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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Boitano LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Mortgage Loan Originator Licensing Act SB 1055

ANALYST C. Sanchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	None	None	\$219	\$219	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)  
Office of the Attorney General (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 1055 enacts the “Mortgage Loan Originator Licensing Act” which would regulate persons who are engaged in the business of making, originating, soliciting, placing, negotiating, acquiring, selling or arranging mortgage loans in the primary market for others, or offering to solicit, place, negotiate, acquire, sell or arrange those loans. A mortgage loan is defined as a loan or agreement to extend credit made to a natural person that is secured by a first or second mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien upon any lot intended for residential purposes or a one-to-four family dwelling, located in this state, including the renewal or refinancing of any such loan.

Specifically, the bill:

1. Requires a license to originate mortgage loans, with exceptions for banks, government agencies, and a person who, with the person's own funds for the person's own investment, makes a purchase money mortgage or finances the sale of the person's own property. However, a person who enters into more than three such investments or sales in any twelve-month period would be subject to the provisions of the Mortgage Loan Originator Licensing Act.
2. Limits mortgage loan origination activities by mortgage loan originators to those on behalf of one mortgage loan company or broker;
3. Imposes a \$5000 fine on persons violating the terms of the Act;

4. Authorizes the Director of the Financial Institutions Division of the Regulation and Licensing Department to issue, deny, suspend, or revoke mortgage loan originator licenses and sets fees for those licenses;
5. Requires licensees to obtain twelve hours of continuing professional education each year;
6. Amends provisions of the current Mortgage Loan Company and Loan Broker Act to increase license application and renewal fees licensees under that Act;
7. Amends provisions of the Mortgage Loan Company and Loan Broker Act to prohibit licensees under that act (mortgage loan companies and brokers) from paying compensation to, contracting with or employing a person in the capacity of a mortgage loan originator who does not have a license in good standing pursuant to the Mortgage Loan Originator Licensing Act.

### FISCAL IMPLICATIONS

There is no initial appropriation or recurring budgetary consideration in the Mortgage Loan Originator Licensing Act for sustaining the licensing, education, examination and background checks, hearings and enforcement requirements. There are, however, anticipated increased costs to the agency. The bill would require 4.5 FTEs, an industry manager, an examiner, and two licensing specialists, a part time attorney, computers, office space, per-diem and vehicle costs.

1 Industry Manager @ 55,000 + 30%	\$ 71,500
1 Part time attorney .5 FTE @ 45,000 + 30%	\$ 29,250
1 Examiner @ \$43,000 + 30% benefits	\$ 55,900
1 Clerk @ \$26,000 + 30% benefits	\$ 33,800
3 computers @ 2000 ea.	\$ 6,000
Office space 4 additional employees @ 150/sf per employee @ \$20/sf	\$ 12,000
Per Diem @ \$211 per week times 26 weeks times 1 examiner	\$ 5,486
1 car	\$ 5,000
	<u>\$218,936</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 enforce this law.

The Division would receive no additional revenue in FY 07, 08 or 09. The amount of additional revenue the Division would receive in FY 2010 is not known, since it is not known the number of loan officers there are in the state. However, at a minimum, if every company had at least one mortgage loan originator there would be approximately 1600 mortgage loan originators requiring licensure at \$200 each, which would translate to \$320,000 in additional revenue. Additionally, a fee increase for renewal licenses of \$100 would result in an additional \$160,000.

This would total a \$480,000 revenue increase at a minimum, assuming that the number of mortgage companies remained at 1600. This revenue estimation would affect FY 2010.

