



**Colorado
Legislative
Council
Staff**

SB17-038

**FINAL
FISCAL NOTE**

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

Drafting Number: LLS 17-0454

Date: June 20, 2017

Prime Sponsor(s): Sen. Todd

Bill Status: Postponed Indefinitely

Fiscal Analyst: Anna Gerstle (303-866-4375)

BILL TOPIC: REGISTRATION HOME INSPECTORS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019	FY 2019-2020
State Revenue			
Cash Funds		<u>up to \$171,525</u>	<u>up to \$114,988</u>
State Expenditures	<u>\$59,210</u>	<u>\$118,370</u>	<u>\$54,507</u>
Cash Funds	51,103	105,301	46,400
Centrally Appropriated Costs	8,107	13,069	8,107
FTE Position Change	0.6 FTE	0.7 FTE	0.6 FTE
Appropriation Required: \$51,103 - Department of Regulatory Agencies (FY 2017-18).			
Future Year Impacts: Ongoing revenue and expenditure increase.			

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

Summary of Legislation

The bill prohibits practicing, advertising, or representing oneself as a home inspector without first registering with the Division of Professions and Occupations (DPO) in the Department of Regulatory Agencies (DORA). A home inspector is defined as someone who conducts a limited visual survey of the components of a residential building, including heating, cooling, plumbing, electrical, and structural systems, as well as the foundation and roof. The definition does not include HVAC technicians, roofing contractors, government code inspectors, industrial hygienists, or anyone registered, certified, or licensed by the state or acting on behalf of the U.S. Department of Housing and Urban Development, or a state or local housing authority.

Registration process. The director of the DPO must issue a registration to anyone who pays the required registration fee and provides evidence that the individual possesses minimum liability insurance coverage of \$50,000 for personal injury for one person and \$100,000 for all individuals in a single accident, and has submitted a minimum \$10,000 surety bond. Applicants must also submit fingerprints to the Colorado Bureau of Investigation (CBI) for a fingerprint-based criminal background check. A person may not apply if his or her registration has been revoked or surrendered within the last two years.

The director of the DPO may promulgate rules to govern the registration of home inspectors, set a renewal schedule, administer oaths, issue subpoenas, and set registration, renewal, and delinquency fees to cover the expenses of the registration administration.

Disciplinary procedures. The bill sets disciplinary procedures as follows:

- the director may deny, suspend, revoke, place on probation, or issue a letter of admonition to a registrant if the individual commits certain violations;
- the director may issue a cease and desist order if credible evidence indicates that an individual is a threat to the health and safety of the public, or someone practices without a registration; and
- a person who acts as a home inspector without an active registration commits a Class 2 misdemeanor for the first offense and a Class 6 felony for subsequent offenses.

The bill sets procedures for the issuance and adjudication of disciplinary procedures, including that an administrative law judge may be used to conduct hearings.

Penalties. Any person who violates the provisions of the bill may be fined between \$100 and \$500 per violation in the first administrative proceeding, and between \$1,000 and \$2,000 per violation in any subsequent administrative proceeding, except that if a person practices as a home inspector without a valid registration, the fine may be between \$1,000 and \$5,000 per violation. A registrant who refuses the inspection of documents is guilty of an unclassified misdemeanor and may be fined up to \$100 per violation. Of the fine revenue, 50 percent is retained by DORA to cover the cost of administering the registration program, and 50 percent is divided between the federal, state, and local law enforcement agencies that assisted with an investigation.

Fees. All registration and renewal fees must be deposited in the Division of Professions and Occupations Cash Fund, to be annually appropriated by the General Assembly.

Sunset. The bill is repealed September 1, 2023. Before it is repealed, DORA must conduct a sunset review of the registration program.

Assumptions

As of January 2017, the International Association of Certified Home Inspectors has 961 members in Colorado. The fiscal note assumes 950 of them will apply for registration in Colorado in FY 2018-19, and 25 new home inspectors will register in subsequent years, based on the Bureau of Labor Statistics annual growth rate for the profession. In addition, the fiscal note assumes that:

- DPO will begin work on the registration program on January 1, 2018, with registration beginning July 1, 2018;
- approximately 30 complaints will be received annually beginning in FY 2018-19; and
- registrations will be renewed annually.

