**Washington State**
**House of Representatives**
**Office of Program Research**

# BILL ANALYSIS

# Insurance, Financial Services & Consumer Protection Committee

# SSB 6452

**Brief Description:** Requiring certain borrower disclosures of yield spread premiums.

**Sponsors:** Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Tom, Weinstein, Oemig and Keiser).

**Brief Summary of Substitute Bill**

- Requires a written disclosure of the transaction costs that will be paid by the borrower if the mortgage broker receives a Yield Spread Premium (YSP) from the lender.
- Requires a refund of any YSP or equivalent benefit paid between a mortgage broker and a lender to a borrower if the amount of compensation is greater than in the original good faith estimate or a subsequent disclosure.

**Hearing Date:** 2/21/08

**Staff:** Jon Hedegard (786-7127).

**Background:**

Mortgage brokers and loan originators are licensed and regulated by the Department of Financial Institutions (DFI) under the Mortgage Brokers Practices Act (MBPA). Consumer loan companies are regulated by the DFI under the Consumer Loan Act (CLA).

There are also federal laws regarding lending and disclosure. The Real Estate Settlement Practices Act (RESPA) is overseen by the United States Department of Housing and Urban Development (HUD). The Truth In Lending Act (TILA) is overseen by the Board of Governors of the Federal Reserve System. Rules have been adopted to implement both the RESPA and the TILA. State laws that provide greater protections to borrowers are not preempted as long as they are consistent with the RESPA and the TILA.

Yield Spread Premium (YSP).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A YSP is a payment by a lender to a mortgage broker. The payment is based on the difference between the interest rate at which the broker actually originates the loan and the "par rate" or base rate at which the lender will make a loan to a borrower without additional cost. YSP is allowed under state and federal law. There are some state and federal standards of regulation of the disclosure of YSP to the borrower.

Disclosure of YSP Under State Law.
Among other disclosures, a mortgage broker must disclose to a borrower any known fees and costs associated with a loan within three days of receiving a loan application. The mortgage broker must provide a good faith estimate of any fees and costs where the actual cost is not known at the time of the disclosure. The good faith estimate must include disclosure of any YSP based on the broker's knowledge of the range of costs. However, the MBPA specifically does not require disclosure of the breakdown of loan fees or points between the mortgage broker and the lender.

The CLA requires a consumer loan company to disclose estimation and explanation of all fees and costs that a borrower must pay for a loan. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not available when the disclosure is provided.

Disclosure of YSP Under Federal Law.
YSP must be disclosed on a required disclosure form adopted by the HUD. The YSP is listed as a "paid outside of closing" charge. The borrower receives the form at the closing of the loan.

**Summary of Bill:**

"Original good faith estimate" means either:
- a good faith estimate that the borrower received at least 30 days prior to closing, if the borrower made the initial application more than 30 days prior to closing; or
- a good faith estimate that the borrower received within the time frame required by if the borrower made the initial application for a loan less than 30 days prior to closing.

"Yield spread premium" (YSP) is defined as a direct payment by a lender to a mortgage broker based on the difference between the interest rate at which the broker originates a residential mortgage loan and the wholesale par rate for which the borrower qualifies.

Disclosure.
In addition to other required written disclosures, a mortgage broker or loan originator must make a written disclosure of the transaction costs that will be paid by the borrower if the mortgage broker receives a YSP from the lender. These transaction costs may include:
- a higher annual percentage rate;
- a variable or adjustable interest rate;
- a prepayment penalty;
- a balloon payment; and
- the estimated dollar amount due to the YSP.

The written disclosure must also include amortization schedules that illustrate:
- the payments and complete costs of a loan if the mortgage broker receives a YSP; and
- the payments and complete cost of a loan if the mortgage broker does not receive a YSP.

The DFI must adopt by rule an amortization schedule template to enable mortgage broker or loan originator to satisfy  the disclosure requirement.

These disclosures must appear on the good faith estimate and on any closing documents.

Remedies.
Any YSP or equivalent benefit paid between a mortgage broker and a lender must be refunded to the borrower if the amount of compensation is greater than in the original good faith estimate or a subsequent disclosure.  The DFI must adopt rules regarding whether a subsequent disclosure is reasonable.

Consumer Loan Companies.
Each consumer loan company must comply with all other applicable federal and state laws and regulations.  These specifically includes the disclosures required by the MBPA.  In turn, this includes YSP disclosure.

**Appropriation:**  None.

**Fiscal Note:**  Not requested.

**Effective Date:**  The bill takes effect 90 days after adjournment of session in which bill is passed.