



**Colorado
Legislative
Council
Staff**

HB17-1313

FISCAL NOTE

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

Drafting Number: LLS 17-1129	Date: April 17, 2017
Prime Sponsor(s): Rep. Herod; Humphrey Sen. Neville T.; Kagan	Bill Status: House Judiciary Fiscal Analyst: Chris Creighton (303-866-5834)

BILL TOPIC: CIVIL FORFEITURE REFORM

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
General Fund	See State Revenue section.	
Cash Funds		
State Expenditures	<u>\$94,052</u>	<u>48,215</u>
General Fund	\$84,451	38,416
Centrally Appropriated Costs	9,601	9,799
TABOR Impact	See TABOR Impact section.	
FTE Position Change	0.5 FTE	0.5 FTE
Appropriation Required: \$84,451 - Department of Local Affairs		
Future Year Impacts: Ongoing revenue impacts and expenditure increase.		

Summary of Legislation

This bill makes the following statutory changes related to the civil forfeiture process.

Seizure reporting process. The Division of Local Affairs (DOLA) is required to establish and maintain, by October 31, 2017, a reporting form for agencies involved in the seizure of property (seizing agencies) to use in submitting biannual seizure reports. The DOLA is also required to establish and maintain a searchable public access database for seizure-related information. Seizing agencies are required to submit seizure information on the form created by DOLA twice annually by June 1 and December 1, unless the report could disclose confidential information. The DOLA is required to send notice to any seizing agency that failed to file a biannual report within 30 days after the report was due and is authorized to levy a civil fine against the seizing agency if there was not good cause for the failure to report.

Forfeiture proceeds. Seizing agencies may only receive forfeiture proceeds from the federal government if the aggregate value of the property and currency seized is over \$50,000 and if the seizure was initiated by the federal government and related to a filed criminal case. All seized property and forfeited proceeds from a joint task force, multi-jurisdictional collaboration, or a federal distribution must be referred to the prosecuting authority unless the aggregate amount is in excess of \$50,000, in which case the property may be referred to a federal agency for federal prosecution.

Reporting. The DOLA is required to submit a report summarizing seizure and forfeiture activity in the state to the Governor, Attorney General, and General Assembly by December 31, 2019, and each December 31 thereafter. The Department of Human Services is currently required to prepare an annual accounting report of moneys received from the distribution of personal property profits. This requirement expires February 21, 2021.

State Revenue

This bill is expected to both increase and decrease state revenue as described below.

Fines. This bill creates a civil fine of \$500 or an amount equal to the forfeiture proceeds received, whichever is greater, for any agency that fails to file timely biannual reports without good cause. Due to the large potential penalty, this analysis assumes a high level of compliance. It is assumed that any revenue generated will be deposited to the General Fund. Fine revenue received from state seizing agencies is not subject to TABOR, however revenue received from local seizing agencies would be subject to TABOR.

Lost forfeiture revenue. Under this bill, state agencies can only receive forfeited proceeds from the federal government if the aggregate value is over \$50,000 and if the seizure was initiated by the federal government and related to a filed criminal case. Currently, much of the seizure related work performed by the Colorado State Patrol and the Colorado Bureau of Investigation in the Department of Public Safety (DPS) is done through participation with federal task forces and the Department of Law is a member of the Organized Crime Drug Enforcement Task Force. By establishing the \$50,000 threshold this bill will reduce cash fund revenues in the DPS and the Department of Law from participation with multi-agency task forces. The extent of this decrease is unknown and will depend on state agency seizure activity and the proceeds received from those proceeds.

TABOR Impact

This bill both increases state General Fund revenue from fines and decreases state cash fund revenue from forfeiture proceeds, which will impact the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund.

In years when the state collects revenue above the TABOR limit, the increase in General Fund revenue has no net impact on the amount of money available in the General Fund for the budget, as both revenue to the General Fund and the refund obligation increase by equal amounts. However, the reduction in cash fund revenue decreases the TABOR refund obligation, increasing the amount of money available in the General Fund for the budget on a dollar-for-dollar basis.

