

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 07-0895
Prime Sponsor(s): Sen. Veiga
 Rep. Rice

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Bill Status: Senate Appropriations
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TITLE: CONCERNING THE APPLICATION OF EXISTING REGULATIONS TO PERSONS PERFORMING SERVICES IN CONNECTION WITH REAL ESTATE TRANSACTIONS, AND, IN CONNECTION THEREWITH, PROVIDING FOR THE REGISTRATION OF PERSONS PROVIDING SETTLEMENT SERVICES WITH THE DIVISION OF REAL ESTATE, ESTABLISHING A FUND TO INCREASE CONSUMER PROTECTION WITH REGARD TO THE ACTIVITIES OF TITLE ENTITIES, AND REQUIRING PERIODIC EXAMINATIONS OF TITLE ENTITIES.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue		
<u>TOTAL</u>	<u>\$1,864,081</u>	<u>\$717,343</u>
General Fund	Fines	Fines
Cash Funds		
Title Insurance Enforcement Cash Fund	\$555,960	\$577,656
Settlement Service Providers Registration Cash Fund	1,052,194 + Fines	105,118 + Fines
Settlement Service Providers Analysis Cash Fund	0	0
Fines Collection Cash Fund	<10,000	<10,000
Fees - Background Checks	108,955	10,885
Cash Fund Exempt - Pass Through Fees to FBI	136,972	13,684
State Expenditures		
<u>TOTAL</u>	<u>\$1,036,906</u>	<u>\$1,008,560</u>
Cash Funds		
Title Insurance Enforcement Cash Fund	555,633	576,767
Settlement Service Providers Registration Cash Fund	230,067	408,668
Settlement Service Providers Analysis Cash Fund	0	0
Fees - Background Checks	114,234	9,441
Cash Fund Exempt - Pass Through Fees to FBI	136,972	13,684
FTE Position Change	13.2	14.5
Effective Date: Upon signature of the Governor (parts 4, 12,13); January 1, 2008 (parts 1-3, 5-11).		
Appropriation Summary for FY 2007-2008: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

The fiscal note is based on amendments adopted in the Senate Business, Labor, and Technology (SBLT) Committee. Since a fiscal note was not available for the SBLT committee hearing, this is the first fiscal note for SB 07-249.

Summary of Legislation

The bill establishes examination requirements for **title insurance companies** and regulatory oversight of **independent settlement services providers**. It also creates the Title Insurance Enforcement Cash Fund, the Settlement Service Providers Registration Cash Fund, and the Settlement Service Providers Analysis Cash Fund. These cash funds will pay for the enforcement activities of the Division of Insurance (DOI) and the Division of Real Estate (DRE) within the Department of Regulatory Agencies, and the Department of Law.

Title Insurance Companies. The bill increases regulatory oversight over title insurance companies.

Examinations. The bill requires the Department of Regulatory Agencies, DOI, to examine title companies for compliance with current title company laws. Examinations will occur with sufficient frequency to ensure compliance equals or exceeds compliance rates in states with similar title company regulations. The DOI will also cooperate with the Division of Real Estate (DRE) and the Department of Law for referrals made to the Attorney General for violations of the Colorado Consumer Protection Act (CCPA).

Title companies created on and after January 1, 2008, will be examined between 12 and 24 months after initial licensure, and shall not be subject to further examination for at least three (3) years unless noncompliance is suspected. A title company examined for noncompliance shall not be examined under normal examination requirements for at least two (2) years.

Annual Reports. Beginning January 1, 2008, each title company must file with the DOI an annual report. The annual report must verify the current business address of the title company, that it is in good standing with the Secretary of State, and that it and its producers are appropriately licensed. Annual reports shall be made available to the public in a manner that allows licensing status and business relationship information to be easily accessed.

Title Insurance Market Analysis. The DOI is required to conduct a periodic analysis of trends in the title insurance market and include regulatory enforcement actions and consumer complaints as part of its report. The first analysis will include data from the 2008 calendar year and will be submitted to the business committees of the General Assembly by March 15, 2009. Successive analyses will be conducted for every two (2) year period thereafter.

Independent Settlement Service Providers. The bill creates a new framework for regulatory oversight of settlement service providers and creates the Settlement Service Provider Registration Act. Generally, independent settlement service providers are persons that provide real estate closing services.

Registration. On and after January 1, 2008, persons engaging in settlement service provider activities are required to be registered with the DRE. Registrations will be valid for a period of three (3) years and applicants are required to submit to a criminal history check, disclose any disciplinary actions taken against the applicant concerning the provision of settlement services, and pay a fee established by the DRE director. Prior to registering, an applicant shall post a surety bond with the DRE.

