**SB 660**

# Department of Legislative Services

Maryland General Assembly
2005 Session

## FISCAL AND POLICY NOTE
**Revised**

Senate Bill 660 (Senators Astle and Exum)
Finance Economic Matters

---

**Financial Institutions - Consumer Credit - Mortgage Originators**

---

This bill requires mortgage originators to become licensed with the Commissioner of Financial Regulation. The bill establishes a special fund to pay for the costs of regulation of mortgage originators and mortgage lenders.

## Fiscal Summary

**State Effect:** General fund revenues and expenditures relating to the regulation of mortgage lenders would become special fund revenues and expenditures beginning October 1, 2005. This represents approximately $2.8 million in revenues and approximately $2.0 million in expenditures. New special fund revenues would be approximately $4.9 million in FY 2007, the January 1, 2007 start date for mortgage originator licenses. New special fund expenditures related to the licensing of mortgage originators would be approximately $67,800 in FY 2006 and approximately $1.56 million in FY 2007. Out-years reflect new and existing revenues and expenditures, 5% industry growth and attrition for mortgage originators, staggered licensing, annualization, and inflation.

| (in dollars) | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|---|---|---|---|---|---|
| GF Revenue | ($2,817,800) | ($3,884,000) | ($3,884,000) | ($3,884,000) | ($3,884,000) |
| SF Revenue | 2,817,800 | 8,759,000 | 5,294,000 | 6,194,000 | 6,194,000 |
| ReimB. Rev. | 0 | 125,000 | 100,000 | 75,000 | 50,000 |
| GF Expenditure | (2,000,200) | (2,753,100) | (2,962,700) | (2,869,500) | (2,932,700) |
| SF Expenditure | 2,068,000 | 4,309,200 | 4,039,800 | 3,959,700 | 4,049,700 |
| Net Effect | ($67,800) | $3,443,900 | $432,900 | $1,294,800 | $1,243,000 |

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** With limited exceptions, the bill requires an individual to obtain a license from the commissioner before acting as a "mortgage originator." Under the bill, a mortgage originator is an individual who is an employee of a mortgage lender who: (1) either is a mortgage broker or has or will have a net branch office at or out of which the individual works; (2) directly contacts prospective borrowers for the purpose of negotiating with or advising them about mortgage loan terms and availability; (3) works on a percentage basis as described under the bill; and (4) is authorized to accept a loan application on the mortgage lender's behalf. Individuals who own 25% or more interest in the mortgage lender for which they work, who are licensed under the mortgage lender laws, whose compensation is paid without a deduction for federal or State income tax.

To qualify for a license, an applicant must satisfy the commissioner that the applicant is of good moral character and has general fitness to warrant the belief that the applicant will act as a mortgage originator in a lawful, honest, fair, and efficient manner. The applicant must also satisfy the commissioner that the applicant has either: (1) at least three years of experience in the mortgage lending business and has completed the required courses for continuing education established under the bill; or (2) completed 40 hours of classroom education and achieved a passing grade on a written examination developed and administered by the person conducting the course and approved by the commissioner. A mortgage lender for which a licensee works is not required to maintain an office in the State under specified circumstances.

The bill specifies the information that an applicant for licensure must provide to the commissioner and the grounds on which the commissioner may and may not deny an application. The bill requires an applicant to provide fingerprints for criminal background checks by the Department of Public Safety and Correctional Services Criminal Justice Information System Central Repository and the Federal Bureau of Investigation. The applicant must pay all applicable fees.

An applicant must pay a nonrefundable $100 investigation fee and a $300 license fee. The license fee must be refunded if the application is denied. A license lasts for two years, at which time it may be renewed for a $300 renewal fee. A license entitles the licensee to act as a mortgage originator for only one mortgage lender. A licensee must notify the commissioner in advance and pay a $75 license amendment fee if the licensee changes employers or the employer changes its name.

