

## **Mortgage Bankers Association of Georgia Legislative Update 2/19/2010**

Thursday, February 18, marked the 20<sup>th</sup> official legislative day out of 40 for the 2010 Georgia General Assembly, which means we are now past the halfway point for 2010. This past week, the Legislature was in session Tuesday, Wednesday, and Thursday, and committee meetings have been held every day. The most significant piece of legislation to pass either chamber this past week was the Georgia State Senate voting to approve last year's amended state budget by slashing more than a \$1 billion in spending. The bill, HB 947, passed 44-6 and will now go back to the Georgia House of Representatives. The senators voted to cut \$1.2 billion in spending from the budget, which runs through June 30, while furloughing teachers and state employees for three additional days.

Senate budget writers largely agreed with an amended 2010 state budget that passed the House but made several changes that will require negotiations nonetheless between both chambers. The Senate approved a \$17.4 billion budget for the current fiscal year that ends June 30. Among their changes, senators propose adding \$1.8 million back into the Department of Revenue's budget to allow the agency to employ a second and third shift of temporary workers to process income tax returns. The Senate version includes at least \$600,000 in savings, according to the Department of Revenue, by moving the state from embossed to flat license plates that are produced digitally. The other major change made by the Senate deals with payments to private hospitals who participate in a particular state program. The governor had budgeted \$8.6 million for the system; the House upped that to \$14.5 million. The Senate zeroes that out for this fiscal year budget said it plans to add the money into the budget for the fiscal year that begins July 1. It will most likely go to conference committee, where House and Senate negotiators will hammer out a compromise. But, there is some speculation that conferees might take their time to see if state revenues begin to rebound. The budget as passed by the House is already \$234 million out of balance, because January's revenue collections were well below estimates.

The Senate and House agreed Thursday to take a two week break to work out Georgia's budget problems. They'll reconvene March 8 for day 21 when, presumably, they will have the February revenue numbers as an additional indicator of how deep the budget gap will be. January's budget revenue numbers were extremely low compared to recent years. House and Senate budget writers will meet in joint Appropriations Committee hearings over the two week period in an unprecedented collaboration to resolve the budget impasse. Options the House and Senate are exploring to fill the budget hole include an increased hospital provider fee, a cigarette tax, and other options. Committees will still be meeting during the two weeks also.

As far as MBAG is concerned, four new bills were introduced. They were SB 417, affecting inspection for termites and wood destroying organisms, HB 1191, relating to recording, payment, and distribution of the intangible tax, HB 1192, relating to payment and distribution of the real estate transfer tax, and HB 1209, affecting notices regarding flood plains.

After a lengthy legislative day on Thursday, February 18, the Chairman of the House Judiciary Subcommittee called a immediate hearing only on SB 57 and HB 972

upon adjournment due to the two week break coming up for Appropriations hearings. The meeting began about 5:00 PM and lasted until about 7:00 PM. Only committee members talked with no testimony and very little input from interested parties in the audience. SB 57 focuses on foreclosures and HB 972 focuses on notification and extending foreclosure proceedings. The calm subcommittee meeting consisted of discussion on yield spread premiums, negative amortization, pre-payment penalties, flipping loans, income verification, right to cure, foreclosure notification, and owner notification on stopping a foreclosure (City of Atlanta).

There will be more hearings to follow throughout the session concerning SB 57 and HB 972, and your legislative team is making sure the voices of MBAG are being heard at each. Along with these bills, hundreds of other pieces of legislation affecting the mortgage industry are “alive” for passage. We will continue to monitor any new bills that will be introduced in the House and Senate affecting MBAG throughout the 2010 session.

As always, rest assured your government affairs firm of Mo Thrash, John Haliburton, and their team is effectively representing our needs and concerns on all matters affecting our industry. Below you will find a list of bills that affect our industry. Please call us with any questions or anything at all!

### **Bills of Concern**

#### **SB 57: Foreclosures and Predatory Lending Sponsored by Sen. Bill Hamrick**

This bill was redrafted into three different bills, SB 139, 140, and 141. These bills were aimed to prevent any type of predatory lending and aid those in the foreclosure process. SB 57 was passed and adopted by the Senate on 3/10/2009. SB 57 is now in the House Judiciary Committee awaiting a vote.

#### **HB 972: Delivery Time of Foreclosure Notice Sponsored by Rep. Billy Mitchell**

Changes the time for the delivery of a notice of the initiation of foreclosure proceedings and to provide, under certain circumstances, for an opportunity, prior to foreclosure, for a debtor to cure a foreclosure and bring the debt current by making all past due payments along with any late fees and charges. HB 972 has been assigned to the House Judiciary Committee.

