


 Colorado *Legislative Council Staff Fiscal Note*
FINAL
FISCAL NOTE

Drafting Number: LLS 08-0389

Date: August 18, 2008

Prime Sponsor(s): Rep. Judd

Bill Status: Postponed Indefinitely

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TITLE: CONCERNING THE REGULATION OF QUALIFIED INTERMEDIARIES.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
General Fund - Penalties	\$ 0	< \$ 2,500
Cash Funds		
Division of Registration Cash Fund*	0	193,200
Investigation Costs	0	< 2,500
Fees – Background Checks	2,450	0
Fees – Pass-through Fees to FBI	3,080	0
State Expenditures		
Cash Funds		
Division of Registrations Cash Fund*	\$ 89,812	\$ 64,958
Fees – Background Checks	2,450	0
Fees – Pass-through Fees to FBI	3,080	0
FTE Position Change	0.9 FTE	0.9 FTE
Effective Date: The bill was postponed indefinitely by the Senate Education Committee on March 10, 2008.		
Appropriation Summary for FY 2008-2009: See State Appropriations section.		
Local Government Impact: None.		

* Fees are set to cover both the direct and indirect costs of a program's implementation. Pursuant to JBC policy, the fiscal note does not include all costs incurred under the bill. See **Expenditures Not Included** section of the fiscal note for these costs.

Summary of Legislation

This bill establishes the regulation of qualified intermediaries within the Division of Registrations, Department of Regulatory Agencies. Qualified intermediaries are persons or corporations that facilitate tax deferred exchanges, as specified in section 1031 of the Internal Revenue Code (26 U.S.C. § 1031). Registration is required by July 1, 2009.

Applicants must submit all required information to the division, provide a fingerprint-based criminal history check, carry a \$1.0 million bond, and carry a \$250,000 errors and omissions insurance policy. The bill specifies the rules by which qualified intermediaries must act to maintain good standing. In the event the rules are violated, the division can restrict or revoke a registration,

issue a cease-and-desist order, or send a letter of admonition. If registration is revoked, the division may charge the registrant for reasonable expenses of the investigation. Additionally, persons or companies that violate the bill shall be subject to a fine of \$1,000 per day for each day the violation continues.

The division is responsible for establishing registration forms, procedures, and fees. It is also responsible for enforcing the bill.

State Revenue

Department of Regulatory Agencies — Fee Impact on Qualified Intermediaries. Fee revenue of \$193,200 is anticipated in FY 2009-10 from initial registrations. Subsequent renewals occur in July of each year, with the first renewal required in July of 2010.

Section 2-2-322, C.R.S., requires legislative service agency review of measures that create or increase any fee collected by a state agency. Table 1 identifies the fee impact of this bill.

Table 1. Fee Impact on Qualified Intermediaries			
Type of Registration Fee	Proposed Fee	Number Affected	Total Fee Impact
Individual	\$500	128	\$64,000
Officer	500	12	6,000
Corporation	3,850	32	123,200
TOTAL			\$193,200

The number of new qualified intermediaries is based on information from the Federation of Exchange Accommodators. After the initial registration of practitioners, the number of new applicants is expected to be fairly low, 7 per year. Once the program is established, fees will be adjusted to balance program costs.

Department of Regulatory Agencies — Penalties. The division may charge investigation expenses of qualified intermediaries that have their registration revoked. Additionally, fines of \$1,000 per day can be assessed for violation of the bill. This fiscal analysis assumes that most problems handled by the division will be addressed through measures prior to the assessment of fines. However, a minimal amount of penalty or investigation revenue (< \$5,000 per year beginning in FY 2009-10) is assumed under the bill.

Department of Public Safety – Background Check Fees. The Colorado Bureau of Investigations (CBI) will receive \$5,530 in FY 2008-09 from qualified intermediaries for criminal history checks. Criminal history checks are \$39.50 each and will be done on 140 qualified intermediaries. Of the \$39.50, \$22.00 passes through to the FBI to cross-check criminal histories

against the national criminal database. The total pass-through amount to the FBI is \$3,080 in FY 2008-09. The remaining \$17.50 is retained by the CBI to cover background check costs, totaling \$2,450 in FY 2008-09.

State Expenditures

Total expenditures are \$95,342 and 0.9 FTE in FY 2008-09 and \$64,958 and 0.9 FTE for FY 2009-10. Expenditures are primarily in the Department of Regulatory Agencies, Division of Registrations, with background check costs in the Department of Public Safety.

Department of Regulatory Agencies, Division of Registrations. The division is responsible for the registration, regulation, and enforcement of qualified intermediaries. Table 1 and the discussion that follows details division costs.

Table 1 — Department of Regulatory Agencies Costs under HB08-1237		
	FY 2008-09	FY 2009-10
Personal Services	\$ 43,768	\$ 43,768
<i>FTE</i>	0.9	0.9
Contract Personal Services	7,347	3,000
Operating Expenses, Capital Outlay, and Leased Space	8,769	4,863
License System	11,920	0
Legal Services	<u>18,008</u>	<u>13,327</u>
Total	\$ 89,812	\$ 64,958

Staff will be responsible for the following:

- ▶ creating registration forms, rules, and procedures;
- ▶ general program oversight;
- ▶ applicant review, including verification of the background check, proof of errors and omissions insurance, and proof of a fidelity bond;
- ▶ public outreach to the industry and applicants; and
- ▶ addressing complaints and representing the program in disciplinary proceedings.

In the first year, contract personal services are for an administrative assistant to help process applications. In the first and second years, an expert consultant will assist the division in establishing regulatory procedures.

Department of Law. Legal services will be provided by the Department of Law at a rate of \$72.03 per hour. In FY 2008-09, 250 hours of legal services are for rulemaking. For FY 2009-10, legal services are required for rulemaking (50 hours), adjudication (20 hours), injunctions (60 hours), general counsel (50 hours), and the creation of a template used when issuing a stipulation (5 hours). Based on historical rates of comparable professions, second year legal services assume that 1 case will be referred to the Attorney General's office to be resolved and 1 injunction will be filed against a person failing to register as required.

Department of Public Safety, Colorado Bureau of Investigations (CBI). The CBI will process 140 fingerprint-based criminal history checks. Of the \$5,530 earned on background checks, \$2,450 is for state costs and \$3,080 will be passed through to the FBI.

Judicial Branch and Department of Personnel and Administration. The majority of disciplinary actions are expected to be handled through the Division of Registrations. However, some actions and investigations may escalate and be resolved by either an administrative law judge or district court. It is expected that these cases would be infrequent and could be absorbed within existing appropriations.

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. HB08-1237 has annual indirect costs of approximately \$17,186.

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

State Appropriations

The Department of Regulatory Agencies requires a cash funds appropriation of \$89,812 from the Division of Registrations Cash Fund and 0.9 FTE in FY 2008-09. Of this amount, the Department of Law will require \$18,008 in reappropriated funds from the Division of Registrations Cash Fund in FY 2008-09. The Department of Public Safety requires a cash funds appropriation of \$5,530, with \$3,080 passed through to the FBI.

Departments Contacted

Regulatory Agencies
Personnel

Public Safety
Judicial

Law