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SB-861 National Mortgage Settlement Fund: allocations. (2017-2018)

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Senate Bill No. 861

CHAPTER 331

An act to amend Section 12531 of the Government Code, relating to the national mortgage settlement, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor September 10, 2018. Filed with Secretary of State September 10, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 861, Committee on Budget and Fiscal Review. National Mortgage Settlement Fund: allocations.

Existing law creates the National Mortgage Special Deposit Fund, the moneys in which are continuously appropriated and to be allocated by the Department of Finance. Existing law authorizes the Director of Finance to allocate or otherwise use the funds in the National Mortgage Special Deposit Fund to offset General Fund expenditures in the 2011–12, 2012–13, and 2013–14 fiscal years.

This bill would provide legislative confirmation and ratification that allocations of funds from the National Mortgage Special Deposit Fund in the 2011–12, 2012–13, and 2013–14 fiscal years were consistent with the direction given to the Director of Finance, as specified. The bill would also confirm and ratify that, because those allocations were displayed in the Governor's proposed budget for the 2012–13 and 2013–14 fiscal years, and left unchanged in the budget acts adopted for the 2012–13 and 2013–14 fiscal years, the Legislature was aware of, and approved, the allocation and expenditure of funds from the National Mortgage Special Deposit Fund to offset General Fund expenditures in those fiscal years. The bill would make related declarations and a statement of legislative intent.

This bill would appropriate \$25,000 from the General Fund to the Department of Finance for legal fees and costs.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares the following:

- (a) The state has funded and allocated billions of dollars for affordable housing in the past several years.
- (b) The 2018–19 budget alone includes \$5.1 billion in state and federal funds across multiple programs and departments to address housing and homelessness.
- (c) The Governor and Legislature developed a legislative package of 15 bills signed in September 2017 that collectively shorten the housing development approval process, provide incentives to streamline development, promote local accountability to

adequately plan for needed housing, and invest in affordable housing production. The housing package establishes a \$75 document recording fee on real estate transactions, excluding home sales, beginning January 1, 2018, to create a sustainable funding source for state affordable housing programs.

(d) The 2017 legislative package also places a \$4 billion bond on the November 2018 ballot, with \$3 billion in general obligation bonds for affordable housing, and \$1 billion for veterans housing to be supported by participants' loan repayments.

(e) To encourage housing development, the Legislature provided local governments with tools to help fulfill their housing priorities and responsibilities, including:

(1) Chapter 386, Statutes of 2013 (SB 743), which provides an alternative approach for CEQA analysis of transportation impacts of transit-oriented development and new exemptions for certain projects.

(2) Chapter 785, Statutes of 2014 (SB 628), which allows cities and counties to create an enhanced infrastructure financing district that utilizes property taxes and other available funding for various types of projects including low and moderate income housing projects.

(3) Chapter 319, Statutes of 2015 (AB 2), which allows specified disadvantaged areas of California to create a community revitalization and investment authority that utilizes property taxes and other available funding for various types of projects, including affordable housing.

(4) Various statutes that reduce minimum parking requirements and expand size and other bonuses for developers that meet affordability requirements.

(5) Chapters 720 and 735, Statutes of 2016 (SB 1069 and AB 2299), which streamline permits and require local ordinances to facilitate the development of these low-cost housing options that provide additional living quarters on single-family lots that are independent of the primary dwelling unit.

(6) Chapter 453, Statutes of 2016 (AB 2031), allows a local government, with an existing successor agency to a former redevelopment agency, to bond against the property tax revenues it receives as a result of redevelopment agency dissolution for the purposes of affordable housing development.

(f) In 2016 the Governor signed into law the No Place Like Home Program, which funds the construction of permanent supportive housing targeted to the chronically homeless and those at risk of chronic homelessness with mental health services needs. The program is funded with a \$2 billion bond, secured by Mental Health Services Act (Proposition 63) revenues, and will be on the November 2018 ballot to accelerate the issuance of program funds.

(g) The Veteran's Housing and Homeless Prevention Bond Act of 2014 (Proposition 41) repurposed \$600 million in bond funds to fund multifamily housing for veterans and their families.

(h) The California Tax Credit Allocation Committee, which administers the low-income housing tax credit program, has made a number of regulatory changes to increase the utilization of this program. Tax credit financing supports nearly all deed-restricted affordable housing in California; improvements to this program benefit low-income families across the state. These efforts resulted in a historic high of 20,847 housing units financed with "4 percent" federal tax credits in 2016.

