



**Colorado
Legislative
Council
Staff**

HB16-1318

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-1001
Prime Sponsor(s): Rep. Wist
Sen. Newell

Date: June 6, 2016
Bill Status: Postponed Indefinitely
Fiscal Analyst: Chris Creighton (303-866-5834)

BILL TOPIC: CHARITABLE SOLICITATIONS REGULATION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		at least \$5,000
Cash Funds		at least \$5,000
State Expenditures	<u>\$65,920</u>	Workload increase.
Cash Funds	65,920	
TABOR Impact:	at least \$5,000	at least \$5,000
Appropriation Required: \$65,920 - Department of State (FY 2016-17).		
Future Year Impacts: Ongoing state revenue and workload increases.		

Note: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

This bill clarifies charitable organization requirements under the Colorado Charitable Solicitations Act (CCSA). By requiring registration statements or renewals, financial reports, and solicitation notices be signed and affirmed under penalty perjury, this bill makes falsifying a charitable organization's financial reports or registration documents a second degree perjury offense. Additionally, any changes that affect the identity of the organization, such as a name change or tax status change, must be reported to the Secretary of State (SOS) within 30 days.

An administrative review may be held to revoke or suspend the registration of the organization if it makes a false statement or omits material information in any registration statement, annual report, or other information required to be filed under the CCSA. After notice has been given and a hearing held, the SOS can issue a cease and desist order to a charitable organization. Any organization receiving a cease and desist order may request judicial review.

Background

A charitable organization is any organization or person that solicits donations for any benevolent, educational, philanthropic, humane, scientific, social welfare environmental, or public health purpose. A charitable solicitation is a request for money, credit, property, financial

assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. Under the Colorado Charitable Solicitations Act, charitable organizations are required to register with the SOS and disclose financial reports and the names and addresses of any paid solicitors or professional fundraising consultants acting on behalf of the organization.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill makes falsifying a charitable organization's financial reports or registration documents a second degree perjury offense, which class 1 misdemeanor. In the past three years there have been 118 cases where at least one charge was filed pursuant to perjury in the second degree. Of these cases 41 were female (36 Caucasian, 2 African American, 3 Hispanic) and 77 male (64 Caucasian, 8 African American, 3 Hispanic, 1 Indian, 1 other). This analysis assumes less than five cases of CCSA-related perjury will be filed per year.

State Revenue

Beginning in FY 2017-18, this bill increases state cash fund revenue by at least \$5,000 per year.

Filing fees. This bill potentially increases filing fee revenue in the Judicial Department. If a charitable organization receives a cease and desist order they may request a judicial review, which will result in a \$224 filing fee. Because other mechanisms are in place to ensure compliance and resolve violations of the CCSA before a cease and desist order is issued and a judicial review can be requested, this analysis assumes less than ten judicial reviews will occur annually, resulting in less than \$5,000 in filing fee revenue, credited to Judicial Stabilization Fund.

Criminal penalties. Beginning in FY 2017-18, this bill is anticipated to increase state revenue by at least \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for second degree perjury, which is a class 1 misdemeanor, is \$500 to \$5,000. To the extent that a defendant is sentenced to probation, an additional \$50 per month will be collected. Because the courts have the discretion of incarceration, imposing a fine, or both the precise impact to state revenue cannot be determined. While it is assumed that there will be less than five CCSA-related perjury cases per year, this fiscal note estimates that these cases will generate at least \$5,000 in fines.

TABOR Impact

This bill increases state cash fund revenue from filing fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

For FY 2016-17 only, state cash fund expenditures are increased by \$65,920. Beginning in FY 2017-18, workload will increase for the SOS and Judicial Department. State expenditure and workload increases are discussed below.

Secretary of State. This bill increases one-time state expenditures in the SOS by \$65,920 in FY 2016-17. Computer programming changes are needed to allow a charitable organization to file a financial report without updating its registration and to change the organization's status to expired if its registration is not renewed. These changes will require 640 hours of computer programming at a rate of \$103 per hour.

Staff time will also be needed to make changes to existing rules and to update requirements and notices regarding the registration of charitable organizations. Should a cease and desist order be issued, workload will also increase to identify the violations and provide supporting facts in the order. This workload increase can be addressed with existing appropriations.

Judicial Department. This bill increases workload in the trial courts and probation division. Any charitable organization that receives a cease and desist notice may petition the court for judicial review. This analysis assumes that most charitable organizations will comply with the CCSA and that any violations that do occur will be minor and be handled through the administrative review process. As a result, it is estimated that less than ten judicial reviews will be requested annually. This workload increase to the trial courts can be addressed within existing appropriations.

If it is determined that a charitable organization or representative of a charitable organization has committed CCSA-related perjury, they may be charged with a class 1 misdemeanor. This increases trial court workload. To the extent that offenders are sentenced to probation, workload will increase in the probation division. These workload increases are assumed to be minimal and do not require an increase in appropriations.

Local Government Impact

This bill will affect local governments in several ways, as discussed below.

Misdemeanor offenses in county courts. First, the bill may increase workload for district attorneys to prosecute any new CCSA-related perjury offenses under the bill. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a class 1 misdemeanor for a period of between 6 and 18 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

Denver County Court. The bill may result in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver for CCSA-related perjury cases that occur in its jurisdiction. The court will try misdemeanor cases under the bill where misdemeanor 1, CCSA-perjury charges are filed in Denver. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted under the bill.

Effective Date

The bill was postponed indefinitely by the Senate Appropriations committee on April 27, 2016.

State Appropriations

Consistent with this fiscal note, for FY 2016-17, this bill requires an appropriation of \$65,920 to the Department of State from the Department of State Cash Fund.

State and Local Government Contacts

Information Technology
Personnel

Judicial
Secretary of State