

Veenstra
Soukup
Rittner

SSB-3032

Small Business/Econ.
Development & Tourism
succeeded by

SENATE/HOUSE FILE SF 2440

BY (PROPOSED IOWA FINANCE

AUTHORITY BILL) BY

S. STATE

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the issuance of closing protection letters by
2 the Iowa finance authority.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 16.91, subsection 2, Code 1999, is
2 amended to read as follows:

3 2. A title guaranty, closing protection letter, or gap
4 coverage issued under this program is an obligation of the
5 division only and claims are payable solely and only out of
6 the moneys, assets, and revenues of the title guaranty fund
7 and are not an indebtedness or liability of the state. The
8 state is not liable on the-guaranties any guaranty, closing
9 protection letter, or gap coverage.

10 Sec. 2. NEW SECTION. 16.93 CLOSING PROTECTION LETTERS.

11 1. The authority through the title guaranty division may
12 issue a closing protection letter to a person to whom a
13 proposed title guaranty is to be issued, upon the request of
14 the person, if the division issues a commitment for title
15 guaranty or title guaranty certificate. The closing
16 protection letter shall conform to the terms of coverage and
17 form of the instrument as approved by the division board and
18 may indemnify a person to whom a proposed title guaranty is to
19 be issued against loss of settlement funds due to only the
20 following acts of the division's named participating attorney
21 or participating abstractor:

22 a. Theft of settlement funds.

23 b. Failure by the participating attorney or participating
24 abstractor to comply with written closing instructions of the
25 person to whom a proposed title guaranty is to be issued
26 relating to title certificate coverage when agreed to by the
27 participating attorney or participating abstractor.

28 2. A closing protection letter shall only be issued to a
29 person to whom a proposed title guaranty is to be issued for
30 real property transactions in which the division has committed
31 to issue an owner or lender certificate and for which the
32 division receives a premium and other payments or fees for a
33 title guaranty certificate or other coverage.

34 3. The division board shall establish the amount of
35 coverage to be provided and may distinguish between classes of

1 property including, but not limited to, residential,
2 agricultural, or commercial, provided that the total amount of
3 coverage provided by the closing protection letter shall not
4 exceed the amount of the commitment or title guaranty to be
5 issued. Liability under the closing protection letter shall
6 be coextensive with liability under the certificate to be
7 issued in connection with a transaction such that payments
8 under the terms of the closing protection letter shall reduce
9 by the same amount the liability under the title guaranty
10 certificate and payment under the title guaranty certificate
11 shall reduce the liability under the terms of the closing
12 protection letter.

13 4. The division may adopt a required fee for providing
14 closing protection letter coverage.

15 5. The division shall not provide any other coverage which
16 purports to indemnify against improper acts or omissions of a
17 person with regard to escrow, settlement, or closing services.

18 6. The authority shall adopt rules pursuant to chapter 17A
19 as necessary to administer this section.

20 EXPLANATION

21 This bill allows the Iowa finance authority through the
22 title guaranty division to issue a closing protection letter
23 to a person to whom a proposed title guaranty is to be issued,
24 upon the request of the person, if the division issues a
25 commitment for title guaranty or title guaranty certificate.
26 The bill provides that the closing protection letter may only
27 indemnify a person to whom a proposed title guaranty is to be
28 issued against loss of settlement funds due to the theft of
29 settlement funds and the noncompliance with written closing
30 instructions relating to title certificate coverage.

31 The bill provides that a closing protection letter shall
32 only be issued to a person to whom a proposed title guaranty
33 is to be issued for real property transactions in which the
34 division has committed to issue an owner or lender certificate
35 and for which the division receives a premium and other

1 payments or fees for a title guaranty certificate or other
2 coverage.

3 The bill provides that the division may establish fees and
4 the amount of coverage which shall not exceed the amount of
5 the commitment or title guaranty to be issued.

6 The bill prohibits the division from providing any other
7 coverage which purports to indemnify against improper acts or
8 omissions of a person with regard to escrow, settlement, or
9 closing services.

10 The bill provides that a title guaranty, closing protection
11 letter, or gap coverage issued by the division is an
12 obligation of the division and not an indebtedness or
13 liability of the state.

