2011 Legislative Report

Washington State Department of Financial Institutions

ESSB 5860 (Chapter 39, Laws of 2011, 1st Special Session), Addressing Temporary Compensation Reductions

Effective Date: July 1, 2011

The legislation temporarily reduces most state employees' salaries by 3 percent from July 1, 2011, through June 29, 2013. There is a 5.2 hours per month of Temporary Salary Reduction Leave for affected employees for the duration of the temporary salary reduction. The bill prohibits performance-based awards and incentives for the duration of the 2011-13 fiscal bienniums. It also prohibits salary increases for state employees during the 2011-13 fiscal biennium, except for positions for which an agency has a demonstrated recruitment and retention problem.

E2SHB 1371 (Chapter 21, Laws of 2011, 1st Special Session), Boards and Commissions

Effective Date: July 1, 2011

Many boards and commissions are eliminated and in some cases duties are transferred to other agencies. Some entities are renamed advisory committees, and in some cases functions are limited to reflect the advisory role. If the Governor appoints the members, an agency head becomes the appointing authority. The Department’s Escrow Commission becomes the Escrow Advisory Committee.

ESSB 5931 (Chapter 43, Laws of 2011, 1st Special Session), Centralizing and Streamlining Central Service Functions

Effective Date: October 1, 2011

Many of the central service agencies are significantly reorganized and two new state agencies are created, the Department of Enterprise Services (DES) and the Consolidated Technology Services (CTS).

DES is tasked with providing products and services to support state agencies, other governmental entities and nonprofits. DES assumes the following responsibilities:

• all roles and responsibilities of GA and the Printer;

• risk management and oversight of personal service contracts from OFM;

• training and career development, oversight of the payroll system, and many other basic functions of DOP; and

• purchase of wireless devices and digital signature authority from DIS.

• DES must also examine state procurement practices and report on recommendations for improvement by December 31, 2011.

DOP is eliminated and its powers and duties divided between OFM and DES. DES will receive the majority of DOP's responsibilities including training and career development and oversight of the payroll system. DES is responsible for job classification activities. Other functions currently performed by DOP are transferred to OFM. These functions include creating broad personnel policies, compensation and salary scheduling, and prescription of training provisions for supervisory or management positions.

DES is authorized to receive funding from the Data Processing Revolving Account as DIS will no longer exist as a state agency. Office of the Chief Information Officer (OCIO) is created within OFM. OCIO is responsible for the preparation and implementation of a strategic IT plan and enterprise architecture (EA) for the state. OCIO must work towards standardization and consolidation of IT infrastructure, establish standards and policies for EA, and educate and inform the state on IT matters. OCIO will prepare a biennial state performance report on IT, evaluate current IT spending and budget requests, and oversee major IT projects including procurements. A majority of service provision duties are transferred from DIS to CTS including server hosting and network administration, telephony, security administration, and email. Most of the legislation takes effect on October 1, 2011.

ESHB 1492 (Chapter 74, Laws of 2011), Concerning the Uniform Commercial Code Article 9A on Secured Transactions

Effective Date: July 1, 2013

Article 9A of the UCC is amended to incorporate the 2010 amendments to Article 9 adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Control of Electronic Chattel Paper

A general test for control of electronic chattel paper is established. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned. The test for control under current law is designated as a sufficient, but not necessary, means of establishing control of electronic chattel paper.

Perfection of Security Interests

Rules are established regarding the perfection of security interests that attach within four months after the debtor changes its location to a new jurisdiction. In addition, rules are established governing security interests that attach within four months after a new debtor (a successor) becomes bound by a security agreement entered into by an original debtor, and the priority contests that may arise when both the original debtor and the successor each have a secured creditor.

Sufficiency of Debtor's Name

Standards regarding the sufficiency of a debtor's name on a financing statement are revised. With respect to an individual, the name of the debtor is sufficient if the financing statement provides the individual name of the debtor, the surname and first personal name of the debtor, or the name of the individual indicated on an unexpired Washington driver's license or identification card.

