

Memo To: Senate Commerce Committee  
From: Sherry C. Diel, Executive Director  
RE: HB 2125-Real Estate Salesperson and Broker License Fees  
Date: March 14, 2013

Chairperson Lynn and members of the Committee, on behalf of the Kansas Real Estate Commission, thank you for the opportunity to present testimony as a **proponent** of HB 2125.

### Fee Increase Request

The Commission requested the introduction of HB 2125 to provide a \$50 statutory increase for salesperson and broker original and renewal fees. The Commission plans to raise the fees \$35 by regulation. This would increase the cost of a two-year salesperson renewal fee from \$100 to \$135 and a two-year broker renewal fee would increase from \$150 to \$185. If the fee increase is approved, the Commission would restore voluntary budget cuts to existing services and the \$35 regulatory increase would generate \$240,290 in FY 2014.

The agency has not had a statutory fee increase since 1993 and the agency has not increased its license fees by regulation since 1998.

### Significant Budget Shortfall

The Commission requested introduction of HB 2125 because the agency is facing a substantial budget shortfall. The agency's projected fee fund balance at the end of FY 2015 is projected to be **\$4,680, after the agency made significant cuts to existing services for FY 2013—FY 2015 in order to submit a balanced budget**. The agency's budget shortage is due to approximately \$750,000 in fee fund sweeps since FY 2004 and the downturn in the economy that has caused licensee counts to drop by 4,000 since FY 2009. (17,600 licensees in FY 2009; 13,618 in FY 2013)

The agency's budget is wholly funded by fees paid by real estate salesperson and broker licensees and applicants. The bulk of the fees come from original and renewal fees. Fee receipts are split 90/10 with 10% being transferred to the State General Fund. Also, except for costs associated with a disciplinary matter, all fines are transferred to the State General Fund. The agency has voluntarily cut its budget for the past three fiscal years at the request of the House in lieu of passing a requested fee increase. A list of the extensive cost saving measures the agency has implemented is attached.

A quick breakdown of the Commission's voluntary budget cuts reflects the following:

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Salaries & Wages:	630,811 (61%)	686,377 (69%)	678,036 (72%)	672,221 (72%)
Contractual Services:	364,476 (35%)	275,784 (28%)	236,620 (25%)	230,435 (25%)
Commodities:	17,043 (2%)	18,550 (2%)	11,925 (1%)	13,450 (1%)
Capital Outlay:	21,951 (2%)	16,500 (1%)	16,500 (2%)	16,500 (2%)
<b>Total Budget:</b>	<b>1,034,281</b>	<b>997,211</b>	<b>943,081</b>	<b>932,606</b>

### **Impact of Budget Shortfall**

The budget shortfall is actually greater than the Division of Budget's ending fee fund balance projections because a person that currently performs part of the Licensing and Enforcement functions had to be cut for FY 2014 and FY 2015 to balance the budget. However, Licensing staff cannot keep up with the current workload, which means that one of the unfunded vacant positions should be filled. It is clear that the fee fund deficit is too large to address by cuts alone when personnel is one of the agency's largest expenditures and the workload is not getting done within current staffing levels. Without filling the vacant FTE in Licensing in FY 2014 – FY 2015, the agency will have significant difficulty inputting continuing education taken by licensees, processing renewals, and processing licensee changes and company changes in a timely and accurate fashion.

### **Program Cuts Are Inevitable in FY 2014 and FY 2015 If a Fee Increase Is Not Approved**

If the agency does not receive a fee increase, agency programs will have to be cut. The largest costs for the agency are personnel and travel expenses for auditors and commissioners. If forced to cut programs, areas that could be addressed include:

#### **Licensing and Education**

The Commission will only have 3 FTEs in Licensing to perform all the Licensing and Education functions. This same work was performed by 5 FTEs and 2 Temporary PT staff just 2 years ago. The staff's duties includes not only original applications, renewal applications, licensee demographic changes, transfers, and company changes, it includes approval of courses and instructors for continuing education and entering rosters of continuing education in each licensee's record that are submitted daily by the schools so that licensees can timely renew. The staff can no longer do this much work in a timely and accurate manner.

#### **Possible Cuts include:**

- Issue licenses to most applicants unless a statutory bar or statutory prohibition applies
- Eliminate the issuance of agency orders to restrict or condition licenses
- Computerized uploading of continuing education rosters from schools (however, this measure would increase IT costs which is not in the budget)
- Enforcement and administrative staff are being pulled over to perform Licensing functions. This creates accuracy problems and will create backlogs in other areas

#### **Travel**

Travel costs must be cut.