#### **SB 417: Require Inspection For Termites and Other Wood-Destroying Organisms Sponsored by Sen. John Bulloch**

Each conveyance of real property on which is located a residential or commercial structure shall require a certification that such structure has been inspected for termites and other wood-destroying organisms. SB 417 has been assigned to the Senate Agriculture and Consumer Affairs Committee.

**HB 1191: Change certain provisions relating to recording, payment, and distribution of the intangible tax**  
**Sponsored by Rep. Larry O'Neal**

To change certain provisions relating to recording, payment, and distribution of the intangible tax when encumbered property is located in more than one county or is located within and outside the state. HB 1191 has been assigned to the House Ways and Means Committee.

**HB 1192: Provisions relating to payment and distribution of the real estate transfer tax**  
**Sponsored by Rep. Larry O'Neal**

To change certain provisions relating to payment and distribution of the real estate transfer tax when property is located in more than one county. HB 1192 has been assigned to the House Ways and Means Committee.

**HB 1209: Notice Regarding Flood Plains**  
**Sponsored by Rep. Don Wix**

To provide that certain notice shall be provided to mortgage customers regarding flood plains. HB 1209 has been assigned to the House Banks and Banking Committee.

**SB 139: Instruments of Conveyance**  
**Sponsored by Sen. Bill Hamrick**

Delineates the factors when determining an instrument of conveyance that purports to be a deed. SB 139 returned to the Senate Banking and Finance Committee and is awaiting a vote.

**SB 140: Tenants in Foreclosed Property**  
**Sponsored by Sen. Bill Hamrick**

Enables tenants to remain in a foreclosed property for 60 days upon notification of the foreclosure as long as the tenant has a valid lease and pays monthly rent to the clerk of the court. SB 140 returned to the Senate Banking and Finance Committee and is awaiting a vote.

**HB 5: Income Tax Credit Bill**  
**Sponsored by Rep. Kevin Levitas**

This Bill will defines the term 'qualified ad valorem tax expense' to mean; funds paid by taxpayers for ad valorem taxes on real property, and allows for a tax credit for those who qualify. This bill was prefiled on 11/17/2009, but has not come up on the House floor.

**HB 40: Foreclosure and Deed Recording Bill**

**Sponsored by Rep. Billy Mitchell**

This changes the amount of time a deed under power by the purchaser of real property must be filed to 45 days. After the 45 days, the responsible party will have to pay no lesser than \$50 per day, up to \$1000, to the clerk of superior court in which the deed under power is recorded. HB 40 returned to the House Committee on Judiciary and is awaiting a vote.

**HB 42: Offenses for Residential Mortgage Fraud**  
**Sponsored by Rep. Billy Mitchell**

Defines the term ‘mortgage foreclosure process’ to mean the process by which a person’s ownership interest in his or her primary residence is foreclosed on or threatened to be foreclosed on and adds those who knowingly use a deliberate misstatement, misrepresentation, or omission to obtain remuneration from a homeowner to forestall an impending foreclosure, when such person is not reasonably able to forestall the foreclosure. HB 42 returned to the House Committee on Judicial Non-Civil and is awaiting a vote.

**HB 264: Regulation of Security Conveyances**  
**Sponsored by Rep. Jeff May**

Revises provisions relating to regulation of security conveyances; repeals certain obsolete provisions relating to due on sale clauses which have been preempted by federal law; provides certain new regulations with respect to certain residential mortgages and deeds to secure debt; prohibits prepayment penalties, negative amortization, and yield spread compensation of loan originators and requires loan originators to verify ability to repay. HB 264 returned to the House Judiciary Committee and is awaiting a vote.

**HB 340: Tenants Residing in Foreclosed Property**  
**Sponsored by Rep Margaret Kaiser**

Prohibits Sheriffs from turning out any debtor or tenant without proof that the notices of eviction were given at least 30 days prior to the date of the eviction. HB 340 returned to the House Committee on Judiciary and is awaiting a vote.

**HB 374: Withholding of Income Tax**  
**Sponsored by Rick Crawford**

When one sells or transfers real property the seller shall deliver to the buyer or transferee all forms or other documents incident to determining the appropriate amount of tax to be withheld or the appropriate amount exempt from withholding. HB 374 was passed by the House Ways and Means Committee and is now awaiting a vote in the House Rules Committee.

**HB 398: Taxes for Mortgage Lenders with Escrow Accounts**

**Sponsored by Rep. Bob Smith**

Any mortgage lender which maintains an escrow account for the payment of ad valorem taxes relative to the secured real property shall not send a check directly to the taxing unit, but issue a check payable jointly to the borrower and the taxing unit and deliver the check to the borrower, who in turn must send the check to the taxing unit within 7 days. Our lobbyists have worked with the author and the Committee Chairman to make sure the language is in MBAG's favor it is to move. HB 398 returned to the House Committee on Banks and Banking and is awaiting a vote.