In future years when the state does not collect revenue above the TABOR limit, the bill's impact on General Fund revenue will increase money available for the General Fund budget.

State Expenditures

This bill increases costs in the DOLA by \$94,052 and 0.5 FTE in FY 2017-18 and \$48,415 and 0.5 FTE in FY 2018-19. Costs and workload are also impacted in the Departments of Human Services, Corrections, Law, Natural Resources, Public Safety, and Revenue. These impacts are shown in Table 1, and discussed below.

Table 1. Expenditures Under HB17-1313		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	\$24,814	\$26,971
FTE	0.5 FTE	0.5 FTE
Operating Expenses and Capital Outlay Costs	5,178	475
Printing and Postage	4,500	3,000
Legal Services	4,753	1,426
Computer Programming	44,486	5,824
Vehicle Mileage	720	720
Centrally Appropriated Costs*	9,601	9,799
TOTAL	\$94,052	\$48,215

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

Department of Local Affairs. To implement this bill, a program coordinator is needed to develop the required reporting form, perform outreach to seizing agencies that will be using the form, review submissions to determine reporting compliance, issue notices to seizing agencies that fail to report, and to complete annual reports. In FY 2017-18 this staff will be responsible for program development and processing one report submitted by seizing agencies. In FY 2018-19 and beyond, this staff will process two biannual report submissions. Expenditures also increase for printing and postage for sending notices by certified mail to seizing agencies that fail to report, legal services associated with the levying of civil fines and collection of outstanding penalties, and computer programming. Computer programming expenditures are based off 403 hours of programming time to create the seizure form and establish a searchable public access database in FY 2017-18 and 52 hours to upgrade and maintain the system in FY 2018-19. The Office of Information Technology will complete the computer programming work using funds reappropriated from the DOLA.

Judicial Department. By allowing DOLA to levy civil fines and to pursue legal action to enforce civil fines, this bill increases trial court workload in the Judicial Department. Conversely, to the extent that seizing agencies refer seized property to federal agencies for federal prosecution trial court workload will decrease. The overall net impact of this bill is expected to be minimal and will not require a change in appropriations to the Judicial Department.

Other state agencies. This bill impacts other state agencies that participate in seizure activities. This includes the Departments of Corrections, Law, Natural Resources, Public Safety, and Revenue. Workload for these agencies is increased to track seizure activity and report on the receipt of and use of forfeited proceeds. Costs are potentially increased to pay any fines assessed for not reporting in a timely manner. A high level of compliance is expected, therefore, it is assumed these impacts can be addressed within existing appropriations and, to the extent possible, paid using forfeited proceeds. Should additional appropriations be needed by any of these agencies, the fiscal note assumes they will be requested 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 2.

Table 2. Centrally Appropriated Costs Under HB17-1313		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,378	\$4,382
Supplemental Employee Retirement Payments	2,223	2,417
Leased Space	3,000	3,000
TOTAL	\$9,601	\$9,799

Local Government Impact

This bill impacts local government seizing agencies, including law enforcement agencies and district attorneys, in the several ways. First, similar to the state, revenue from seizures with an aggregate value of less than \$50,000 or from seizures not initiated by the federal government and related to a filed criminal case will be reduced. Second, workload and costs are increased to track seizure activity and report biannually on the receipt of and use of forfeited proceeds. Lastly, to the extent that a local seizing agency fails to file a timely report without good cause, costs will increase to pay the civil fine. This analysis assumes a high level of compliance and that any fines received will be paid using forfeited assets. The exact impact will vary by local government depending on their level of involvement in seizure activities and the proceeds received from those activities.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed. It applies to seizures conducted on or after this date.

State Appropriations

For FY 2017-18, this bill requires a General Fund appropriation of \$84,451 and an allocation of 0.5 FTE to the Department of Local Affairs. Of this amount, \$44,486 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

- | | | |
|--------------------|---------------------|------------------------|
| Agriculture | Corrections | Counties |
| District Attorneys | Human Services | Information Technology |
| Judicial | Law | Local Affairs |
| Municipalities | Natural Resources | Public Defender |
| Public Safety | Regulatory Agencies | Revenue |
| Sheriffs | | |