The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 1852

INTRODUCER: Appropriations Committee

SUBJECT: Funding from the National Mortgage Settlement

DATE: April 19, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Martin	Hansen		**AP SPB 7146 as introduced**
2.	Martin	Hansen	AP	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

SB 1852 appropriates $200,080,474 to several state entities for various housing and foreclosure-related programs and services, contingent upon such funds being deposited into the state treasury from the National Mortgage Settlement.

Funds are appropriated, with specific restrictions and requirements, as follows:

- $70 million for the State Housing Initiatives Partnership (SHIP) program;
- $65 million for the State Apartment Incentive Loan Program (SAIL);
- $10 million for housing for homeless persons;
- $40 million for the State Courts System for the foreclosure cases backlog;
- $10 million for legal aid services for low and moderate-income homeowners facing foreclosure;
- $2 million for a consumer awareness promotional campaign; and
- $3 million for administrative costs.

This bill does not amend, create, or repeal any sections of the Florida Statutes.

II. Present Situation:

National Mortgage Settlement

In February 2012, 49 state attorneys general and the federal government announced a historic joint state-federal settlement with the country's five largest mortgage servicers:[1]

Ally/GMAC
- Bank of America
- Citi
- JPMorgan Chase
- Wells Fargo

This settlement will provide as much as $25 billion in relief to distressed borrowers in the 49 states who signed on to the settlement and direct payments to signing states and the federal government. (Oklahoma did not sign the agreement.)

The agreement settles state and federal investigations finding that the country's five largest mortgage servicers routinely signed foreclosure related documents outside the presence of a notary public and without really knowing whether the facts they contained were correct. Both of these practices violate the law.

The settlement provides benefits to borrowers in the signing states whose loans are owned by the settling banks as well as to many of the borrowers whose loans they service.

Key provisions of the settlement include:

- Immediate aid to homeowners needing loan modifications now, including first and second lien principal reduction. The servicers are required to work off up to $17 billion in principal reduction and other forms of loan modification relief nationwide.
- Immediate aid to borrowers who are current, but whose mortgages currently exceed their home's value. Borrowers will be able to refinance at today's historically low interest rates. Servicers will have to provide up to $3 billion in refinancing relief nationwide.
- Payments to eligible borrowers who lost their homes to foreclosure with no requirement to prove financial harm and without having to release private claims against the servicers or the right to participate in the Office of the Comptroller of the Currency (OCC) review process; $1.5 billion will be distributed nationwide. The National Mortgage Settlement Administrator mailed Notice Letters and Claim Forms in late September through early October 2012 to approximately 2 million borrowers who lost their home due to foreclosure between January 1, 2008, and December 31 2011 and whose loans were serviced by one of the five mortgage servicers that are parties to the settlement.
- Immediate payments to signing states to help fund consumer protection and state foreclosure protection efforts.

[1] United States of America, et al. v. Bank of America Corp., et al., No. 305 12-0361-RMC, in the United States District Court for the District of Columbia.

- First ever nationwide reforms to servicing standards. These servicing standards require a single point of contact, adequate staffing levels and training, better communication with borrowers, and appropriate standards for executing documents in foreclosure cases, ending improper fees, and ending dual-track foreclosures for many loans.
- State Attorneys Generals will have oversight of national banks for the first time.
  - National banks will be required to regularly report compliance with the settlement to an independent, outside monitor that reports to state Attorneys General.
  - Servicers will have to pay heavy penalties for non-compliance with the settlement, including missed deadlines.

Florida's share of the total monetary benefits under the settlement is approximately $8.4 billion:

- Florida borrowers will receive an estimated $7.6 billion in benefits from loan modifications, including principal reduction, and other direct relief.
- Approximately $170 million will be available for cash payments to Florida borrowers who lost their home to foreclosure from January 1, 2008 through December 31, 2011 and suffered servicing abuse.
- The value of refinanced loans to Florida's underwater borrowers would be an estimated $309 million.
- The State of Florida received a payment of approximately $334 million.

With respect to the $334 million payment received by The State of Florida, pursuant to the settlement agreement, each State Attorney General must designate the uses of the funds:

> To the extent practicable, such funds shall be used for the purposes intended to avoid preventable foreclosures, to ameliorate the effects of the foreclosure crisis, to enhance law enforcement efforts to prevent and prosecute financial fraud, or unfair or deceptive acts or practices and to compensate the States for costs resulting from the alleged unlawful conduct of the Defendants. Such permissible purposes for allocation of the funds include, but are not limited to, supplementing the amounts paid to state homeowners under the Borrower Payment Fund, funding for housing counselors, state and local foreclosure assistance hotlines, state and local foreclosure mediation programs, legal assistance, housing remediation and anti-blight projects, funding for training and staffing of financial fraud or consumer protections enforcement efforts and civil penalties.[2]

The Florida Attorney General transferred $74 million to the state's General Revenue Fund in two installments of $34 million and $40 million, and requested the distribution of another $60 million (technically requested by each responsible agency and approved by the Legislative Budget Commission on January 17, 2013), as provided below:

- $5 million to contract with legal aid entities within the seven regions of Florida's Regional Legal Services Delivery System to provide legal aid services.

