

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Fidel DATE TYPED 03/14/05 HB 267/aSJC/aHGUAC/
 SHORT TITLE Real Estate Broker Licensing Requirements SB aSFI#1/aHF1#1
 ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$150		Non-Recurring	Real Estate Recovery Fund

(Parenthesis () Indicate Revenue Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$150.0		Non-Recurring	Real Estate Recovery Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files
 Regulations and Licensing Department (RLD)
 Attorney Generals Office (AG)

SUMMARY

Synopsis of HF1 #1Amendment

The House Floor #1amendments would:

Allow licensed individuals over the age of 65 who have been licensed with a continuous 20 years of experience to retain their ability to waive continuing education requirements.

Change the number of hours required for an applicant to furnish the commission certificate of that the applicant has completed successfully classroom hours of instruction in basic real estate courses approved by the commission from 180 to 90. The original bill proposed 120 hours.

Delete one of the acceptable education options for applicants of a qualifying broker's license or an associate's license: equivalent experience in an activity closely related to or associated with real estate and successful completion of ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which had to be a broker basics course.

Add the requirement an applicant for a qualifying broker's license have completed successfully one hundred twenty hours of pre-licensing courses, including a broker basics course approved by the commission.

Add new language "subject to appropriation of the legislature" to relate to the newly proposed Education Fund.

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee amendment deletes the Senate floor amendment.

Synopsis of SFI #1 Amendment

The Senate Floor amendment provided that for every day that there remained two representatives on the Real Estate Commission; the Senate minority leader would be the governor of the state of New Mexico.

Synopsis of SJC Amendment

The proposed amendment to Senate Bill 267 specifies that the minimum of thirty classroom hours instruction in continuing education courses prescribed by the commission would have to be completed every three years for renewal of license. Before the amendment, the bill did not specify how often the continuing education courses would have to be taken.

Synopsis of Original Bill

Senate Bill 267 makes an appropriation of funds from the Real Estate Recovery Fund to the Real Estate Education Fund, a newly proposed fund. The proposed appropriation would comprise of funds that are currently appropriated as fund balance revenue in the Commission's Real Estate Recovery Fund budget.

Should Senate Bill 267 be enacted, it would phase out the salesperson category of licensure and make associate broker the entry level real estate license in New Mexico effective January 1, 2006 and increase the number of classroom hours required for eligibility to take the examination to obtain an entry-level real estate license from 60 hours to 120 hours. The bill proposes that licensees who are salespersons on the effective date of the Act be "grandfathered" to "associate broker status" with no additional education or examination requirements. The bill proposes to allow the Real Estate Commission authority to increase continuing education requirements for license renewal.

New language is proposed which would give the Real Estate Commission statutory authority to require criminal background checks as a condition of licensure.

A proposed amendment would raise the cap on annual premiums provided by the Commission's contract provider for mandatory errors and omissions insurance from \$150 to \$200.

The term “transaction broker” is incorporated into the proposal; RLD asserts this classification will allow licensees to provide real estate services to customers and clients without forming an agency relationship

An “Education and Training Fund” would be created by the enactment of the proposed bill and would be funded using all funds in excess of \$250 thousand in the Real Estate Recovery Fund, to “improve real estate education and instruction.” Currently the amount above \$250 thousand is \$150 thousand.

A “consent to service” provision for non-resident licensees is proposed; According to RLD, the language was inadvertently deleted from the law two years ago.

According to RLD, wording changes to sections of the law dealing with “basic licensee duties” are proposed to conform to existing language in the Commission’s rules.

New language proposed by the bill requires out-of-state licensees to permit the Real Estate Commission to accept service of processes as if personal service had been made upon the non-resident licensee, and to consent to New Mexico jurisdiction for litigation matters.

Significant Issues:

The Attorney General’s Office (AGO) points out that: the bill changes the term “broker” to “qualifying broker” in some bill references, but treats the terms as synonyms in other instances.

The AGO asserts that the State will not usually receive service of process on behalf of a foreign entity unless the plaintiff can’t locate the agent for the foreign entity, and that NMSA 1978, Section 38-1-16 already lists the types of transactions a nonresident must commit to be subject to New Mexico legal jurisdiction.

