

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 15, 2011  
POSITION: Neutral

BILL NUMBER: SB 53  
AUTHOR: R. Calderon

**BILL SUMMARY: Real Estate Licensees**

This bill would provide the Department of Real Estate (DRE) with additional enforcement tools to combat mortgage fraud and other real estate violations, add safeguards to protect consumers who seek services from real estate licensees, and make technical changes to certain provisions of the Real Estate Law.

**FISCAL SUMMARY**

The Department of Finance estimates that this bill would have no state General Fund impact, and concurs with the DRE estimate that costs arising from this bill would be minor and absorbable.

By authorizing the Real Estate Commissioner to issue citations with fines of up to \$2,500, to licensees that violate provisions of the Real Estate Law, this bill could result in additional revenue to the Recovery Account of the Real Estate Fund. The DRE indicates that over the past two years, it has taken approximately 1,000 disciplinary actions per year. If 10 percent of those actions result in a citation and fine, this could generate approximately \$250,000. However, the DRE notes that while it can withhold real estate license renewals for those licensees who owe outstanding fines, it would have to go to Superior Court in order to collect outstanding fines from those who are unlicensed, resulting in costs to the DRE that are likely to make this bill fiscally neutral.

**COMMENTS**

The Department of Finance has identified no fiscal concerns with this bill.

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Analyst/Principal (0751) M. Tollefson	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

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**BILL ANALYSIS** Form DF-43 (Rev 03/95 Buff)

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**ANALYSIS**

## A. Programmatic Analysis

**Current law** requires real estate brokers to retain copies of all books, accounts, and records related to any transaction for which a real estate broker license is required, and to retain and make them available for inspection by the Department of Real Estate (DRE) for at least three years after the transaction closes. If, after appropriate notice, a real estate broker refuses to allow access, DRE may seek an administrative subpoena to compel the production of the materials. If a broker continues to refuse access, DRE must request representation the Department of Justice to enforce the subpoena in a Superior Court.

**This bill** would authorize the DRE to appear in court directly to enforce an administrative subpoena.

**Current law** allows the DRE to regulate and control the issuance and revocation of all real estate licenses, but lacks any provision that authorizes the DRE to issue an on-the-spot citation to a licensee found to have violated a provision of the Real Estate Law.

**This bill** would give the DRE the authority to issue citations and/or fines to both licensees and unlicensed individuals found to have violated provisions of the Real Estate Law, subject to the following:

- Citations may contain an order to correct the violation(s) identified and a reasonable time period by which the violation(s) must be corrected.
- Licensees would be authorized to appeal the findings of any such citation.
- Fines would be capped at \$2,500 per violation and would be deposited into the Real Estate Fund's Recovery Account, where they would be available to reimburse consumers for losses resulting from certain violations of the Real Estate Law.

**Current law** grants the DRE authority to enforce the Real Estate Law and to regulate and control the issuance and revocation, both temporary and permanent, of all real estate licenses. DRE is authorized, after conducting an investigation, to issue desist-and-refrain (D&R) orders and bar orders against licensees.

**This bill** would allow the DRE to make information public confirming the fact of an investigation or proceeding regarding a licensee or unlicensed person believed to be engaging in activities for which a real estate license is required, after the filing of a D&R or bar order, or the commencement of a formal disciplinary action by the DRE, and upon a finding by the DRE that action is warranted for the protection of the public, and that failure to act is likely to result in grievous harm. Any such release that contains the identity of a person or business under investigation must include language explaining that the subject of the release is entitled to a public hearing on the merits of the D&R order, bar order, or accusation.

**Discussion:** Current law provides no mechanism for use by the DRE to warn the public, if the department knows of licensees who are engaging in activities that pose a risk to the public. The public would have to wait until the DRE files a formal action such as a D&R order, in order to be notified of which companies or persons may pose a risk.

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**Current law** imposes certain disclosure and recording requirements on real estate brokers engaging in escrow activities.

**This bill** would require, beginning July 1, 2012, a real estate broker who engages in escrow activities for five or more transactions within a year, or whose escrow activities equal or exceed \$1 million in a calendar year, to file a report with the DRE within 60 days documenting the number of escrows conducted and the dollar volume escrowed during the calendar year in which the threshold was met. If the broker is subject to the provisions of this bill as well as the reporting requirements in current law, the broker may file a consolidated report. Failure to report would result in a penalty of \$50 per day for up to 30 days and \$100 per day thereafter, where total fines may not exceed \$10,000. This bill would allow the Real Estate Commissioner (Commissioner) to suspend or revoke the license of a broker who fails to pay.

