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## FISCAL IMPACT REPORT

SPONSOR Cook ORIGINAL DATE 2/16/19  
LAST UPDATED \_\_\_\_\_ HB 519  
SHORT TITLE Tenants in Common Waiver of Partition SB \_\_\_\_\_  
ANALYST Gaussoin

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

#### No Responses Received

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 519 would allow a tenant in common to waive the right to partition jointly owned property to secure financing if all tenants agree to the waiver and the agreement is on record, either in writing or through another tangible or electronic medium.

The bill would amend Article 5 of Chapter 42 of state law, Actions and Proceedings Relating to Property, by adding a new section

### FISCAL IMPLICATIONS

The fiscal implications for the state are minimal.

### SIGNIFICANT ISSUES

Tenants in common each hold separate ownership interests in real property but all areas of the property are owned equally by the group. Unlike joint tenants, the ownership interest of a tenant

in common can be sold or passed down to heirs.

Traditionally, the only bank financing available for tenants in common (TIC) owners was a loan in which all owners would act as co-borrowers. More recently, banks have begun to offer “fractional loans” for individuals with the loan secured with the tenant’s share of ownership.

Dentons, a multinational law firm among the largest in the world, advises its clients to move cautiously on loans to tenants in common. “Prudent lenders should insist that TICs either include a provision in their tenancy in common agreement waiving their right to partition the mortgaged property or [a] covenant in the loan documents that they will not commence a partition action.”

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