Comparable Crime

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. The bill creates a new Class 2 misdemeanor for anyone who practices as a home inspector without a registration and a Class 6 felony for any subsequent offenses of practicing without a registration. The penalty for a Class 2 misdemeanor is \$250 to \$1,000, 3 to 12 months in jail, or both; the penalty for a Class 6 felony is \$1,000 to \$100,000, 12 to 18 months in prison, or both. In addition, the bill creates an unclassified misdemeanor if a registrant refuses to permit the inspection of documents, records, or items. The penalty for that misdemeanor is \$100 per violation. A comparable crime is the unlicensed practice as a professional land surveyor, the first offense of which is a Class 2 misdemeanor and any subsequent offense is a Class 6 felony. In the last three years, there have been no charges or convictions under those offenses. As a result, the fiscal note assumes that any criminal violations under the bill will be minimal.

State Revenue

The bill increases cash fund revenue as shown in Table 1 and discussed below. No revenue increase is expected in FY 2017-18.

Table 1. Revenue Under SB17-038

Revenue Source	FY 2018-19	FY 2019-20
Registration Fees - DORA	\$114,000	\$79,000
Administrative Fines - DORA	up to 7,500	up to 15,000
Administrative Fines - law enforcement agencies	up to 7,500	up to 15,000
Fingerprint-based Background Check - DPS	37,525	988
Criminal Fines - Judicial Department	up to 5,000	up to 5,000
Court Fees - Judicial Department	minimal	minimal
TOTAL	up to \$171,525	up to \$114,988

DPO — Department of Regulatory Agencies. The bill increases revenue to the DPO by up to \$121,500 in FY 2018-19 and up to \$94,000 in FY 2019-20 to the DPO Cash Fund from registration fees and administrative fines. The fiscal note assumes that up to \$15,000 in administrative fines will be collected in FY 2018-19 and up to \$30,000 in FY 2019-20, split between DPO and other state, federal, or local agencies that assist with investigations.

Department of Public Safety (DPS). The bill increases fee revenue to the DPS from fingerprint background checks by \$37,525 in FY 2018-19 and \$988 in FY 2019-20. The cost per background check is \$37.50, with \$17.50 transferred to the Federal Bureau of Investigation. The pass-through funds to the FBI total \$16,625 in FY 2018-19 and \$438 in FY 2019-20. The fiscal note assumes 950 new background checks in FY 2018-19 and 25 in FY 2019-20. Fees for background checks are deposited in the CBI Identification Unit Cash Fund.

Fee impact on home inspectors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 2 below identifies the fee impact of registration fees and background checks on home inspectors beginning in FY 2018-19. The registration fee amounts are estimates only, actual fee calculations will be set administratively by the DPO based on cash fund balance, estimated program costs, and the estimated number of registrations and renewals subject to the fee.

Table 2. Fee Impact on Home Inspectors				
Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2018-19	Home Inspector Registration - New	\$120	950	\$114,000
	Fingerprint Background Check	39.50	950	37,525
TOTAL				\$151,525
FY 2019-20	Home Inspector Registration - New	\$120	25	\$3,000
	Home Inspector Registration - Renewal	80	950	76,000
	Fingerprint Background Check	39.50	25	988
TOTAL				\$79,988

Judicial Department. The bill also increases revenue to the Judicial Department by up to \$5,000 from the following sources:

Criminal fines. Beginning in FY 2018-19, this bill is anticipated to increase state revenue from criminal fines by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. 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 no convictions of a similar crime over the last three years and the low number of criminal fines imposed in 2016, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

Court fees. This bill may also increase state court fee revenue by a minimal amount. Fees are imposed for a variety of court-related costs, which vary based on the offense and the type of court.

State Expenditures

The bill increases cash fund expenditures in DORA and DPS as shown in Table 3 and discussed below. The bill also increases the workload for the Judicial Department, Department of Personnel and Administration (DPA), and potentially the Department of Corrections beginning in FY 2018-19, and in DPS beginning in FY 2019-20.

