

LFC Requester:	Clint ELKINS
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date January 13, 2015
Bill No: SB 30-305

Sponsor: Sen. Michael Padilla **Agency Code:** 305-Attorney General's Office
Short HOME LOAN LOSS **Person Writing** David C. Kramer, AAG
Title: MITIGATION SERVICING **Phone:** 505-222-9134 **Email** Dkramer@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY- REVISED

Synopsis:

This bill creates two substantive rights in favor of homeowners facing a foreclosure: (1) it imposes standards that the bank or loan servicer must follow for loss mitigation and foreclosure prevention, and (2) it allows the homeowner to raise failure to meet these standards as defenses or counter-claims in his or her foreclosure. Further, the bill authorizes the Financial Institutions Division (“FID”) to enforce compliance with the Act and (after consultation with the AGO) create rules.

The bill also requires FID to create multi-lingual versions of the notices set out in the Act. Many of the requirements set out in the Act are already imposed on lenders and servicers as a matter of federal law by the Consumer Financial Protection Bureau (“CFPB”) rules. Those rules are now codified as “Regulation X”, 12 C.F.R. §1024. The key difference, however, is that unlike the CFPB rules, a homeowner can use these standards as a defense in the foreclosure to demonstrate, for example, that the lender is failing to work in good-faith on a loan workout or modification.

FISCAL IMPLICATIONS

FID is better positioned to comment on whether it would require additional funding to engage in this enforcement and rule-making.

(Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.)

SIGNIFICANT ISSUES

The following issues are apparent:

- 1) This bill provides substantial additional protections to consumers facing foreclosure unlike federal regulations.
- 2) Some may contend that this Act totally duplicates federal law and is thus not needed, but this is untrue. The regulations at the federal level do not permit the consumer/homeowner to assert failures or violations as a defense, nor provide a private right of action. Foreclosures are generally a matter of state law so the absence of this right at the federal level is intuitive in some ways.

PERFORMANCE IMPLICATIONS

The Act will likely be enforced primarily by homeowners and their attorneys in the foreclosure cases. FID should be consulted as to its proposed role.

ADMINISTRATIVE IMPLICATIONS

It is unclear how FID and the AGO would cooperate on rulemaking, particularly in cases of a dispute over the content of proposed rules.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

As noted above, the law in some respects duplicates 12 C.F.R. § 1024, but not completely. As advocated by some groups, in particular the Center for Responsible Lending, this bill “plugs the gaps” in federal law and decreases the risk of needless foreclosures by allowing consumers the chance to save the home while seeking a loan modification or other workout from the lender. Traditionally, lenders and servicers are not motivated by economics or through their structure to focus on loss mitigation – they are often paid fees based upon the unpaid principal balance (“UPB”).

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Comment:

TECHNICAL ISSUES

Not aware of any.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Homeowners will continue to face potentially unlawful acts by lenders and servicers (or failure to comply with loss mitigation standards) without effective recourse. If lenders and servicers are not held accountable in a meaningful way at the loan level/case level, then unnecessary foreclosures will continue to occur. This leads to further displacement of families, blight and abandonment of homes, “zombie” properties and instability.

AMENDMENTS

None.