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FISCAL IMPACT STATEMENT

LS 7074 | **NOTE PREPARED:** Jan 6, 2010
BILL NUMBER: HB 1206 | **BILL AMENDED:**

SUBJECT: Five-Star Mortgages.

FIRST AUTHOR: Rep. DeLaney | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: This bill has the following provisions:

(1) Requires the Department of Financial Institutions (DFI) to establish a voluntary five-star mortgage program for creditors that offer qualifying mortgages to Indiana customers after June 30, 2010.
(2) Provides that to qualify as a five-star mortgage, a mortgage: (a) must require a down payment of at least 20% of the purchase price of the dwelling; (b) must have a fixed rate of interest; (c) must provide for an escrow account for the payment of taxes and insurance; (d) may not have a term that exceeds 30 years; and (e) may not include a prepayment penalty or fee.
(3) Provides that to qualify as a five-star mortgage lender, a creditor: (a) must offer to Indiana customers one or more mortgage products that qualify as five-star mortgages; (b) must not have a record of any violation of the law concerning mortgage appraisal fraud or, in certain circumstances, other laws concerning mortgage transactions; and (c) must not have a key officer or director with a record of a felony involving fraud, deceit, or misrepresentation.
(4) Requires DFI to issue to a creditor that qualifies as five-star mortgage lender a certificate that: (a) designates the creditor as a five-star mortgage lender; and (b) may be displayed at any of the creditor's Indiana business locations at which the creditor offers five-star mortgages.
(5) Requires a five-star mortgage lender to provide a written statement to any Indiana customer who: (a) applies for a five-star mortgage offered by the lender; and (b) does not qualify for the mortgage based on the lender's underwriting standards.
(6) Provides that the statement must set forth the reasons why the customer did not qualify for the five-star mortgage.
(7) Allows a creditor that qualifies as a five-star mortgage lender to include that fact in marketing materials or solicitations directed at Indiana customers, subject to DFI's rules.

(8) Provides that DFI's rules establishing the program may provide for the following: (a) reporting requirements for five-star mortgage lenders, (b) civil penalties for creditors that falsely hold themselves out as five-star mortgage lenders, (c) the use of a statement, a seal, or another designation on paperwork associated with a five-star mortgage or in marketing materials or solicitations that include the creditor's designation as a five-star mortgage lender, and (d) an application fee for applications submitted by creditors seeking to participate in the program.
(9) Provides that the authority of the boards of trustees of the Public Employees' Retirement Fund (PERF) and of the State Teachers' Retirement Fund (TRF) to invest in pooled funds includes the authority to invest in pools consisting in part or entirely of five-star mortgages.
(10) Allows the PERF board to maintain alternative investment programs within: (a) the PERF annuity savings account; and (b) the legislators' defined contribution plan; that invest in pooled funds consisting in part or entirely of five-star mortgages, or that otherwise invest in five-star mortgages.
(11) Allows the TRF board to maintain alternative investment programs within the TRF annuity savings account that invest in pooled funds consisting in part or entirely of five-star mortgages, or that otherwise invest in five-star mortgages.

Effective Date: Upon passage; July 1, 2010.

Explanation of State Expenditures: *Summary*: DFI reports the provisions of this bill will increase the workload of the Department; however, these increases are expected to be offset through the collection of five-star lender application fees.

Additional Information:

5 Star Mortgages: This bill requires DFI to: (1) create guidelines and rules that (a) define a five-star mortgage and (b) govern the creditors who provide five-star mortgages, (2) review the applications of creditors requesting to be five-star mortgage lenders, (3) provide justification to creditors whose applications to be a five-star lender are denied, (4) create a five-star lending certificate for qualifying lenders to display, (5) receive reports from five-star lenders, (6) potentially investigate creditors who fail to comply with the requirements of the five-star lending program, and (7) file civil actions against creditors who falsely purport to be five-star lenders. Under the bill's provisions, DFI is authorized to assess an application fee which is not to exceed the costs to administer the five-star program. Depending on the decisions made by DFI administrators, revenue received from application fees can fully or partially offset any increase in state expenditures.

DFI estimates this bill may increase DFI workload by approximately 450 hours per year, or 10 additional hours per week, to meet the bill's requirements. Most of the increase in workload will result from creating guidelines and rules for mortgage lenders, reviewing applications to be a five-star mortgage lender, investigating violations, and developing a five-star lender tracking system. Additional increases in workload for both DFI and the Office of the Attorney General will result to the extent there are civil cases filed against creditors who falsely purport to be a five-star lender.

The bill's requirements represent an additional workload [and/or expenditure] on the agency outside of the agency's routine administrative functions, and existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

Public Employee Retirement Fund (PERF) and Teacher's Retirement Fund (TRF): This bill allows the PERF and TRF executive boards to invest retirement funds in pooled funds that consist either entirely or in part of 5 star mortgages. Providing these mortgages as investment options will increase the number of options available to investment managers. Assuming 5 star mortgages are a good investment, these options will be selected over less appealing ones. These provisions are not necessarily expected to impact state expenditures or workload, but rather expand the options available to managers investing the public funds of PERF and TRF.

Explanation of State Revenues: *Summary:* This bill will increase state revenue from application fees for 5 star lenders, from any civil penalties assessed against individuals who violate provisions of the 5 star program, and any additional revenue collected from civil court fees. Increases in state revenue is indeterminable.

Additional Information:

Program Fees: This bill will allow DFI to collect application fees for the five-star lending program. Increases in revenue will depend on how many creditors apply to be a five-star lender and the application fee established by DFI.

Civil Penalties: Under the bill, creditors who are found to have violated provisions of the five-star lending program can be subject to civil penalties. This will increase state revenue (1) to the extent individuals are found in violation of the program's provisions, (2) if retribution is sought through the civil process, and (3) awards made by the court. Actual increases are indeterminable.

Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of $100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee ($2), automated record keeping fee ($7), judicial salaries fee ($18), public defense administration fee ($3), court administration fee ($5), and the judicial insurance adjustment fee ($1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: This bill may increase the workload of local courts if more civil cases are heard for violations of the five-star lending program. Actual increases are unknown.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the $100 civil costs 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. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: DFI; Office of the Attorney General.

Local Agencies Affected: Local courts.

Information Sources: John Schroeder, DFI.

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