



**Colorado
Legislative
Council
Staff**

SB16-117

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 9, 2016)

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

Drafting Number: LLS 16-0666
Prime Sponsor(s): Sen. Sonnenberg

Date: March 28, 2016
Bill Status: Senate Appropriations
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	at least (\$40,757,800)	at least (\$40,757,800)
General Fund	at least (39,412,000)	at least (39,412,000)
Cash Funds	at least (1,345,800)	at least (1,345,800)
State Expenditures	\$1,746,673	\$648,795
General Fund	1,080,152	40,675
Cash Funds	572,129	492,254
Centrally Appropriated Costs	94,392	115,866
TABOR Impact	at least (\$40,757,800)	at least (\$40,757,800)
FTE Position Change	7.8 FTE	8.9 FTE
Appropriation Required: \$1,652,281 - Multiple Agencies (FY 2016-17).		
Future Year Impacts: Ongoing state revenue reduction and state expenditures increase.		

This fiscal note has been updated to reflect new and additional information from multiple state agencies.

Summary of Legislation

This bill, **as amended by the Senate Finance committee**, limits the authority of state agencies to impose fines. Specifically, the bill prohibits any state agency from imposing a fine of \$1,000 or more or in total for related violations unless the agency mails written notice of the violation of the law or rule, and the offender fails to correct the violation on or before the 30th calendar day after mailing of the written notice. The bill caps these 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, five 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 fines does not apply. The bill does not apply to criminal penalties.

State Revenue

This bill will reduce state revenue by at least \$40.8 million per year beginning in FY 2016-17. General Fund revenue will decrease by at least \$39.4 million and cash fund revenue in various agencies will decrease by at least \$1.3 million. The impact to specific agencies is discussed below.

	FY 2016-17	FY 2017-18
Department of Revenue	(\$39.4 million)	(\$39.4 million)
Department of Labor and Employment	(\$570,000)	(\$570,000)
Department of Public Health & Environment	(\$520,000)	(\$520,000)
Department of Natural Resources	(\$205,300)	(\$205,300)
Department of Regulatory Agencies	(\$62,500)	(\$62,500)
TOTAL	(\$40.8 million)	(\$40.8 million)

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 three categories, including the Business Enforcement Group, the Division of Motor Vehicles, and tax penalties. Currently, the DOR receives more than \$130 million in fine revenue per year. The opportunity to cure violations is expected to eliminate the penalty in 30 percent of cases, resulting in an estimated \$39.4 million loss in revenue, \$39 million of which would have gone to the General Fund, the remaining 400,000 of which would have gone to various cash funds within the department.

Colorado Department of Labor and Employment (CDLE). CDLE imposes fines over \$1,000 in the Division of Worker's Compensation and the Unemployment Insurance Division. The estimated loss of revenue in the Division of Worker's Compensation from the ability to cure violations is \$120,000. The Unemployment Insurance Division collected approximately \$4.5 million in fines of \$1,000 or more, credited to various cash funds. Because it is unknown how many violators will cure their violations or be subject to a reduced fine, an estimate of 10 percent yields a \$450,000 reduction in cash funds. The total estimated revenue reduction is \$570,000.

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 \$5.2 million in revenue from fines that would be subject to the limits set by the bill—\$3 million in General Fund and \$2.2 million in cash fund revenue. 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 \$300,000 reduction in General Fund revenue and a \$220,000 reduction in revenue to various cash funds.

Department of Natural Resources (DNR). DNR collected about \$1.1 million in revenue from fines over \$1,000 in the last year. The limits set by the bill are expected to affect fine penalties in the Oil and Gas Conservation Commission (OGCC), the Division of Reclamation Mining and Safety (DRMS), and the State Land Board (SLB). Revenue losses to these divisions are estimated at \$93,000, \$112,000, and \$300, respectively, for a total revenue loss of \$205,300. OGCC and SLB fine revenue is credited to various cash funds and DRMS fine revenue goes to the General Fund.

Department of Regulatory Agencies (DORA). Several divisions in DORA issue fines that exceed \$1,000 including the Division of Real Estate, the Division of Professions and Occupations, the Division of Insurance, and the Public Utilities Commission. 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 various cash funds. Because DORA must set its fees to cover its direct and indirect costs, any lost fine revenue will require an increase in fees across several divisions' license types.

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. Since the bill reduces both revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget. However, the bill will reduce money available for the General Fund budget in the future during years the state does not collect money above the TABOR limit.

