



Colorado
Legislative
Council
Staff

HB16-1129

REVISED
FISCAL NOTE

(replaces fiscal note dated April 7, 2016)

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

Drafting Number: LLS 16-0647
Prime Sponsor(s): Rep. Lawrence; McCann
Sen. Crowder; Heath

Date: April 22, 2016
Bill Status: Senate Appropriations
Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: CHARITABLE FRAUD ENHANCED ENFORCEMENT MEASURES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue General Fund Cash Funds		Potential increase.
State Expenditures		Minimal workload increase.
TABOR Impact		Potential increase.
Future Year Impacts: Potential increase in state revenue and minimal workload increase.		

Summary of Legislation

The **reengrossed** bill strengthens measures against charitable fraud in several ways. First, it allows the state to bring civil actions against individuals charged with charitable fraud, with a penalty of up to \$10,000 for each violation with a cap of \$3 million for related series of violations. In determining a civil penalty, the court must adjust the limitations cap for inflation. The Attorney General is to hold any civil penalty collected as custodial money and must donate it to charity within two years of collection, with approval from the district court having jurisdiction over the underlying civil action.

Second, the bill places additional requirements on paid solicitors when registering with the Department of State. An applicant must provide a statement attesting that neither he nor she (nor any officer, director, or employee) serves on the board of directors or directs the operations of a charitable organization for which he or she solicits contributions. If this relationship exists, the applicant must attest that the relationship meets the standards set forth in law regarding conflict of interest transactions.

Third, the bill defines a new basis for a class 2 misdemeanor fraud violation. Specifically, it is an offense to solicit on behalf of an organization that purports to have significant membership of a certain type, like firefighters, when the organization does not. Significant membership is defined as 10 percent or 100 members, whichever is less. The bill specifies that if a paid solicitor commits fraud in soliciting contributions, the charitable organization will also be liable for any remedies and penalties if the organization knew or should have known about the fraud. This personal liability does not extend to board members of a charitable organization beyond the personal liability allowed by law.

Background

Under current law, paid solicitors must register with the Secretary of State's office before soliciting contributions on behalf of any organization. There are currently 207 paid solicitors registered with the Secretary of State.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 creates a new factual basis for the existing crime of charitable fraud, classified as a class 2 misdemeanor. Class 2 misdemeanors are punishable by 3 to 12 months in jail, a fine of \$250 to \$1,000, or both. However, if an individual commits a misdemeanor fraud violation involving three separate contributors in any one campaign, the individual can be charged with a class 5 felony. Class 5 felonies are punishable by 1 to 3 years in prison, a fine of \$1,000 to \$100,000, or both. There have been seven convictions of charitable fraud violations in the past two fiscal years; five were females (one Asian, four Caucasian) and two were males (both Caucasian).

State Revenue

This bill may increase state cash fund revenue from fines for criminal offenses or state General Fund revenue from civil penalties by a minimal amount. Fine revenue for criminal offenses is credited to the Fines Collection Cash Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2015, the fiscal note assumes that any cash fund revenue generated is likely to be minimal. Because no civil penalty for charitable fraud violations exists under current law, the number of civil cases that will be brought for charges of charitable fraud is unknown. The precise impact to state General Fund revenue cannot be determined but is expected to be minimal.

TABOR Impact

This bill may increase state cash fund revenue from fines, which may increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

State Expenditures

Beginning in FY 2016-17, the bill increases workload by a minimal amount in the Department of State and the Judicial Department.

Department of State. Workload increases by a minimal amount in the Department of State to process the additional statement that paid solicitors are required to submit under the bill. No increase in appropriations is required.

Judicial Department. To the extent that investigations and filings increase as a result of the new factual basis for a fraud violation, workload for trial courts within the Judicial Department may increase. Any increase in workload is expected to be minimal and can be accomplished within existing appropriations.

Local Government Impact

This bill could increase workload for district attorneys prosecuting individuals for charitable fraud or bringing civil action on behalf of the state. It could also increase jail costs for any person convicted of a misdemeanor fraud offense. It is assumed that increases in workload and costs for district attorneys and local governments under the bill will be minimal. 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. The bill may increase in workload for the Denver County Court, managed and funded by the City and County of Denver, as it tries more misdemeanor cases. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue as a result of more offenders convicted of misdemeanor charges under the bill. It is assumed that any increases will be minimal.

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. It applies to charitable solicitations on or after this date.

State and Local Government Contacts

District Attorneys
Information Technology

Law
Secretary of State