation "B."

2. Reletter the succeeding subsections accordingly.

3. On page 3, line 22, strike the closing quotation mark.

4. On page 3, between lines 22 and 23, insert the following new subsection:

"E. As used in this section, "person" means an individual, including a municipal or county government employee or elected official, or a corporate entity, including any organization formed under state law to carry out business or other activities."".

The amendment moves the definition of “person” to its own section from being incorporated as a portion of a previous section.

Striking section B on page 2 line 8 removes the following:

B. If the attorney general has reasonable belief that a person might be in possession, custody or control of an original or copy of a document or recording, including a record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Affordable Housing Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce for inspection or copying the document or recording. The demand by the attorney general shall not be a matter of public record and shall not be published by the attorney general except by order of the court.

Synopsis of Original Bill

House Bill 31 (HB 31) amends the Affordable Housing Act (AHA), Section 6-27-1 NMSA 1978, to permit the timely sale of an affordable housing project after foreclosure, by creating an exception to the AHA’s long-term affordability restriction, under specified conditions. The bill requires the MFA to adopt rules governing the same.

HB 31 also amends the AHA to require the AGO to investigate an alleged violation of the AHA reported by the MFA. The AGO is authorized to serve civil investigative demands and bring either or both a civil action and criminal charges against a person who violates the AHA. HB 31 provides that in a civil action, if a court finds that a person willfully committed an act in violation of the AHA, the AGO may seek to recover a civil penalty of up to \$5,000.00 per violation, in addition to any equitable relief imposed by the court. The effective date of the Act is July 1, 2014.

FISCAL IMPLICATIONS

MFA reports minimal costs related to rules promulgation proposed in HB 31.

SIGNIFICANT ISSUES

MFA reports that AHA permits state and local governments to contribute public funds, buildings and other resources to create or preserve affordable housing. In the ten years since the Act was signed into law, two flaws have emerged that HB 31 would resolve:

1. The long-term affordability requirement mandated by the current Act makes it difficult to resell a foreclosed property and recoup public resources invested in the property. By providing an exception to the long-term affordability requirement in the event of foreclosure, HB 31 enables state and local governments to timely sell a foreclosed

property at fair market value. The proceeds from any such sale must be used for purposes of the Affordable Housing Act, such as reinvestment in other affordable housing projects.

2. The current Act allows the attorney general to investigate alleged violations of the Affordable Housing Act, but contains no penalties. HB 31 enables the attorney general to bring civil actions, charge civil penalties, and pursue criminal charges as appropriate, for violations of the Act.

MW/ds:svb