F I S C A L   I M P A C T   R E P O R T

SPONSOR Boitano **DATE TYPED** 1/26/2004 **HB**

SHORT TITLE Fund Requirements at Real Estate Closings **SB** 137

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
Regulation and Licensing Department (RLD)

No Response
Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of Bill

Senate Bill 137 removes refinancing of existing loans from the current requirement of a lender having funds available to a third-party fiduciary (i.e. title company) at the time of closing.

Existing statute is intended to make proceeds of a loan available to a seller at the time of closing and includes loans for the purpose of purchasing or refinancing real property. The title company (closing agent) is not permitted to disburse available funds until the deed is recorded with the county clerk.

Significant Issues

SB 137 would amend the Act to remove loans for the purpose of refinance from the requirement. Federal Law requires a 72 hour “right of rescission” on refinance transactions before funds are disbursed to the borrower. The question of who receives interest on the funds during the rescission period prior to disbursement is a potential issue. The bill addresses this issue by removing refinance loans from the requirement.

OTHER SUBSTANTIVE ISSUES

The Regulation and Licensing Department (RLD) notes financial institutions release funds to a title company (third party fiduciary), expecting a return on their investment at prevailing interest rates from the moment of release. Interest does not begin accruing on the loan to the borrower until the borrower has closed on the loan and signed the mortgage documents. This timing differential between release of funds to the title company and closing of the loan may be anywhere from several hours to several days, depending on the circumstances. If funding is done late in the day on the last day of a week, title companies may need to hold funds overnight. The title company will not be inclined to pay the mortgage company interest at the prevailing rate for the interim period that the title company holds the funds prior to closing, since this will increase the title company's costs. Although the title company could invest the funds they hold as a fiduciary in overnight funds and earn a return; that return would be lower than the prevailing loan interest rate, which the financial institution is expecting. The title company would not be inclined to pay the differential in interest rates to the financial institution, since that would be an additional expense for the title company. The bill addresses this issue by removing refinance loans from the requirement.

PA/njw