State Expenditures

This bill increases state expenditures by an estimated \$1.7 million and 7.8 FTE in FY 2016-17 and by \$648,795 and 8.9 FTE in FY 2017-18. These costs are incurred in DOR, CDLE, DORA, and CDPHE. In addition, the Departments of Law and Personnel and Administration 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 Revenue	<u>\$1,068,554</u>	<u>\$24,000</u>
Updates to GenTax System	1,044,554	0
Mailings	24,000	24,000
Department of Labor and Employment	<u>\$500,129</u>	<u>\$422,822</u>
Personal Services	238,675	333,176
FTE	5.6 FTE	6.3 FTE
Operating Expenses and Capital Outlay Costs	28,265	5,985
Information Technology Services	164,800	0
Mailings	3,300	3,300
Centrally Appropriated Costs*	65,089	80,361
Department of Regulatory Agencies	<u>\$163,822</u>	<u>\$185,298</u>
Personal Services	124,653	149,584
FTE	2.0 FTE	2.4 FTE
Operating Expenses and Capital Outlay Costs	11,686	2,280
Mailings	750	750
Centrally Appropriated Costs*	26,733	32,684
Department of Public Health & Environment	<u>\$14,168</u>	<u>\$16,675</u>
Personal Services	11,283	13,539
FTE	0.2 FTE	0.2 FTE
Operating Expenses and Capital Outlay Costs	190	190
Mailings	125	125
Centrally Appropriated Costs*	2,570	2,821
TOTAL	<u>\$1,746,673</u>	<u>\$648,795</u>

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

Assumptions. Unless otherwise specified below, the fiscal note assumes that departments issuing fines of \$1,000 or more require four hours per violation to send notices, verify that the violator has or has not cured the violation with 30 days, and solicit and verify income data in order to determine the maximum allowable fine. Also, to the extent that the incentive to pay fines outweighs the incentive to be in compliance with the law, these agencies may require additional FTE and resources to increase enforcement measures. The fiscal note has not estimated these costs and assumes that any increase in expenditures that result from noncompliance with the law will be addressed through the annual budget process.

Department of Revenue (DOR). The bill increases expenditures by \$1,044,554 in DOR in FY 2016-17 for programming and testing of GenTax, the DOR's tax processing computer system. DOR requires 5,146 hours of analysis, design, coding, testing, and validation to modify the billing logic in the GenTax system, to be performed by FAST Enterprises, the vendor that created and works on the GenTax system for DOR. The bill also increases expenditures by

\$24,000 in both years and ongoing for mailings of approximately 24,000 notices to violators. Because of the highly automated nature of the GenTax system and the resources in place within the tax division, the DOR does not require additional personnel to process notices.

Colorado Department of Labor and Employment (CDLE). Expenditures from the Worker's Compensation Cash Fund and the Employment Support Fund increase by approximately \$500,000 in CDLE in FY 216-17. CDLE requires an increase of 2.5 FTE in the Division of Worker's Compensation and 4.2 FTE in the Unemployment Insurance Division in the first year (prorated in to 2.1 FTE and 3.5 FTE, respectively, to account for the bill's effective date). Personnel in these divisions must send approximately 3,300 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. CDLE also requires a one-time expenditure of \$164,800 for computer programming updates to make changes to the Unemployment Insurance computer system. Mailing expenses total approximately \$3,300 per year.

Department of Regulatory Agencies (DORA). Expenditures from various cash funds will increase by approximately \$164,000 in DORA in FY 2016-17. DORA requires 2.4 FTE each year to send approximately 750 notices, verify compliance, follow up, and solicit and verify income data in order to determine the maximum allowed fine (FTE are prorated to 2.0 in the first year). Investigations of violations and cures in the Division of Professions and Occupations and the Division of Real Estate are estimated at four hours; however, personnel within the Public Utilities Commission require eight hours per violation, because transport carriers subject to fines are inspected in the field in areas throughout the state. Mailing expenses total approximately \$750 per year.

Colorado Department of Public Health and Environment (CDPHE). General Fund expenditures will increase by approximately \$14,000 in CDPHE in FY 2016-17. CDPHE requires an additional 0.2 FTE to send 125 notices, verify compliance, follow up, and solicit and verify income data in order to determine the maximum allowed fine. Mailing expenses total approximately \$125 per year.

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 to make greater use of suspensions or revocations instead of fines, litigation may increase. Third, the Consumer Credit Unit within DOL issued 30 fines of \$1,000 or more last year. Workload to send notices and verify cures for these fines is expected to increase. Finally, agencies with statutory authority under current law to impose fines may need legal services to clarify their ability to issue fines under the bill. The fiscal note assumes that any increase in appropriations required under the bill will be addressed through the annual budget process.

Department of Personnel and Administration (DPA). Workload in the Office of Administrative Courts in DPA may increase as both violators and departments issuing fines contest whether or not a violation has been cured. Current law grants statutory authority to several departments to levy fines of certain amounts, and potential conflicts under the bill may increase litigation. The fiscal note has not estimated the costs associated with a increased caseload or more protracted timelines in the Office of Administrative Courts but assumes that DPA will request additional appropriations, as needed, 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)	\$62,335	\$71,395
Supplemental Employee Retirement Payments	32,057	44,471
TOTAL	\$94,392	\$115,866

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:

- \$1,068,554 to the Department of Revenue from the General Fund;
- \$435,040 to the Department of Labor and Employment from the Worker's Compensation and Employment Support Cash Funds and an allocation of 5.6 FTE;
- \$137,089 to the Department of Regulatory Agencies from the Motor Carrier Cash Fund, the Division of Professions and Occupations Cash Fund, the Division of Real Estate Cash Fund, and the Mortgage Company and Loan Originator Cash Fund and an allocation of 2.0 FTE; and
- \$11,598 to the Department of Public Health and Environment from the General Fund and an allocation of 0.2 FTE.

State and Local Government Contacts

All Departments