**Discussion:** The DRE currently lacks the authority to determine which of its licensed brokers engage in escrow activities and current law does not require these licensees to notify DRE about their volume of escrow business. Without access to information about the activities of its licensees, the DRE is limited to using consumer complaints to help prioritize which of its licensees to examine. During the last year alone, real estate licensees were found to have mishandled over \$2.5 million in trust fund deposits. It is unknown what volume of mishandled money went undetected. Providing the DRE with specific information about its licensees will help give the department a better sense of the activities in which its licensees are engaging. This, in turn, will help the DRE identify potential problems before they result in harm to consumers.

**Current law** authorizes the Commissioner to suspend or revoke the license of a real estate licensee, or deny the issuance of a license to a real estate applicant, who has engaged in one or more of several prohibited acts. However, the Commissioner lacks the authority to deny the renewal of a license application submitted by a real estate licensee who is under investigation by the DRE for having engaged in behavior that would warrant a license suspension or revocation. This creates a situation in which the DRE must renew the license of a licensee that has paid his or her renewal fee and completed his or her continuing education requirements, even when the DRE plans to issue an accusation to that individual suspending or revoking his or her license. Recent press accounts have criticized the DRE for continuing to license individuals known to be engaging in acts that would disqualify them from licensure.

**This bill** authorizes, beginning July 1, 2012, the DRE to delay a license renewal to an individual known or suspected to have engaged in acts that would disqualify them from licensure until the results of any disciplinary actions against the licensee are final.

**Current law** makes it unlawful for any person to offer or sell any security in an issuer transaction unless the sale has been qualified or the security or transaction is exempted or is not subject to qualification. Current law requires a real estate broker to indicate in its transaction file the provisions in law pertaining to qualification or exemption from qualification under which a transaction is being conducted.

**This bill** would require a real estate broker to submit a copy of the information in the real estate broker's transaction file relative to securities qualification or exemption from securities qualification, pursuant to a transaction involving secured notes on real property, to any investor from whom the real estate broker obtains funds in connection with the transaction, within 10 days of receipt of those funds.

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**Current law** provides specified government law enforcement entities with access to records of the Department of Motor Vehicles (DMV).

**This bill** provides the DRE access to obtain copies of full-face engraved pictures or photographs of individuals directly from the DMV for purposes of enforcing the Real Estate Law and the Subdivided Lands Law.

**Discussion:** For many years, DRE had access to driver's license and vehicle registration information from the DMV. The DRE used this information to help it identify and locate individuals upon whom it sought to issue subpoenas, D&R orders, and accusations, and when interviewing victims of real estate fraud or other real estate violations, in order to properly identify the individuals with whom these victims interacted. In 2001, the DMV changed its policies regarding access to its records by limiting such access to sworn peace officers. This technically cut the DRE off from the records, because none of the DRE's personnel are sworn peace officers. Despite the 2001 change to the DMV's policy, some DRE offices continued receiving access to the DMV records until very recently. That changed in late 2010, when DMV began more formally enforcing its policies, and terminated all access to its records by the DRE employees.

Without access to DMV information, the DRE lacks access to photographs of persons it needs to investigate. The DMV's records can also help DRE identify the most recent address of a licensee or individual improperly acting without a license. The DMV has not identified any concerns with this bill.

**B. Fiscal Analysis**

The Department of Finance estimates that this bill would have no state General Fund impact, and concurs with the DRE estimate that costs arising from this bill would be minor and absorbable.

By authorizing the Commissioner to issue citations with fines of up to \$2,500, to licensees that violate provisions of the Real Estate Law, this bill could result in additional revenue to the Recovery Account of the Real Estate Fund. The DRE indicates that over the past two years, it has taken approximately 1,000 disciplinary actions per year. If 10 percent of those actions result in a citation and fine, this could generate approximately \$250,000. However, the DRE notes that while it can withhold real estate license renewals for those licensees who owe outstanding fines, it would have to go to Superior Court in order to collect outstanding fines from those who are unlicensed, resulting in costs to the DRE that are likely to offset the revenue.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year)				Fund Code
			(Dollars in Thousands)				
			FC	2011-2012 FC	2012-2013 FC	2013-2014 FC	
0001/Major Rev	SO	No		-----	No/Minor Fiscal Impact	-----	0001
2320/Real Estate	SO	No		-----	See Fiscal Summary	-----	0317

<u>Fund Code</u>	<u>Title</u>
0001	General Fund
0317	Real Estate Fund