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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/08
 SPONSOR SCORC LAST UPDATED 2/8/08 HB _____
 SHORT TITLE Mortgage Loan Originator Licensing Act SB 445/SCORCS
 ANALYST C. Sanchez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
None	None	\$340.0	Recurring	Non-reverting Loan Originating Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	None	\$443.9	\$443.9	\$887.8	Recurring	Non-Reverting Loan Originating Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

The Senate Corporations and Transportation Committee substitute for Senate Bill 445 provides for the licensing, bonding, education, examination and testing, background checks, hearings and enforcement requirements of individuals that participate in residential mortgage transactions secured by property located in New Mexico. Exempt from the licensing requirements are employees of all federal and state chartered depository institutions; and the governments of the United States, the States and all of their agencies or instrumentalities. There are enforcement provisions including orders to cease and desist, fines and affirmative actions.

The Bill creates “loan originator fund” which will be a non-reverting fund in the state treasury and shall be administered by the division. The fund shall consist of licensing or renewal fees received pursuant to the Mortgage Loan Originator Licensing Act and money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

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

If the Bill is enacted into law, the effective date will be July 1, 2009.

FISCAL IMPLICATIONS

There is no initial appropriation in the Mortgage Loan Originator Licensing Act in FY 09 for initial start up costs for licensing, education, examination and testing, background checks, hearings and enforcement requirements. According to the Financial Institutions Division, there are however, anticipated increased costs to the agency. The bill should require 6.5 FTEs, an industry manager, a part time attorney, an administrative law judge, two examiners and two licensing specialists, computers, office space, per-diem and vehicle costs.

1 Industry Manager @ 55,000 + 30%	\$ 71,500
1 Part time attorney .5 FTE @ 60,000 + 30%	\$ 40,000
1 Administrative Law Judge @ \$60,000 + 30%	\$ 78,000
2 Examiners @ \$53,040 + 30% benefits	\$138,000
2 Clerks @ \$26,000 + 30% benefits	\$ 67,600
7 computers @ 2000 ea.	\$ 14,000
Cell phones @ \$900 per examiner	\$ 1,800
Office space 7 additional employees @ 150/sf per employee @ \$20/sf	\$ 21,000
Per Diem 2 examiners	\$ 7,000
1 car	<u>\$ 5,000</u>
	<u>\$443,900</u>

Although this law would not go into effect until FY2010 (7/1/09), these funds would be needed in FY 2009 to have the staff and infrastructure in place to carry out the purposes of this law.

The amount of future (FY 10 and later) revenue and operating budget cannot be determined at this time but will be projected under the assumptions defined in the next paragraph.

The Financial institutions Division will receive additional revenue in subsequent years. The amount of additional revenue the Division would receive in subsequent years is not known, since it is not known the number of mortgage loan originators that would be subject to licensure under the Mortgage Loan Originator Licensing Act. However, at a minimum, if every company had at least one mortgage loan originator there would be approximately 1700 mortgage loan originators requiring original licensure at \$200 each during the first year, which would translate to \$340,000 in additional revenue. During the second year, assuming all 1700 originators renew at \$125, the revenue would be \$212,500.

There may be years that the division will experience a shortfall in revenues necessary to carry out the provisions of the Mortgage Loan Originator Licensing Act.

SIGNIFICANT ISSUES

Under the Loan Company and Loan Broker Act, NMSA 1978, § 58-21-1 et seq, loan brokers generally had very little or no liability for their employees filling out loan applications. This loan originator addresses that problem in that loan originators must be licensed and loan brokers can only employ duly licensed loan originators. Section 10 requires a surety bond of \$20,000 for loan origination where the licensee is within New Mexico and when the licensee is physically outside of New Mexico, the surety bond is \$50,000. Section 10 also provides for a 3 year statute of limitations to bring action on the surety bond.

Although on its surface, the bonds appear to be significant, in reality, they are quite small. The amount of financial harm that can be caused by such tactics as inflated appraisals, inflated stated incomes, and failure to disclose adjusted rate mortgages can be in the hundreds of thousands leading to borrowers losing their homes to foreclosure. For this reason, the surety bond should be in parity with the potential harm that may arise to a single borrower from a single mortgage transaction.

PERFORMANCE IMPLICATIONS

Without an additional appropriation for FY 09, it may not be possible at the current level of staffing, for the Financial Institutions Division to fulfill the statutory mandate to license, educate, administer examinations and conduct background checks, hearings and enforcement actions as set forth in the Mortgage Loan Originator Licensing Act.

TECHNICAL ISSUES

Section 2 F– The definition of a “mortgage loan” is different from the definition contained in the Mortgage Loan Company and Loan Broker Act, Chapter 58, Article 21, NMSA 1978. The definition appearing in this bill may be construed to include loans on vacant land. The definition in the Mortgage Loan Company and Loan Broker Act covers only improved property.

Section 4B and Section 5A are in conflict. Licensees shall only engage in mortgage loan origination on behalf of one registrant. Section 5A refers to “registrants”, this should be “registrant”.

Section 5 B - Add a subsection (3) “has successfully completed all other requirements of Section 5”.

Section 8 – The following verbiage appears in subsections D, E, F, G and H, “or an employee of the applicant or licensee”. There is no other reference or indication that an applicant or a licensee may have an employee in the Mortgage Loan Originator Licensing Act.

Section 14. The term “amendment” of a license should be defined.

OTHER SUBSTANTIVE ISSUES

General – there will be court costs associated with hearings and enforcement matters such as stenographers, and fees. A provision providing that court costs and fees may be passed on to an applicant or a licensee would be appropriate.

General - A provision providing that electronic payment fees for applications may be passed on to an applicant or a licensee would be appropriate. Without this language the Division will not be able to accept credit card payments without absorbing the fee charged by the credit card company.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If Senate Bill 445 is not enacted, the problem of unregulated loan originators that engage in unethical business practices will continue.

CS/bb