#### **Possible cuts include:**

- Brokers may be required to submit requested documents to the Commission for audit purposes via mail or email and on-site audits may only be done if deemed necessary. Other alternatives are to reduce how often audits are conducted or to eliminate audits.
- Reduce in-person Commission meetings to quarterly which would impact applicants who have submitted an application for review and those that have requested a hearing
- Disciplinary committee will not meet in-person
- Skype Commission meetings and hearings and Skype Disciplinary committee meetings will be considered as an alternative when the improved internet connectivity is installed

### **Complaints**

Triage Policy for complaints must be revised.

#### **Possible cuts include:**

- Guidelines are being established for complaints that the Commission will not address
  - May only investigate complaints involving serious matters including mishandling of money, misrepresentation, etc.
  - May only issue agency orders for suspensions and revocations and associated penalties
- Guidelines will be established for complaints to be given low priority; and
- Warning letters may ultimately be issued except in egregious cases

### **Agency Receipts**

The agency may not be able to afford to pay the 90/10 split of agency receipts and other “central service billings” costs. If the agency did not transfer 10% of receipts to the SGF in FY 2014 and FY 2015, an additional \$90,000-\$95,000 **per year** would remain in the Commission’s real estate fee fund. In addition, the Commission expends approximately \$35,000-\$50,000 for “central service billings” costs per year.

### **Enhancement Request Only Restores Existing Services**

There has been some confusion that the Commission is requesting a fee increase and is then asking to spend more money. That is technically true; but only because of the significant cuts to existing services that the Commission will need to make in FY 2014 and FY 2015 to end the year with money in the fee fund. However, there have been some significant changes at the Commission since the budget was submitted in September. With the approval of the Governor’s Office, the Commission was able to reorganize some of its existing staffing and hire an attorney and legal assistant. This has created the opportunity for significant efficiencies in operations and most of the Commission’s disciplinary and licensure hearings are now handled by the in-house attorney. This has resulted in substantial savings. Consequently, the expenditures needed for the Commission to return to existing services for FY 2014—FY 2015 is much less than initially proposed and can be addressed by the Senate Ways and Means Committee’s recommendation to fund the agency at FY 2012 actual expenditure levels.

### **Conclusion**

Because the agency’s primary goal is to protect the public, implementing severe program cuts would not be in the best interest of the public or licensees. The agency has done its part to implement voluntary budget cuts, implement policies and procedures to generate efficiencies, and to introduce legislation to request a fee increase to maintain current services. The agency respectfully requests that the Committee support the agency’s request for a fee increase and to restore the voluntary cuts that were made to FY 2014 and FY 2015 to allow for continuance of existing services.

I would be happy to address the members’ questions.



# Agency Snapshot

## Mission

To protect the public interest, which embraces both the interests of the regulated real estate licensees and the interests of consumers who use their services and products. The Kansas Real Estate Commission will act in accordance with the highest standards of ethics, accountability, efficiency and openness.

We affirm that safeguarding the public interest in the selling, purchasing and leasing of real estate and developing responsive policies and procedures which are feasible and not unduly burdensome to regulated real estate licensees is a public and private trust. We approach our activities with a deep sense of purpose and responsibility. The public and regulated licensees can be assured of a balanced and sensible approach to regulation.

## Commission Structure

The Commission consists of five members appointed by the Governor: one from each of the four congressional districts and one member at large.

The law provides that at least three members shall have been real estate brokers for five years and at least one member shall have never engaged in business as a real estate broker and shall not be so engaged while serving on the Commission. This combination of industry and public members results in a well-rounded, functioning unit.

Each member is appointed for a four-year term. Term expiration dates are staggered, resulting in one appointment each year for three years and two appointments in the fourth year. This ensures some continuity within the Commission.

The Commission appoints a director who is responsible for employing and directing the agency staff and implementing policies set by the Commission.

## Commission Members

Kathy Copeland	Chair	3 <sup>rd</sup> Congressional District
Tim Holt	Vice Chair	4 <sup>th</sup> Congressional District
Marilyn Bittenbender	Member	2 <sup>nd</sup> Congressional District
Errol Wuertz	Member	1 <sup>st</sup> Congressional District
Shirley Cook	Member	State at Large

## Agency Functions

The primary purpose of the Kansas Real Estate Commission is to protect the public interest in the real estate marketplace through the regulation of real estate brokers and salespersons. These responsibilities are carried out through a variety of efforts, which can be divided into three main categories:

