



**Colorado
Legislative
Council
Staff**

HB17-1158

FISCAL NOTE

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

Drafting Number: LLS 17-0795
Prime Sponsor(s): Rep. McKean

Date: February 14, 2017
Bill Status: House SVMA
Fiscal Analyst: Chris Creighton (303-866-5834)

BILL TOPIC: CHARITABLE SOLICITATIONS REGULATION

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		<u>less than \$5,000</u>
Cash Funds		less than \$5,000
State Expenditures		<u>\$14,832</u>
Cash Funds		14,832
TABOR Impact		less than \$5,000
Appropriation Required: None. See State Expenditures section.		
Future Year Impacts: Ongoing cash fund revenue increase and workload increase.		

Summary of Legislation

This bill modifies and clarifies charitable organization requirements under the Colorado Charitable Solicitations Act as follows:

- By requiring that 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, which is a class one misdemeanor.
- Any changes that affect the identity of the organization, such as a name change or tax status change, must be reported to the Department of State within 30 days.
- The time limit for a request for a hearing on the denial, suspension, or revocation of a registration is changed from 5 to 30 days.
- The requirement that a charitable organization designate a registered agent for the service of process and notices is replaced with the requirement that the organization provide an address of record.
- The failure to file a financial report is subject to a fine. Notice of failure to file is deemed received if it is sent twice by the Department of State to the address on file.
- The Department of State may promulgate rules providing for the withdraw of an active registration by a charitable organization.

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. This includes charitable organizations, professional fundraising consultants, and paid solicitors. 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 Department of State 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

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 is a class one misdemeanor. In the past three years, there have been 138 cases filed in the trial courts with at least one second degree perjury offense charge (59 female, 79 male; 118 Caucasian, 9 African American, 6 Hispanic, 2 American Indian, 1 Asian, 1 unknown, and 1 other). However, it is not known how many of these cases, if any, involved a charitable organization. This analysis assumes a high level of compliance and less than five cases per year.

State Revenue

Beginning in FY 2018-19, this bill increases state cash fund revenue by less than \$5,000 per year as described below.

Department of State fines. Under current law, failure by a charitable organization to properly register or renew a registration is subject to Department of State fines, after sufficient notification has been given. This fine is set by Department of State rules and is currently \$60 per overdue report for charitable organizations and \$200 for fundraising consultants. This bill increases revenue by making failure to file a financial report subject to these fines. Because the Department of State is required to provide sufficient notification before levying a fine, any increase in fine revenue is expected to be minimal.

Criminal fines. By making falsifying a charitable organization's financial reports or registration documents a second degree perjury offense, this bill increases state revenue credited to the Fines Collection Cash Fund in the Judicial Department by less than \$5,000 per year beginning in FY 2018-19. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000, a sentence of 6 to 18 months in county jail, or both. Because the courts have the discretion of incarceration or imposing a fine, the precise impact cannot be determined.

Court and administrative fees. This bill may also increase state fee revenue credited to various cash funds. Court and administrative fees are imposed for a variety of court-related costs, which vary based on the offense and the type of court. Typical fees may include such items as probation supervision, drug or sex offender surcharges, genetic testing, victim compensation, late fees, and other administrative fees. Any court and administrative fee increase resulting from this bill is expected to be minimal. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

TABOR Impact

This bill increases state cash fund revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19. 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 2018-19, this bill increases state cash fund expenditures by \$14,832. This bill also increases workload for the Department of State and Judicial Department as described below.

Department of State. For FY 2018-19, this bill increases Department of State Cash Fund expenditures by \$14,832. This one-time cost is for programming changes which will require 144 hours of computer programming at a rate of \$103 per hour. Workload also increases to update associated charitable organization rules. This workload increase can be accomplished as part of the department's existing rule making duties.

Judicial Department. This bill increases workload in the trial courts and probation divisions of the Judicial Department. Trial court workload is increased to hear second degree perjury cases related to falsifying a charitable organization's financial reports or registration documents. To the extent that offenders are sentenced to probation, workload will increase in the probation division. A high level of compliance by charitable organizations is assumed and therefore any increase in workload is expected to be minimal and will not require an increase in appropriations.

The bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. However, this fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Local Government Impact

This bill impacts local governments as described below.

Misdemeanor offenses in county courts. This bill increases workload for district attorneys to prosecute perjury cases related to falsifying charitable organization documents. 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 results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience a minimal increase in workload to supervise persons convicted under the bill. The fine penalty for

a class 1 misdemeanor, second degree perjury is \$500 to \$5,000. Should any cases occur in the City and County of Denver, and offenders are sentenced to pay a fine, criminal fine revenue will increase.

Court and administrative fees. Similar to the state, court and administrative fee revenue will increase to the extent new misdemeanor perjury cases are heard in the City and County of Denver. If any offenders are sentenced to probation, City and County of Denver probation fee revenue is anticipated to increase by \$50 per month, per offender.

Technical Note

This bill is effective July 1, 2018, and applies to the regulation of charitable solicitations on or after this effective date. An appropriation is needed in FY 2017-18, for the Department of State to make required programing changes to begin regulating charitable organizations by July 1, 2018, in accordance with the requirements of this bill.

Effective Date

The bill takes effect July 1, 2018 and applies to the regulation of charitable solicitations by the Department of State on or after this date.

State and Local Government Contacts

Judicial Secretary Of State