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**FINAL
FISCAL NOTE**

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

Date: August 9, 2018
Bill Status: Signed into Law
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Bill Topic: LICENSEE DISCIPLINE MEDIATION STATE AGENCY

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> 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 and includes an appropriation of \$125,356 to the Department of Regulatory Agencies.

Fiscal Note Status: The fiscal note reflects the enacted bill.

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

		FY 2018-19	FY 2019-20
Revenue	Cash Funds	\$130,000	\$130,000
	Total	at least \$130,000	at least \$130,000
Expenditures	Cash Funds	\$125,356	\$125,356
	Centrally Appropriated	\$8,037	\$8,037
	Total	\$133,393	\$133,393
	Total FTE	0.8 FTE	0.8 FTE
Transfers		-	-
TABOR Refund	General Fund	at least \$130,000	at least \$130,000

Summary of Legislation

This bill adds a mediation component to the process related to professional disciplinary actions. Under the bill, during an agency proceeding that concerns an individual who is licensed to practice a profession or occupation — with the exception of commercial driver license holders and not in the case of summary suspensions — either the licensee or agency may request mediation after the licensee has received the notice of hearing, to be ordered by the hearing officer or administrative law judge involved in the proceeding. When mediation is ordered, the agency must:

- assign a person with authority to make prehearing decisions concerning the disposition of the matter to be present during meetings related to settlement communications or mediation communications and to be included in any material settlement communications with the licensee or the licensee's representative over the matter; and
- upon the licensee's request, allow a private or public mediator chosen by the licensee to be present during meetings related to mediation and to be included in any material settlement communications with the licensee or the licensee's representative over the matter — if the mediator is privately retained, the licensee must pay the mediator's reasonable fees.

The bill requires, to the extent feasible, that administrative law judges (ALJs) make themselves available as public mediators without cost to the licensee. Members of any governing body regulating the licensee must also make one of the body's members or another person available for mediation as a person with authority to make prehearing decisions concerning disposition of the matter.

Under the bill, if an agency fails to comply with an order of mediation, a licensee adversely affected by the failure may petition the ALJ or hearing officer to suspend the proceedings and require compliance with the order, to be completed in good faith as soon as practicable.

If mediation fails, the agency shall notify the ALJ or hearing officer, and the ALJ or hearing officer shall lift the suspension and proceed with the hearing. Final agency action is subject to judicial review.

When determining the place to hold the mediation, the agency shall give due consideration to the location of the licensee's occupation or residence, the availability of an ALJ to mediate, and the availability of a member of the related governing body.

Finally, by January 1, 2022, the Division of Professions and Occupations in the Department of Regulatory Agencies (DORA) and the Office of Administrative Courts in the Department of Personnel and Administration (DPA) must submit a one-time report to the House and Senate Judiciary and State Affairs Committees of the General Assembly comparing the number of hearings, mediations, and proceedings in the two-year period preceding the bill and the two-year period after the bill's passage.

Background

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.

State Revenue

Beginning in FY 2018-19, the bill will increase state cash fund revenue by at least \$130,000 per year to the Division of Professions and Occupations Cash Fund from fees that will be raised on licensees to cover the costs under the bill. This assumes that the vast majority of licensees subject to the bill are licensed by DORA; however, other state agencies that regulate professionals, including the Departments of Education, Judicial, Natural Resources, Public Health and Environment, Revenue, and State, may also be required to raise license fees to cover the costs under the bill. Revenue may also increase from court filing fees.

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 fee impact shown in Table 2, and represents an estimate based on one-half of approximately 400,000 licensees renewing each year. Actual fee increases will be set administratively by DORA to cover the costs under this bill, based on cash fund balance and the number of licensees subject to the fee.

Table 2
Fee Impact on Occupational Licensees in DORA

FY	Type of Fee	Fee Increase	Number Affected	Total Fee Impact
FY 18-19	Fee increase to cover HB 18-1224 costs	\$0.65	200,000	\$130,000
FY 19-20			200,000	\$130,000

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 \$130,000 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**

	FY 2018-19	FY 2019-20
Department of Regulatory Agencies		
Personal Services	\$44,310	\$44,310
Legal Services	\$64,575	\$64,575
Per Diem and Travel Reimbursement	\$16,471	\$16,471
Centrally Appropriated Costs*	\$8,037	\$8,037
FTE – Personal Services	0.5 FTE	0.5 FTE
FTE – Legal Services	0.3 FTE	0.3 FTE
Total Cost	\$133,393	\$133,393
Total FTE	0.8 FTE	0.8 FTE

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

Department of Regulatory Agencies. Under the bill, mediation may only be initiated after the Notice of Charges have been filed. Based on the past three years of filings in the Division of Professions and Occupations, the fiscal note assumes that approximately 100 mediations will be requested per year. Each mediation is estimated to require the following resources:

- 6 hours of an administrator per mediation who will coordinate all mediations for the division (0.3 FTE);
- 6 hours of legal services per mediation (0.3 FTE);
- 5 hours of an ALJ from the Department of Personnel and Administration (0.2 FTE) per mediation; and
- per diem and travel expense reimbursement for one board member per mediation, estimated at \$50 and \$100 respectively per mediation, and mileage reimbursement for ALJs, estimated at \$13 per mediation.

Costs may increase for DORA related to transportation time; this will be addressed during the annual budget process. DORA will also conduct a coordinated outreach effort within the normal course of business.

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 \$8,037 annually beginning in FY 2018-19.

Effective Date

The bill was signed into law by the Governor and took effect on May 29, 2018.

State Appropriations

For FY 2018-19, the bill requires and includes an appropriation of \$125,356 from the Division of Professions and Occupations Cash Fund in DORA and an allocation of 0.3 FTE. Of this amount, \$64,575 is reappropriated to the Department of Law with an allocation of 0.3 FTE, and \$19,917 is reappropriated to the Department of Personnel and Administration with an allocation of 0.2 FTE.

State and Local Government Contacts

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