Once all application requirements have been satisfied, the director has 21 days to issue or deny the registration of an applicant. An applicant shall be denied registration based on his or her criminal record, professional record, or for filing an incomplete or incorrect application. If approved, an applicant shall have and maintain insurance coverage for errors and omissions in an amount set by the DRE director. Persons registered as a real estate or mortgage broker, attorney, banker, insurer, or other regulated profession that provides settlement services are exempt from registration.

Suspensions, Revocations, and Denials. The DRE director may summarily suspend the registration of a person who is not qualified to provide settlement services. The director shall also suspend a settlement service provider for failure to maintain a \$25,000 surety bond. If a person's registration has been revoked, he or she shall not be eligible for registration for two (2) years. Finally, the director may issue a cease and desist order against a person suspected of violating the Settlement Service Provider Registration Act.

State Revenue

Total state revenue will increase by \$1,854,081 in FY 2007-08 and by \$707,343 in FY 2008-09. Revenue components are discussed below.

Assessment Fees - Title Insurance Enforcement Cash Fund. The bill creates the Title Insurance Cash Fund. Fund revenue will be derived from a fee assessed on licensed title insurance agents. Under no circumstances shall fees be set in a manner that exceeds \$1.50 per title policy. The bill specifies that the fund shall be used to be for title company enforcement activities for the DOI and Department of Law. Currently, there are approximately 2,712 title insurance agents. Based on the bill's expenditures, it is estimated that the annual fee will equal \$124 in FY 2007-08, resulting in \$555,960 ($\$205 * 2,712$) in fee revenue. The bill states that the fund balance cannot exceed \$500,000 but does not prohibit revenue in excess of this amount from being collected as long as the balance does not exceed the allowable limit. Since expenditures will be made while revenue is received, total annual revenue will be greater than \$500,000 but the balance at any one time will be less than \$500,000.

Administrative Fines - Colorado Consumer Protection Act (CCPA). New prohibitions for title insurers are also enforced under the CCPA. Civil penalties under the CCPA are up to \$2,000 per violation or up to \$10,000 per violation if the victim is over the age of 60. CCPA fine revenue is credited to the General Fund. While compliance with the bill's requirements is expected to be high, moderate fine revenue is expected. However, the increase in fine revenue cannot be quantified.

Registrations - Settlement Service Providers Registration Cash Fund. The bill creates the Settlement Service Providers Registration Cash Fund. Revenue will be derived from registration fees upon persons registered to provide settlement services. The DRE director shall set the fee to cover the direct and indirect costs of implementing the Settlement Service Provider Registration Act for a three (3) year period. Based on this requirement, it is estimated that for FY 2007-08 and FY 2008-09 the fee will be set at \$169. An estimated 6,226 settlement service providers will register in FY 2007-08 resulting in revenue of \$1,052,194 ($\$169 * 6,226$).

Administrative Fines - Settlement Service Providers Registration Cash Fund. The director of the DRE may investigate any provider of settlement services for violations. A person violating the act is subject to an administrative fine of up to \$1,000 in the first instance and between \$1,000 and \$2,000 per violation for second and subsequent violations. The bill does not specify what fund administrative fines are credited to but the fiscal note assumes they will be credited to the Settlement Service Providers Analysis Cash Fund. Administrative fine revenue is expected to be minimal.

Assessment Fees - Settlement Service Providers Analysis Cash Fund. The bill creates the Settlement Service Providers Analysis Cash Fund. Revenue will be received from an assessment of fees registered to provide settlement services. The fee will be set by the DRE director to pay for a settlement services market trend analysis conducted by the DRE. The market trend analysis will not be performed until at least 2010. Consequently, no assessment will be made in FY 2007-08 or FY 2008-09.

Criminal Fines - Fines Collection Cash Fund. Any person or business providing settlement services without proper registration is guilty of a Class 1 misdemeanor. Per Section 18-1.3-501, C.R.S., the penalty for a Class 1 misdemeanor is six (6) to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. If the violator is a business, it shall be punished by a fine of not more than \$5,000. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. 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 (<\$10,000 per year) is assumed under the bill.

Background Check Fees - Department of Public Safety, Criminal Bureau of Investigation (CBI). The CBI will receive \$245,927 in FY 2007-08 and \$24,569 in FY 2008-09 from settlement service providers for criminal history checks. Criminal history checks are \$39.50 each and will be done on 6,226 brokers in FY 2007-08 currently operating under an FHA exemption. 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 \$136,972 in FY 2007-08. The remaining \$17.50 is retained by the CBI to cover background check costs, totaling \$108,955 in FY 2007-08.

State Expenditures

Total state expenditures will increase by \$1,036,906 and 13.2 FTE in FY 2007-08 and by \$1,008,560 and 14.5 FTE in FY 2008-09. Expenditure components are discussed below.

