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FISCAL IMPACT STATEMENT

LS 7315

BILL NUMBER: HB 1229

NOTE PREPARED: Jan 15, 2004

BILL AMENDED:

SUBJECT: Home Loan Practices.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (A) The bill restricts certain lending acts and practices.

(B) The bill establishes the Homeowner Protection Unit (HPU) in the Office of the Attorney General (AG).

(C) The bill provides enforcement procedures for deceptive mortgage acts.

(D) The bill establishes a \$3 mortgage recording fee.

(E) The bill requires the Indiana Housing Finance Authority (IHFA) to provide home ownership training programs.

(F) The bill appropriates \$75,000 to the Legislative Council to contract for a study of predatory lending and the high rate of foreclosure in Indiana.

(G) The bill establishes the Interim Study Committee On Mortgage Lending Policies (ISCOMLP.)

Effective Date: Upon passage; July 1, 2004.

Explanation of State Expenditures: *Summary: (B) -* The bill establishes the Homeowner Protection Unit under the Attorney General. The HPU would cooperate with the Indiana Professional Licensing Agency, Department of Financial Institutions, Department of Insurance, Securities Division of the Secretary of State, the Supreme Court Disciplinary Commission, the Indiana Housing Finance Authority, the Department of State Revenue, the State Police, and prosecuting attorneys in order to implement the enforcement responsibilities of the bill. The HPU must cooperate with the IHFA in order to implement and maintain home

ownership training programs.

Under the bill, the HPU would be funded with revenue from the proposed mortgage record fee. A portion of the proposed fee would be deposited into the Homeowner Protection Unit Account of the state General Fund. (see *Explanation of State Revenues*).

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. For the FY 2004-2005 biennium the AG has been authorized 302 full-time, 32 intermittent, and 3 temporary positions. As of December 3, 2003, the AG had 249 full-time, 2 part-time, 1 temporary, and 20 intermittent employees. For the FY 2004-2005 biennium the AG has been authorized 302 full-time, 32 intermittent, and three temporary positions. The AG reverted \$645,443 from its operating account at the end of FY 2003. If revenue from the proposed fee does not fully fund the HPU, the source of funds and resources required to satisfy the provisions of this bill would depend upon legislative and administrative actions.

(E) Under the bill, the Home Ownership Training Account within the state General Fund would be created. The Account would be used to support home ownership training programs. The Account would be administered by the IHFA. At the end of a state fiscal year, money in the Account in excess of \$100,000 would revert back to the state General Fund.

(F) The bill requires the state to enter into a contract with an independent organization to conduct a study on the causes of the high rate of foreclosure in Indiana during 2001-2004. The study would be funded by an appropriation from the Homeowner Protection Unit Account in FY 2006. The bill appropriates the first \$75,000 of revenue generated from the increased mortgage recording fees established under the bill (See *Explanation of State Revenues*.) The study results must be reported in electronic format to the Legislative Council no later than December 31, 2006.

Background: There were 29,731 mortgage foreclosure cases filed in Indiana trial courts in 2002.

(G) The bill establishes the Interim Study Committee on Mortgage Lending Policies. The Committee would operate under the policies established by the Legislative Council for interim study committees. Under Legislative Council Resolution 03-02, 2003 interim committees with a membership under 16 were budgeted \$8,000. Committees with a membership of 16 or more were budgeted \$15,000.

Explanation of State Revenues: *Summary:* (B) & (E) - The bill establishes a fee of \$3 for recording a mortgage. County recorders would retain \$0.50 of the \$3 fee. The remaining \$2.50 would be distributed to the Auditor of State. The Auditor would distribute \$1.25 of every \$2.50 to the IHFA to identify, promote, and fund home ownership training programs throughout Indiana. The remaining \$1.25 would be distributed to the HPU to carry out their responsibilities under the bill.

Note: Under the bill, the first \$75,000 in fee revenue deposited into the Homeowner Protection Unit Account would be used for the aforementioned mortgage foreclosure study before any expenditure may be made by the Attorney General for the HPU.

According to the Department of Local Government Finance, approximately 200,000 parcels of land are sold or conveyed each year. The U.S. Bureau of Census reports that 21.8 M primary mortgages were originated in the U.S. from 1995-1999. Approximately 2.2% of these, or an average of 96,000 mortgages per year (1995-

1999), are attributed to Indiana. According to the above DLGF estimate, a little less than 50% of all parcels of land sold or conveyed per year would have a mortgage. Therefore, the \$3 fee is estimated to generate about \$48,000 for the recorder, approximately \$120,000 for the IHFA , and approximately \$120,000 for the HPU. (These amounts would represent a minimum as second and third mortgages are not factored into the estimate.)

(C) *Civil Penalty*- The AG would be allowed to bring an action to enjoin a person from committing deceptive lending acts under the bill. The court could, as one option, assess violators a civil penalty of \$15,000 per violation. If the court decided to issue an injunction instead of a monetary penalty, and that injunction was violated, the violator would be required to pay a civil penalty not exceeding \$15,000.

In addition, those that knowingly and intentionally were to violate the provisions of the bill would commit an act that is actionable by the AG and would be subject to the penalties for deceptive acts. Current law includes civil penalties up to \$500 per deceptive act and up to \$15,000 per violation of an injunction.

Criminal Penalty- Under the bill, a person that knowingly or intentionally were to violate the provisions of the bill regarding home loan practices, the person would commit a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (C) A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (B) County recorder revenues would increase by \$0.50 per mortgage filing (see *Explanation of State Revenues*).

(C) If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Office of the Attorney General; Indiana Housing Finance Authority; Professional Licensing Agency and appropriate licensing boards; Department of Financial Institutions; Department of Insurance; Office of the Secretary of State, Securities Division; Indiana Supreme Court; Department of State Revenue; Indiana State Police.

Local Agencies Affected: County recorders, trial courts, prosecutors, local law enforcement agencies.

Information Sources: Department of Financial Institutions website: www.in.gov/dfi/members/minutes; State Budget Agency website: www.in.gov/sba; State Budget Agency: BUDSTARS system; State of Indiana *HRM Detail Staffing Report, December 3, 2003*; *Indiana Judicial Service Report 2002, Vol. 1, pg 71*; US Bureau of Census: *American Housing Survey For the United States In 1999*.

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