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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/10
LAST UPDATED 02/17/10 **HB** _____

SPONSOR SJC

SHORT TITLE Limit Appraisal Management Company Fees **SB** CS/138/aHJC

ANALYST Escudero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses to the Original Bill Received From
 Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment removes the prohibition of including a hold harmless provision in a contract with an appraiser and replaces it with language limiting the liability of an appraiser to indemnify the appraisal management company to errors and omissions by the appraiser.

The amendment removes the requirement that an appraisal management company compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

Finally, the amendment removes the definition of customary and reasonable for rates for appraisals.

Synopsis of Original Bill

Senate Judiciary Committee substitute for SB138 is an act relating to appraisal management companies amending procedures for disciplinary proceedings; clarifying the rights and obligations of appraisers and appraisal management companies with regard to liability, fees and disclosure; requiring surety. The bill addresses the concerns raised by the AGO in its analyses of the original bill.

The bill amends the Appraisal Management Company Registration Act (AMCRA). Many additions and eliminations are clarifying and grammatical corrections. Substantive changes are as follows:

Section 1 amends the AMCR Act by correcting the short title citation.

Section 2 amends the AMCR Act by adding a bond or other equivalent means of security to the registration requirements of an appraisal management company.

Section 3 amends the AMCR Act to require employees of an appraisal management company, who are responsible for selecting an appraiser or reviewing completed appraisals, to have geographic and product competence.

Section 4 amends the AMCR Act by prohibiting an Appraisal Management Company from requiring an appraiser to have a “Hold Harmless” provision in their contract or requiring the appraiser to indemnify the AMC.

Section 5 amends the AMCR Act by stating:

A. an Appraisal Management Company shall compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised;

B. The fees paid to an appraiser for completion of the appraisal shall not include a fee for management of the appraisal process or an activity other than the performance of the appraisal.

C. An Appraisal Management Company shall separately state the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser’s services to the client, borrower and other payor;

D. Appraisers shall not be prohibited by the Appraisal Management Company, client of other third party from disclosing the fee paid to the appraiser for the performance of the appraisal in the appraisal report;

E. The bill defines “payor” means any person or entity who is responsible for making payment for the appraisal; and “customary and reasonable” means a rate that is most consistent with the of appraisers for a given category of appraisal charged by the majority of appraisers with similar training and experience providing services within the same geographical area;

F. An Appraisal Management Company shall, except in cases of breach of contract or substandard performance of services, make payment to in independent appraiser for the completion of an appraisal or valuation assignment within sixty days of the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee;

G. An Appraisal Management Company shall provide an appraiser with the appropriate nontaxable transaction certificate pursuant to Section 7-9-48 NMSA 1978.”

Section 6 amends the AMCR Act by changing the requirements for conducting adjudicatory proceeding from the Administrative Procedures Act to the Uniform Licensing Act.

Section 7 amends the AMCR Act by adding the specific bonding requirements necessary for AMC registration. The bond must be maintained by a corporate surety authorized to transact business in NM or equivalent and the board is authorized to set the amount in rules not to exceed \$25,000. The bond can be used to secure payment for:

- any administrative or judicial penalties imposed by the state or board;
- penalties or costs required by a board disciplinary action; and
- any loss sustained by any person damaged as a result of a violation of the AMCR Act or board rules.

FISCAL IMPLICATIONS

As stated by Regulation and Licensing Department, SB 138 is not likely to have any fiscal impact for the Real Estate Appraisers Board.

SIGNIFICANT ISSUES

The Attorney General's Office submitted the following observations:

The proposed amendments attempt to correct unforeseen issues that have arisen with Sections 47-14-1 to -22, which were newly enacted in 2009. The Real Estate Appraisers Board has recently begun registering Appraisal Management Companies ("AMC's") and has encountered a number of problems with the current statute.

Regulation and Licensing Department noted that:

It should be noted that the AMCR Act was adopted at the last legislative session. The REA Board adopted rules that required all AMC's to be registered by January 1, 2010. The changes being proposed in SB 138 are intended to protect appraisers and correct adjudicatory process to the Uniform Licensing Act.

Correcting the due process language brings the Act into compliance with the Real Estate Appraisal Act which is also enforced by the REA Board. This will ensure disciplinary action is not challenged because the board applied the wrong standard. Also, the current language states the board may use the APA. This is too arbitrary. The legislature should direct the board in the specific due process standard it must follow.

ADMINISTRATIVE IMPLICATIONS

Correcting the due process standard will clear up staff and board confusion. This will have a positive impact on staff and board administration, but it is not measurable

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As stated by Attorney General's Office, without the amendment to Section 47-14-22, the Real Estate Appraiser's Board will have significant difficulty in the disciplinary process of AMC's.

As stated by Regulation and Licensing Department, The Appraisal Management Company Registration Act would remain the same with less protection for the public and disciplinary actions would remain convoluted, costly and open for due process challenges.

PME/mt:mew