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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/13
 SPONSOR Cook LAST UPDATED 03/04/13 HB 254/aHBIC/aHJC
 SHORT TITLE Escrow Bonds & Audits SB _____
 ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to SB 282

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General Office (AGO)

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 254 deletes the lead in sentence on DIVISION RECORDS so the first sentence now reads “Division examination reports, financial information...” The change does not alter the intent of the section.

Synopsis of HBIC Amendment

1. On page 2, line 11, strike "three hundred" and insert in lieu thereof "five hundred". This makes 500 accounts rather than 300 the threshold for the requirement of a "certified public accountant reviewed statement".
2. On page 2, line 14, strike "full audit report" and insert in lieu thereof "certified public accountant reviewed statement".
3. On page 4, line 16, strike "five" and insert in lieu thereof "ten". This allows for ten days rather than five for the submission of a final account statement.
4. On page 4, line 22, after “address” insert “or legal description.”,

Synopsis of Original Bill

House Bill 254, amends the Escrow Company Act to eliminate two exceptions for obtaining a bond, requires the licensee to provide account statements, reports of condition and under certain circumstances, audit reports. The bill would create an exclusion of certain records held by the Financial Institutions Division (FID) from being subject to the Inspection of Public Records Act and from subpoena without an administrative, civil or criminal action. However the records may still be disclosed with the consent of the director.

Full audit report-

The bill would amend Section 58-22-8 NMSA 1978 so that “A licensee that manages three hundred or more escrow accounts at the time of application for a license renewal shall, at its own expense, submit with its license renewal application a full audit report for the prior calendar year performed and signed by an independent certified public account.”

Elimination of exceptions for bonds-

The bill would no longer allow exemptions from the provisions of Section 58-22-10 NMSA for licensee bonding for a) escrow companies that have been licensed for more than three years or b) an escrow company whose application for licensure was submitted on or before December 31, 1990 and that for at least three years immediately prior to licensure actually engaged in servicing at least five hundred accounts in escrow.

Statement of account-

The bill would expand the provisions of Section 58-22-18 NMSA 1978 so that within 5 days of a buyer depositing the final payment the licensee would be required to send a notice to the seller containing the final statement of account which shall include

- (1) The names of the buyers and sellers on the account;
- (2) The address of the subject property;
- (3) A statement that the account was paid in full;
- (4) The amount of the final payment;
- (5) The date that the final payment was deposited with the licensee; and
- (6) The date that the final payment was disbursed by the licensee.

The licensee is required to retain copies of the notices and make them available for examination by the director.

Reports of Conditions-

The bill would create a new section of the Escrow Company Act requiring the licensee to submit quarterly reports of condition as prescribed by the director. A licensee that fails to comply will be fined twenty dollars (\$20.00) for each day’s delay.

Division records-

The bill would amend the Act to contain the language:

“The records of the division generated or received pursuant to the Escrow Company Act, including division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not or have not yet culminated in administrative, civil or criminal action:

- A. are not public records subject to the Inspection of Public Records Act;
- B. may be disclosed only with the consent of the director; and
- C. are not subject to subpoena.”

FISCAL IMPLICATIONS

No fiscal implications were identified.

SIGNIFICANT ISSUES

RLD provides the following general information:

In 2012, the Financial Institutions Division placed 50 percent of the escrow companies examined into receivership and obtained permanent injunctions against the companies for egregious violations of the Escrow Company Act which included misappropriations in excess of \$1,000,000 of customer monies held in escrow trust accounts. Escrow receiverships in 2012 cost the State \$298,078.12. As a result the bill proposes to improve escrow regulations to prevent drastic and costly remedies such as receivership, and to enable the director of FID carry out the legislative purpose of the Escrow Company Act

AGO comments on the section dealing with confidentially of certain records:

Section 6 “Division Records” is a statutory exception to the New Mexico Inspection of Public Records Act (IPRA), § 14-2-1 to -12, NMSA 1978. The language “records of the division generated or received pursuant to the Escrow Company Act...” is broad in that it encompasses all the division records that are either received or created by the division under the Act. Since the citizen’s right to know is the rule and secrecy is the exception this broad exception could capture some information that the public should have access to and which does not compromise the discretion needed by the division to effectuate its work under the Act.

It may be appropriate for the Legislature to consider amending proposed Section 6. Instead of protecting all records of the Division that are received or created under the Act, it might be advisable to limit the exception to those records that are specifically listed, namely, "division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not or have not yet culminated in administrative, civil or criminal action." Whether these listed documents meet the need of the agency should, of course, be carefully vetted. Nevertheless, specific exemptions are consistent with the current IPRA scheme.

MW/blm