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Thomas J. Vilsack
Governor

Sally J. Pederson
Lt. Governor

Darlene M. Jeris
Executive Director

MEMORANDUM OF PROBLEM

The Title Guaranty Division is receiving requests for closing protection letters from Participating Attorneys. Closing protection letters provide coverage to a guaranteed for theft of the funds by the closing agent or the closing agents failure to follow the closing instructions of the guaranteed which causes the guaranteed to suffer a loss.

Closing protection letters are issued in the regular course of business of title insurance companies for their agents. The Division needs to be able to provide the ancillary services that are customary and expected in the title guarantee business. The letter issued by the Division would only cover participating attorneys and abstractors because they are the Division's "agents". Abstractors should be included because they are getting into the escrow and closing services.

The Division would need to amend an amendment to the statute to be able to provide closing protection letters. Under current provisions, the Division can only provide title guaranty certificates.

Substituted for by HF 2373
4/26/00
(P. 1410)

FILED APR 3 '00
2440

WITHDRAWN
4-26-00
P. 1411

SENATE FILE
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 2295)
(SUCCESSOR TO SSB 3032)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the title guaranty program, mortgage release
2 certificates, and the issuance of closing protection letters
3 by the Iowa finance authority.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2440

1 Section 1. Section 16.91, subsection 2, Code 1999, is
2 amended to read as follows: * * *

3 2. A title guaranty, closing protection letter, or gap
4 coverage issued under this program is an obligation of the
5 division only and claims are payable solely and only out of
6 the moneys, assets, and revenues of the title guaranty fund
7 and are not an indebtedness or liability of the state. The
8 state is not liable on ~~the guaranties~~ any guaranty, closing
9 protection letter, or gap coverage.

10 Sec. 2. Section 16.92, subsection 1, paragraph f,
11 subparagraph (4), Code Supplement 1999, is amended to read as
12 follows:

13 (4) If after payment of the unpaid balance of the loan
14 secured by the mortgage, the mortgage continues to secure any
15 unpaid obligation due the mortgagee or any unfunded commitment
16 by the mortgagor to the mortgagee, ~~the legal description of~~
17 ~~the property that will continue to be subject to the mortgage,~~
18 and the legal description of the property that will be
19 released from the mortgage.

20 Sec. 3. Section 16.92, subsection 2, paragraph a,
21 subparagraph (1), subparagraph subdivision (b), Code
22 Supplement 1999, is amended to read as follows:

23 (b) The statement contains the legal description of the
24 property to be released from the mortgage ~~and the legal~~
25 ~~description of the property that will continue to be subject~~
26 ~~to the mortgage.~~

27 Sec. 4. Section 16.92, subsection 3, paragraph d,
28 subparagraph (2), Code Supplement 1999, is amended to read as
29 follows:

30 (2) A statement that the certificate is a partial release
31 of the mortgage, and the legal description of the property
32 that will be released from the mortgage, ~~and the legal~~
33 ~~description of the property that will continue to be subject~~
34 ~~to the mortgage.~~

35 Sec. 5. Section 16.92, subsection 7, Code Supplement 1999,

1 is amended to read as follows:

2 7. PRIOR MORTGAGES.

3 a. If the real estate lender or closer has notified the
4 division that a mortgage has been paid in full by someone
5 other than the real estate lender or closer, or was paid by
6 the real estate lender or closer under a previous transaction,
7 and an effective release has not been filed of record, the
8 division may execute and record a certificate of release
9 without certification by the real estate lender or closer that
10 payment was made pursuant to a payoff statement and the date
11 payment was received by the mortgagee. A certificate of
12 release filed pursuant to this subsection is subject to the
13 requirements of subsection 2, paragraph "c".

14 b. For purposes of this subsection, an effective release
15 has not been filed of record if there appears that a mortgagee
16 in the record chain of title to the mortgage has not, either
17 on the mortgagee's own behalf or by the mortgagee's duly
18 appointed servicer or attorney in fact as established of
19 record by a filed servicing agreement or power of attorney,
20 filed of record either an assignment of the mortgage to
21 another mortgagee in the record chain of title to the mortgage
22 or a release of the mortgagee's interest in the mortgage. For
23 the purposes of this subsection and subsection 2, paragraph
24 "c", "mortgage servicer" includes a mortgagee for which an
25 effective release has not been filed of record as provided in
26 this paragraph.