[2] Id.

- $35 million to the Florida Housing Finance Corporation (FHFC) for down payment assistance.
- $10 million to the FHFC for housing counseling.
- $5 million to the State Courts System to help with foreclosure related issues.
- $5 million to reimburse the Office of the Attorney General for legal fees.

Of the $334 million payment received by Florida, there remains $200,080,474 in the mortgage settlement escrow account created as a result of the consent judgment entered into by the Florida Attorney General on April 4, 2012, in the case of *United States of America, et al. v. Bank of America Corp., et al.*, No. 305 12-0361-RMC, to be used for the purposes enumerated above pursuant to the settlement agreement.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida. It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Economic Opportunity (DEO), but is a separate budget entity not subject to the control, supervision, or direction of the DEO. Instead, it is governed by a nine member board of directors comprised of the Secretary of the DEO, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.

The corporation operates numerous housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;[3]
- The State Housing Initiatives Partnership Program (SHIP), which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing;
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The HOME Investment Partnership Program, which provides low-interest loans from federal funds to developers to finance construction and rehabilitation of homes and rental program;
- The Predevelopment Loan Program, which assists nonprofit and community based organizations, local governments and public housing authorities by providing loans of up to $750,000 for predevelopment activities; and

[3] Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.

- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.

The state funds received by the FHFC for its affordable housing programs are from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.[4] Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.[5]

State Apartment Incentive Loan Program (SAIL)

The FHFC administers the SAIL program which provides low-interest loans on a competitive basis to affordable housing developers each year. This money often serves to bridge the gap between the development's primary financing and the total cost of the development. The SAIL dollars are available to individuals, public entities, not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.

A minimum of 20 percent of each development's units must be set aside for families earning 50 percent or less of the area median income. Developments that use housing credits in conjunction with this program may use a minimum set-aside of 40 percent of the units for residents earning 60 percent of the area median income. Developments in the Florida Keys Area may use a minimum set-aside of 100 percent of the units for residents with annual household incomes below 120 percent of the state or local median income, whichever is higher.

Loan interest rates are set at zero percent for those developments that maintain 80 percent of their occupancy for farmworkers, commercial fishing workers or homeless people. The interest rates are set at one percent for all other developments. Loans are issued for a maximum of 15 years unless housing credit syndication requirements or Fannie Mae requirements dictate longer terms or if the FHFC's encumbrance is subordinate to the lien of another mortgage, in which case the term may be made coterminus with the longest term of the superior loan. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

State Housing Initiatives Partnership Program (SHIP)

The FHFC administers the State Housing Initiatives Partnership program (SHIP), which provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to serve very low, low and moderate income families.

The SHIP dollars may be used to fund emergency repairs, new construction, rehabilitation, down payment and closing cost assistance, impact fees, construction and gap financing, mortgage buy-

[4] Sections 201.15(9) and (10), F.S.
[5] *See* ss. 420.507(33) and 159.608, F.S.

downs, acquisition of property for affordable housing, matching dollars for federal housing grants and programs, and homeownership counseling. The SHIP funds may be used to assist units that meet the building construction standards of ch. 553, F.S. The SHIP funds may also be used to assist manufactured housing constructed after June 1994 in accordance with the installation standards defined in the rules of the Department of Highway Safety and Motor Vehicles.

The SHIP funds are distributed on an entitlement basis to all 67 counties and 53 Community Development Block Grant entitlement cities in Florida. The minimum allocation is $350,000 and the maximum allocation is over $8.8 million. In order to participate, local governments must establish a local housing assistance program by ordinance; develop a local housing assistance plan and housing incentive strategy; amend land development regulations or establish local policies to implement the incentive strategies; form partnerships and combine resources in order to reduce housing costs; and ensure that rent or mortgage payments within the targeted areas do not exceed 30 percent of the area median income limits, unless authorized by the mortgage lender.

A minimum of 65 percent of the funds must be spent on eligible homeownership activities; a minimum of 75 percent of funds must be spent on eligible construction activities; at least 30 percent of the funds must be reserved for very-low income households (up to 50 percent of the area median income or AMI); an additional 30 percent may be reserved for low income households (up to 80 percent of the AMI); and the remaining funds may be reserved for moderate-income households (up to 120 percent of the AMI.). It is important to note that no more than 5 percent of SHIP funds may be used for administrative expenses. However, if a local government makes a finding of need by resolution, a local government may use up to 10 percent for administrative expenses. Funding for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. Funds are allocated to local governments each month on a population-based formula. These funds are derived from the collection of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Total actual disbursements are dependent upon these documentary stamp collections.

