



**Legislative  
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**FISCAL NOTE**

**Drafting Number:** LLS 18-0098  
**Prime Sponsors:** Rep. Willett

**Date:** March 20, 2018  
**Bill Status:** House SVMA  
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**Bill Topic:** LICENSEE DISCIPLINE MEDIATION STATE AGENCY

- Summary of Fiscal Impact:**
- State Revenue
  - State Expenditure
  - State Transfer
  - TABOR Refund
  - Local Government
  - Statutory Public Entity

The bill adds a mediation component to professional disciplinary actions initiated by state agencies. It will increase state revenue, expenditures, and workload on an ongoing basis.

**Appropriation Summary:** For FY 2018-19, the bill requires an appropriation of \$1,256,017 to the Department of Regulatory Agencies.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under HB 18-1224**

		<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Revenue</b>	Cash Funds	\$1.3 million	\$1.3 million
	<b>Total</b>	<b>\$1.3 million</b>	<b>\$1.3 million</b>
<b>Expenditures</b>	Cash Funds	\$1,256,017	\$1,232,502
	Centrally Appropriated	\$83,933	\$83,933
	<b>Total</b>	<b>\$1,339,950</b>	<b>\$1,316,435</b>
	<b>Total FTE</b>	<b>9.2 FTE</b>	<b>9.2 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>	Cash Funds	\$1.3 million	\$1.3 million
	<b>Total</b>	<b>\$1.3 million</b>	<b>\$1.3 million</b>

**Summary of Legislation**

Under current law, a state agency that is taking action to revoke, suspend, annul, limit, or modify an occupational license may not do so until it has given the licensee notice in writing, allowed the licensee an opportunity to submit written comments, and — except in cases of deliberate and willful violations or of substantial danger to public health and safety — has given the licensee a reasonable opportunity to comply with lawful requirements.

If a state agency fails to follow these procedures, this bill creates an action for a licensee whereby he or she may petition an administrative law judge (ALJ) or hearing officer (officer) to suspend the proceedings and require mediation, unless the agency can demonstrate extraordinary circumstances. Agencies are required to provide notice to licensees of their rights under the bill during the notice of hearing process. If mediation fails, the agency must notify the ALJ or officer, who must lift the suspension. State agencies must also give due consideration to the location of the licensee and other factors when determining the place to hold the mediation. Summary suspensions and commercial driver licenses are exempt from these procedures. Final agency action is subject to judicial review.

Under the bill, the Department of Regulatory Agencies (DORA) is specifically required to assign a person with authority to make prehearing decisions concerning disposition of the matter to be present during meetings related to settlement or mediation communications and who will be included in any material settlement communications with the licensee or their representative when taking disciplinary action against a licensee. In addition, DORA must allow the licensee, upon his or her request, to have a public or private mediator present during meetings and included in communications. Public mediation will be provided by ALJs in the Department of Personnel and Administration (DPA). If the licensee selects a private mediator, the licensee must pay the private mediator's reasonable fees.

**State Revenue**

Beginning in FY 2018-19, the bill will increase state cash fund revenue by about \$1.3 million per year from fees that will be raised on licensees to cover the costs under the bill.

**Fee impact on occupational licensees in DORA.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. As the bill increases expenditures for the Division of Professions and Occupations in DORA, the fiscal note assumes that fees will be raised on all licensees in the division to cover the costs of the bill. The estimated fee impact is shown in Table 2, and represents an estimate only based on about 400,000 licensees in the division and half renewing each year. Fee increases will be set administratively by DORA to cover the costs under this bill, based on cash fund balance and number of licensees subject to the fee.

**Table 2**  
**Fee Impact on Occupational Licensees in DORA**

<b>FY</b>	<b>Type of Fee</b>	<b>Fee Increase</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
FY 18-19	Fee increase to cover HB 18-1224 costs	\$6.65	200,000	<b>\$1,339,950</b>
FY 19-20			200,000	<b>\$1,316,435</b>

**Court filing fees.** To the extent that additional cases are filed for judicial review in state district courts under the bill, state cash fund revenue from filing fees will increase. The fiscal note assumes the impact of the bill will be minimal. For informational purposes, court filing fees are set at \$224.