Title Entity Enforcement by the Department of Regulatory Agencies, DOI. The DOI will promulgate rules to implement procedures for title company examinations. Specifically, rules will be needed to ensure that examinations can be conducted in a manner that does not place undue financial hardships on title companies. The DOI will also require staff to collect and post annual report information on the DOI website, track title company market trends, prepare reports for the General Assembly, collect assessment fees, and perform on-site examinations of title companies.

Legal services will also be needed to assist in rule promulgation and to ensure compliance with examination requirements. Legal services are billed at a rate of \$67.77 per hour. Total legal service hours needed in FY 2007-08 and FY 2008-09 are estimated at 155 hours. Finally, a minimal amount of computer programming will be needed to allow title company information to be posted on the DOI website. Table 1 summarizes DOI expenditures under SB 07-249.

Table 1. Division of Insurance Expenditures Under SB07-249.		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$409,432	\$376,866
FTE	8.1	7.3
Operating Expenses and Capital Outlay	25,236	3,350
Information Technology	7,973	7,973
Legal Services	10,504	10,504
Total - Title Insurance Enforcement Cash Fund	\$453,145	\$398,693

Title Entity Enforcement by the Department of Law under the CCPA. The bill makes title companies subject to enforcement under the CCPA. Consequently, the Department of Law will require staff to investigate and prosecute civil allegations of deceptive trades practices. Finally, miscellaneous costs will be incurred for litigation expenses and travel costs. Table 2 lists total expenditures for the Department of Law to enforce CCPA provisions.

Table 2. Department of Law Expenditures Under SB07-249.		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$78,343	\$156,686
FTE	1.0	2.0
Operating Expenses and Capital Outlay	14,950	3,000
Vehicle and Parking	3,444	6,888
Litigation	3,000	6,000
Lease Space	2,750	5,500
Total - Title Insurance Enforcement Cash Fund	\$102,487	\$178,074

Settlement Service Providers Enforcement by the Department of Regulatory Agencies, DRE. The DRE will require professional staff to investigate and review registration applications of prospective settlement service providers and make registration recommendations to the DRE director. Additional personnel will receive complaint information from consumers, investigate complaints, and determine whether registrations should be suspended or revoked. Administrative support will also be needed for record-keeping and general office support.

Legal services will be needed to assist in rule promulgation and to represent the DRE in administrative disciplinary proceedings against settlement service providers. Total legal service hours needed in FY 2007-08 are estimated at 1,912 hours (1.1 FTE) due the bill's effective date. FY 2008-09 legal services are estimated to increase to 3,824 hours (2.1 FTE).

Finally, computer programming will be required to establish a database to store registration information and track different type of revocations, suspensions, and disciplinary actions, and ensure that registrants and licensees have errors and omissions coverage. Table 3 summarizes DRE expenditures under SB 07-249.

Table 3. Division of Real Estate Expenditures Under SB07-249.		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$88,662	\$142,320
FTE	1.8	3.0
Operating Expenses and Capital Outlay	6,134	1,500
Information Technology	5,695	5,695
Legal Services	129,576	259,152
Total - Settlement Service Providers Analysis Cash Fund	\$230,067	\$408,667

Department of Public Safety, CBI. For FY 2007-08, the CBI, requires \$114,234 and 1.2 FTE for criminal history checks on settlement service provider applicants. The CBI will need staff to process and maintain fingerprint records, search Colorado databases for applicant criminal history, and submit fingerprints to the FBI. In FY 2007-08, the number of background checks is estimated at 6,226. Of the \$251,206 collected from applicants for background checks, \$136,972 will pass through to the FBI to cross-check applicants with the national criminal database.

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

Civil and Criminal Enforcement. The bill makes it a deceptive trade practice to violate any provision of the bill related to title insurance. Therefore, it will increase civil and criminal enforcement responsibilities for district attorneys under the CCPA. Local governments are responsible for funding the majority of the costs associated with district attorney offices. However, since civil and criminal cases will be spread out among numerous district attorney offices, costs to local governments are expected to be minimal.

Criminal Penalties. Any person that provides settlement services without being registered or who has his or her registration revoked or suspended is guilty of a Class 1 misdemeanor. The penalty for a class 1 misdemeanor is six (6) 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 or imposing a fine, 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

The fiscal note indicates the following department appropriations for FY 2007-08:

Regulatory Agencies	<u>\$ 785,700</u>	Total and 9.9 FTE
	555,633	Title Insurance Enforcement Cash Fund
	230,067	Settlement Service Providers Registration Cash Fund
Law	<u>\$ 242,567</u>	CFE Transfer and 2.1 FTE
Public Safety	<u>\$ 251,206</u>	Total and 1.2 FTE
	114,234	Cash Funds
	136,972	Cash Funds Exempt Pass Through to FBI

Departments Contacted

Regulatory Agencies
District Attorneys

Personnel and Administration
Public Safety

Law