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FISCAL IMPACT REPORT

SPONSOR Cook **ORIGINAL DATE** 2/24/19
LAST UPDATED _____ **HB** 518
SHORT TITLE Power of Sale of Trust Real Estate **SB** _____
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			No fiscal impact			

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB559.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Developmental Disabilities Planning Council (DDPC)

Attorney General (NMAG)

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 518 would amend the Deed of Trust Act, NMSA Section 48-10-10, to accelerate the timeline for a trustee to sell commercial or industrial property secured under a deed of trust if the parties agree to a shorter period in the deed. The period could be shorter than the statutory minimum of 90 days but no shorter than 30 days and the shorter timeline would apply only to loans with an original principal amount exceeding \$1 million.

The bill defines “commercial or industrial loan” as a real estate loan whose purpose is not to finance a dwelling. The effective date of the bill is July 1, 2019.

FISCAL IMPLICATIONS

The bill has no financial implications for the state.

SIGNIFICANT ISSUES

In New Mexico law, deeds of trust involve a trustee, which holds or manages the legal title to the property as security between a borrower and a lender. The borrower is referred as the trustor and the lender is the beneficiary. Unlike a mortgage, in which the lender – generally a bank – typically must go through a judicial procedure to foreclose on a property, deeds of trust typically include a “power of sale” clause that allows the trustee to foreclose on the property on behalf of the beneficiary if the trustor defaults on the terms of the loan.

Current law states a power of sale is only exercisable after 90 days. HB518 would allow a foreclosure on commercial property of high value to occur after a month.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB559 clarifies that foreclosure on a home loan, whether a mortgage or a deed of trust, is a judicial procedure.

OTHER SUBSTANTIVE ISSUES

The Developmental Disabilities Planning Council notes that, in those cases when trust real estate is being managed on behalf of an individual or group of individuals, a shorter timeline on a foreclosure could significantly benefit beneficiaries who might not have any other source of liquid assets.

DDPC further notes that the provisions of the bill rely on determining the loan is a commercial or industrial loan at the time the loan is made. Failure to accurately make that determination could result in a legal dispute.

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