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F I S C A L I M P A C T R E P O R T

SPONSOR: Lujan DATE TYPED: 02/27/01 HB 895

SHORT TITLE: Licensing of Mortgage Companies & Brokers SB

ANALYST: Valdes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	**FY02**	**FY01**	**FY02**		
			$ 166.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Financial Institutions Division, Regulation and Licensing Department

SUMMARY

Synopsis of Bill

House Bill 895 is a major reform of the Mortgage Loan Company and Loan Broker Act (58-21-1 through 58-21-27 NMSA 1978). The bill provides mortgage borrowers greater protection against negligence, incompetence and fraud amongst mortgage practitioners. It would require the licensing of the majority of mortgage practitioners involving mortgage loan companies, mortgage brokers and loan officers. It creates a new advisory committee to advise and assist the Financial Institutions Division (FID) Director in many licensing, regulatory and enforcement activities. Additionally, it creates a new borrower recovery fund for financially injured borrowers which would be funded with licensing and other fees collected in the administration of the amended Act.

Significant Issues

- The bill amends statutes governing money, interest and usury by integrating new terms used in the proposed mortgage Act

- The bill requires licensure for all loan officers. A loan officer license expires 12 months from the date the license is issued. The initial fee is $175 and $100 for renewal

- The bill includes a new licensee fee of $50 for each new branch office

- The bill deletes the exemption in current statutes for real estate brokers who obtain financing for the their clients purchase of real estate

- Affiliated or controlled business arrangements or loan origination services by or between mortgage brokers and real estate professional are prohibited by this bill

- Mortgage broker applicants acting as individuals will be required to meet certain qualifications, i. e., residency, age of majority, bachelor's degree, 12 months experience in lending proven by working with a mortgage broker, performed actively as a mortgage broker for at least 24 months of the last 36 months working with a mortgage broker or exempt mortgage entity prior to application and is a registered mortgage broker in good standing.

- All individual loan officers working for mortgage loan companies and mortgage brokers must be licensed. Loan officer applicants will be required to meet certain licensing qualifications, i.e., residency, have a bachelor's degree, successfully completed 60 hours of education courses approved by the director and have 18 months experience by working with a mortgage broker or exempt entity. The FID Director has been given new licensing and supervisory authority over loan officers.

- All mortgage brokers, loan officers and branch office certificates must be displayed prominently at the physical location of the office.

- A five member advisory committee will be created by appointment of the Governor with staggered terms of office. The regular term of office is three years. The purpose is to advise and assist the FID Director in matters of proposal and adoption of rules, education and experience requirements, code of ethics and conduct for licensees, format of application and interpretation, implementation and enforcement of the Act. The committee meets twice a year at the call of the director.

- The bill creates a recovery fund in the State Treasury. The fund is funded by licensee fees, administered by the FID Director, and the State Treasurer handles the investment of the fund. Interest earned is credited to the fund. Money in excess of $150,000 in the fund reverts to the General Fund. If the fund drops below $150,000 the director may adjust licensee fees. The purpose of the fund is to make restitution to anyone aggrieved by a licensee in an amount no more than $10,000 per judgment regardless of the number of people or mortgage transactions involved; and $30,000 against a single licensee. Restitution will not be made by the fund until a search of the licensee's assets reveals that the licensee cannot make restitution. If the fund is insufficient to satisfy claims, borrowers will receive the money when the fund is replenished in the chronological order that claims are made, with interest in the amount of 8%. After payment of restitution, the director may revoke, suspend or refuse to renew a licensee's license.

- The bill provides for a new written disclosure provided by the lender that specifies the nature of the relationship between the broker and the borrowers including duties and compensation. The FID Director must provide a standard form of disclosure by rule.

PERFORMANCE IMPLICATIONS

This bill, depending on how many loan officers obtain licensing from Financial Institutions Division, may affect the division's performance output measure on application processing, which designates that 80% of the applications be processed within a standard number of days.

