



**Colorado
Legislative
Council
Staff**

SB16-117

FISCAL NOTE

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

Drafting Number: LLS 16-0666

Date: February 9, 2016

Prime Sponsor(s): Sen. Sonnenberg

Bill Status: Senate Finance

Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: LIMIT STATE AGENCY AUTHORITY TO IMPOSE FINES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>at least (\$3,722,500)</u>	<u>at least (\$3,722,500)</u>
General Fund	at least (640,000)	at least (640,000)
Cash Funds	at least (3,082,500)	at least (3,082,500)
State Expenditures	<u>\$1,377,190</u>	<u>\$1,303,525</u>
Cash Funds	1,300,130	1,209,475
Centrally Appropriated Costs	77,060	94,050
TABOR Impact	at least (\$3,722,500)	at least (\$3,722,500)
FTE Position Change	6.1 FTE	7.3 FTE
Appropriation Required: \$1.3 million - Multiple Agencies (FY 2016-17).		
Future Year Impacts: Ongoing state revenue reduction and state expenditures increase.		

Summary of Legislation

This bill limits the authority of state agencies to impose discretionary fines. Specifically, the bill prohibits any state agency from imposing a discretionary fine of \$1,000 or more unless the agency provides written notice of the violation of the law or rule and the offender fails to correct the violation on or before the 20th business day after receipt of the written notice. The bill caps discretionary fines as follows:

- for an individual, ten percent of the taxable income reported on his or her last state income tax return;
- for a business, ten percent of the operating revenue reported on its income statement for the last fiscal year; and
- for a political subdivision of the state, ten percent of its tax revenue for the last fiscal year.

The bill specifies that a state agency may request that an offender provide income information that would allow the agency to determine the maximum allowable fine. If the offender fails to provide income information, the cap on discretionary fines does not apply. The bill does not apply to criminal penalties.

State Revenue

This bill will reduce state revenue by at least \$3,722,500 per year beginning in FY 2016-17. General Fund revenue will decrease by at least \$640,000 and cash fund revenue in various agencies will decrease by at least \$3,082,500. The impact to specific agencies is discussed below.

Table 1. Revenue Under SB16-117		
	FY 2016-17	FY 2017-18
Department of State	(\$2.20 million)	(\$2.20 million)
Department of Revenue	(\$1.26 million)	(\$1.26 million)
Department of Regulatory Agencies	(\$62,500)	(\$62,500)
Department of Public Health & Environment	(\$200,000)	(\$200,000)
TOTAL	(\$3.72 million)	(\$3.72 million)

Department of State (DOS). The Business and Licensing division within the DOS fines businesses that fail to file their periodic reports on time. The fine has no cap in statute currently. In 2015, 54,700 businesses failed to file their reports on time. Of those, 44,000 filed their reports within 20 days of their original deadline. Under the bill, those 44,000 businesses would no longer be subject to the \$50 late filing penalty, which amounts to a \$2.2 million loss in revenue for the Department of State Cash Fund. Because the DOS must set its fees to cover its direct and indirect costs, the lost fine revenue will likely require an increase in its business filing fees.

Department of Revenue (DOR). The DOR imposes penalties for tax purposes and for regulatory activities. The limits set by the bill are expected to affect fine penalties in multiple divisions. Because it is unclear how a violator can cure a violation in some instances, the exact impact to state revenue cannot be determined. However, a conservative 10 percent estimated loss in penalty revenue, from either the curing of a violation or the reduction in the fine imposed, results in an approximate \$1,260,000 loss in revenue, \$440,000 of which would have gone to the General Fund, the remaining \$820,000 of which would have gone to various cash funds within the department.

Department of Regulatory Agencies (DORA). Several divisions in DORA can issue fines that exceed \$1,000. DORA collects an average of \$625,000 in revenue from fines subject to the limits set by the bill. While it is unknown how many violators will cure their violations, or be subject to a reduced fine as limited by the bill, a conservative estimate of 10 percent yields a \$62,500 reduction in revenue to cash funds within the Division of Real Estate, the Division of Professions and Occupations, and the Public Utilities Commission. Because DORA must set its fees to cover its direct and indirect costs, the lost fine revenue will likely require an increase in fees across several divisions.

Colorado Department of Public Health and Environment (CDPHE). Several divisions within CDPHE regularly impose fines over \$1,000, most commonly the Air Pollution Control Division, the Water Quality Control Division, the Hazardous Materials and Waste Management Division, and the Health Facilities and Emergency Medical Services Division. CDPHE collected an estimated \$2 million in revenue from fines that would be subject to the limits set by the bill. While it is unknown how many violators will cure their violations, or be subject to a reduced fine as limited by the bill, a conservative estimate of 10 percent yields a \$200,000 reduction in General Fund revenue.