**HB 505: Sheriff's Service Fees**

**Sponsored by Rep. Len Walker**

Increases the service fees that Sheriff's charge for certain actions for serving or dispossessing tenants or intruders from \$25 to \$50. HB 505 returned to the House Committee on Governmental Affairs and is awaiting a vote.

**HB 508: Stop Mortgage Foreclosure Rescue Act of 2009**

**Sponsored by Billy Mitchell**

Provides homeowners relief from unfair practices related to foreclosure and foreclosure rescue schemes. HB 508 returned to the House Banks and Banking Committee and is awaiting a vote.

**HB 627: Georgia Foreclosed Property Upkeep Act**

**Sponsored by Rep. Margaret Kaiser**

Enacts the "Georgia Foreclosed Property Upkeep Act." HB 627 returned to the House Judiciary Committee and is awaiting a vote.

**HB 645: Tax Executions Collection of Costs**

**Sponsored by Rep Jay Roberts**

Changes provisions regarding the collection of costs, commissions, interest and penalties. HB 645 returned to the House Ways and Means Committee and is awaiting a vote.

**HB 761: Notice of Impending Sale to Occupant in Foreclosed Property**

**Sponsored by Rep. Billy Mitchell**

Provides a person living in a property, which has been foreclosed upon, a notice of an impending sale of the property. HB 761 returned to the House Judiciary Committee and is awaiting a vote.

**HB 970: Property Boundaries**

**Sponsored by Rep. Ellis Black**

Changes certain provisions relating to the application for a new survey, marking of lines, and notice to owners of adjoining lands. HB 970 has been assigned to the House Judiciary Committee.

**HB 1048: Require Inspection For Termites and Other Wood-Destroying Organisms  
Sponsored by Rep. Tom McCall**

Each conveyance of real property on which is located a residential or commercial structure shall require a certification that such structure has been inspected for termites and other wood-destroying organisms. HB 1048 was recommitted to the House Agriculture and Consumer Affairs Committee. *Our legislative team has met with the House Rules Committee Chairman, Rules Committee members, House leadership, and the Agriculture Committee Chairman about this bill and its affect on our industry. We will keep you updated on where this bill goes from here.*

**HB 1050: Add Regulations for the Appraisal of Management Companies  
Sponsored by Rep. Tommy Benton**

Add regulations for the establishment and maintenance of a real estate appraisal management company. HB 1050 has been assigned to the House Regulated Industries Committee.

**HR 1: Property Freeze Tax Assessment Caps  
Sponsored by Rep. Edward Lindsey**

Freezes property values of both commercial and residential properties. This bill is being reconsidered in House Rules. It failed to receive the 120 votes necessary to pass as a resolution. HR 1 returned to the House Ways and Means Committee.

**SB 54: Georgia Fair Lending Act  
Sponsored by Sen. Steve Thompson**

Prohibits abusive home loan practices. SB 54 returned to the Senate Committee on Banking and Finance and is awaiting a vote.

**SB 236: Property Development Moratoriums  
Sponsored by Sen. Ralph Hudgens**

Provides the procedures for local governments to adopt property development moratoriums. SB 236 returned to the Senate Committee on State and Local Government Operations and is awaiting a vote.

**SB 249: Exemptions from Levy and Sale  
Sponsored by Sen. Ed Tarver**

Changes the nonbankruptcy exemptions from levy and sale; changes provisions relating to the exemption from bankruptcy for residences and burial plots and changes the

amounts of certain property exemptions. SB 249 returned to the Senate Banking and Finance Committee and is awaiting a vote.

**SB 251: Tax Executions**

**Sponsored by Sen. Bill Hamrick**

Changes certain provisions regarding collection of costs, commissions, interest, and penalties. SB 251 returned to the Senate Committee on Finance and is awaiting a vote.

**SB 371: Fraudulent Real Estate Transactions**

**Sponsored by Sen. Bill Cowsert**

Provides the Georgia Bureau of Investigation with the authority to investigate certain offenses involving fraudulent real estate transactions and provides the Georgia Bureau of Investigation subpoena power for such investigations. SB 371 was assigned to the Senate Judiciary Committee.

**SR 759: Mortgage Lending Institutions Adopting Rent to Own Programs**

**Sponsored by Sen. Gail Buckner**

Requests the adoption of rent-to-own programs by mortgage lending institutions to help eliminate unnecessary home mortgage foreclosures. SR 759 returned to the Senate Banking and Financial Institutions Committee and is awaiting a vote.