Foreclosure Cases Impact on the Judicial Branch

The home foreclosures of recent years has negatively affected the judicial branch, in terms of both funding and caseload. Florida has the largest share of foreclosure inventory of any state in the nation, with 305,766 properties in some stage of foreclosure or bank-owned as of the end of 2012.[6] Seven of the top 10 highest foreclosure markets in the nation are in Florida, with Palm Bay-Melbourne-Titusville having the highest rate of foreclosure of any metro area in the nation.[7]

The state court system is struggling with a backlog of foreclosure cases. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings dramatically increased to 399,118. The courts did not have the resources to quickly and efficiently deal with this high volume of cases. Due to constitutional and statutory requirements

[6] RealtyTrac, 4th quarter data, presented to the Florida House of Representatives Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.
[7] Id.

to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog.[8]

Furthermore, the caseload backlog is not spread evenly across the state. While the statewide average is 11.02 percent of residential loans in foreclosure, certain areas, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits. For instance, Miami-Dade has 15.56 percent of loans in foreclosure compared to only 5.26 percent in Sumter County.

The 2012 legislature appropriated $4 million to the State Courts System and $2 million to the Clerks of the Court in an effort to reduce the number of backlogged foreclosure cases in the system. In January 2013, the Legislative Budget Commission approved $4,993,500 from the National Mortgage Settlement funds to the State Court System for staffing assistance and technology upgrades to assist with the foreclosure backlog.

As of December 2012, the number of pending foreclosure cases in the trial courts was 371,119. The courts have estimated that approximately 680,000 additional foreclosure cases will be filed between FY 2012-13 and FY 2015-16.[9]

III. Effect of Proposed Changes:

The bill provides appropriations totaling $200,080,474 to the entities and for the uses enumerated below.

Section 1

The nonrecurring sum of $70,000,000 is appropriated from the Local Government Housing Trust Fund to the Department of Economic Opportunity for Fiscal Year 2013-2014 for transfer to the Florida Housing Finance Corporation (FHFC) to fund the State Housing Initiative Program (SHIP). The FHFC shall allocate the funding to all eligible counties and cities. Except as otherwise specified in this section, local governments must use this funding according to the SHIP statute and rules, and within the parameters of their adopted Local Housing Assistance Plans (LHAPs).

All funding appropriated in this section must be targeted for one or more of the following strategies:

- Rehabilitating/modifying owner-occupied houses (including blighted homes and/or neighborhoods);
- Assisting with purchases of existing housing (with or without rehabilitation);
- Providing housing counseling services;
- Providing lease-purchase assistance; and

[8] Florida Office of the State Courts Administrator, Summary Reporting System (SRS), August 19, 2011.
[9] (2013) Foreclosure Backlog Reduction Initiative, Florida Office of State Courts Administrator, on file with Senate Appropriations Committee staff.

- Implementing strategies approved by the Florida Housing Finance Corporation (FHFC) that are related to assisting households and communities impacted by foreclosures, using existing housing stock.

Of the funding provided in this section, each local government must use a minimum of 20 percent of their allocation to serve "persons with special needs" as defined in s. 420.0004(13), F.S. Before this portion of the allocation is released by the FHFC, a local government must submit an existing or new LHAP strategy for this purpose to the FHFC for approval to ensure that it meets these specifications. First priority for use of these special needs funds must be for persons with developmental, hearing, visual or mobility disabilities, with an emphasis on home modifications, including technological enhancements and devices that will allow homeowners to remain independent in their own homes and maintain their homeownership.
Local governments may not use more than 3 percent of their allocations under this section for administrative costs.

Section 2

The nonrecurring sum of $65,000,000 is appropriated from the State Housing Trust Fund to the Department of Economic Opportunity for Fiscal Year 2013-2014 for transfer to the Florida Housing Finance Corporation (FHFC) to fund the State Apartment Incentive Loan (SAIL) Program.

Each SAIL development provided funds under this section shall include up to 15 percent, but not less than 5 percent, of their units designed, constructed and targeted for individuals with developmental, hearing, visual or mobility disabilities. All developments shall be required to enter into agreements with the local Center for Independent Living, Agency for Persons with Disabilities, or other such agency approved by the Florida Housing Finance Corporation, for the purpose of coordinating services and housing for individuals with disabilities.

Affordable housing units in each development that are in addition to those required for disabled tenants shall provide reduced-rent units to serve elderly tenants and extremely low income (ELI) tenants. To the extent possible, the ELI units should be part of the FHFC's existing "Link Initiative" in which developers set aside units for special needs households, including persons with disabilities, homeless families, youth aging out of foster care, frail elders and survivors of domestic violence, who are receiving community-based supportive services and are referred by a supportive services agency in the community where the property is located.

