

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 07-0518

**Date:** January 28, 2007

**Prime Sponsor(s):** Sen. Veiga  
Rep. Massey

**Bill Status:** Senate Business, Labor, and Technology

**Fiscal Analyst:** David Porter (303-866-4375)

**TITLE:** CONCERNING ADDITIONAL CONSUMER PROTECTIONS RELATING TO REAL ESTATE TRANSACTIONS.

<b>Fiscal Impact Summary</b>	<b>FY 2007-2008</b>	<b>FY 2008-2009</b>
<b>State Revenue</b>		
General Fund - Fines (Civil Penalties)	< \$ 5,000	< \$ 5,000
Fines Collection Cash Fund	< 5,000	< 5,000
<b>State Expenditures</b>		
General Fund		\$ 5,517
General Fund Diversion to the Capital Expansion Reserve Fund	(\$ 125,165) 125,165	
Mortgage Broker Registration Cash Fund	56,696	104,301
<b>FTE Position Change</b>	0.3 FTE	0.5 FTE
<b>Effective Date:</b> Applies to all acts occurring on or after the date of signature by the Governor.		
<b>Appropriation Summary for FY 2007-2008:</b> See State Appropriations section.		
<b>Local Government Impact:</b> Potential county jail impact.		

**Summary of Legislation**

The Division of Real Estate in the Department of Regulatory Agencies is responsible for registering mortgage brokers. This bill addresses the relationship between mortgage brokers and real estate appraisers and modifies the powers and duties of the director of the Division of Real Estate.

Mortgage brokers are prohibited from trying to influence the independent judgement of a real estate appraiser through coercion, intimidation, or compensation. If the director has reason to believe that a broker is trying to influence an appraisal he or she must initiate an investigation.

The bill adds “influencing a real estate appraiser” to the Consumer Protection Act (CPA) as a deceptive trade practice. This classification allows the Office of the Attorney General to pursue a civil enforcement action. The bill also stipulates that influencing a real estate appraiser can be pursued as a criminal enforcement action. If a criminal action is filed, the person violating the act would be guilty of class 1 misdemeanor upon conviction of a first offense. Second and subsequent convictions are class 6 felonies.

The powers and duties of the director addressed by the bill are as follows:

- the director must refuse or revoke registration of brokers who have been prohibited from practicing in any other state in the past five years;
- the director is given rule-making authority; and
- administrative proceedings finding broker misconduct will result in fines of not less than \$1,000 for a first offense and between \$1,000 and \$2,000 for subsequent offenses.

## **State Revenue**

***Fine Revenue.*** This bill authorizes the director of the Division of Real Estate or an administrative law judge to administer a fine for persons found in violation of the Mortgage Broker Registration Act. Fines of up to \$1,000 for a first offense, and between \$1,000 and \$2,000 for a second offense, will be credited to the General Fund. Since the fine amount is discretionary, the impact to state revenue from administrative proceedings cannot be determined. However, a minimum amount of fine revenue (<\$5,000 per year) is assumed under the bill.

Influencing a real estate appraiser is also added to the Colorado Consumer Protection Act, allowing the Office of the Attorney General to pursue civil and criminal actions. Violation of this new section of the Consumer Protection Act is designated as a class 1 misdemeanor for a first offense and a class 6 felony for second and subsequent offenses. Per Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Per Section 18-1.3-401 (III) (A), C.R.S., the penalty for a class 6 felony is 12 to 18 months imprisonment in a state correctional facility, a fine of \$1,000 to \$100,000, or both. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined. However, a minimal amount of fine revenue (< \$5,000 per year) is assumed under the bill.

***Fee Revenue.*** Costs to the Department of Regulatory Agencies are borne by participants in the regulatory program. The current fee charged, \$200 per registrant, is the maximum allowed per Section 12-61-908 (1), C.R.S., and the department cannot raise the fee any further. In this case, the costs of investigating complaints and pursuing disciplinary action described in the State Expenditures section of this fiscal note would cause an increase to the mortgage broker fees. However, the roughly 3,500 mortgage brokers registered with the department exceeds predicted participation level and is expected to provide enough extra revenue to support the program without needing a fee adjustment. Should the number of brokers registered with the department continue to exceed expectations and more than fully fund the expenditures of the program, the fee schedule will be adjusted accordingly.

**State Expenditures**

*Total state expenditures for SB07-085 are \$56,696 and 0.3 FTE in FY 2007-08 and \$104,301 and 0.5 FTE in FY 2008-09.* Costs are for complaint investigation, associated hearings, and one individual sentenced to the Department of Corrections every five years. Table 1 and the discussion that follows explain the cost components of the bill.

<b>Table 1. Total Costs Under SB07-085</b>		
<b>Cost Components - Department of Regulatory Agencies</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>
Personal Services (Compliance Investigator I)	\$ 14,471	\$ 24,119
Operating Expenses	0	552
Capital Outlay	1,562	0
Legal Services	40,662	79,630
<b>Mortgage Broker Registration Cash Fund Total</b>	<b>\$ 56,696</b>	<b>\$ 104,301</b>
<b>FTE</b>	<b>0.3</b>	<b>0.5</b>
<b>Cost Components - Department of Corrections</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>
Construction	\$ 125,165	\$ 0
Operating	0	5,517
<b>General Fund Total</b>	<b>\$ 125,165</b>	<b>\$ 5,517</b>
<b>FTE</b>	<b>0.0</b>	<b>0.0</b>
<b>Grand Total Costs</b>	<b>\$ 181,861</b>	<b>\$ 109,818</b>
<b>Grand Total FTE</b>	<b>0.3</b>	<b>0.5</b>

**Department of Regulatory Agencies.** The Division of Real Estate is responsible for investigating complaints that are generated by this bill. The amount of resources required is based on the number of complaints. Using the number of complaints filed against real estate appraisers to estimate the number of complaints that will be filed against mortgage brokers, 48 complaints per year are expected (with 24 in the first year). Complaints will be received and evaluated by a Compliance Investigator I at 0.3 FTE in the first year and 0.5 FTE in out years. The investigator's workload is expected to increase as complaints are filed and work their way through the investigation process to hearings.

