



**Colorado
Legislative
Council
Staff**

HB17-1313

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 17, 2017)

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

Drafting Number: LLS 17-1129
Prime Sponsor(s): Rep. Herod; Humphrey
Sen. Neville T.; Kagan

Date: May 1, 2017
Bill Status: House Appropriations
Fiscal Analyst: Chris Creighton (303-866-5834)

BILL TOPIC: CIVIL FORFEITURE REFORM

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue General Fund Cash Funds		See State Revenue section.
State Expenditures General Fund Centrally Appropriated Costs	\$134,057 \$123,150 10,907	60,425 50,881 9,544
TABOR Impact	See TABOR Impact section.	
FTE Position Change	0.8 FTE	0.7 FTE
Appropriation Required: \$123,150 - Department of Public Safety (FY 2017-18).		
Future Year Impacts: Ongoing revenue impacts and expenditure increase.		

Summary of Legislation

This bill, **as amended by the House Judiciary Committee**, makes the following statutory changes related to the civil forfeiture process.

Seizure reporting process. The Division of Criminal Justice in the Department of Public Safety (DPS) is required to establish and maintain, by December 31, 2017, a reporting form for agencies involved in the seizure of property (seizing agencies) to use in submitting biannual seizure reports. The DPS is also required to establish and maintain a searchable public access database for seizure-related information. Seizing agencies are required to submit seizure information on the form created by the DPS twice annually by June 1 and December 1, unless the report could disclose confidential information. The DPS is required to send notice to any seizing agency that failed to file a biannual report within 30 days after the report was due and is authorized to levy a civil fine against the seizing agency for the failure to report.

Forfeiture proceeds. Seizing agencies may only receive forfeiture proceeds from the federal government if the aggregate value of the property and currency seized is over \$50,000 and if the seizure was initiated by the federal government and related to a filed criminal case. All seized

property and forfeited proceeds from a joint task force, multi-jurisdictional collaboration, or a federal distribution must be referred to the prosecuting authority unless the aggregate amount is in excess of \$50,000, in which case the property may be referred to a federal agency for federal prosecution.

Reporting. The DPS is required to submit a report summarizing seizure and forfeiture activity in the state to the Governor, Attorney General, and General Assembly by December 31, 2019, and each December 31 thereafter. The Department of Human Services is currently required to prepare an annual accounting report of moneys received from the distribution of personal property profits. This requirement expires February 21, 2021.

State Revenue

This bill is expected to both increase and decrease state revenue as described below.

Fines. This bill creates a civil fine for any agency that fails to file timely biannual reports without good cause. This analysis assumes a high level of compliance. It is assumed that any revenue generated will be deposited to the General Fund. Fine revenue received from state seizing agencies is not subject to TABOR, however revenue received from local seizing agencies would be subject to TABOR.

Lost forfeiture revenue. Under this bill, state agencies can only receive forfeited proceeds from the federal government if the aggregate value is over \$50,000 and if the seizure was initiated by the federal government and related to a filed criminal case. Currently, much of the seizure related work performed by the Colorado State Patrol and the Colorado Bureau of Investigation in the Department of Public Safety (DPS) is done through participation with federal task forces and the Department of Law is a member of the Organized Crime Drug Enforcement Task Force. By establishing the \$50,000 threshold this bill will reduce cash fund revenues in the DPS and the Department of Law from participation with multi-agency task forces. The extent of this decrease is unknown and will depend on state agency seizure activity and the proceeds received from those activities.

TABOR Impact

This bill both increases state General Fund revenue from fines and decreases state cash fund revenue from forfeiture proceeds, which will impact the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund.

In years when the state collects revenue above the TABOR limit, the increase in General Fund revenue has no net impact on the amount of money available in the General Fund for the budget, as both revenue to the General Fund and the refund obligation increase by equal amounts. However, the reduction in cash fund revenue decreases the TABOR refund obligation, increasing the amount of money available in the General Fund for the budget on a dollar-for-dollar basis.

In future years when the state does not collect revenue above the TABOR limit, the bill's impact on General Fund revenue will increase money available for the General Fund budget.

State Expenditures

This bill increases costs in the Department of Public Safety by \$134,057 and 0.8 FTE in FY 2017-18 and \$60,425 and 0.7 FTE in FY 2018-19 and future years. Costs and workload are also impacted in the Departments of Human Services, Corrections, Law, Natural Resources, Local Affairs, and Revenue. These impacts are shown in Table 1, and discussed below.

