



**Colorado
Legislative
Council
Staff**

HB16-1129

**FINAL
FISCAL NOTE**

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

Drafting Number: LLS 16-0647 **Date:** July 19, 2016
Prime Sponsor(s): Rep. Lawrence; McCann **Bill Status:** Signed into Law
 Sen. Crowder; Heath **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 Cash Funds	<u>\$18,952</u> 18,952	
TABOR Impact		Potential increase.
Appropriation Required: \$18,952 - Department of State (FY 2016-17).		
Future Year Impacts: Potential increase in state revenue.		

Summary of Legislation

The 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 Secretary of State's office. 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. An applicant must also file evidence of a savings account, deposit, certificate of deposit, or surety bond in the amount of \$15,000, as a guarantee that the solicitor will perform in good faith. The bill specifies that no corporate surety will be required to pay a claim on a bond until a final determination of fraud has been made by the Secretary of State's office or the courts and that bonds must be renewed annually at the same time the bondholder's license is renewed.

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. No TABOR impact is expected in FY 2016-17.

State Expenditures

This bill will result in a one-time state cash fund expenditure of \$18,952 in FY 2016-17 in the Secretary of State's office. The bill may also increase workload in the Secretary of State's office and the Judicial Department by a minimal amount.

Department of State. The Department of State will be required to update its online filing system to accommodate the additional requirements under the bill, including the statement and evidence of a savings account, deposit, or bond from paid solicitors seeking to register. The department will require an estimated 184 hours of technology services to design and implement the change to its system, at an estimated cost of \$18,952 from the Department of State Cash Fund. An appropriation for this cost was not included in this bill. Therefore, the Department of State may be required to request funding through the annual budget process to conduct this work.

Because the bill adds a new definition of charitable fraud, it may increase workload for staff involved in charitable fraud investigations. Any ongoing increase in workload is expected to be minimal and can be accomplished within existing appropriations.

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 was signed into law by the Governor on June 8, 2016, and takes effect August 10, 2016, assuming no referendum petition is filed. It applies to charitable solicitations on or after this date.

State Appropriations

In FY 2016-17, the bill requires but does not include an appropriation of \$18,952 to the Department of State from the Department of State Cash Fund.

State and Local Government Contacts

District Attorneys
Law

Information Technology
Secretary of State