Fee revenues from the bill and from the licensing of mortgage lenders are deposited into the Mortgage Lender-Originator Fund established under the bill. The fund's purpose is to pay the commissioner's costs in regulating the industry.

Unless otherwise exempt, an individual must be licensed by January 1, 2007 to act as a mortgage originator. Beginning in fiscal 2006, the Governor must appropriate in the State budget funds to the Division of Financial Regulation for the purpose of creating necessary positions to implement the bill's provisions. An amount equal to the Governor's appropriation must be repaid from the fund created by the bill to the general fund by June 30, 2008.

A person aggrieved by the conduct of a licensee in connection with a mortgage loan may file a complaint with the commissioner. The commissioner must investigate such a complaint and may make any other investigation of a licensee if reasonable cause exists to believe that the licensee has violated a law or regulation regulating mortgage lending or mortgage origination. A licensee must pay a fee of up to $250 for each of the commissioner's employees engaged in an investigation that results in the discovery of a violation of the bill.

The bill specifies activities for which the commissioner may deny licensure to an applicant, reprimand a licensee, or suspend or revoke a license and the criteria which the commissioner must consider in making such a decision. The commissioner may also issue cease and desist orders or orders to take affirmative corrective action, including restitution, to violators. Violators who fail to comply with a cease and desist order or an order to take affirmative corrective action could be liable for a civil penalty of up to $1,000 for each violation. The commissioner may file a petition in circuit court seeking enforcement of an order.

Knowing and willful violation of the bill is a felony. Violators are subject to a fine of up to $25,000 for each violation and/or five years' imprisonment.

**Current Law:** Individual employees of mortgage lenders are not currently licensed or regulated by the State. However, a mortgage lender must be licensed by the Commissioner of Financial Regulation. To qualify for a mortgage lender license, an applicant must satisfy the commissioner that the applicant is of good moral character and has sufficient financial responsibility, business experience, and general fitness: (1) to engage in business as a mortgage lender; (2) warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and (3) command the public's confidence. An applicant must have three years of experience in the mortgage lending business. Under Chapter 473 of 2004, the commissioner may also issue a mortgage lender license to a sole proprietor who does not meet the experience requirement under specified circumstances.

An applicant for a mortgage lender license must also file a surety bond, pay an investigation fee, submit to an investigation by the commissioner, and if successful, pay the licensing fee. Licensees must meet continuing education requirements and are subject to regulation, investigation, and discipline by the commissioner. Licensing and regulation of mortgage lenders is performed with general funds.

**State Revenues:** There are currently 4,000 licensed mortgage lenders, including mortgage brokers, in the State. It is estimated that there are approximately three mortgage originators for each mortgage lender, with some lenders employing more and others employing fewer. It is assumed that the growth and attrition in these positions would roughly equal each other at approximately 5% annually so that the overall number of licensees would remain roughly constant. This would represent approximately 12,000 initial licensees and in the out-years, approximately 600 new applicants annually. The bill imposes a one-time, $100 nonrefundable investigation fee; a $300 initial licensing fee; and a $300 two-year renewal fee. Money from these fees would be deposited in the fund established under the bill. The division advises that it would begin staggered licensing immediately as authorized under the bill to maintain a more even, manageable workload. Based on this, special fund revenues would increase by approximately $4.88 million in fiscal 2007, approximately $1.41 million in fiscal 2008, and approximately $2.31 million annually thereafter.

Beginning October 1, 2005, the bill makes general fund revenues related to the licensing of mortgage lenders special fund revenues. These revenues include a $100 investigation fee for new applicants for licensure, a $1,000 licensing fee for a new licensee, a $1,000 renewal licensing fee for a two-year license, and a $250 per employee per day examination fee. In fiscal 2006, approximately $2.8 million in general fund revenues would become special fund revenues, reflecting the bill's October 1, 2005 effective date. Beginning in fiscal 2007, annual special fund revenues from these fees would be approximately $3.9 million, reflecting total phase-in of staggered licensing for these licensees.