HB 1150 (Chapter 18, Laws of 2011), Extending Time for a Small Business to Correct a Violation

Effective Date: July 22, 2011

Under legislation enacted in 2010, before an agency may impose a fine, civil penalty, or administrative sanction on a small business for a violation of a law or rule, the agency must provide the small business with a copy of the law or rule being violated. The agency must also allow the small business at least two business days to correct the violation. The bill extends the time period for correcting violations from two days to seven calendar days.

2SHB 1362 (Chapter 58, Laws of 2011), Protecting and Assisting Homeowners from Unnecessary Foreclosures

Effective Date: July 22, 2011 (substantive provisions, other provisions April 14, 2011)

In 2008 the Legislature amended the Deeds of Trust Act to require a beneficiary to contact a borrower by letter and telephone before issuing a notice of default in order to assess the borrower's financial situation. This is called the “meet and confer” requirement of the law. The beneficiary must give the borrower information for housing counseling agencies and must inform the borrower that he or she can request a subsequent meeting with the beneficiary to explore options to avoid foreclosure. The requirement for this meeting applies to deeds of trust made from January 1, 2003, to December 31, 2007, on owner-occupied residential property and expires on December 31, 2012.

2SHB 1362 amends this "meet and confer" requirement to allow for an additional 60 days before the notice of default may be issued, if the borrower responds within 30 days of the initial contact by the beneficiary. The beneficiary makes initial contact by sending

a form letter, which must contain model language developed by the Department of Commerce. The letter must urge the borrower to contact a housing counselor or attorney as soon as possible. If the borrower requests a meeting with the beneficiary, the meeting must be in person unless waived by the borrower. A person authorized to make decisions for the beneficiary may participate by phone. The "meet and confer" requirement is made applicable to all deeds of trust on owner occupied residential real property and the expiration date is repealed.

A housing counselor who is contacted by a borrower has a duty to act in good faith to attempt to reach a resolution within the time frame of the meet and confer process. A resolution may include, but is not limited to a loan modification, an agreement to conduct a short sale, a deed in lieu of foreclosure, or some other plan. Housing counselors are not liable for civil damages resulting from acts or omissions in providing assistance to borrowers, unless the acts or omissions constitute gross negligence or willful or wanton misconduct.

A foreclosure mediation process is established at the Department of Commerce and applies to borrowers of deeds of trust on owner-occupied residential property who have been referred to mediation by a housing counselor or attorney. A housing counselor or attorney may refer a borrower to mediation if appropriate based on the individual circumstances and if a notice of sale has not yet been recorded. A referral to mediation does not preclude a trustee from issuing a notice of default. Beginning October 1, 2011, and every quarter thereafter, beneficiaries must report to the Department of Commerce the number of owner-occupied residential real properties for which the beneficiary has issued notices of default during the previous quarter; and remit to Commerce a lump sum payment of $250 per property. This reporting and remitting requirement does not apply to financial institutions and loan servicers that have issued fewer than 250 notices of default in the preceding year, or to association beneficiaries.

HB 2119 (Chapter 24, Laws of 2011, 1st Special Session), Requiring another one time sum due by beneficiaries for recording certain notices of default

Effective Date: June 7, 2011

During the 2011 Regular Session, Second Substitute House Bill 1362 (2SHB 1362) was enacted which makes numerous changes to the deeds of trust foreclosure process. There is a mechanism in 2SHB 1362 that provides funding for increasing the number of housing counselors and attorneys available to assist individuals at risk of default, establishing a foreclosure mediation program, enforcing new consumer protection requirements, and conducting homeowner prepurchase and postpurchase outreach and education programs. Although the foreclosure mediation program and other provisions do not take effect until July 22, 2011, the provisions creating the funding mechanism took effect April 14, 2011.

Second Substitute House Bill 1362 provides that no later than 30 days after April 14, 2011, certain beneficiaries must remit to the Department of Commerce a lump sum payment of $250 per owner-occupied residential real property for which the beneficiary has issued a notice of default during the three months prior to April 14, 2011. That remittance period covers the number of properties receiving notices of default during the period of mid-February through mid-April.

In addition, 2SHB 1362 provides that beginning October 1, 2011, and every quarter thereafter, certain beneficiaries must remit to the Department of Commerce a lump sum payment based on the number of properties for which a notice of default is issued during the previous quarter. The October 1, 2011, remittance requirement covers the period from July 1 through September 30, 2011. There is no remittance requirement for the period between mid-April and June 30, 2011.