Table 3. Expenditures Under SB17-038			
Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Personal Services - DORA	\$36,325	\$36,325	\$36,325
FTE - DORA	0.6 FTE	0.6 FTE	0.6 FTE
Personal Services - DPS		5,835	
FTE - DPS		0.1 FTE	
Operating Expenses and Capital Outlay Costs	5,273	665	570
Legal Services	9,505	9,505	9,505
Temporary Staffing		27,691	
Fingerprint Background Check Costs		25,280	
Centrally Appropriated Costs*	8,107	13,069	8,107
TOTAL COSTS	\$59,210	\$118,370	\$54,507
TOTAL FTE	0.6 FTE	0.7 FTE	0.6 FTE

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

DPO — Department of Regulatory Agencies. The bill increases expenditures in the DPO by \$59,210 and 0.6 FTE in FY 2017-18, \$82,198 and 0.6 FTE in FY 2018-19, and \$54,507 and 0.6 FTE in FY 2019-20 from the DPO Cash Fund.

Personal services. The DPO requires 0.6 FTE annually beginning in FY 2017-18. A program manager is required to establish registration procedures, research and conduct rulemaking, coordinate outreach, and develop policy guidelines. An administrative assistant is required to process applications, renewals, complaints, and enforcement actions, as well as to track disciplinary actions and criminal background check results.

Legal services. The DPO requires 100 hours of legal services annually beginning in FY 2017-18 for rulemaking, enforcement, and complaint resolution. Legal services are provided by the Department Law at a rate of \$95.05 per hour.

Temporary staffing. The DPO requires \$27,691 for temporary staffing in FY 2018-19 to accommodate initial registration for 950 home inspectors. The DPO requires three staff for three months at a rate of \$19.23 per hour.

DPS — Fingerprint-based background checks. The bill increases expenditures for DPS by \$31,115 and 0.1 FTE in FY 2018-19 and increases the workload by a minimal amount in subsequent years to conduct additional CBI background checks, including fingerprint examiner time, postage and per-print software and equipment costs, as well as the pass through costs of the FBI background check. These costs are based on up to 950 checks in FY 2018-19, and 25 in FY 2019-20, and are paid from the CBI Identification Unit Cash Fund.

DPA — Office of Administrative Courts. The bill increases the workload in DPA to provide administrative law judges to conduct administrative hearings beginning in FY 2018-19. The workload increase can be accomplished within existing appropriations.

Judicial Department. The bill increases the workload in the Judicial Department by a minimal amount to handle any cases related to practicing without a registration, conduct judicial review of any agency actions, and review requests for injunctive relief. The increase is expected to be accomplished within existing appropriations.

Department of Corrections (DOC). To the extent that this bill increases the number of persons sentenced to the DOC, costs will increase. Should Class 6 felony convictions occur, the fiscal note assumes the DOC will request additional appropriations 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. Indirect costs are assessed for DPS only.

Table 3. Centrally Appropriated Costs Under SB 17-038			
Cost Components	FY 2017-18	FY 2018-19	FY 2019-20
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,852	\$5,733	\$4,852
Supplemental Employee Retirement Payments	3,255	3,778	3,255
Indirect Costs (DPS)		3,558	
TOTAL	\$8,107	\$13,069	\$8,107

Local Government Impact

The bill will impact local governments in the following ways:

County court expenditures. The bill may increase workload for district attorneys to prosecute any new misdemeanor offenses under the bill. To the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a Class 2 misdemeanor for a period of between 3 and 12 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. The fiscal note assumes that the impact of this bill on county courts will be negligible.

Denver County Courts. This bill may increase revenue from criminal fines by less than \$5,000 per year for the City and County of Denver, beginning in FY 2018-19. In addition, court fee revenue will increase by a minimal amount for the City and County of Denver.

Administrative fine revenue. The bill will also increase revenue from administrative fines for any local law enforcement agency that assists with an investigation and thus receives a portion of fines assessed. It is expected that up to \$7,500 in FY 2018-19 and up to \$15,000 in FY 2019-20 will be divided among federal, state, and local agencies that assist with investigations.

Technical Note

The bill takes effect January 1, 2018, and applies to conduct on or after that date. However, the DPO requires some time to establish registration procedures before registrations will be available. As a result, the fiscal note assumes registrations will be available beginning July 1, 2018.

Effective Date

The bill was postponed indefinitely by the Senate Finance Committee on February 9, 2017.

State Appropriations

For FY 2017-18, the bill requires an appropriation of \$51,103 and 0.6 FTE from the Division of Professions and Occupations Cash Fund to the Department of Regulatory Agencies. Of this, \$9,505 is reappropriated to the Department of Law.

State and Local Government Contacts

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