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BILL



ANALYSIS

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Senate Bill 1160 (as passed by the Senate)
Sponsor: Senator Tom Casperson
Committee: Banking and Financial Institutions

Date Completed: 6-26-12

CONTENT

The bill would enact a new statute to create the "Homeowner Protection Fund" within the Department of Treasury. The bill would authorize spending from the Fund by the Department of Treasury, the Department of Attorney General, the Michigan State Housing Development Authority (MSHDA), the Michigan Department of Education, and the Department of Military and Veterans Affairs upon appropriation for specified programs, including victim restitution, programs to assist homeless children, and foreclosure counseling.

Authorized Expenditures

The bill would authorize the Departments and MSHDA to spend money from the proposed Fund upon appropriation, as follows.

The Department of Treasury could spend Fund money for the following:

- Payments to "qualifying victims" of a crime related to the foreclosure of a mortgage on a primary residence (as described below).
- Programs approved by the Attorney General to assist homeless children.

The Michigan State Housing Development Authority could spend Fund money for the following:

- Foreclosure counseling and foreclosure-related legal aid services approved by the Attorney General.
- Blight elimination.
- Michigan Housing and Community Development Fund programs under Sections 58a to 58d of the State Housing and Development Authority Act.

The Michigan Department of Education could spend money from the Fund for the following:

- Technology improvements or equipment for, or renovation or rehabilitation of, a school building under the oversight of the Education Achievement Authority.
- Programs approved by the Attorney General to assist homeless children.

The Department of Military and Veterans Affairs could spend money from the Fund to assist military service members affected by the foreclosure crisis.

The Department of the Attorney General would be authorized to spend Fund money for operational and enforcement expenses.

Victim Payments

To obtain restitution for a qualifying crime, a qualifying victim would have to submit a claim to the Attorney General. A "qualifying crime" would be 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.

A "qualifying victim" would be a Michigan resident to whom one of the following applies:

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

After a qualifying victim submitted a claim, the Attorney General would be authorized to determine the amount of restitution to be paid, if any, and direct the State Treasurer to make restitution payments from the Fund. Restitution paid to an individual would be limited to the lesser of \$3,000 and either the amount of restitution ordered by a court that the defendant was unable to pay or the amount of loss supported by evidence submitted with the claim.

The determination of whether to direct payment and of the amount to be paid would be in the sole discretion of the Attorney General, would not create or affect a private right, and would not be subject to review under any law.

Fund Administration

The State Treasurer, in consultation with the Department of Attorney General, would be the administrator of the proposed Homeowner Protection Fund for auditing purposes. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would be responsible for the investment of the Fund, and all earnings of the Fund would have to be credited to it. The balance in the Fund would carry forward at year end.

FISCAL IMPACT

The State-Federal Foreclosure Settlement designated approximately \$97.2 million for distribution to Michigan for purposes including avoiding preventable foreclosures, alleviating the effects of the foreclosure crisis, law enforcement activities to prevent or prosecute financial fraud or deceptive practices, and compensation to the State for costs resulting from unlawful conduct of the defendants in the suit. The bill would create the Homeowner Protection Fund as a repository for the settlement funds and designate the departments and purposes for which the money could be spent. Appropriations from the Fund would be required before any money could be spent; the bill, however, would not make any appropriation. On May 21, 2012, the State Budget Director submitted a request to the Legislature for \$97.2 million in supplemental funding from the proposed Homeowner Protection Fund in FY 2011-12 for the Departments of Attorney General, Treasury, Education, and Military and Veterans Affairs, and the Michigan State Housing Development Authority for the purposes described in this bill. The supplemental request is pending.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.