Section 3

The nonrecurring sum of $5,262,579 is appropriated from the General Revenue Fund to the State Court System for Fiscal Year 2013-2014 to provide technology solutions that expedite foreclosure cases through the judicial process. Such technology solutions must enable judges and staff to effectively use electronic documents when disposing of foreclosure cases, produce orders electronically, provide for electronic calendaring, serve orders electronically, and generate case management reports. All technology enhancements to expedite the mortgage foreclosure cases must be completed in accordance with standards set by the Florida Court Technology Commission regarding functionality as outlined in the Case Processing Application Standards.

Section 4

The nonrecurring sum of $9,908,948 is appropriated from the General Revenue Fund to the State Court System for Fiscal Year 2013-2014 to provide supplemental resources including, but not limited to, additional senior judge days and temporary case management staff in the trial courts to reduce the backlog of pending foreclosure cases. The nonrecurring sum of $9,908,947 is appropriated from the General Revenue Fund to the State Court System for Fiscal Year 2014-2015 for the same purpose.

Section 5

The nonrecurring sum of $7,500,000 is appropriated from the General Revenue Fund to the State Court System for the clerks of the court for Fiscal Year 2013-2014 to enhance levels of service to assist and support the courts in expediting the processing of backlogged foreclosure cases. The nonrecurring sum of $7,500,000 is appropriated from the General Revenue Fund to the State Court System for the clerks of the court for Fiscal Year 2014-2015 for the same purpose.

Section 6

The nonrecurring sum of $10 million is appropriated from the General Revenue Fund to the Department of Legal Affairs, Office of the Attorney General for Fiscal Year 2013-2014 to contract with regional legal aid service providers to provide legal aid services to low-income and moderate-income homeowners facing foreclosure. Administrative costs or fees may not be collected or used by the Office of the Attorney General, any association, or any foundation for providing such services.

Section 7

This section authorizes the Office of the Attorney General to establish, coordinate, and promote an advertising campaign, which may include public relations activities and contracting with media representatives for the purpose of dispersing promotional materials and opportunities for consumer assistance. The nonrecurring sum of $2 million is appropriated from the General Revenue Fund to the Department of Legal Affairs, Office of the Attorney General for Fiscal Year 2013-2014 for this purpose.

Section 8

The nonrecurring sum of $3 million is appropriated from the State Housing Trust Fund to the Department of Economic Opportunity for Fiscal Year 2013-2014 for transfer to the Florida Housing Finance Corporation for administrative expenses associated with implementing the provisions of this act.

Section 9

The nonrecurring sum of $10,000,000 is appropriated from the State Housing Trust Fund to the Department of Economic Opportunity for Fiscal Year 2013-2014 for transfer to the Florida Housing Finance Corporation (FHFC) to fund a competitive grant program to provide housing for homeless persons. The FHFC shall award funds on a competitive basis to private non-profit organizations to purchase and renovate existing houses to be used by extremely low income homeless individuals. Funds may also be awarded to private non-profit organizations to construct small specialty housing of 10 units or less for homeless families.

Section 10

This section provides that the appropriations made in the act are contingent upon the deposit of $200,080,474 into the state treasury from the escrow account created as a result of the consent judgment entered into by the Florida Attorney General on April 4, 2012, in the case of *United States of America, et al. v. Bank of America Corp., et al*., No. 305 12-0361-RMC, in the United States District Court for the District of Columbia. Of the $200,080,474, the following amounts shall be deposited in the specified funds in the state treasury: $70,000,000 shall be deposited into the Local Government Housing Trust Fund in the Department of Economic Opportunity; $78,000,000 shall be deposited into the State Housing Trust Fund in the Department of Economic Opportunity; and $52,080,474 shall be deposited into the General Revenue Fund.

Section 11

This act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Homeowners and renters will benefit from the programs funded by the bill. Funds will provide for home modifications and renovations, and more homes and low-cost rental units being made available for low income, elderly, and special needs persons. Homeowners facing foreclosure will also receive legal aid services and counseling under the provisions of the bill. In addition, funds provided to the state courts will assist persons facing foreclosure with the timely processing of their cases in court.

C. Government Sector Impact:

This bill appropriates $200,080,474 contingent upon those funds being deposited into the state treasury from the National Mortgage Settlement. Of that amount, $70,000,000 is appropriated from the Local Government Housing Trust Fund to the FHFC, $78,000,000 is appropriated from the State Housing Trust Fund to the FHFC, and $52,080,474 is appropriated from the General Revenue Fund to the Attorney General and to the State Courts. All of the implementation costs of the bill are funded with these funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.