HB 2119 addresses the gap in the funding mechanism of 2SHB 1362 by requiring the beneficiaries to remit to the Department of Commerce a one-time lump sum payment of $250 per owner-occupied residential real property for which notices of default were issued from April 14, 2011, through June 30, 2011. Beneficiaries must remit the onetime payment by July 31, 2011.

SB 5375 (Chapter 52, Laws of 2011), Allowing Trust Companies to be Formed as Limited Liability Companies

Effective Date: July 22, 2011

A trust company may form or convert to a limited liability company after obtaining approval from the Department of Financial Institutions. Approval is based upon the same conditions set for banks, bank holding companies, and savings banks.

SSB 5232 (Chapter 303, Laws of 2011), Authorizing Prize Linked Savings Deposits

Effective Date: July 22, 2011

Depository financial institutions are authorized to conduct promotional contests of chance. Depositors in a savings account, certificate of deposit, or any other savings program of the financial institution conducting a promotional contest of chance are eligible to receive a prize in a drawing. This can be for an annual drawing if they retain funds in their account for at least one year, or it can be for other drawings for which depositors may be eligible.

In order to conduct a promotional contest of chance, a financial institution must obtain approval from its board of directors. A financial institution cannot conduct a promotional contest of chance if it is likely to adversely affect the institution's safety or soundness, harm the institution's reputation, or mislead the institutions members or the general public. Banks, trust companies, and mutual savings banks are given authority to

conduct a promotional contest of chance only if the director of the Department of Financial Institutions finds that a federal regulatory agency has interpreted federal law to permit them to conduct a promotional contest of chance.

HB 1594 (Chapter 262, Laws of 2011), Financial Education Public-Private Partnership

Effective Date: July 22, 2011

HB 1594 sets the terms of service of the Partnership's members.

The new law encourages school districts to voluntarily adopt the JumpStart Coalition National Standards in K-12 Personal Finance Education and provide students an opportunity to master them.

SSB 5042 (Chapter 170, Laws of 2011), Vulnerable Adults

Effective Date: July 22, 2011

This bill was brought by the Department of Social and Health Services (DSHS) to stop practices of financial exploitation that occurred in the adult family home setting. In recent years, allegations of financial exploitation against vulnerable adults have increased substantially, according to DSHS. These allegations could include a wide variety of activities such as cashing an elderly person's checks without permission or forging signatures, stealing money or belongings, coercing a senior into signing an unfavorable will, or misusing legally obtained guardianships or powers of attorney. There were concerns that state law did not adequately define what constituted financial exploitation and this resulted in difficulty prosecuting the offense. According to the National Center on Elder Abuse, this is the fastest growing area of abuse, and only a fraction of these cases are prosecuted.

The bill amends the law to cover financial exploitation which includes the use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to use property, income, resources, or trust funds for a benefit other than the vulnerable adult. Financial exploitation is also the breach of fiduciary duty that results in unauthorized appropriation, sale, or transfer of property, income, resources or trust funds to benefit some person other than the vulnerable adult. It is also obtaining or using the vulnerable adult's property, income, resources, or trust funds without lawful authority by someone who knows or should know that the vulnerable adult lacks the capacity to consent.

The new law defines property as interest in real or personal property income, credit, identity, or resources that are held for the benefit of a vulnerable adult by a fiduciary or representative of the vulnerable adult, including trust accounts, conservatorships, guardianships or other accounts.

SSB 5590 (Chapter 362, Laws of 2011), Concerning Lien Holder Requirements for Certain Foreclosure Sales

Effective Date: July 22, 2011

If a seller of owner-occupied residential property and a buyer agree on a purchase price that is insufficient to pay in full the obligation owed, and the seller makes a written offer to the senior beneficiary, the senior beneficiary must respond, in good faith, within 120 days with an acceptance, rejection, or counter-offer of the seller's written offer.

If the senior beneficiary acts in bad faith, the seller has a right of action for actual monetary damages. However, a senior beneficiary is not responsible for the actions or inactions of a subsequent lien holder.

If the property is foreclosed, and the seller (borrower) failed to enjoin the sale based on a lien holder acting in bad faith, the seller is not deemed to have waived his or her claim for damages under the Deeds of Trust Act.

