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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/11
 LAST UPDATED 03/01/11 **HB** _____

SPONSOR Eichenberg

SHORT TITLE Broker Licensure & Education Requirements **SB** 105/aSCORC/aSJC

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	NFI	NFI	NFI	Recurring	Real Estate Commission Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 112

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment changes the word "on" to "prior to" in line 22 on page 7.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendments:

- Maintain the existing \$95 statutory cap on licensing examination fees (from a proposed cap of \$200);
- Change the fee for electronic list of real estate brokers from the proposed \$25 to actual costs up to fifty dollars; and
- Change the effective date of the bill from January 1, 2012 to July 1, 2011.

Synopsis of Original Bill

Senate Bill 105 proposes to amend several sections of the law applicable to real estate brokers and salesmen to:

- Clarify the definition of broker to include those managing property for others and narrows the exemption for owners of property to exclude those selling or offering for sale property constituting a subdivision containing one hundred or more parcels;
- Repeal an exemption from continuing education for brokers over the age of 65 with 20 years of continuous licensure, but continues the exemption for brokers already exempt from continuing education on the bill's effective date;
- Remove the \$300 cap on the maximum annual premium for a licensee for group professional liability insurance;
- Provide for fingerprinting and national criminal history background checks of applicants for brokers' licenses, which shall not be used for non-licensure purposes and shall be confidential (and violations of this section shall constitute a misdemeanor);
- Increase statutory fees for licensing examinations from \$95 to \$200 and for lists of associate and qualifying broker's license holders from \$20 to \$125;
- Delete language authorizing the issuance of a qualifying broker's license in the name of a corporation, partnership or association;
- Clarify the definition of a "foreign broker" to authorize a broker currently licensed in another jurisdiction to engage in real estate activity within the state as long as that broker has entered into a transaction-specific written agreement with a New Mexico licensed qualifying broker;
- Increase the penalty for unlicensed real estate brokerage activity from a misdemeanor to fourth degree felony;
- Allow a civil penalty for violation of the practice act to be the amount of commission received, and direct all such penalties be deposited into the real estate recovery fund;
- Reduce the statutory minimum of the real estate recovery fund (funded from fees collected from real estate licensees) from \$250,000 to \$150,000; and
- Repeal the sunset provision terminating the practice act (currently set for July 1, 2012).

FISCAL IMPLICATIONS

Both AGO and RLD report no fiscal impact.

SIGNIFICANT ISSUES

RLD explains that, while it has long supported the repeal of the long-standing exemption from continuing education for brokers who are 65 years of age with 20 years of continuous licensure due to the increasing complexities of real estate transactions, administrative difficulties in requiring those exempt brokers to meet continuing education requirements--many of whom have not been required to meet those requirements for many years--argues for the limited exemption contained in this bill for those brokers.

RLD notes the current practice of arrest records checks from Department of Public Safety as a condition of licensure and license renewal is insufficient because those records are limited to New Mexico. In light of the increasing number of applicants from other states, it believes that national criminal background checks as proposed in this bill is necessary to carry out its public protection responsibilities.

RLD argues the increase in penalty for unauthorized practice from misdemeanor to fourth degree felony is necessary as a deterrent. Additionally, the amendment authorizing deposit of any penalty imposed into the real estate recovery fund supports the purpose of the fund, which is to compensate consumers who have suffered financial loss due to fraud or misrepresentations by brokers. Further, RLD notes reducing the statutory minimum for that fund from \$250,000 to \$150,000 is supported by claims experience.

RLD also advises that the increase in and removal of fee caps is likely necessary for the Real Estate Commission to cover costs of licensing examinations (the next contract for which will be effective July 1, 2011) and to provide group errors and omissions coverage for brokers, due to the high rate of claims paid by the Commission's contract insurance provider, which has made it increasingly difficult to maintain that insurance coverage. If the Commission is unable to provide insurance within the existing premium cap, the requirement in NMSA 1978, section 61-29-4.2(B) would likely disappear. RLD updated this position in its analysis of the SCORC amendment to advise that the Commission has received a proposal for licensing examinations within the existing cap, which obviates the need for the proposed increase for those expenditures.

PERFORMANCE IMPLICATIONS

Based on RLD's comments on this bill, it appears that failure to increase the statutory cap on license exams may adversely affect the Real Estate Commission's to have a contractor in place for administration and scoring of future examinations. Administrative difficulties in requiring those exempt brokers to meet continuing education requirements, many of whom have not been required to meet those requirements for many years.

CONFLICT

Section 2 of Senate Bill 105 conflicts with Section 1 of Senate Bill 112 in that SB 105 grandfathers in those brokers who are already exempt from continuing education requirements, while SB 112 repeals the exemption from continuing education entirely.

TECHNICAL ISSUES

The AGO suggests more clarification on the meaning of "a foreign associate broker or qualifying broker licensed in another state in Section 8 in light of prior issues concerning out-of-state real estate agents.

RLD suggests the effective date of the bill should be changed from January 1, 2012 to July 1, 2011 (see Significant Issues above).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RLD advises that, without the increase in the statutory fee cap for license examinations proposed in SB 105, the Real Estate Commission may not be able to successfully procure a contractor for examination services in its upcoming procurement, if no contractor proposes to administer and score the broker exam within the existing \$95 fee cap.