

Legislative Analysis



HOMEOWNER PROTECTION FUND

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 1160 (as passed the Senate)

Sponsor: Sen. Tom Casperson

Committee: Appropriations

Complete to 7-17-12

SUMMARY OF SENATE BILL 1160 AS PASSED THE SENATE

Senate Bill 1160 creates the Homeowner Protection Fund to be administered by the Department of Treasury in consultation with the Department of Attorney General. The fund could receive any money or other assets from any source for deposit in the fund, including any interest or earning from fund investments. The state treasurer would have control over the investment of the fund. Money in the fund at the close of the fiscal year would remain in the fund.

In addition to creating the Homeowner Protection Fund, Senate Bill 1160 provides for authorized expenditures from the fund, upon appropriation, by the Departments of Attorney General, Education, Military and Veterans Affairs, and Treasury, and the Michigan State Housing Development Authority (MSHDA). Specifically, the following are considered authorized expenditures, upon appropriation, under the provisions of Senate Bill 1160:

Department of Treasury

- Payments to "qualifying victims" of a foreclosure related crime (see further analysis below)
- Programs approved by the Attorney General to assist homeless children

Michigan State Housing Development Authority (MSHDA)

- Foreclosure counseling approved by the Attorney General and foreclosure-related legal aid services approved by the Attorney General
- Blight elimination
- Michigan State Housing and Community Development Fund programs (See MCL 125.1458a and MCL 125.1458b)

Department of Education

- Technology improvements, renovation, rehabilitation, and equipping of building or facilities for instructional programs being operated, maintained, authorized, established, or overseen by the Education Achievement Authority (EAA)
- Programs approved by the Attorney General to assist homeless children

The Department of Attorney General may expend funds, upon appropriation, for operational and enforcement purposes.

The Department of Military and Veteran Affairs may expend funds, upon appropriation, for programs to assist military service members affected by the foreclosure crisis.

Victim Restitution

As was noted above, the Department of Treasury may expend funds for victim restitution payments to "qualifying victims." Under the bill, "qualifying victims" are defined as residents of this state to whom one of the following applies:

- Was awarded restitution by a court in prosecution for a "qualifying crime," but the defendant was unable to pay the full amount to the victim
- Was a victim of a "qualifying crime" and can provide evidence of the amount of loss but was not awarded restitution in court

A "qualifying crime" is defined as a criminal offense resulting in a conviction for conduct involving the exchange of money or services for promised assistance with obtaining, servicing, modifying, refinancing, negotiating, or stopping foreclosure of a mortgage on a primary residence or with redeeming a mortgaged primary residence after foreclosure.

To obtain restitution under the provisions of the bill, the qualifying victim would be required to submit a claim to the Attorney General. The Attorney General would then be authorized to direct the State Treasurer to pay the qualifying victim restitution from the fund. Restitution payments could not exceed the lesser of \$3,000 or one of the following:

- The amount of restitution awarded by the court that the defendant is unable to pay
- The amount of loss from a qualifying crime as supported by evidence of the claim

The Attorney General would retain sole discretion in the determination of whether to authorize a payment and the amount to be paid to the qualifying victim. The determination would not be judicial or quasi-judicial in nature, would not create or affect a private right or license, and would not be subject to review under any law.

FISCAL IMPACT

The state of Michigan received approximately \$97.2 million under the Joint State-Federal Foreclosure Settlement to be used for purposes intended to avoid preventable foreclosures, to counter the effects of the foreclosure crisis, for law enforcement activities to prevent and prosecute foreclosure fraud or deception, and to compensate states for foreclosure-related costs stemming from the alleged unlawful conduct of the defendants in the suit.

The bill would create the Homeowner Protection Fund as a repository for the funds the state of Michigan received under the Joint State-Federal Foreclosure Settlement.

Furthermore, the bill outlines the authorized purposes for which expenditures of the fund may be made; however, it requires that a legislative appropriation be made prior to any expenditure of the funds for the stated purposes.

As drafted, the bill's authorized expenditures align with Supplemental Request 2012-15 from the State Budget Office, which requests appropriations for the Departments of Attorney General, Education, Military and Veterans Affairs, and Treasury, and the Michigan State Housing Development Authority for the purposes described in this bill.

Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.