



Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 12-0570
Prime Sponsor(s): Sen. Giron
 Rep. Duran

Date: January 27, 2012
Bill Status: Senate Judiciary
Fiscal Analyst: Harry Zeid (303-866-4753)

TITLE: CONCERNING A REQUIREMENT TO PURSUE AVAILABLE LOAN MODIFICATION REMEDIES BEFORE FORECLOSING ON RESIDENTIAL REAL PROPERTY.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
General Fund	\$277,907	\$217,658
FTE Position Change	3.0 FTE	3.0 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature. The bill applies to foreclosures in which the notice of election and demand is filed on or after the effective date.		
Appropriation Summary for FY 2012-2013: See the State Appropriations section.		
Local Government Impact: See the Local Government Impact section.		

Summary of Legislation

Prior to initiating or completing the process of foreclosing on residential real property containing four or fewer dwelling units, the bill requires the holder of an evidence of debt to make and fully document its efforts to:

- contact the borrower directly;
- fully assess the eligibility of the borrower, the property, and the loan for any available public or private loan modification programs or other foreclosure alternatives;
- pursue and place the borrower in foreclosure alternatives if the borrower is eligible and the holder's interests can be protected;
- communicate with, and inform, the borrower about impending deadlines and the consequences of missing them at every major step of the foreclosure process;
- provide specific information to the borrower regarding eligibility for foreclosure alternatives and any determination regarding the borrower's foreclosure status; and
- abide by the terms of any offer of modification it makes, if the borrower signs and returns documents containing those terms.

A borrower has until seven business days before a scheduled foreclosure sale to submit a foreclosure alternatives application packet. After making such application, the borrower may dispute the outcome of the holder's review.

The bill also requires the state (through the Department of Local Affairs) to publish a standardized notice to initiate the foreclosure alternatives process.

State Expenditures

Judicial Branch. The Judicial Branch will experience a General Fund expenditure increase of \$277,907 and 3.0 FTE in FY 2012-13, and \$217,658 and 3.0 FTE in FY 2013-14 and each year thereafter.

Increased workload within the trial courts will come from three primary areas:

- the bill will result in new challenges and increased numbers of contested Rule 120 cases (an order of the court authorizing a property sale);
- the list of requirements placed on the holder of an evidence of debt to make and fully document its efforts may result in longer hearings to determine whether or not all of the requirements were met; and
- additional burdens of the holder of the evidence of debt may induce more borrowers to challenge the sufficiency of evidence prerequisite to a foreclosure.

The number of recent Rule 120 cases filed with the courts was 34,832 in FY 2008-09; 39,404 cases in FY 2009-10; and 32,969 cases in FY 2010-11. For purposes of this fiscal note, it is assumed that 30,000 Rule 120 cases will be filed annually in the future. It is further assumed based on Judicial Branch experience that approximately 1,500, or five percent, of the cases will challenge the certification or documentation provided by the holder of an evidence of debt. On average, one hour of court/hearing time will be needed to resolve each challenge. Based on these assumptions, the Judicial Branch will require 0.75 FTE for a magistrate-level judicial officer, and 2.25 FTE associated staff (including 0.75 FTE each for a court reporter, division staff, and a law clerk for a district court judicial officer). Table 1 identifies General Fund expenditures for the Judicial Branch required under Senate Bill 12-071.

Table 1. Expenditures Under SB 12-071		
Cost Components	FY 2012-13	FY 2013-14
Personal Services	\$211,245	\$211,245
FTE	3.0 FTE	3.0 FTE
Operating Expenses	6,413	6,413
Capital Outlay	60,249	0
TOTAL	\$277,907	\$217,658

It should be noted that the Judicial Branch must request magistrates through the fiscal note process in lieu of a request for judges. Although the bill will create additional impact to judicial workload, the request is for additional magistrates to assist judges in keeping pace with their workload. Incrementally, the bill will create additional need for district court judges in the system and may trigger a future request for new district court judgeships.

Department of Local Affairs. The department is required to publish a borrower notice in the form described by the bill on the website of the Colorado Foreclosure Hotline, maintained by the department's Division of Housing. The department will perform this requirement within existing resources.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs for the Judicial Branch subject to this policy are summarized in Table 2.

Table 2. Expenditures for the Judicial Branch Not Included Under SB 12-071*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$18,485	\$18,485
Supplemental Employee Retirement Payments	11,263	12,966
TOTAL	\$29,748	\$31,451

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

Public trustees will need to update their foreclosure management computer systems in order to comply with the bill. It is believed, however, that most county offices have update services included in their contracts with software vendors. Therefore, no additional local expenses are anticipated.

State Appropriations

The fiscal note implies that the Judicial Branch requires a General Fund appropriation in the amount of \$277,907 and 3.0 FTE in FY 2012-13 to implement the bill.

Departments Contacted

Judicial Local Affairs