**State Expenditures:** Beginning October 1, 2005, the bill makes general fund expenditures related to the licensing of mortgage lenders special fund expenditures. The division advises that 39 existing positions would be converted from general fund to special fund positions. In fiscal 2006, approximately $2 million in general fund expenditures would become special fund expenditures, reflecting the bill's October 1, 2005 effective date. In fiscal 2007, these expenditures would be approximately $2.7 million, reflecting annualization and inflation.

Because the division would begin licensing individuals in fiscal 2007, most of the start-up costs for the new licensing category would begin then. However, some work on the new licensing category would be required in fiscal 2006 to prepare for the undertaking. Because revenues from mortgage lender licensing would become special fund revenues in fiscal 2006 under the bill and because these revenues exceed currently projected expenditures for the regulation of mortgage lenders, special fund revenues would be sufficient to cover special fund expenditures. Special fund expenditures could increase by an estimated $67,800 in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one administrator and one administrative officer to make advance preparations for the new licensing category. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Special fund expenditures could increase by an estimated $1.56 million in fiscal 2007, which accounts for the January 1, 2007 date by which all mortgage originators must be licensed and a July 1, 2006 hiring date for additional employees relating to the new license category. This estimate reflects the cost of hiring four administrative specialists, two fiscal clerks, two financial examiners, two enforcement officers, and four contractual employees to handle initial licensing applications, examine licensees, handle telephone inquiries from licensees and the public, process revenues, handle ongoing paperwork associated with the new licensing category, and ongoing expenditures for the two employees who started in fiscal 2006.

Also in fiscal 2007, it is estimated that approximately 250 initial hearings would be held for applicants who are denied licensure. The commissioner would not have the resources to conduct this number of hearings and would use the services of the Office of Administrative Hearings (OAH), at an approximate cost of $500 for each hearing. It is estimated that the number of hearings requested would drop by approximately 50 each year for the next four years as the industry becomes more stable. The cost of these hearings would be paid by the division; however, these expenditures would be offset by an increase in reimbursable fund revenues for OAH.

This is a particularly volatile industry, with mortgage originators moving from one mortgage lender to another on a regular basis and with the names of lenders occasionally changing. Because the mortgage originator license must bear the name of the licensee and the licensee's employer, the division estimates that approximately 3,600 would have to be reissued annually beginning in fiscal 2008. To perform this work, special fund expenditures could increase by approximately $109,600 in fiscal 2008.

The new category of licensees would require reprogramming the division's electronic licensing program both for the new category itself and to accept an increase of over 300% in the number of nondepository licensees. Because the division's current location would have insufficient space to handle the number of new employees, the division would need additional space to house those employees.

The fiscal 2007 estimate includes salaries, fringe benefits, one-time start-up costs, computer reprogramming costs, costs related to contracting for applicants, and ongoing operating expenses.

| | |
|---|---|
| Salaries and Fringe Benefits | $586,900 |
| Computer Programming and Testing Costs | 500,000 |
| Other Operating Expenses | 469,300 |
| **Total FY 2007 State Expenditures** | **$1,556,200** |

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

**Small Business Effect:** Many mortgage lenders are small businesses. The bill would impose new licensing regulations on many of their employees; however, the bill could relieve the small business mortgage lenders from performing their own more stringent background investigations when they hire an individual licensed under the bill.

## Additional Information

**Prior Introductions:** A similar bill, HB 1026 of 2004, was introduced and heard in the Economic Matters Committee. No further action was taken.

**Cross File:** HB 1040 (Delegate Wood, *et al.*) – Economic Matters.

**Information Source(s):** Office of Administrative Hearings; Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2005
ncs/ljm Revised - Senate Third Reader - April 4, 2005
Revised - Clarification - May 10, 2005

Analysis by: T. Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510