According to RLD, the proposed amendments are intended to increase public protection by: (1) raising educational standards for individuals entering the real estate business and eliminating existing exemptions from continuing education required for license renewal (2) assuring that all license applicants, and not only those who voluntarily disclose criminal backgrounds, submit to a criminal background check (3) assuring that affordable professional liability insurance is available to all active licensees through the Commission’s mandatory errors and omissions insurance program (4) providing consumers with a real estate brokerage alternative that allows the purchase of real estate services without the creation of a formal agency relationship (5) using funds already contributed by licensees to the Real Estate Recovery Fund to create a program to enhance the quality of real estate courses and instruction (6) restoring Commission authority to serve process on non-resident licensees without having to serve the licensee in his or her state of residence (7) assuring that the “basic licensee duties” owed to all customers and clients in any real estate transaction in the state are consistent in both the real estate license law and the Commission rules.

PERFORMANCE IMPLICATIONS

RLD asserts that the amendments to the real estate license law proposed in SB267 will enhance the Real Estate Commission’s ability to carry out its public protection responsibilities.

The SB267 provides for a one-time transfer of approximately \$150,000 in excess revenues in the Real Estate Recovery Fund to a new Education and Training Fund designed to improve the qual-

ity of real estate courses and instruction. Additional revenues to the Education and Training Fund are to be provided through fees already authorized but not yet implemented on real estate course, sponsor, and instructor certifications, along with gifts, grants, donations and bequests to the Fund and interest income earned from investment of the Fund. The proposed transfer will leave intact a \$250,000 minimum balance in the Real Estate Recovery Fund which is required by law.

FISCAL IMPLICATIONS

The appropriation of \$150 thousand contained in this bill is an expense to the Real Estate Recovery Fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall not revert and would remain in the proposed Real Estate Education Fund.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

RLD asserts that it is possible that one additional FTE could be required in future fiscal years to administer the Education and Training Fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB267 conflicts, in part, with HB312.

TECHNICAL ISSUES

The Attorney General's office asserts that the proposed changes to Section 61-20-2(A)(4) and 61-20-2(A)(4)(d) appear to treat "broker" to "qualifying broker" as synonyms and other parts of the bill repeatedly change the term "broker" to "qualifying broker." The AGO asks if there a substantive difference and if not, why the change has not been made throughout the bill

AGO also reflects that the proposed changes to Section 61-29-9(D) discuss how a salesperson's license will be converted to an associate broker's license. It does not discuss how a broker's license will be converted to a qualifying broker's license.

The language regarding the appropriation of funds from the Real Estate Recovery Fund to the proposed Real Estate Education Fund could be clarified to make certain whether the funds from the Recovery Fund will be transferred once, only on July 1, 2005, or whether funds will be transferred on July 1, 2005 and on future dates, whenever the Commission's fund balance exceeds \$250 thousand.

OTHER SUBSTANTIVE ISSUES

The Attorney Generals Office (AGO) points out that it is unclear whether Section 15, "Nonresident Licensees Consent to Service" is necessary or helpful to the Real Estate Commission, because the Commission already has jurisdiction on licensing matters over nonresident licensees. Further, AGO cites that in those matters beyond licensing, NMSA 1978, Section 38-1-16 lists the

types of transactions a nonresident must commit to be subject to New Mexico legal jurisdiction. The proposed section allows a plaintiff to serve the Commission instead of the nonresident defendant; the Office of the AG suggests that the Commission may not want to be caught in the middle as agent of service of process for non-licensing litigation.

RLD comments that when the mandatory errors and omissions insurance requirement was added to the license law in 2001, it contained a \$150 cap on annual premiums that the Commission's insurance contractor could charge licensees for errors and omissions insurance. Claims history, according to RLD, since the enactment of the law has raised concerns that the insurance contractor might not be able to provide insurance within the \$150 cap beyond in the 2006 policy year and beyond. Current law state that the requirement for errors and omissions insurance will be suspended if the Commission cannot provide insurance within the statutory cap. RLD asserts that raising the annual cap to \$200 will assure that insurance requirements will continue uninterrupted, and at an affordable rate for real estate licensees.

ALTERNATIVES

According to RLD, if amendments are made to HB 312 consistent with SB 367, the enactment of HB312 would be equivalent to the enactment of SB367.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

RLD cites that one consequence of not enacting SB267 might be that active New Mexico real estate licensees would not be able to maintain errors and omissions insurance because the Commission's insurance contractor is not able to provide errors and omissions insurance within the existing \$150 cap on annual premiums. RLD asserts further that suspension of the errors and omissions requirement would mean that many licensees would either be without insurance or be forced to pay significantly higher premiums on the open market than are provided through the group program. According to RLD, suspension of the errors and omissions program would mean that consumers would have less recourse in the event that a licensee error or omission in a real estate transaction caused them financial harm. The amendment increasing the annual premium cap from \$150 to \$200 is being proposed during the 2005 legislative session to allow the amendment to take place before on January 1, 2006, which is the beginning of the new insurance policy period.

EM/lg:yr