<p style="text-align: center;"><b><u>Licensing and Education</u></b></p> <p>Respond to public and licensee inquires Process new applications and renewals Process licensee and company changes Issue consent agreements Issue and litigate agency orders Approve real estate curriculum and instructors Track and enter continuing education</p>	<p style="text-align: center;"><b><u>Enforcement</u></b></p> <p>Respond to public and licensee inquires Investigate complaints from the public Issue warning letters and agency orders</p> <p style="text-align: center;"><b><u>Audits</u></b></p> <p>Respond to broker inquiries Audit brokerage trust account and transaction files Issue warning letters and agency order</p>
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## Recent Cost Saving Measures

The agency has already significantly modified the way it does business. In addition, to a reduction in staffing, the agency has restructured and implemented several cost saving practices in its Licensing and Enforcement divisions.

### Increase in Hearing Requests in a Bad Economy

Although licensee counts have decreased, the agency has experienced an increase in the number of requests for hearings for the past several fiscal years. This trend is expected in a poor housing market for two reasons: (1) violations committed by licensees call for more suspensions and revocations; and (2) more licensees request hearings to fight having to pay a fine.

#### Staffing Changes

- Restructured agency staff without adding FTEs to allow for hiring of a legal assistant and a litigation attorney in order to minimize the effect of the increase in hearing requests
- Reduced contracted legal expense by shifting most litigation to in-house litigation attorney

#### Changes in Discipline and Licensure Procedures

- The Commission made changes to its discipline process commencing in FY 2012 by:
- Sending warning letters if certain criteria are met and the public will not be harmed
- Entering into more consent agreements for both licensure and enforcement matters
- Reserving the issuance of agency orders for the more serious cases or those cases which cannot be resolved with a reasonable settlement
- Reduced staff time with new discipline process
- Reduced expenses associated with defending hearings requested by licensees and applicants

## **Other Agency Changes to Create Efficiencies**

### **Efficiency Policies and Procedures (\*In Progress\*)**

- Creation of enhanced docket management database system with reporting capabilities
- Creation of complaint management database system with reporting capabilities
- Changes in agency procedures to improve efficiencies
- Improvements to agency forms to eliminate confusion
- Improvements to Instructions and Frequently Asked Questions posted on the agency Website
- Automated phone system
- Requiring complaints to be submitted in writing on an agency form with requested supporting documentation attached
- Implementing guidelines to provide staff specific authority to approve, deny or restrict/condition license applications
- Implement the use of templates and form letters for the majority of agency correspondence
- Reduce postcards/ mailing of notices to licensees and use email notifications whenever possible
- Return incomplete paperwork to licensees
- Improvement of the license application checklist
- Creation of an agency newsletter
- Staggered two-hour blocks of time for staff to work without interruptions

### **Travel**

- Out-of-state travel has been eliminated for the past 4 years

### **Commission Meetings**

- Commission in-person meetings have been reduced to every other month when licensure hearings are held in addition to reviewing applications and conducting other Agency business
- On the "off" months, the commissioners meet by conference call to review applications and conduct other agency business

### **Online License Management System**

- An online system has been developed for licensees to change demographic information, transfer licenses between companies and to add or remove company affiliations, which would ease the workload on License staff.
- However, the Commission's current bandwidth and router connection cannot support the expected demand for the new online system. The Commission has been waiting since the summer of 2012 for the necessary infrastructure to be installed to implement the system.

### **Enforcement**

- With the realignment of Enforcement staff, the Commission is developing new procedures to resolve the backlog in Enforcement but the backlog has already significantly improved over the past 4 months.

Staff continues to explore ways of finding efficiencies and implementing new procedures.

## KREC Fee Structure

	<u>Current</u>	<u>Proposed</u>
Application Fees	\$15	\$15
Broker Fees	\$150	\$185*
Salesperson Fees	\$100	\$135*
Late Fees	\$50	\$50
Reinstatement Fees	\$15	\$15
Certifications of Licensure History	\$10	\$10
Original Course Approvals	\$50	\$50
Renewal Course Approvals	\$15	\$15
Company Changes	\$15/license	\$15/license
Duplicate Licenses	\$10	\$10
Transfers	\$15	\$15
New Branch Office	\$25	\$25
New Primary Office	\$25	\$25
Certification of Education History	\$10	\$10
Certification for Professional Corporation	\$10	\$10
Each Additional Primary or Branch Office Affiliation	\$10	\$10

\*Commencing in FY 2014, the Commission proposes a \$50 statutory increase to the two-year license fee for brokers to \$200 (\$185 by regulation) and a \$50 statutory increase to the two-year license fee for salespersons to \$150 (\$135 by regulation).