### **SIGNIFICANT ISSUES**

This act appears intended to require licensure of persons who work for or with mortgage loan companies or brokers, or their clients. However, there also appears to be some overlap between the current Mortgage Loan Company and Loan Broker Act and the new Mortgage Loan Originator Act proposed by this bill with regard to the persons licensed or registered and the activities covered. For example, the current Mortgage Loan Company and Loan Broker Act, NMSA Sections 58-21-1 to 58-21-29 already requires “registration” of mortgage loan companies and loan brokers with the Director of the Financial Institutions Division. Those companies are defined in current law as persons who, directly or indirectly, holds themselves out as being able to serve as an agent for any person in an attempt to obtain a mortgage loan; or who hold themselves out as being able to serve as an agent for a person who makes mortgage loans; or who hold themselves out as being able to make mortgage loans. NMSA Section 58-21-2I. That section also defines “loan broker” as any person who acts as a finder or agent of a lender or borrower of money for the purpose of procuring a mortgage loan. NMSA Section 58-21-2G. The definition of “mortgage loan originator” in the new act proposed by this bill also appears to include persons who serve as agents for mortgage loan companies or their clients, and who may also be involved in making loans.

The provisions of the bill take effect on July 1, 2009. However, it does not provide any “grandfather” provisions or grace periods for becoming licensed. The Director will not be authorized to issue licenses until that date. However, persons engaged in the mortgage loan brokerage business on or after that date without such licenses will automatically be in violation of the Act.

### **PERFORMANCE IMPLICATIONS**

Without an initial and recurring appropriation, it would be difficult 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.

### **ADMINISTRATIVE IMPLICATIONS**

Page 4, line 25 through page 5, line 15 - The Director may be required to write a regulation that clarifies how to evaluate an applicant’s character, qualifications and fitness that will warrant the belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

Page 5, lines 16 through 20 – The Director will be required to establish or adopt a “mortgage lending study” curriculum program.

Page 5, lines 24 through 25 – The Director may be required to establish or adopt a background check program.

Page 6, lines 7 through 9 - The Director will be required to monitor a “mortgage lending study”

continuing education program.

Page 6, lines 13 through 17 - The Director will be required to establish or adopt a hearing and appeals process when an initial or renewal application has been denied. This may require the use of court stenographers without an associated fee provided in the Bill to offset the cost.

Page 8, lines 6 through 8 - The Director may be required to write a regulation that establishes a reasonable period of time for an applicant or licensee to furnish information required by the director.

Page 8, lines 19 through 22 - The Director may be required to write a regulation that clarifies what constitutes activities and practices that are deceptive, dishonest or unduly harmful to the interests of the public for the purpose of ordering a licensee to cease such activity or practice. The director will not have the ultimate authority in determining violations of federal law.

Page 8, lines 23 through Page 9 line 2 - The Director will be required to establish or adopt a process that will facilitate in the exchange of any information regarding the administration of the Mortgage Loan Originator Licensing Act with any agency of the United States or an agency of any state that regulates the licensee or administers statutes, rules or programs related to mortgage loans.

Page 9, lines 3 through 5 - The Director will be required to establish or adopt a process that will facilitate in the disclosure that an applicant's or licensee's application or license has been denied, suspended or revoked or refused renewal.

## **TECHNICAL ISSUES**

Page 2, Lines 8 through 14 – 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 and exclude subordinate lien mortgages after the second lien. The definition in the Mortgage Loan Company and Loan Broker Act covers only improved property and is silent about lien position.

Page 2, line 23 through page 3, line 7 – The definition of a “mortgage loan originator” includes certain duties that are clerical and may result in licensing requirements for loan processors and anyone involved in the mortgage loan process whose duties are strictly clerical.

Page 4, lines 2 through 3 – The line that reads “...or finances the sale of the person's own property,...” is unclear. There may be an unintended licensing requirement because of the language.

Page 4, lines 9 and 10 conflicts with page 4, line 24 – use of the word “registrant” (singular) in the former vs. “registrants” (plural) in the latter.

Page 6, line 18 through page 7, line 25 – 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.

Page 10, lines 2 and 3 – “affirmative action” is not defined.

Page 11, Section 12 – 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.

Page 10, Section 12 - 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.

Page 12, lines 5 through 12 – the continuing education requirement after failure to timely renew a license is not clear. It appears that the requirement for obtaining delinquent continuing professional education hours is not to exceed the annual requirement of 12 hours.

### **OTHER SUBSTANTIVE ISSUES**

As mentioned previously, there is no initial or continuing appropriation to fulfill the statutory mandate to license, educate, administer examinations and conduct background checks, hearings and enforcement actions as set forth in this proposed legislation.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mt