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## FISCAL IMPACT REPORT

SPONSOR: Fidel DATE TYPED: 02/18/03 HB \_\_\_\_\_

SHORT TITLE: Amend Real Estate Licensing SB 43/aSFC

ANALYST: Geisler

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		See Narrative	Recurring	Real Estate Commission Fund, Real Estate Recovery Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to: SB 45, Real Estate Broker Responsibilities

### SOURCES OF INFORMATION

RLD/Real Estate Commission

### SUMMARY

#### Synopsis of Senate Finance Committee Amendment

On page 8, line 17, before “file” insert “if not a resident of New Mexico,”.

#### Synopsis of Original Bill

SB43 would increase the three-year license fee cap for real estate salespersons and brokers from the present \$180 to \$270. The bill would delete obsolete language pertaining to the Real Estate Commission authority to hire personnel. The bill would eliminate the “non-resident broker” category of broker’s license, but retain a provision from that section of the law that requires non-resident licensees to consent to service of lawsuits in New Mexico. The bill would provide for the transfer of any balances in excess of \$400,000 in the Real Estate Recovery Fund to the Real Estate Commission Fund.

#### Significant Issues

The Commission last sought a fee cap increase twelve years ago when the annual license fee in-

creased from \$40 to \$60. (License renewal changed from annual to triennial in 1995.) One result of having reached its current fee cap is that the Commission is unable to pass on to licensees more than \$3,000 in annual transaction fees for credit card payments of license and other fees. The Commission's cash balance is projected to dip to 35 percent of operating budget as operating costs have increased while licensee numbers have remained static.

Language in the license law authorizing the Commission to hire personnel dates to the Commission's 1959 establishment as an independent agency. Commission administrative and personnel authority were transferred to the Regulation and Licensing Department (RLD) Superintendent by Executive Order in 1986. However, the obsolete language remains in the statute.

The non-resident broker category of broker's license has been rendered obsolete by the abolishment of residency requirements from state professional and occupational licensing laws. However, the only place in the statute that consent by non-resident brokers to service of lawsuits in New Mexico is in the non-resident broker section of the law. This is an important provision that needs to be retained.

The Real Estate Recovery Fund balance is presently slightly less than twice the \$250,000 minimum balance required by law. The bill would on July 1 of each year transfer from the Recovery Fund to the Real Estate Commission (operating) Fund any balances exceeding \$400,000. Such transfer authority would allow the Commission to use those funds for the purpose of carrying out the real estate license law and would provide a hedge against future license fee increases, while still maintaining the Recovery Fund balance at a level well in excess of the statutory minimum. The Recovery Fund is funded by a \$10 assessment on each new license application and license renewal to provide a source of compensation for members of the public who suffer financial loss as the result of fraud by real estate licensees. The Commission suspended collection of the \$10 assessment two years ago because of high Fund balances. The highest level of claims activity on the Fund in the last 10 years was \$66,000 in claims paid three years ago.

### **FISCAL IMPLICATIONS**

The fee cap increases proposed would generate a maximum of approximately \$282,000 per year in new license revenues beginning in FY05. The revenue transfer authority would have generated \$90,000 to the Real Estate Commission Fund in FY02.

The fee cap increase being requested will allow the Commission to recover costs legitimately related to the administration of a licensing and disciplinary program and maintain an adequate cash balance while still keeping fees at or below regional and national levels.

### **ADMINISTRATIVE IMPLICATIONS**

SB 43 would give the Commission the ability to assess licensees the true costs of administering a licensing and disciplinary program while maintaining a sound financial footing and forestalling license fee increases in the near future. Additionally, SB 43 would eliminate confusion created by obsolete language pertaining to personnel that does not accurately reflect the hiring authority of the RLD Superintendent established since 1986. Finally, the fund transfer authority being requested would allow excess balances in the Real Estate Recovery Fund to be put to work for licensees.

The primary administrative implication of SB43 is that the RLD Superintendent's de facto authority over Commission personnel matters is finally codified

**CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP**

There are is no known conflict, duplication, companionship or relationship with other legislation, although SB 45 addresses different sections of the real estate license law dealing with brokerage relationships.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Commission will be unable to recover from licensees the legitimate costs of maintaining a licensing and disciplinary program and maintain an adequate cash balance. Obsolete language pertaining to Commission authority to hire staff will continue to cause confusion and undermine the administrative authority of the RLD Superintendent. Excess Recovery Fund balances will not be put to work for the benefit of licensees who paid the fees that comprise the Fund.

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