Complaints may lead to dismissal, denial of registration, revocation of registration, or administrative fines. The division will require legal services from the Department of Law for all hearings. The division will also need legal services to advise in the rule-making process.

**Department of Law.** The Department of Law is responsible for assisting the Department of Regulatory Agencies in promulgating rules for the complaint process and for legal representation in the hearings with mortgage brokers. With 24 complaints in the first year and 48 complaints in the second year and with 25 hours of rule-making assistance each year, legal services of 600 and 1175 hours are required. This is equivalent to 0.3 FTE in FY 2007-08 and 0.7 FTE in FY 2008-09.

The Department of Law is also responsible for prosecuting violations of the Colorado Consumer Protection Act. The addition of “influencing a real estate appraiser” to the act may result in additional case filings by the department. The number of cases brought by the Office of the Attorney General is unknown, and this fiscal note assumes that the workload will be absorbed. If more resources are required, the need will be addressed through the budget process.

*Department of Personnel and Administration.* The workload of the Office of Administrative Courts within the Department of Personnel and Administration (DPA) is impacted by any hearings that result from this bill. However, this bill alone does not generate the need for more administrative law judges. Should a number of bills pass this session and significantly impact the DPA, it is assumed that any additional resources will be addressed through the annual budget process.

*Department of Corrections.* As indicated in Table 2, the bill is expected to increase department expenditures by \$125,165 in FY 2007-08 and \$5,517 in FY 2008-09. For the next five years, the bill will increase department expenditures by \$148,061. This cost is based on the assumption that one mortgage broker will be convicted of a class 6 felony every five years.

### **Five-Year Fiscal Impact on Correctional Facilities**

The adoption of this bill will result in a net increase in periods of imprisonment in a state correctional facility. Section 2-2-703, C.R.S., requires that such bills cannot be passed without five years of appropriations for prison bed construction and operating costs. Construction costs are estimated to be \$125,165 per inmate bed. Operating costs are \$78.58 per bed per day or \$27,587 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing.

Prison bed construction is funded through a General Fund transfer to the Capital Construction Fund, which is then transferred to the Corrections Expansion Reserve Fund. These appropriations are not subject to the 6 percent statutory General Fund appropriations limit. General Fund appropriations for operating costs are subject to the 6 percent limit.

However, in the event state correctional facilities are at capacity, Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the Department of Corrections to permanently place state inmates classified as medium custody and below in private contract prisons. The state pays private prisons at a rate of \$51.91 per bed per day or \$18,947 per bed per year.

<b>Table 2. Five-Year Fiscal Impact On Correctional Facilities</b>				
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
<b>FY 2007-08</b>		\$ 125,165	\$ 0	\$ 125,165
<b>FY 2008-09</b>	0.2	0	5,517	5,517
<b>FY 2009-10</b>	0.2	0	5,793	5,793
<b>FY 2010-11</b>	0.2	0	5,793	5,793
<b>FY 2011-12</b>	0.2	0	5,793	5,793
<b>Total</b>		\$125,165	\$22,896	\$148,061

**Other State Impacts**

Based on the December 2006 Legislative Council Staff revenue forecast, there is enough revenue to fully fund the diversion to the Highway Users Tax Fund (HUTF) under the provisions of SB 97-1 for the next five fiscal years and have additional revenue flow into the General Fund excess reserve. Under the provisions of HB02-1310, revenue in the General Fund excess reserve is diverted two-thirds to the HUTF and one-third to capital construction. Construction costs for new prison beds are funded outside of the 6 percent appropriations limit. Therefore, the increased expenditure needed to fund this element of the bill would serve to reduce the amount of money available for diversion to the HUTF and to capital construction. In FY 2007-08, this amounts to \$83,443 (two-thirds) from the HUTF and \$41,722 (one-third) from capital construction.

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program.

- group health, life and dental insurance
- inflation indices
- amortization equalization disbursements
- supplemental amortization equalization disbursements
- short-term disability
- leased space
- indirect costs

**Local Government Impact**

The penalty for a class 1 misdemeanor is six to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact at the local level cannot be determined. The cost to house an offender in

county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$48.96 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

### **State Appropriations**

This fiscal note indicates a cash funds exempt appropriation of \$56,696 and 0.3 FTE from the Mortgage Broker Registration Cash Fund to the Division of Real Estate, Department of Regulatory Agencies, in FY 2007-08. The Department of Corrections will require a General Fund appropriation of \$125,165 in FY 2007-08 for capital construction costs and the remaining appropriations identified in Table 2, page 5.

### **Departments Contacted**

Corrections  
Judicial  
Public Safety

District Attorneys Council  
Law  
Regulatory Agencies