**TABOR Refund**

This bill increases state revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. 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**

While the bill's effective date falls in FY 2017-18, the fiscal note assumes that it will take a few months for licensees to utilize the mediation program in DORA. Beginning in FY 2018-19, the bill will primarily increase state cash fund expenditures for DORA, by about \$1.3 million per year, as shown in Table 3 and discussed below. It will also increase expenditures or workload for the other state agencies that regulate occupations or that will hear cases related to the bill, which include the Education, Judicial, Natural Resources, Public Health and Environment, Revenue, and State Departments.

**Table 3  
 DORA Expenditures Under HB 18-1224**

	<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Department of Regulatory Agencies</b>		
Personal Services	\$464,592	\$464,592
Operating Expenses and Capital Outlay Costs	\$28,455	\$4,940
Legal Services	\$762,970	\$762,970
Centrally Appropriated Costs*	\$83,933	\$83,933
FTE – Personal Services	5.2 FTE	5.2 FTE
FTE – Legal Services	4.0 FTE	4.0 FTE
<b>Total Cost</b>	<b>\$1,339,950</b>	<b>\$1,316,435</b>
<b>Total FTE</b>	<b>9.2 FTE</b>	<b>9.2 FTE</b>

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

**Department of Regulatory Agencies — assumptions and analysis.** In DORA, respondent-initiated mediations do not take place under current law and voluntary mediations by mutual agreement are rarely requested. DORA's Office of Expedited Settlement is the agency's alternative to litigation; it works with the licensee to accept a board-proposed sanction in lieu of legal action. In 2017, the Division of Professions and Occupations issued 267 revocations, 14 suspensions, 843 stipulations, 446 letters of admonition, and 4,773 other/dismissals. Of these, 963 cases were settled through the expedited settlement process (ESP).

Under the bill, the licensee may initiate mediation, either before or after ESP. Because the ESP is an offered settlement process, the fiscal note assumes that there will be incentive for licensees facing disciplinary action to participate in mediation. The fiscal note assumes that about

75 percent of all ESP cases (725); about 75 percent of revocations (200); and about 75 percent of suspensions (15) will require mediation. Of these 940 estimated mediations, the fiscal note assumes that 5 percent will be privately mediated, and the remaining 95 percent (895) will require state ALJs.

Of these 895 cases, it is assumed that each case will require 6 hours of an ALJ from the Department of Personnel and Administration, which estimates 2 hours per-hearing statement review and 4 hours mediation; and 6 hours for regulatory staff, which estimates 1 hour pre-mediation work, 4 hours mediation, and 1 hour follow-up. In addition, 8 hours of legal services per mediation, which includes 4 hours of work on the pre-mediation statement and 4 hours to attend the mediation. Costs may increase if transportation time is a factor; this will be addressed during the annual budget process.

**Other state agencies.** To the extent that the Education, Natural Resources, Public Health and Environment, Revenue, and State Departments require additional resources to respond to requests for mediation under the bill, these will be addressed through the annual budget process.

**Judicial Department.** To the extent that the bill results in additional civil filings in state district courts, workload will increase in the Judicial Department. The fiscal note assumes this workload increase is minimal and no additional appropriations are required.

**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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$83,933 in FY 2018-19 and FY 2019-20.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## State Appropriations

For FY 2018-19, the bill requires an appropriation of \$1,256,017 from the Division of Professions and Occupations Cash Fund in DORA and an allocation of 2.6 FTE. Of this amount, \$762,970 should be reappropriated to the Department of Law with an allocation of 4.0 FTE, and \$222,843 to the Department of Personnel and Administration with an allocation of 2.6 FTE.

## State and Local Government Contacts

Agriculture	Education	Judicial
Law	Natural Resources	Personnel
Public Health and Environment	Regulatory Agencies	Revenue
Secretary of State		