DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 21, 2007 **BILL NUMBER:** SB 385
POSITION: Neutral, note concerns **AUTHOR:** M. Machado

BILL SUMMARY: Real Estate: Mortgages: Real Estate Brokers

This bill would require the Department of Financial Institutions (DFI), the Department of Real Estate (DRE), and the Department of Corporations (DOC) to adopt and apply certain published federal guidelines on nontraditional mortgages to all state-regulated entities in the business of mortgage lending or brokering. This bill would require the Secretary of the Business, Transportation and Housing Agency to ensure that these departments coordinate their policymaking and rulemaking efforts.

FISCAL SUMMARY

The DFI indicates that the provisions of this bill would require two additional positions, one for banking and one for credit unions, at an annual cost of approximately $240,000.

The DOC's preliminary estimate of the cost associated with this bill is $125,000.

The DRE indicates they have no fiscal concerns with the provisions of this bill.

Although this bill has been flagged as a state mandate it is not reimbursable by the state because violations of the provisions of this bill would constitute a crime.

COMMENTS

Finance notes the following concern regarding this bill:

- It is our understanding that the DRE, DOC, and DFI can already adopt regulations without legislation. The DOC indicates that it has already drafted regulations to achieve the objectives of this bill.

Analyst/Principal	Date	Program Budget Manager	Date
(0761) C. Hill		Mark Hill	

Department Deputy Director	Date

Governor's Office:	By:	Date:	Position Approved_______
			Position Disapproved

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ANALYSIS

A. Programmatic Analysis

Under current federal law, financial institutions that are in the business of mortgage lending and brokering are generally regulated by five federal agencies including the Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA). These federal financial institution regulatory agencies, together with the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), have each published guidelines on nontraditional mortgage product risks.

Under current state law, entities in the business of mortgage lending and brokering are licensed and regulated by three different departments, the Department of Real Estate (DRE), the Department of Corporations (DOC), and the Department of Financial Institutions (DFI).

This bill would require the DFI, DRE, and DOC to adopt and apply certain published federal guidelines on nontraditional mortgages to all state-regulated entities in the business of mortgage lending or brokering. This bill would require the Secretary of the Business, Transportation and Housing Agency to ensure that these departments coordinate their policymaking and rulemaking efforts.

Discussion: This bill contains legislative intent language that states that DRE, DOC, and DFI take steps to ensure that state-licensed mortgage lenders and brokers are aware of the existence and content of the Interagency Guidance on Nontraditional Mortgage Products Risks (Interagency Guidance) issued in September 2006 by OCC, FRB, FDIC, OTS, and NCUA, and the published Guidance issued in November 2006 by CSBS and AARMR.

The federal Interagency Guidance and the CSBS and AARMR Guidance have been developed to address risks associated with the growing use of mortgage products that have allowed borrowers to defer payment of principal and sometimes interest. These mortgage products are being offered to a wider spectrum of borrowers who may not otherwise qualify for more traditional loans. Additionally, these loans are increasingly combined with other features that compound risk including second-lien mortgages and the use of reduced documentation in evaluating an applicant's creditworthiness.

B. Fiscal Analysis

The DFI indicates that the provisions of this bill would require two additional positions, one for banking and one for credit unions, at an annual cost of approximately $240,000.

The DOC's preliminary estimate of the cost associated with this bill is $125,000.

The DRE indicates they have no fiscal concerns with the provisions of this bill.

Although this bill has been flagged as a state mandate it is not reimbursable by the state because violations of the provisions of this bill would constitute a crime.

Under Section 6(b) of Article XIII B of the California Constitution, any costs to a unit of local government which result from legislation defining a new crime or changing an existing definition of a crime are not reimbursable by the state. In addition, Section 17556(g) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in such legislation which eliminated a crime or changed the penalty for a crime. Therefore, any local

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ANALYSIS (continued)

B. Fiscal Analysis (continued)

government costs resulting from the mandate in this measure would not be state-reimbursable, because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2007-2008	FC	2008-2009	FC	2009-2010	Fund Code
2150/Finan Instit	SO	No	A	$120	A	$240	A	$240	0298
2180/Corporations	SO	No	A	$63	A	$125	A	$125	0067
2320/Real Estate	SO	No		------------------- No/Minor Fiscal Impact -------------------					0317

Fund Code	Title
0067	Corporations Fund, State
0298	Financial Institutions Fund
0317	Real Estate Fund