LEGISLATIVE SERVICES AGENCY

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FISCAL IMPACT STATEMENT

LS 7074 **NOTE PREPARED:** Feb 1, 2010
BILL NUMBER: HB 1206 **BILL AMENDED:** Feb 1, 2010

SUBJECT: Five-Star Mortgages.

FIRST AUTHOR: Rep. DeLaney **BILL STATUS:** 2nd Reading - 1st House
FIRST SPONSOR:

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

Summary of Legislation: This bill has the following provisions:

(1) establishes a voluntary five-star mortgage program for creditors that offer qualifying mortgages to Indiana customers after June 30, 2010,
(2) requires the Department of Financial Institutions (DFI) to adopt guidelines to implement the program,
(3) provides that to qualify as a five-star mortgage lender, a creditor must provide to DFI a certification attesting that the creditor: (a) offers or will offer to Indiana customers one or more mortgage products that qualify as five-star mortgages; (b) does not have a record of any violation of the law concerning mortgage appraisal fraud or other laws concerning mortgage transactions; and (c) does not have a director or an executive officer with a record of a felony involving fraud, deceit, or misrepresentation,
(4) provides that to qualify as a five-star mortgage, a mortgage: (a) must require: (i) a down payment of at least 10% of the purchase price of the dwelling, in the case of a purchase money transaction; or (ii) that the customer have equity of at least 10% in the dwelling, in the case of a refinancing ; (b) must have a fixed rate of interest; (c) must provide for an escrow account for the payment of taxes and insurance, if the creditor regularly provides for such escrow accounts in the creditor's ordinary course of business; (d) may not have a term that exceeds 30 years; and (e) may not include a prepayment penalty or fee,
(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 guidelines,

(8) provides that DFI's guidelines may provide for the following: (a) reporting requirements for five-star mortgage lenders, (b) a civil penalty 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 that indicates that the mortgage product is a five-star mortgage, (d) a requirement that a creditor that qualifies as a five-star mortgage lender and files a certification with DFI shall periodically submit a renewal certification, (e) a fee for certifications and renewal certifications submitted by creditors participating in the program.
(9) requires DFI to publish on the Department's Internet web site a list of all creditors that have a current and accurate certification or renewal certification on file with DFI,
(10) 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,
(11) 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, and
(12) 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: (Revised) *Five-Star Mortgages*: This bill will require DFI to (1) adopt guidelines to implement a five-star mortgage program, (2) publish a list of creditors who have accurately self-certified to be five-star lenders, and (3) investigate credible complaints of lenders falsely purporting to be five-star lenders. DFI reports the provisions of this bill can be implemented with existing staff and resources.

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 five-star mortgages. Providing these mortgages as investment options will increase the number of options available to investment managers. Assuming five-star mortgages are a good investment, these options may 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: (Revised) *Summary:* This bill will increase state revenue from certification fees for five-star lenders, from any civil penalties assessed against individuals who violate provisions of the five-star program, and any additional revenue collected from civil court fees. Increases in state revenue is indeterminable.

Additional Information:

(Revised) *Certification Fees*: This bill will allow DFI to collect certification fees for the five-star lending program. Increases in revenue will depend on the number of creditors who 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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