These provisions do not apply to beneficiaries that conduct fewer than 250 trustee sales per year.

2SHB 1405 (Chapter 191, Laws of 2011), Regulating Loans Made under the Consumer Loan Act

Effective Date: July 22, 2011

The exemption under the Consumer Loan Act (CLA) regarding loans made primarily for business, commercial, or agricultural purposes is modified. Under the new law, the exemption will not include any loans secured by a lien on a borrower's primary residence. Thus entities engaging in these activities will have to obtain a license under the CLA. It is a prohibited practice for a licensee to execute or induce the execution of an instrument that conveys any ownership interest in a borrower's primary residence to the lender. The prohibition only applies to actions that are contemporaneous to the making of the loan and are prior to a default on the loan. The prohibited practice does not apply to mortgages or deeds of trust. It is a prohibited practice for a licensee, at the time of closing a loan, to obtain a release for damages resulting from a violation of the usury law, the CLA, or other laws. The bill also permits the Director of the Department of Financial Institutions to waive CLA licensing provisions for persons servicing mortgage loans if the Director determines it is necessary to facilitate commerce and protect consumers.

HB 1191 (Chapter 129, Laws of 2011), Changing the Expiration Dates on the Mortgage Lending Fraud Prosecution Account

Effective Date: June 29, 2011

In 2003 legislation was enacted creating the Mortgage Lending Fraud Prosecution Account (Account), a specific fund to aid in the prosecution of consumer fraud in the mortgage lending process. In 2006 the Department of Financial Institutions (DFI) extended the Account for five years. Funds for the Account are generated by a $1 surcharge, assessed at the recording of a deed of trust. In order to defray the costs of collection, the county auditor may retain up to 5 percent of the funds collected. The bill extends the expiration date of the Mortgage Lending Fraud Prosecution Account and the surcharge until June 30, 2016.

SB 5076 (Chapter 93, Laws of 2011), Addressing the Subpoena Authority of the Department of Financial Institutions

Effective Date: July 22, 2011

The Director, or authorized assistants, of the Department may apply for and obtain a superior court order authorizing a subpoena in advance of its issuance. The application must state that an order is sought pursuant to the authority granted; specify documents, records, evidence, or testimony; and include a declaration under oath that an investigation is being conducted for a lawfully authorized purpose and that the documents, records, evidence, or testimony are reasonably related to an investigation within the Department's authority. Where the application is made to the satisfaction of the court, the court must issue an order approving the subpoena. No prior notice to any person is required. This authority is granted under the following regulatory programs of the Department: franchise investment protection, business opportunities, mortgage brokers, securities, money transmitters, commodity transactions, consumer loan companies, and check cashers and sellers.

HB 1179 (Chapter 63, Laws of 2011), Clarifying the Public Employees may Attend Information or Educations Meetings Regarding Legislative Issues

Effective Date: July 22, 2011

The bill adds an exception to state ethics laws to allow state employees to attend informational or educational meetings regarding legislative issues while accompanied by a legislator or other elected official. The bill also allows state facilities, including state-owned or leased buildings, to be used for informational or educational meetings regarding legislative issues.

SHB 1899 (Chapter 273, Laws of 2011), Changing Penalty amounts for Public Records Violations

Effective Date: July 22, 2011

The legislation gives the courts discretion as to whether to make no award or to make a per-day award in any amount up to the maximum currently allowed under the Public Records Act, of $100 per day.

SHB 1257 (Chapter 188, Laws of 2011), Adopting the Investments of Insurers Model Act

Effective Date: July 1, 2012

(partial veto not included in summary)

The National Association of Insurance Commissioners' (NAIC) Investment of Insurer's Model Act (Model Act) is adopted in substantial part. The NAIC Model Act seeks to provide a more concentrated level of protection for insureds, creditors, and the general public while concurrently providing insurers more autonomy with regards to their investment practices.

The Insurance Commissioner is authorized to enact rules that target specific instances of overtly risky investment practices. Insurers must meet minimum financial security benchmarks and minimum asset requirements in order to be classified as solvent for investment purposes. Insurers must establish and follow a written investment policy to ensure prudent investment standards are practiced.