Additionally, the advisory and assistance functions of the newly created mortgage broker advisory committee may result in the unintended consequence of delaying the adoption of rules, the granting of denying of licenses/renewals and the interpretation, implementation or enforcement of the mortgage Act.

FISCAL IMPLICATIONS

There is no appropriation contained in this bill. The scope of licensing and regulation will be increased significantly in the areas of licensing, enforcement, regulation promulgation, advisory committee oversight and administration of a borrower recovery fund. It is estimated that 2 additional examiners, 1 clerk specialist and 1 training officer, or a total of 4 FTE's will be required. Additional costs will include filing space, travel, litigation, mediation, examination and investigation, administrative proceedings, civil and criminal proceedings, advisory committee meetings, enforcement of recovery plan penalties and oversight of mortgage broker/real estate professional controlled business arrangements. The Financial Institutions Division would not be able to absorb the additional costs within its present budget.

ADMINISTRATIVE IMPLICATIONS

- See performance implications and fiscal impact above. The director will be responsible for developing a 60-hour education curriculum for mortgage loan officers, to police mortgage broker/real estate professional relationships and to coordinate a five member advisory committee.

- Page 23, lines 15 through and 24 – Currently the Financial Institutions Division's complaint process involves receiving the complaint from the consumer on the complaint form and mailing the form to the licensee for a response. As such, the notification and investigation are concurrent. The new language will create and additional step to the process, delaying response times.

- Page 30, lines 1 and 14 – It is assumed that the 30 day period following the effective date of the Act may be extended so that the estimated 2,000 or so new licensees may be processed by the staff in an orderly manner. Factors such as license requirements, the volume of new entrants into the licensing pool, agency-staffing requirements, education and experience requirements are considerations in determining time lines in making the transition.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

This bill overlaps, duplicates, conflicts with, is a companion to and relates to the Mortgage Loan Company and Loan Broker Act, section 58-21-1 to 58-21-27 NMSA 1978, House bill 308 and Senate bill 199. both bills have been introduced in the 45th legislative session. both bills amend the Mortgage Loan Company and Loan Broker Act in various sections. house bill 895 also duplicates the general laws governing Money, Interest and Usury, subsection 56-8-7.

TECHNICAL ISSUES

- Section 8, "QUALIFICATIONS FOR A MORTGAGE BROKER LICENSE" does not make the distinction between an individual and a legal business entity and what licensing requirements would be appropriate for the legal business entity (page 12, line 3 through page 13, line 23)

- Page 19, lines 15 and 21 – The bill contemplates allowing the director to conduct an investigation when a person has improperly claimed an exemption to subsection D of Section 58-21-6 NMSA 1978 without addressing the other exemptions.

- The bill does not define "loan officer". In the mortgage industry, certain individuals are known as loan processors and engage minimally in the mortgage loan origination process and as they become more proficient, individuals transition to "loan officer". The bill needs to address this issue and make a distinction for licensing and legal compliance issues.

- The bill does not specify who develops and administers the education curriculum. The bill also does not address instructors or testing.

- Beginning on page 33, line 12 through page 34, line 6 the provision does not address when and how monies are credited to the recovery fund.

  - The provision on page 12, lines 20 through 24 is in conflict with the provision beginning on page 12, line 25 through page 13, line 5

  - The terms for lenders (mortgage bankers/mortgage loan companies) does not appear in several areas throughout the bill. The term "mortgage loan company" should appear in the following portions of the bill:

    Page 3, Line9;
    Page 6, line 17;
    Page 7, line 8;
    Page 7, line 17;
    Page 8, line 3;
    Page 17, line 20;
    Page 18, line 2;
    Page 27, line 25

  - The term "registration" has not been replaced by "license" in several provisions of the bill.

  - Page 13, lines 21 through 23 are not clear as to the meaning of "financial requirements" or what constitutes compliance.

  - Page 15, lines 20 and 21 – currently, the vast majority of bonds are open-ended with no maturity date and the surety companies upon expiration, termination or cancellation notify the division. Forced maturity dates on bonds occasionally result in gaps in coverage and such a system requires an elaborate tracking system.

MFV/prr