HOUSE BILL REPORT
HB 1081

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to the mortgage lending fraud prosecution account.

Brief Description: Providing funds to deter, investigate, and prosecute real estate fraud crimes.

Sponsors: Representatives Hunter, Benson, Schual-Berke, Newhouse, Cooper, Roach and Simpson.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/22/03, 2/11/03 [DPS].

Brief Summary of Substitute Bill

- Creates a fund to be administered by the Department of Financial Institutions and the State Treasurer for the purpose of assisting state and local law enforcement authorities in deterring, investigating, and prosecuting fraud on the part of mortgage lenders.
- Requires county auditors to collect money for the Mortgage Lending Fraud Prosecution Account via the imposition of a surcharge upon those recording certain deeds of trust.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hunter, Roach and Santos.

Minority Report: Without recommendation. Signed by 1 member: Representative Hatfield.

Staff: Thamas Osborn (786-7129).

Background:

Predatory Lending: Since the late 1990s, there has been increasing controversy nationwide regarding the marketing and lending practices of certain members of the mortgage lending industry, particularly those involved in the subprime market. Subprime loans are those issued to borrowers who do not meet the credit standards required to receive a loan on the prime market. Some unscrupulous lenders engage in a variety of fraudulent and/or deceptive practices resulting in loan agreements that are detrimental to the financial interests of the borrowers and which unfairly benefit the lender. Such predatory lending practices tend to diminish the financial benefits of home ownership by retarding the accumulation of equity and substantially increasing the likelihood of default and foreclosure, a phenomenon that some have characterized as a national trend towards "asset depletion." The negative effects of such lending practices have a disproportionate impact on low income persons, minorities, and the elderly.

State Regulation: Under Washington law, there are three acts that are pertinent to the regulation of mortgage lending practices: 1) Consumer Protection Act (Chapter 19.86 RCW); 2) Mortgage Broker Practices Act (Chapter 19.146 RCW); and the 3) Consumer Loan Act (Chapter 19.86 RCW). Although none of these acts directly address some of the specific practices often associated with predatory lending (i.e., excessive fees, prepayment penalties, balloon payments, etc.), they have significant disclosure requirements and generally prohibit practices that involve fraud, deceit, and/or misrepresentation.

Summary of Substitute Bill:

The substitute bill creates a fund to be administered by the Department of Financial Institutions (DFI) for the purpose of prosecuting consumer fraud on the part of mortgage lenders. The DFI is required to consult with the attorney general and local prosecutors in developing guidelines for the distribution of the funds, which are to be used to enhance law enforcement capabilities at both the state and local level. Only the director of the DFI “ or an authorized designee “ may authorize expenditures from the fund.

The fund is derived from a $1 surcharge assessed by the county auditor against individuals recording deeds of trust. In order to defray the costs of collection, the county auditor may retain up to 5 percent of the funds collected. Once collected by a county, the funds must be transferred monthly to the State Treasurer who, in turn, must deposit the funds into an a specially designated "Mortgage Lending Fraud Prosecution Account (Account)."

The DFI has sole authority with respect to the expenditure of funds from the Account and must report yearly to the Legislature regarding Account activity. Should the funds in the Account during any fiscal year exceed $700,000, the DFI must transfer the excess funds to the Washington Housing Trust Fund.

All sections of the bill expire as of June 30, 2008.

Substitute Bill Compared to Original Bill:

The substitute bill lowers the surcharge to $1 and requires that it be charged upon the filing of any deed of trust rather than just "residential first mortgage deeds of trust." It also clarifies that the fund shall be used only for the criminal prosecution of fraud within the mortgage lending process.

The substitute bill requires that the DFI report yearly to the Legislature regarding Account activity and provides that the provisions of the bill expire as of June 30, 2008.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Predatory mortgage lending is a major problem that impacts the lives of many people. There are sufficient laws in this state to address the problem, but there are insufficient financial resources available to prosecutors. The purpose of the bill is to provide a source of funding that will better enable local prosecutors to pursue cases of fraud related to the mortgage lending process. Such cases are complex and often expensive to prosecute and, in some instances, may cost as much as $250,000. As a result, many cases are simply not pursued. This bill addresses this problem and would enable many more cases to be prosecuted. Accordingly, this is an important consumer protection bill that will help solve the predatory lending problem.

Testimony Against: (Original bill) County auditors are against the bill because it would be burdensome and expensive for them to implement the fee collection provisions. Workloads would be increased because it is often difficult to determine whether a particular deed is a residential first mortgage deed of trust.– This determination would sometimes involve researching the nature of the deed. The fees that would be retained by the county will not begin to defray the costs of this increased workload. Furthermore, far too many fees are already imposed at the time that deeds are recorded.

Testified: (In support) Representative Hunter, prime sponsor; Dale Miller, Washington Association of Mortgage Brokers; and Denny Eliason, Washington Banker's Association.

(Comments only) Mark Thomsen, Department of Financial Institutions.

(Opposed) Karen Herr, Mason County Auditor's Office; and Vern Spatz, Grays Harbor

County Auditor and County Auditor’s Association.