27 Sec. 6. NEW SECTION. 16.93 CLOSING PROTECTION LETTERS.

28 1. The authority through the title guaranty division may
29 issue a closing protection letter to a person to whom a
30 proposed title guaranty is to be issued, upon the request of
31 the person, if the division issues a commitment for title
32 guaranty or title guaranty certificate. The closing
33 protection letter shall conform to the terms of coverage and
34 form of the instrument as approved by the division board and
35 may indemnify a person to whom a proposed title guaranty is to

1 be issued against loss of settlement funds due to only the
2 following acts of the division's named participating attorney
3 or participating abstractor:

4 a. Theft of settlement funds.

5 b. Failure by the participating attorney or participating
6 abstractor to comply with written closing instructions of the
7 person to whom a proposed title guaranty is to be issued
8 relating to title certificate coverage when agreed to by the
9 participating attorney or participating abstractor.

10 2. A closing protection letter shall only be issued to a
11 person to whom a proposed title guaranty is to be issued for
12 real property transactions in which the division has committed
13 to issue an owner or lender certificate and for which the
14 division receives a premium and other payments or fees for a
15 title guaranty certificate or other coverage.

16 3. The division board shall establish the amount of
17 coverage to be provided and may distinguish between classes of
18 property including, but not limited to, residential,
19 agricultural, or commercial, provided that the total amount of
20 coverage provided by the closing protection letter shall not
21 exceed the amount of the commitment or title guaranty to be
22 issued. Liability under the closing protection letter shall
23 be coextensive with liability under the certificate to be
24 issued in connection with a transaction such that payments
25 under the terms of the closing protection letter shall reduce
26 by the same amount the liability under the title guaranty
27 certificate and payment under the title guaranty certificate
28 shall reduce the liability under the terms of the closing
29 protection letter.

30 4. The division may adopt a required fee for providing
31 closing protection letter coverage.

32 5. The division shall not provide any other coverage which
33 purports to indemnify against improper acts or omissions of a
34 person with regard to escrow, settlement, or closing services.

35 6. The authority shall adopt rules pursuant to chapter 17A

1 as necessary to administer this section.

2 EXPLANATION

3 This bill allows the Iowa finance authority through the
4 title guaranty division to issue a closing protection letter
5 to a person to whom a proposed title guaranty is to be issued,
6 upon the request of the person, if the division issues a
7 commitment for title guaranty or title guaranty certificate.
8 The bill provides that the closing protection letter may only
9 indemnify a person to whom a proposed title guaranty is to be
10 issued against loss of settlement funds due to the theft of
11 settlement funds and the noncompliance with written closing
12 instructions relating to title certificate coverage.

13 The bill provides that a closing protection letter shall
14 only be issued to a person to whom a proposed title guaranty
15 is to be issued for real property transactions in which the
16 division has committed to issue an owner or lender certificate
17 and for which the division receives a premium and other
18 payments or fees for a title guaranty certificate or other
19 coverage.

20 The bill provides that the division may establish fees and
21 the amount of coverage which shall not exceed the amount of
22 the commitment or title guaranty to be issued.

23 The bill prohibits the division from providing any other
24 coverage which purports to indemnify against improper acts or
25 omissions of a person with regard to escrow, settlement, or
26 closing services.

27 The bill provides that a title guaranty, closing protection
28 letter, or gap coverage issued by the division is an
29 obligation of the division and not an indebtedness or
30 liability of the state.

31 The bill provides that, in the context of prior mortgages,
32 an effective release has not been filed of record if there
33 appears that a mortgagee in the record chain of title to the
34 mortgage has not filed of record either an assignment of the
35 mortgage to another mortgagee in the record chain of title to

1 the mortgage or a release of the mortgagee's interest in the
2 mortgage.

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SENATE FILE 2440

S-5620

1 Amend Senate File 2440 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 7C.5, Code 1999, is amended to
5 read as follows:

6 7C.5 FORMULA FOR ALLOCATION.

7 1. Except as provided in subsection 2 and in
8 section 7C.4A, subsections 1 through 5, the state
9 ceiling shall be allocated among all political
10 subdivisions on a statewide basis on the basis of the
11 chronological orders of receipt by the governor's
12 designee of the applications described in section 7C.6
13 with respect to a definitive issue of bonds, as
14 determined by the day, hour, and minute time-stamped
15 on the application immediately upon receipt by the
16 governor's designee. However, for the period January
17 1 through June 30 of each year, allocations to bonds
18 for which an amount of the state ceiling has been
19 reserved pursuant to section 7C.4A, subsection 6,
20 shall be made to the political subdivisions submitting
21 the applications first from the reserved amount until
22 the reserved amount has been fully allocated and then
23 from the amount specified in section 7C.4A, subsection
24 7.

