

*Colorado Legislative Council Staff Fiscal Note*  
**STATE, LOCAL, and**  
**STATUTORY PUBLIC ENTITY**  
**FISCAL IMPACT**

**Drafting Number:** LLS 08-0277  
**Prime Sponsor(s):** Sen. Boyd  
 Rep. Riesberg

**Date:** February 19, 2008  
**Bill Status:** Senate Health and Human Services  
**Fiscal Analyst:** Harry Zeid (303-866-4753)

**TITLE:** CONCERNING INTEREST ON FIDUCIARILY HELD REAL ESTATE ACCOUNTS FOR THE PURPOSE OF FINANCING THE PROVISION OF AFFORDABLE HOUSING, AND, IN CONNECTION THEREWITH, CREATING THE FIDUCIARY EARNINGS FOR AFFORDABLE HOUSING FUND AND THE FIDUCIARY EARNINGS FOR AFFORDABLE HOUSING FOUNDATION.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
<b>State Revenue</b>		
Cash Funds		
Fiduciary Earnings for Affordable Housing Fund*	cannot be quantified	cannot be quantified
<b>State Expenditures</b>		
Cash Funds		
Fiduciary Earnings for Affordable Housing Fund*	cannot be quantified	cannot be quantified
<b>FTE Position Change</b>	0.0 FTE	0.0 FTE
<b>Effective Date:</b> September 1, 2008, unless a referendum petition is filed.		
<b>Appropriation Summary for FY 2008-2009:</b> None.		
<b>Local Government Impact:</b> See the Local Government Impact section.		

\* While the amount of money actually donated to the foundation on an annual basis cannot be estimated, it is assumed that all money credited to the fund will be distributed to local governments and otherwise distributed as grants.

**Summary of Legislation**

The bill creates the Fiduciary Earnings for Affordable Housing Foundation, a Colorado nonprofit corporation, for the purpose of generating a statewide source of revenue to support the creation and maintenance of safe and affordable housing alternatives for low- and moderate-income residents. The 15-member board of directors of the foundation will be appointed by the Governor for terms of four years. Members of the board serve without compensation but may be reimbursed for necessary expenses. No later than February 15 each year, the foundation will report to the Governor and the Local Government Committees of the General Assembly. The report will contain a summary of the amount of money remitted to the Fiduciary Earnings for Affordable Housing Fund during the past year, money distributed by the foundation from the fund during the past year, and a description of the type and nature of the activities funded.

SB08-162 requires closing and settlement services providers to pool and commingle trust money received from clients or beneficial owners in connection with escrows and closings. Closing and settlement services providers include: any title insurance company; title insurance entity or its agent; attorney; escrow agent; closing agent; or any other person who holds money to be transmitted to or from the seller, purchaser, or a lender in connection with real estate closing and settlement services. The providers must give notice to all parties to the transaction that the trust money, absent direction from the parties, will be placed in a fiduciary account that may generate interest and that such interest will be donated to the Fiduciary Earnings for Affordable Housing Foundation. The client or beneficial owner may request that interest earned on the trust money be returned to the client or beneficial owner.

At least quarterly, the financial institution in which the commingled account is maintained would pay the interest earned on the account, less any service charges, to the Fiduciary Earnings for Affordable Housing Foundation. The money would then be deposited in the Fiduciary Earnings for Affordable Housing Fund in the State Treasury for annual distribution. If the money in the fund constitutes at least \$20 million:

- 50% shall be distributed to local governments through a formula to be recommended by the State Housing Board within the Division of Housing, taking into account the population of local communities; and
- 50% shall be distributed by the foundation as grants based upon a grants application process to be established by the foundation. Up to 10% of the 50% set aside for grants may be used by the staff of the foundation to assist local governments with small numbers of residents in preparing grant applications and in providing technical assistance to local governments.

If the fund does not reach \$20 million in any fiscal year, all of the money in the fund shall be distributed by the foundation in the form of grants. Furthermore, the bill states its intent that not less than 50% of the money distributed from the fund on an annual basis benefit households earning 50% or less of the area median income.

### **State Revenue**

Donated trust money will be placed temporarily in a fiduciary account at a financial institution. Interest earned on the donated money will be deposited in the Fiduciary Earnings for Affordable Housing Fund in the State Treasury on a quarterly basis. It is unknown how much money will be donated from clients or beneficial owners in connection with escrows and real estate closings.

It is recognized that the trust money donated to the foundation may qualify as an itemized deduction on state and federal income tax returns. Since the annual amount of donations that may be included as an itemized deduction is unknown, state income tax implications cannot be estimated.

### **State Expenditures**

The bill specifies how money in the Fiduciary Earnings for Affordable Housing Fund will be considered for distribution by the foundation. As a Colorado nonprofit corporation, the

foundation is not subject to any administrative direction by any department, commission, board, bureau, or agency of the state. Expenditures of the foundation for administrative purposes and for expense reimbursement of board members is an expenditure of a statutory public entity.

If the balance in the fund does not reach \$20 million in any fiscal year, all of the money will be distributed as grants. If the fund balance exceeds \$20 million, 50% will be distributed to local governments, and 50% will be distributed as grants. The paragraphs that follow describe the bill's impact on the Department of Regulatory Agencies and the Department of Local Affairs.

**Department of Regulatory Agencies.** Two divisions in the Department of Regulatory Agencies will be impacted by the bill:

- **Division of Insurance.** The Division of Insurance is required to enact rules and regulations for the effective administration and implementation of the program. Furthermore, the division will receive quarterly statements from financial institutions that detail the remittances to the foundation. The division estimates that 100 hours will be necessary to perform the rule-making function, however, this workload level falls below the threshold required for requesting additional resources. In addition, approximately 40 hours of an Administrative Assistant III is necessary for filing and storing the quarterly bank statements. This function will be conducted within the existing appropriations of the division. No further appropriation is required by the bill.
- **Division of Real Estate.** The Division of Real Estate will make modifications to the Contract to Buy and Sell form. The division periodically revises the language of the form, therefore, no fiscal impact will occur to make the form revisions.

**Department of Local Affairs.** 50% of the money in the Fiduciary Earnings for Affordable Housing Fund will be distributed to local governments through a formula to be recommended by the State Housing Board within the Division of Housing in the Department of Local Affairs. This requirement is within the scope of the Division of Housing's mission statement and workload. Therefore no additional appropriation is required.

### **Local Government Impact**

Assuming that at least \$20 million in annual interest earnings is remitted to the Fiduciary Earnings for Affordable Housing Fund, at least 50% of the money in the fund will be distributed to local governments through a formula, as recommended by the State Housing Board. Until such time as the money in the fund reaches \$20 during any fiscal year, all money in the fund will be distributed as grants based on an application process established by the foundation. Up to 10% of the 50% of grant moneys may be used by the staff of the foundation to assist local governments with small numbers of residents in preparing grant applications and in providing technical assistance to local governments.

### **Departments Contacted**

Local Affairs                      Regulatory Agencies                      Governor's Office                      State Treasurer