Table 1. Expenditures Under HB17-1313		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	\$43,155	\$37,760
FTE	0.8 FTE	0.7 FTE
Operating Expenses and Capital Outlay Costs	5,462	475
Printing and Postage	4,500	3,000
Legal Services	4,753	1,426
Computer Programming	64,560	7,500
Vehicle Mileage	720	720
Centrally Appropriated Costs*	10,907	9,544
TOTAL	\$134,057	\$60,425

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

Department of Public Safety. To implement this bill, a program administrator is needed. In FY 2017-18, 0.8 FTE is needed and this staff will be responsible for program development, creating the reporting form and searchable database, providing outreach and technical assistance to seizing agencies, and processing one report submitted by seizing agencies. FY 2017-18 costs are prorated to reflect a September 1 start date. In FY 2018-19 and beyond 0.7 FTE is needed, this staff will process two biannual report submissions, perform outreach, and complete annual reports. Expenditures also increase for printing and postage for sending notices by certified mail to seizing agencies that fail to report, legal services associated with the levying of civil fines and collection of outstanding penalties, and computer programming. Computer programming expenditures are based off 440 hours of programming time to create the seizure form and establish a searchable public access database in FY 2017-18 and 50 hours to upgrade and maintain the system in FY 2018-19. The Office of Information Technology will complete the computer programming work using reappropriated funds. Should additional appropriations be needed to implement this bill, they will be requested by DPS through the annual budget process.

Judicial Department. By allowing DPS to levy civil fines and to pursue legal action to enforce civil fines, this bill increases trial court workload in the Judicial Department. Conversely, to the extent that seizing agencies refer seized property to federal agencies for federal prosecution trial court workload will decrease. The overall net impact of this bill is expected to be minimal and will not require a change in appropriations to the Judicial Department.

Department of Local Affairs. Currently, the Division of Local Government in the Department of Local Affairs compiles forfeiture reports from each judicial district and law enforcement agencies. These reports will now be required to be posted in the seizure and forfeiture database, thus decreasing workload to the Department of Local Affairs. This decrease in workload is expected to be minimal and no decrease in appropriations is needed.

Other state agencies. This bill impacts other state agencies that participate in seizure activities. This includes the Departments of Corrections, Law, Natural Resources, and Revenue. Workload for these agencies is increased to track seizure activity and report on the receipt of and use of forfeited proceeds. Costs are potentially increased to pay any fines assessed for not reporting in a timely manner. A high level of compliance is expected, therefore, it is assumed these impacts can be addressed within existing appropriations and, to the extent possible, paid using forfeited proceeds. Should additional appropriations be needed by any of these agencies, the fiscal note assumes they will be requested 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 2.

Table 2. Centrally Appropriated Costs Under HB17-1313		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$7,040	\$6,160
Supplemental Employee Retirement Payments	3,867	3,384
TOTAL	\$10,907	\$9,544

Local Government Impact

This bill impacts local government seizing agencies, including law enforcement agencies and district attorneys, in several ways. First, similar to the state, revenue from seizures with an aggregate value of less than \$50,000 or from seizures not initiated by the federal government and related to a filed criminal case will be reduced. Second, workload and costs are increased to track seizure activity and report biannually on the receipt of and use of forfeited proceeds. Lastly, to the extent that a local seizing agency fails to file a timely report without good cause, costs will increase to pay the civil fine. This analysis assumes a high level of compliance and that any fines received will be paid using forfeited assets. The exact impact will vary by local government depending on their level of involvement in seizure activities and the proceeds received from those activities.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed. It applies to seizures conducted on or after this date.

State Appropriations

For FY 2017-18, this bill requires a General Fund appropriation of \$123,150 and an allocation of 0.8 FTE to the Department of Public Safety. Of this amount, \$64,560 is reappropriated to the Office of Information Technology.

Departmental Difference

Consistent with the fiscal note for Senate Bill 17-136, to implement this bill the Department of Public Safety requested \$269,265 and 2.0 FTE for FY 2017-18 and \$152,086 and 2.0 FTE for FY 2018-19. This includes 884 hours of computer programing. However because less frequent reporting is required under House Bill 17-1313 and a searchable database is to be created rather than a website, this analysis assumes that this bill can be implemented using 0.8 FTE and 440 programming hours.

State and Local Government Contacts

Agriculture	Corrections	Counties
District Attorneys	Human Services	Information Technology
Judicial	Law	Local Affairs
Municipalities	Natural Resources	Public Defender
Public Safety	Regulatory Agencies	Revenue
Sheriffs		