Other agencies. Any state agency imposing a fine of \$1,000 or more may have to reduce the fine in line with the limits set by the bill, but because agencies have not collected income data on the violators to whom they have assessed fines, the precise reduction in fine revenue cannot be determined. Furthermore, any person or entity that cures their violation may be exempt from the fine altogether.

TABOR Impact

This bill reduces state revenue from cash funds and the General Fund, which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

State Expenditures

This bill increases state cash fund expenditures by an estimated \$1,377,190 in FY 2016-17 and by \$1,303,525 in FY 2017-18. These costs are incurred in the DOS, DORA, and CDPHE. In addition, the Department of Law may experience a significant increase in workload. These costs are listed in Table 2 and explained below.

Table 2. Expenditures Under SB16-117		
Cost Components	FY 2016-17	FY 2017-18
Department of State	<u>\$1,194,150</u>	<u>\$1,096,485</u>
Personal Services	193,310	233,190
FTE	3.9 FTE	4.7 FTE
Operating Expenses and Capital Outlay Costs	17,220	4,465
Information Technology Services	135,550	
Certified mailings of 66,000 notices	800,280	800,280
Centrally Appropriated Costs*	47,790	58,550
Department of Regulatory Agencies	<u>\$168,150</u>	<u>\$189,640</u>
Personal Services	124,650	149,580
FTE	2.0 FTE	2.4 FTE
Operating Expenses and Capital Outlay Costs	11,700	2,280
Certified mailings of 750 notices	5,100	5,100
Centrally Appropriated Costs*	26,700	32,680
Department of Public Health & Environment	<u>\$14,890</u>	<u>\$17,400</u>
Personal Services	11,280	13,540
FTE	0.2 FTE	0.2 FTE
Operating Expenses and Capital Outlay Costs	190	190
Certified mailings of 125 notices	850	850
Centrally Appropriated Costs*	2,570	2,820
TOTAL	<u>\$1,377,190</u>	<u>\$1,303,525</u>

* Centrally appropriated costs are not included in the bill's appropriation.

Department of State (DOS). Expenditures from the Department of State Cash Fund will increase by \$1.2 million in the DOS in FY 2016-17. Because the DOS imposes several fines not capped in statute, it will be required to send initial notices of violations. The DOS will have to send 55,000 notices to businesses, 100 notices to lobbyists, and 800 campaign finance violation notices. Because the 20-day cure period does not begin until receipt of the initial notice, DOS will be required to send each notice by certified mail, for a total cost of \$800,280 each year. Staff must record receipt of the notice and send a second mailing, requesting income data required to calculate the maximum penalty, to any entities that fail to cure the violation. The process requires staff to send and track approximately 66,000 letters each year, and the DOS will require an allocation of 4.7 FTE to accomplish the increase in workload, prorated to 3.9 FTE in the first year. The DOS will also require approximately 1,316 hours of information technology services in FY 2016-17 to update computer systems for the business and lobbying programs, as well as the online campaign finance reporting system.

Department of Regulatory Agencies (DORA). Expenditures from various cash funds will increase by approximately \$168,000 in DORA in FY 2016-17. DORA requires 2.4 FTE (prorated to 2.0 FTE in the first year) and \$5,100 in mailing expenses each year to send approximately 750 notices, verify compliance, follow up with violators who do not cure their violations, and solicit and verify income data in order to determine the maximum allowed fine.

Colorado Department of Public Health and Environment (CDPHE). Expenditures from various cash funds will increase by approximately \$15,000 in CDPHE in FY 2016-17. CDPHE requires an additional 0.2 FTE and \$850 in mailing expenses to send 125 notices, verify compliance, follow up with violators who do not cure their violations, and solicit and verify income data in order to determine the maximum allowed fine.

Department of Law (DOL). The DOL may experience a significant increase in workload as a result of the bill. First, various agencies may need legal services to clarify rules around how a violation can be cured. Second, to the extent that regulatory agencies modify disciplinary procedures in favor of suspensions or revocations instead of fines, litigation may increase. Finally, agencies with statutory authority under current law to impose fines may need legal services to clarify conflicting interpretations of state law. The fiscal note assumes that any increase in appropriations required under the bill will be addressed through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

Table 3. Centrally Appropriated Costs Under SB16-117		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$48,900	\$58,540
Supplemental Employee Retirement Payments	28,160	35,510
TOTAL	\$77,060	\$94,050

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

State Appropriations

In FY 2016-17, this bill requires the following appropriations:

- \$1,146,360 to the Department of State from the Department of State Cash Fund and an allocation of 3.9 FTE;
- \$141,450 to the Department of Regulatory Agencies from various cash fund sources and an allocation of 2.0 FTE; and
- \$12,320 to the Department of Public Health and Environment from various cash fund sources and an allocation of 0.2 FTE.

State and Local Government Contacts

All Departments