

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 558**Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office***Only Impacts on Original or Engrossed
Versions are Considered Official***

Prepared by: Matt Stayner
Reviewed by: Michelle Deister, Steve Bender, Monica Brown
Date: 3/21/13

Measure Description:

Requires beneficiary under residential trust deed to request resolution conference with grantor for purposes of negotiating foreclosure avoidance measure, unless beneficiary is eligible to claim exemption from requirement.

Government Unit(s) Affected:

Department of Justice, Judicial Department, Housing and Community Services Department

Summary of Expenditure Impact:

Please see analysis

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

The measure amends several sections of Chapter 112, Oregon Laws of 2012 which was created by Senate Bill 1552 in the 2012 regular legislative session. The measure also amends and adds new provisions to ORS 86.705 to 86.795, statutes related to trust deeds. The fiscal impact of the measure is indeterminate due to unknown variables including: the number of actual foreclosure actions initiated each month, the number of lenders and loan services exempted, the participation rate of the parties, the performance of the contractors, and the amount of time required before the program is self-sustaining.

Oregon law allows for two types of foreclosures of residential trust deeds; judicial and non-judicial (trustee's sale). Up until the implementation of SB 1552, the method favored by lenders was the non-judicial method in which the grantor at the time of entering in to the mortgage loan agreement allowed the lender to foreclose through notice of default and subsequent trustee sale. This method was generally less expensive and quicker for the lender than the judicial method. The non-judicial foreclosure method is the subject of the provisions enacted by SB 1552. Upon the implementation of SB 1552, foreclosures in Oregon nearly stopped. Once foreclosures began to be initiated again, the vast majority of these foreclosure actions were shifted to the judicial process, thus avoiding the requirements of SB 1552. This also produced an unanticipated increase in costs to the Judicial Department as a greater number of judicial cases were filed.

The model created by the DOJ for the foreclosure mitigation program of a self-sustaining, fee based program fell apart due to lack of lender participation as foreclosures are now predominately judicial actions. The Florida based service provider that was chosen by the DOJ did not have sufficient cash flow from the contract to remain viable. The DOJ implemented a minimum contract funding level that allowed the payment of \$80,000 per month to the service provider so that they could continue to process the few non-judicial foreclosures that were in process and maintain the capacity to process mediation cases should the number of non-judicial foreclosures increase or a solution to the problem arise. The Florida based service provider was unable to remain solvent even with this modification and the contract has been reassigned to a second interim service provider under the same terms, but the department is currently completing contracting procurement processes that eliminate baseline provisions and require only by case payments. Program expenses are currently \$127,275 per month; including contract

payments, direct DOJ costs, and legal fees. The DOJ is projected to completely exhaust the \$1.8 million General Fund allocation provided by the Emergency Board by July 2013.

SB 558

The measure is the proposed solution to the problems encountered in the implementation of SB 1552. There are two types of fixes contained in the bill. The first of these is a number of technical adjustments to the program such as providing additional definition of terms used, flow of fees, change to the name of the fund, reworking language to comport to the larger substantive changes and so forth. The second is the substantive changes to the mechanics of the act, including: the expansion of the required mediation to judicial foreclosures, the removal of county clerk involvement in collection of fees, the reduction in the exemption bar from beneficiaries who processed under 250 foreclosure proceedings in the prior calendar year to those who processed under 100, The deeming of beneficiary's violation of certain provisions to be an unlawful act, and the general reworking of the mechanical processes.

For the purpose of the fiscal impact, the most important of these is the expansion of the mediation requirements to both judicial and non-judicial foreclosure actions. This change would require that all beneficiaries (less those exempted by the bill) that commence foreclosure proceedings would be subject to the mediation process and required to pay fees to support that process. Even in the case where a grantor does not respond or participate, the beneficiary would be required to pay a processing fee according to the DOJ.

The DOJ provided an updated pro-forma model of the program's finances under SB 558. Many of the assumptions made for SB 1552 were carried forward in this model since the DOJ believes that the issue of volume will be resolved by the bill. There are small changes to fees: who collects, when they are collected, and the amount, but the overall fees for each mediation case are anticipated to decrease by \$25 from \$725 to \$700. In the model, the DOJ has established a baseline for the program to be self-sustaining at 300 foreclosure actions per month. Below this number the delivery model would have to be altered, the fees would have to be restructured to provide additional revenue, or the program would have to be supported by funding other than fees; presumably the General Fund. According to information provided by the agency, the average number of combined judicial and non-judicial foreclosures in Oregon has been about 1,100 per month. In February of 2013, The Oregonian reported 7,300 foreclosures in 2012. Not all foreclosures would be subject to mediation due to exemptions provided by the bill, but if even half of these were, the program would be self-sustaining according to the DOJ model.

The DOJ is currently evaluating proposals, and completing procurement processes for the contract of a new mediation service provider. This includes the elimination of a base-line funding in the contract so that going forward the fees paid to the mediation service provider will be based on the number of mediations serviced. The DOJ believes that the contractor will be sustainable due to the provisions of the bill.

The DOJ anticipates a three month ramp-up time between the operative date of the measure and the realization of enough fee revenue to sustain the program. During this time the DOJ would require additional funding of between \$50,000 and \$150,000 to support the program; that funding is assumed to be General Fund, There are two policy option packages in the Governor's proposed budget that deals with these costs and the expenditure limitation required for the expenditure of fees collected by the program. These two policy option packages request the addition of two half-time positions. The first of these is a 0.50 FTE permanent position to assist in the management and monitoring of the program. The expected cost of the position is \$66,392 in the 2013-15 biennium and is expected to be funded through Other Funds generated from fees. The second position is a 0.50 FTE limited duration accounting position. The expected cost of that position is \$76,950 in the 2013-15 biennium and is planned to be funded through Other Fund generated from fees. Assumptions made in the DOJ model are only assumptions and therefore may not anticipate all issues with the implementation of the bill. Ongoing funding of the program may be significantly in excess of the amounts discussed.

The Oregon Judicial Department (OJD) believes that the establishment of violations of certain provisions of the bill by the beneficiary as an unlawful act will increase the caseload and therefore the costs to the OJD, but the possible reduction in the number of judicial foreclosures may offset these costs thus resulting in no net change in the workload for the circuit courts.

For State agencies and local housing authorities holding mortgages and initiating foreclosure proceedings, the bill would not provide relief to these entities from payment of the mediation fees and may cause a larger number of entities to be impacted due to the change in the exemption provisions. The extent of the possible additional fiscal impact to these agencies is unknown. HCSD holds 6,950 single-family housing loans with 291 of those loans in foreclosure as of February.