25 2. a. Applications for the state ceiling
26 allocation under section 7C.4A, subsection 5, shall be
27 competitively rated by the governor's designee based
28 on the following criteria:

29 (1) The total number of jobs created.

30 (2) The total number of jobs to be created which
31 meet the wage threshold requirements of subparagraph

32 (3).

33 (3) The jobs to be created shall have a starting
34 wage of the lowest of any of the following:

35 (a) Ninety percent of the average county wage.

36 (b) Ninety percent of the average regional wage.

37 (c) Nine dollars and fifty cents adjusted annually
38 by calculating the percent increase or decrease in the
39 average Iowa hourly earnings level for all production
40 and nonproduction workers in the private sector from
41 the month of June of the previous year to June of the
42 current year.

43 (4) The provision and payment of at least eighty
44 percent of the cost of a standard medical and dental
45 plan for all full-time employees working at the
46 project for which assistance has been requested.

47 (5) The impact of the applicant's proposed project
48 on other businesses in competition with the applicant.
49 The governor's designee shall make a good faith effort
50 to prohibit the displacement of employees of existing

S-5620

S-5620

Page 2

1 businesses through an allocation of the state ceiling.

2 (6) The issuance to the applicant of all known
3 required environmental permits and the applicant's
4 compliance with all environmental regulations.

5 (7) The economic impact of the applicant's
6 proposed project on the state and the region of the
7 state in which the applicant will be locating.

8 b. Of the applications for the state ceiling
9 allocation under section 7C.4A, subsection 5, the
10 governor's designee shall place the highest rated
11 applications into one of the two drawings provided in
12 paragraph "c", subparagraph (1), based on the
13 population of the political subdivision where the
14 proposed project will be located. Upon request, the
15 governor's designee shall make available a written
16 rationale detailing the reasons used for selecting the
17 particular applicants chosen for the drawings
18 conducted pursuant to paragraph "c", subparagraph (1).

19 c. (1) On or before June 30 of each year, the
20 state ceiling allocated under section 7C.4A,
21 subsection 5, shall be allocated based on one drawing
22 conducted by the governor's designee for each of the
23 following groups:

24 (a) Applicants eligible pursuant to paragraph "b"
25 whose proposed project would be located in a political
26 subdivision with a population of twenty thousand or
27 less according to the most recent census.

28 (b) Applicants eligible pursuant to paragraph "b"
29 whose proposed project would be located in a political
30 subdivision with a population over twenty thousand.

31 (2) One-half of the state ceiling allocated under
32 section 7C.4A, subsection 5, shall be reserved for the
33 applicants in the drawing conducted pursuant to
34 subparagraph (1), subparagraph subdivision (a). The
35 remaining one-half of the state ceiling allocated
36 under section 7C.4A, subsection 5, shall be reserved
37 for the applicants in the drawing conducted pursuant
38 to subparagraph (1), subparagraph subdivision (b).

39 (3) Any remaining portion of the state ceiling
40 allocated under section 7C.4A, subsection 5, which has
41 not been awarded after the drawings under paragraph
42 "c" shall become available to any applicant as
43 determined by the governor's designee.

44 d. An applicant shall not be allocated a portion
45 of the state ceiling under this subsection more than
46 once during the same calendar year. An applicant
47 shall not be allocated a portion of the state ceiling
48 under this subsection if the applicant has a majority
49 owner who is a majority owner of another applicant who
50 has been allocated a portion of the state ceiling

S-5620

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S-5620

Page 3

- 1 under this subsection during the same calendar year."
- 2 2. By striking page 1, line 10, through page 2,
- 3 line 26.
- 4 3. Title page, by striking lines 1 through 3 and
- 5 inserting the following: "An Act relating to the Iowa
- 6 finance authority by providing for the issuance of
- 7 closing protection letters and providing for the
- 8 allocation of the state ceiling of federally tax-
- 9 exempt private activity bonds."
- 10 4. By renumbering as necessary.

By JEFF LAMBERTI

S-5620 FILED APRIL 25, 2000

adopted
4/26/00
(P. 1410)