

LFC Requester:	Aurora Sanchez
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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	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>1/18/15</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>SB 141</u>

Sponsor:	<u>Senator Michael Padilla</u>	Agency Code:	<u>Attorney General's Office</u>
Short Title:	<u>Settlement Facilitation Before Foreclosure</u>	Person Writing	<u>AAG Kenneth Owens</u>
		Phone:	<u>505-222-9123</u>
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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

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: Senate Bill 141 is an act that would require that the Administrative Office of the Courts ensure that all state district courts provide settlement facilitation for residential foreclosure actions.

The act requires that residential foreclosure cases be stayed for no more than 120 days from the date of the court referral to the settlement facilitation program. The settlement facilitation would be conducted by a settlement facilitator and require the in-person participation of both the plaintiff/lender and defendant/homeowner. The plaintiff/lender would need to participate with a representative that has the authority to settle the case. Both parties would be required to participate in “good faith” to explore whether there are any alternatives to foreclosure to include loan modifications, deed-in-lieu agreements, “cash-for-keys” agreements, short sales, extended occupancy agreements to rent or lease-to-own, and an expedited “fast-track” option to move to foreclosure when the home has been abandoned. The act would require that any settlement agreement be held as confidential.

FISCAL IMPLICATIONS – N/A

SIGNIFICANT ISSUES

- Maximum 120 day of stay

The act would require that the foreclosure action be stayed for “no more than one hundred twenty days from the date of the court referral for settlement facilitation”. The accomplishment of many loss-mitigation options to foreclosure such as loan modifications require the defendant/homeowner to provide extensive information and documentation to the plaintiff/lender and there are frequently requests to update information before a decision can be rendered by the plaintiff/lender’s underwriters. An absolute requirement that the order staying the case end at 120 days will undermine on-going efforts that could be successful if allowed adequate time. The act would be strengthened by modifying the language so that the settlement facilitator could request a good cause extension of the stay based upon on-going efforts that may lead to settlement.

- Plaintiff waiver from participation for “good cause”

The act allows the plaintiff/lender to file a motion to waive participation for “good cause”,

though good cause is undefined. Since the act only requires participation in “residential foreclosures” the bill would be clarified by defining “good cause from participation by plaintiff” as a showing that the loan was not originated as an owner-occupied residential loan.

- “Fast track” for vacant and abandoned homes

The act contemplates an expedited “fast track” judicial process for vacant and abandoned houses if the homeowner signs a statement that they do not intend to return and maintain ownership. Although an expedited process is desirable for judicial economy and to get the property back on the market there are significant consumer protection concerns if this agreement would be obtained by the plaintiff/lender before the homeowner is given the opportunity to participate in settlement facilitation.

It is not uncommon for banks and their representatives to incorrectly inform homeowners that there are no options and they need to abandon the home before going to court. If the homeowner is going to be given a meaningful option to abandon the home they should be provided with clear disclosures and options, if any, to abandonment. Without this information the homeowner could be subject to unknown deficiency judgments, tax implications, negative credit reporting, and liability for the home until transfer of title, etc.

Most importantly, if the abandonment statement was obtained before the settlement facilitation process, the homeowner may not be provided with information on options to save the home. The act would be strengthened if the fast-track provision was utilized only as part of and within the settlement facilitation process and where a “deed-in-lieu” of foreclosure agreement with a participating defendant/homeowner or through a motion for summary judgment when the defendant fails to participate or file an answer to the foreclosure complaint. Both of these mechanisms accomplish the desired expediency and would allow the defendant/lender to obtain the home in less than 120 days, while providing adequate protection for the defendant/homeowner.

- Confidentiality of settlement agreements

The act requires that any resolution achieved during the settlement facilitation conference be held confidential. Although it may be beneficial for the purposes of settlement negotiation for the contents of the conference itself to be confidential the act would be strengthened by allowing the settlement agreement itself to be subject to court filing thereby binding the parties and providing the court with an understanding of the agreement in case future disputes arise.

PERFORMANCE IMPLICATIONS- N/A

ADMINISTRATIVE IMPLICATIONS- N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 122 Foreclosure of Vacant and Abandoned Property. SB 122 seeks to provide a mechanism for expediting the foreclosure process of vacant or abandoned homes by filing a motion for summary foreclosure “not earlier than before the period to answer the foreclosure complaint”. This time frame may conflict with the settlement facilitation timeframes including the 120 day stay for participation in a settlement conference.

TECHNICAL ISSUES- N/A

OTHER SUBSTANTIVE ISSUES- N/A

ALTERNATIVES- N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Second and Thirteenth Judicial District courts currently have foreclosure settlement facilitation pilot projects that were funded for (18) months, through FY 15, by funds obtained from the Office of the New Mexico Attorney General. The funds were available to the Office of the New Mexico Attorney General through the 2012 National Mortgage Settlement. Those settlement funds are non-recurring, have been largely expended and are insufficient to further fund a statewide foreclosure facilitation project for all district courts.

AMENDMENTS

Suggested language amendments-

C. All parties are required to participate in the settlement facilitation ~~conference~~ process in good faith. In the absence of good faith the settlement facilitator shall inform the court of such. The court, at its discretion, has the option to dismiss the case with or without prejudice and/or hold the parties in contempt.

F. The foreclosure action shall be stayed for no more than one hundred twenty days from the date of the court referral for settlement facilitation, unless the settlement facilitator believes that a settlement agreement is still possible and additional time is needed and makes a recommendation to the court extending the stay.

G. (2) “residential foreclosure action” means foreclosure by a creditor on a home loan originated as an owner occupied residence containing 1-4 residential units; and

G. (3) “settlement facilitation conference” means a conference where discussions and offers are confidential in order to achieve a voluntary, resolution settlement agreement that will be filed with the court regarding ~~of~~ the dispute which:

G. (4) “good cause for waiver of participation by plaintiff” means when the plaintiff files a motion with the court requesting removal from mandatory settlement facilitation participation by providing evidence that the subject loan was not originated as a home loan for an owner occupied residence containing 1-4 residential units.