



**Colorado
Legislative
Council
Staff**

SB17-045

**FINAL
FISCAL NOTE**

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

Drafting Number: LLS 17-0793 **Date:** August 29, 2017
Prime Sponsor(s): Sen. Grantham; Williams A. **Bill Status:** Postponed Indefinitely
 Rep. Duran; Wist **Fiscal Analyst:** Josh Abram (303-866-3561)

BILL TOPIC: CONSTRUCTION DEFECT CLAIM ALLOCATION OF DEFENSE COSTS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
State Expenditures	\$302,543	\$255,376
General Fund	252,543	204,106
Centrally Appropriated Costs	49,752	51,270
FTE Position Change	2.4 FTE	2.4 FTE
Appropriation Required: \$252,543 - Judicial Department (FY 2017-18).		
Future Year Impacts: Ongoing increase in state expenditures.		

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

In civil suits brought to court as a result of an alleged construction defect, this bill allows an insurance company to request that the court apportion the defense costs (e.g., attorney fees) equitably among all liability insurers who have a duty to defend against the claim. The bill requires that the district court set the contribution claim within 90 days after the filing of the action, and promptly resolve the case. The district court is required to enter such orders as are necessary to hold an expedited evidentiary hearing. Following a final judgment resolving all claims, any insurer may apply to the district court for a final apportionment of the defense costs, and the district court must equitably allocate defense costs among the insurers.

State Expenditures

For FY 2017-18, this bill increases state expenditures in the Judicial Department by \$302,295 and 2.4 FTE. For FY 2018-19, increased expenditures are \$255,375 and 2.4 FTE. State expenditures are detailed in Table 1 and described below.

Table 1. Expenditures Under SB17-045		
Cost Components	FY 2017-18	FY 2018-19
Personal Services*	\$182,395	\$198,976
FTE	2.4 FTE	2.4 FTE
Operating Expenses and Capital Outlay Costs	70,148	5,130
Centrally Appropriated Costs**	49,752	51,269
TOTAL	\$302,295	\$255,375

* FY 2017-18 personal services are adjusted to account for the General Fund pay date shift.

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

This bill allows an insurer to move the court to determine if other insurers have a duty to defend, and so order contributions prior to the final conclusion of a case. In order to apportion costs, the courts analyze a plaintiff's expert reports identifying the alleged defects, and the defense expert reports identifying the damages, the seriousness of the defects, and a detailing of the expected cost to repair. Under current law, the court conducts these hearings at the end of the case.

In order to prepare its judgment on apportionment of legal costs within 90 days of the insurer's claim, district courts will add at least one full day of court time to a construction defect case. On average, there are 200 construction defect cases filed per year. Assuming one additional day in 75 percent of cases, the court requires the addition of 0.6 magistrate. (150 cases x 1 day = 150 days x 8 hours = 1200 hours / 2080 available work hours per year = 0.6 magistrate FTE).

Personal services costs in the Judicial Department increase with each new court magistrate. Adding a magistrate results in the addition of a judicial assistant, law clerk, and court reporter to support the new magistrate. Therefore, adding 0.6 FTE magistrate also adds an additional 1.8 FTE accompanying support staff, for a grand total of 2.4 FTE.

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 SB 17-045		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$33,408	\$33,440
Supplemental Employee Retirement Payments	16,344	17,829
TOTAL	\$49,752	\$51,269

Effective Date

The bill was postponed indefinitely by the Senate Appropriations Committee on May 9, 2017.

State Appropriations

For FY 2017-18, the Judicial Department requires a General Fund appropriation of \$252,543 and an allocation of 2.4 FTE.

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