(i) In addition, the California Tax Credit Allocation Committee has worked with the California Debt Limit Allocation Committee to convene a High Cost Task Force to address the growing housing development costs that limit the impact of public investment. As a result, the state has set a high-cost threshold for funded projects, provided incentives for the construction of larger projects with lower costs per unit, and removed state funding requirements that prioritize expensive projects.

(j) The California Housing Financing Agency has increased its multifamily lending activity each year since the Great Recession, providing \$369 million in financing in 2016–17 to support 2,100 affordable housing units. The agency also issued \$682 million in private activity bonds for affordable housing since 2015.

(k) The state's first-time homebuyers downpayment assistance program has provided \$4 billion to moderate-income families that do not qualify for the low-income programs.

SEC. 2. (a) It is the intent of the Legislature in enacting Section 3 of this act to confirm that allocations and uses of funds made by the Director of Finance from the National Mortgage Special Deposit Fund pursuant to Section 12531 of the Government Code in the 2011–12, 2012–13, and 2013–14 fiscal years were consistent with legislative direction and intent and to abrogate the holding of the Court of Appeal in the case of *National Asian American Coalition v. Brown*, 25 Cal.App.5th 60 (2018). The Legislature further declares that the allocations made by the Director of Finance pursuant to Section 12531 of the Government Code were made for purposes consistent with the National Mortgage Settlement.

(b) It is the intent of the Legislature to explore potential appropriations and other support for housing in the next fiscal year, consistent with the Legislature's recent efforts to fund and support housing.

SEC. 3. Section 12531 of the Government Code is amended to read:

12531. (a) The Legislature finds and declares that California, represented by the California Attorney General, entered a national multistate settlement with the country's five largest loan servicers. This agreement, the National Mortgage Settlement stemmed from successful resolution of federal court action (Consent Judgment, United States v. Bank of America (No. 1:12-cv-00361, Banzr. D.C. Apr. 4, 2012)). The National Mortgage Settlement is broad ranging, with California's share of this settlement estimated to be up to eighteen billion dollars (\$18,000,000,000). Of this amount, approximately four hundred ten million dollars (\$410,000,000) will come directly to the state in costs, fees, and penalty payments.

(b) There is hereby created in the State Treasury the National Mortgage Special Deposit Fund. Notwithstanding Section 13340, all moneys in the fund are hereby continuously appropriated, and shall be allocated by the Department of Finance.

(c) Direct payments made to the State of California as civil penalties pursuant to the National Mortgage Settlement shall be deposited in the Unfair Competition Law Fund as required by the settlement.

(d) Direct payments made to the State of California pursuant to the National Mortgage Settlement, except for those payments made pursuant to subdivision (c), shall be deposited in the National Mortgage Special Deposit Fund.

(e) Notwithstanding any other law, the Director of Finance may allocate or otherwise use the funds in the National Mortgage Special Deposit Fund to offset General Fund expenditures in the 2011–12, 2012–13, and 2013–14 fiscal years. The Department of Finance and the Controller's office shall recognize this fiscal alignment accordingly for the purpose of the state budget process and legal basis of accounting.

(f) Not less than 30 days prior to allocating any moneys pursuant to subdivision (e), the Department of Finance shall submit an expenditure plan to the Joint Legislative Budget Committee detailing the proposed use of the moneys in the National Mortgage Special Deposit Fund.

(g) Notwithstanding any other law, the Controller may use the funds in the National Mortgage Special Deposit Fund for cashflow loans to the General Fund as provided in Sections 16310 and 16381.

(h) The Legislature hereby confirms and ratifies that the allocations of funds from the National Mortgage Special Deposit Fund in the 2011–12, 2012–13, and 2013–14 fiscal years were consistent with the direction given to the Director of Finance in subdivision (e) to offset General Fund expenditures in those years. The Legislature further confirms and ratifies that because those allocations were displayed in the Governor's proposed budget for the 2012–13 and 2013–14 fiscal years, and left unchanged in the budget acts adopted for the 2012–13 and 2013–14 fiscal years, the Legislature was aware of, and approved, the allocation and expenditure of funds from the National Mortgage Special Deposit Fund to offset General Fund expenditures in those fiscal years. This subdivision is declaratory of existing law.

SEC. 4. The amount of twenty-five thousand dollars (\$25,000) is hereby appropriated from the General Fund to the Department of Finance for legal fees and costs.

SEC. 5. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.