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FISCAL IMPACT REPORT

SPONSOR Wallace DATE TYPED 2/22/05 HB 312/aHGUAC
 SHORT TITLE Real Estate Broker Licensing Requirements SB _____
 ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	(\$150.0)	NFI	Indeterminate	Recurring	Real Estate Recovery Fund
	\$150.0	NFI	Indeterminate	Recurring	Proposed Education and Training Fund

(Parenthesis () Indicate Expenditure Decreases)

House Bill 312 relates to HB 306 which extends the sunset date for the Real Estate Commission, and HB 310 which proposes language regarding the appropriating role of the legislature.

HB312 partially duplicates and conflicts with SB 267.

SOURCES OF INFORMATION

LFC Files
 Regulations and Licensing Department (RLD)

FOR THE LEGISLATIVE FINANCE COMMITTEE

Synopsis of Amendment

The proposed amendments to House Bill 312 would provide for:

1. revision, rather than elimination, of provisions for refunding of license fees.
2. revision of the annual premium for liability insurance and the requirements for continuing education.
3. the ability of the commission to adopt rules which would require professional liability insurance with minimum coverage standards
4. authorization of the commission to facilitate a competitive bid process for insurance carriers.

5. maximum annual premiums for insurance to not exceed two hundred dollars for an individual (\$200) and not less than one hundred thousand dollars (\$100,000) for individual coverage and five hundred thousand for aggregate coverage limitation.
6. commission rules including option for licensees to purchase individual insurance policies, and not requiring insurance should the commission not be carrying the group policy.
7. those currently licensed as real estate salespersons to automatically be qualified for an associate brokers license rather than have the possibility of being qualified for the associate brokers license.
8. the ability of the commission to limit or condition a license in addition to the already provided power to revoke the license based on fraudulent activity or any other licensee fall from established protocol.
9. removal of language specifying the legislature's role in the appropriation of commission funds
10. the requirement that the commission promulgate rules regarding fund administration

Synopsis of Bill

House Bill 312 "Education and Training Fund," proposes to phase out the salesperson category of licensure and make "associate broker" the entry level real estate license in New Mexico effective January 1, 2006. The bill proposes to double, from 60 to 120, the classroom hours required to be eligible to take the examination for an entry-level real estate license, which would be an associate broker's license under HB 312.

The bill provides for "grandfathering" of licensees who are salespersons on the effective date of the Act to associate broker status with no additional education or examination requirements. Proposed language would eliminate the existing "65 years of age and 20 years of continuous licensure" exemption from continuing education required for license renewal and give the Real Estate Commission statutory authority to require criminal background checks as a condition of licensure.

The term "transaction broker" is proposed to be incorporated into the real estate license law and would allow licensees to provide real estate services to customers and clients without forming an agency relationship.

The bill proposes the creation of an "Education and Training Fund," by appropriating balances in the Real Estate Recovery Fund in excess of \$250 thousand (approximately \$150,000 currently). The bill provides that the appropriation would take place on July 1, 2005.

A "consent to service" provision for non-resident licensees is proposed.

Significant Issues

According to RLD, minor wording changes to sections of the law dealing with "basic licensee duties" are proposed for the purpose of conforming to language in the Commission's rules.

The Department asserts that proposed statute amendments are intended to “increase public protection” by:

(1) increasing educational standards for individuals entering the real estate business and removing the existing exemption from continuing education for licensees who are 65 years of age and have 20 years of continuous licensure

(2) allowing the Commission to require that all license applicants submit to a criminal background check

(3) providing a “transaction broker” classification as a real estate brokerage alternative to a formal agency relationship with a real estate brokerage

(4) using funds contributed by licensees to the Real Estate Recovery Fund to create a program to improve real estate courses and instruction

(5) restoring Commission authority to serve process on non-resident licensees without having to serve the licensee in his or her state of residence

(6) providing measures so that real estate license law and the Commission rules regarding “basic licensee duties” are consistent.

PERFORMANCE IMPLICATIONS

According to the Regulations and Licensing Department, the amendments to the real estate license law proposed in HB 312 will enhance the Real Estate Commission’s ability to carry out its public protection responsibilities.

FISCAL IMPLICATIONS

House Bill 312 provides for an appropriation of approximately \$150,000 from the Real Estate Recovery Fund to proposed new Education and Training Fund.

According to RLD, future revenues to the Education and Training Fund would be provided through Real Estate Commission fees already authorized but not yet implemented on real estate: course, sponsor, and instructor certifications, and gifts, grants, donations and bequests to the Fund. The Department also suggests that interest income would be earned from investment of the Fund. The proposed transfer will leave intact the \$250,000 minimum balance in the Real Estate Recovery Fund required by law.

Continuing Appropriations

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

ADMINISTRATIVE IMPLICATIONS

According to RLD, most of the changes proposed in HB 312 could be accomplished with existing staff and within existing budget; however, the Department states that it is possible that one additional FTE could be required in future fiscal years to administer the Education and Training Fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 312 duplicates, and conflicts, in part, with SB 267.

House Bill 312 relates to HB 306 which extends the sunset date for the Real Estate Commission, and HB 310 which proposes language regarding the appropriating role of the legislature.

OTHER SUBSTANTIVE ISSUES

HB 310 amends all board and commission funds to specify the appropriating power of the legislature; the last proposed amendment by the Real Estate Commission would remove language specifying this power.

ALTERNATIVES

According to the Real Estate Commission, SB 267 would be an alternative to HB 312.

SB 267 was recently amended to include a provision that would cause the Senate Minority Leader to serve as the governor of NM for every day that there is more than one real estate commissioner from any one county.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

By not enacting HB 312, there is still the option of enacting SB 267, or the option of leaving the commission statute and the Commission would continue to operate as it is currently.

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