

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated April 18, 2007)

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

Date: April 24, 2007
Bill Status: Senate Second Reading
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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 LICENSING 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, REQUIRING PERIODIC EXAMINATIONS OF TITLE ENTITIES, AND MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue		
<u>TOTAL</u>	\$1,392,903 +	\$ 563,447 + Fines
General Fund	Fines	Fines
Fines Collection Cash Fund	Fines	Fines
Cash Funds	Fines	
Division of Insurance Cash Fund		\$499,008
Closing/Settlement Service Provider Licensing Cash Fund	\$748,512 644,391 + Fines	64,439 + Fines
State Expenditures		
<u>TOTAL</u>	\$678,830	\$679,241
Cash Funds		
Division of Insurance Cash Fund	493,760	533,702
Closing/Settlement Service Provider Licensing Cash Fund	185,070	145,539
FTE Position Change	10.6	10.8
Effective Date: Sections 1-9 and 11-13 are effective July 1, 2007; section 10 is effective only if SB 07-203 is enacted.		
Appropriation Summary for FY 2007-2008: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

The bill, as amended in the Senate Appropriations Committee, establishes examination requirements for **title insurance companies** and regulatory oversight of **independent settlement services providers**.

Title Insurance Companies. 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 cooperate with the Division of Real Estate (DRE) and the Department of Law to enforce suspected 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.

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

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 analysis. 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. On and after July 1, 2007, persons engaged in settlement service provider activities are required to be licensed with the DOI. Generally, independent settlement service providers provide real estate closing services. Licensed real estate brokers, mortgage brokers, attorneys, bankers, and title insurers are exempt from settlement service provider licensure.

The Insurance Commissioner may investigate persons suspected of providing settlement services without a license. If the commissioner believes a person is practicing without a license, he or she may issue a cease and desist order prohibiting the person from providing settlement services and levy an administrative fine. Finally, mortgage brokers and loan originators are prohibited from using the services of an unlicensed settlement service provider.

State Revenue

Total state revenue will increase by \$1,392,903 in FY 2007-08 and by \$563,447 in FY 2008-09. Revenue components are discussed below.

Premium Surcharge (Ongoing) - Division of Insurance Cash Fund. The bill establishes a premium surcharge on title entity licensees. The surcharge shall be calculated as a pro rata share of total annual title insurance premiums received during the preceding year. The Commissioner of Insurance shall set the assessment surcharge in a manner that generates no more than \$500,000 in any given fiscal year. 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 premium surcharge per agent will be \$184 in both FY 2007-08 and FY 2008-09, resulting in \$499,008 (\$184*2,712) in revenue in both years.

Premium Surcharge (One-Time) - Division of Insurance Cash Fund. The bill establishes a one-time assessment to fund DOI start-up costs. The start-up assessment will be used to fund implementation expenditures related to regulating title entities except that revenue is capped at \$250,000. To fund implementation costs and ensure an adequate fund balance, it is estimated that the one-time premium surcharge per agent will be \$92 in FY 2007-08, resulting in \$249,504 (\$92*2,712) in revenue in FY 2007-08 only.

Administrative Fines - Colorado Consumer Protection Act (CCPA). Under current law, a title insurance company is prohibited from paying for business referrals, giving or receiving compensation for a service not rendered, and engaging in improper affiliated business relationships. The bill makes these violations deceptive trade practices 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.

Licensing - Closing/Settlement Service Provider Licensing Cash Fund. The bill creates the Closing/Settlement Service Providers Licensing Cash Fund. Revenue will be derived from settlement service licensing fees. The DOI director shall set the fee to cover the direct and indirect costs of implementing the Closing/Settlement Service Provider Licensing Act. The fiscal note assumes that licenses will be valid 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 \$207. An estimated 3,113 settlement service providers will register in FY 2007-08 resulting in revenue of \$644,391 (\$207 * 3,113).

Additionally, a person violating the licensing requirements of this 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. Fine revenue is credited to the Closing/Settlement Service Providers Licensing Cash Fund. Administrative fine revenue is expected to be minimal.

Criminal Fines - Fines Collection Cash Fund. Any person or business providing settlement services without a license 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.

State Expenditures

Total state expenditures will increase by \$678,830 and 10.6 FTE in FY 2007-08 and by \$679,241 and 10.8 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 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. DOI - Title Entity Regulation Expenditures		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$352,210	\$334,214
FTE	6.8	6.5
Operating Expenses and Capital Outlay	20,585	2,937
Information Technology	7,973	7,973
Legal Services	10,504	10,504
Total - Division of Insurance Cash Fund	\$391,273	\$355,628

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 - CCPA Enforcement Expenditures.		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$78,343	\$156,686
FTE	1.0	2.3
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 - Division of Insurance Cash Fund	\$102,487	\$178,074

Settlement Service Providers Enforcement by the DOI. The DOI will require professional staff to investigate and review license applications of prospective settlement service providers and make licensure recommendations to the Insurance Commission. Additional personnel will receive complaint information from consumers, investigate complaints, and determine whether licenses should be suspended or revoked. Administrative support will also be needed for record-keeping and general office support.

Finally, computer programming will be required to establish a database to store registration information and track different types of administrative disciplinary actions. Table 3 summarizes DOI expenditures under SB 07-249.

Table 3. DOI - Settlement Service Provider Regulation Expenditures		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$156,307	\$138,529
FTE	2.8	2.0
Operating Expenses and Capital Outlay	8,763	7,010
Information Technology	20,000	0
Total - Closing/Settlement Service Providers Licensing Cash Fund	\$185,070	\$145,539

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 certain laws related to title insurance. Therefore, it will increase civil enforcement responsibilities for district attorneys under the CCPA. The bill also makes it a Class 1 misdemeanor to provide settlement services without a license, resulting in additional criminal enforcement responsibilities for district attorneys. 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 a license 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 bill contains an appropriation clause indicating a total appropriation to the Department of Regulatory Agencies, DOI, of \$722,410 and 11.1 FTE for FY 2007-08. This appropriation was based on a calculation that incorrectly identified the total annual work hours per 1.0 FTE.

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

Regulatory Agencies	<u>\$ 678,830</u>	Total and 10.6 FTE
	493,760	Division of Insurance Cash Fund
	185,070	Closing/Settlement Service Licensing Cash Fund
Law	\$ 112,991	CFE Transfer and 1.0 FTE

Departments Contacted

Regulatory Agencies	Personnel and Administration	Law
District Attorneys	Public Safety	