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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/19

SPONSOR Fajardo/Montoya LAST UPDATED _____ HB 648

SHORT TITLE Real Estate Licensure Changes SB _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate		Recurring	See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 99, SB 120, SB 238

Conflicts with HB 99, SB 120

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation & Licensing Department (RLD)

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 648 amends Ch. 61, Art. 29 NMSA 1978, which governs real estate broker licensing, to:

- exempt a person who deals exclusively in the sale of water rights.

- require the Real Estate Commission (REC) to appoint a three member committee composed of two real estate brokers and a public member. Members of REC may not serve on the committee. The committee is charged with reviewing alleged violations of the law and REC rules governing real estate licensees before referring them to REC. The committee may dismiss allegations the committee determines are frivolous or without merit.

- require an applicant for a real estate license to provide fingerprints for purposes of federal and state criminal background checks only when the applicant initially applies for a license.

- permit REC members to participate in a meeting by conference telephone or similar communications equipment under certain circumstances.

- permit REC to refuse to issue a license or to suspend, revoke, limit or condition a license if an applicant or licensee has been convicted of a crime that substantially relates to the qualifications, functions or duties enumerated in the real estate licensing law.

- provide that a civil or criminal prosecution or an administrative disciplinary proceeding for violations of the real estate licensing law must be initiated within six months after REC discovers the conduct that is the basis for the action.

FISCAL IMPLICATIONS

REC notes that members of the committee created by HB 648 to review alleged violations would receive per diem and mileage at a rate of \$95 per day and 44 cents per mile to attend committee meetings.

SIGNIFICANT ISSUES

REC believes that the creation of a complaint committee as provided in HB 648 is unnecessary. REC states that it currently has procedures in place to investigate complaints and present them to REC for review at its regular meetings. REC closes 50-60 percent of complaints at this level of review for lack of jurisdiction or lack of merit. REC states that complainants and the public deserve review and consideration of complaints directly by REC.

REC notes that the existing law requires real estate licensees to be fingerprinted at the time of initial licensure and license renewal. This gives REC access to the most current arrest records and is an important part of REC's public protection mission. In connection with Senate Bill 99, which also eliminates criminal background checks for professional license renewal applications, the Department of Public Safety noted that it currently is unable to conduct criminal background checks without fingerprints. This means that, if HB 648 is enacted, REC will not have access to a licensee's criminal history after the initial license application.

REC states that the bill's provision allowing REC members to participate in meetings by telephone conference is unnecessary. The provision is identical to Section 10-15-1(C) of the Open Meetings Act, which allows a member of a public body to participate in a meeting of the public body by means of a conference telephone "if otherwise allowed by law or rule of the public body." REC currently has rules that implement the authority conferred by Section 10-15-1(C). *See* 16.61.1.9 NMRA (2012).

HB 648's amendment to Section 61-29-12(A)(6) changes existing language that authorizes REC to take disciplinary action against a licensee who has been convicted of "a felony or any offense involving moral turpitude" to convicted of a "crime that substantially relates to the qualifications, functions or duties enumerated in [the real estate licensing law]." REC notes that the proposed change implicates Section 61-29-3, which provides that the Criminal Offender Employment Act (COE Act) governs any consideration of criminal records by REC.

NMAG states that the amendment to Section 61-29-12(A)(6) is inconsistent with the COE Act in two respects. First, the Act prohibits a professional licensing board such as REC from

considering “misdemeanor convictions not involving moral turpitude” in connection with a license application. The bill’s amendment would permit REC to consider conviction of any “crime” substantially related to the real estate profession, which broadly includes misdemeanors the COE Act prohibits REC from using to determine eligibility for a license.

Second, the COE Act allows a professional licensing board to refuse to grant or to suspend or revoke a license to engage in a profession if the licensee has been convicted of “a felony or a misdemeanor involving moral turpitude [that] does not directly relate to the particular ... profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.” *See* Section 28-2-4(A)(2). HB 648’s amendment to Section 61-29-12(A)(6) effectively precludes REC from considering any felony or misdemeanor, regardless of how atrocious or violative of the public trust, unless it is substantially related to matters governed by the real estate licensing law.

NMAG notes that the bill’s six-month limitation on initiating prosecutions and administrative proceedings for violations of the real estate licensing law significantly reduces the limitations period under existing law. Under Section 61-1-3.1 of the Uniform Licensing Act, REC and other professional licensing boards may initiate disciplinary action up to two years after the discovery of conduct that would be the basis for the action. REC and NMAG state that the shortened limitation period will require REC to review and investigate alleged violations, and NMAG to initiate administrative prosecutions, within six months, which may be difficult given the number of complaints received by REC and workload of the two agencies. The short limitations period could cause REC to lose jurisdiction to act on serious violations of the real estate licensing law.

The bill applies the six-month limitations period to criminal and civil prosecutions authorized by Section 61-29-17. Those prosecutions are brought by the attorney general or appropriate district attorney. It is likely unfeasible and unrealistic to expect those offices to initiate a prosecution within six months of discovering the conduct underlying the crime or violation. To illustrate, Section 61-29-17(A) makes engaging in the business of a real estate broker without a license a fourth degree felony. The current limit for commencing a criminal prosecution of a fourth degree felony is five years from the time the crime was committed. *See* Section 30-1-8(B) NMSA 1978.

ADMINISTRATIVE IMPLICATIONS

NMAG states that the six-month limitations period for initiating administrative proceedings would increase the workload of the Litigation Division of NMAG and require additional personnel and other resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 99 Fingerprints to Renew License Not Required, SB 120 Real Estate Auctioneer Licensure & Fees, and SB 238 Require Bond to Protect Property Owner, which also amend Ch. 61, Art. 29 NMSA 1978.

Conflicts with:

HB 99, which makes the same amendments to Section 61-29-2 NMSA 1978
SB 120, which also amends Section 61-29-2