



**Colorado
Legislative
Council
Staff**

HB17-1334

FISCAL NOTE

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

Drafting Number: LLS 17-1160
Prime Sponsor(s): Rep. Melton

Date: April 18, 2017
Bill Status: House Business
Fiscal Analyst: Chris Creighton (303-866-5834)

BILL TOPIC: REGISTRATION PROCESS SERVERS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	<u>at least \$118,200</u>	<u>at least \$113,900</u>
General Fund	Minimal Increase.	Minimal Increase.
Cash Funds	at least 118,200	at least 113,900
State Expenditures	<u>\$110,297</u>	<u>\$106,027</u>
Cash Funds	99,262	92,465
Centrally Appropriated Costs	11,035	13,562
TABOR Impact	at least 118,200	at least 113,900
FTE Position Change	0.8 FTE	1.0 FTE
Appropriation Required: \$99,262 - Department of Regulatory Agencies (FY 2017-18).		
Future Year Impacts: Ongoing revenue and expenditure increase.		

Summary of Legislation

This bill requires a person acting as a process server to be registered with the Department of Regulatory Agencies (DORA) by February 2018. Any person who serves process or presents him or herself as a process server without an active registration commits a class 2 misdemeanor. Subsequent offenses are a class 1 misdemeanor. Certified peace officers who serve process do not need to register.

This bill specifies the qualifications that must be met to register as a process server, including:

- being at least 18 years of age;
- being lawfully present in the United States and a Colorado resident;
- demonstrating knowledge of the laws and rules affecting process servers by successfully completing a process server education course;
- the passage of a background check, paid by the applicant (licensed private investigators are exempt from the background check requirement); and
- the payment of registration, renewal, and/or reinstatement fees.

The DORA is authorized to promulgate rules, create the process server application process, establish fees for the issuance of and renewal of process server registration, and to establish process server disciplinary fines, not to exceed \$3,000 per incident. The bill also specifies the grounds by which DORA may deny an application, suspend or revoke a registration, or issue a letter of admonition or a cease and desist order. This bill repeals September 1, 2024, following a sunset review.

Background and Assumptions

Service of process is when a party to a lawsuit provides appropriate notice of initial legal action on another party, court, or administrative body. Currently, in Colorado, process may be served by the sheriff or a deputy in the county of the lawsuit; ordered by the court to be delivered by the sheriff's department; or delivered by any person not a party to the lawsuit that is over the age of 18, which may include private, for-profit process servers.

It is assumed that 200 process servers will need to apply for registration under this bill. Under the bill, process servers must be registered within six months of the bill's effective date; therefore all 200 initial registrations must be approved by February 2018 (see technical note). It is further assumed that process server registrations will need to 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. This bill creates a new crime by making it unlawful to act as a process server without obtaining registration from DORA. Since this is a new crime, comparable crime data was pulled for similar crimes including impersonating a notary and impersonating a licensed private investigator. In the last three years one case of impersonating a notary (Caucasian, female) and one case of impersonating a licensed private investigator (Caucasian, male) occurred. This analysis assumes a high level of compliance and that few cases of acting as a process server without being registered will occur.

State Revenue

This bill is anticipated to increase state revenue by at least \$118,200 in FY 2017-18 and \$113,900 in FY 2018-19 and future fiscal years as discussed below.

Process server registration and renewal fees. This bill increases cash fund revenue credited to the Professions and Occupations Cash Fund by creating process server registration and renewal fees as shown in Table 1. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fee calculations will be set administratively by the DORA based on cash fund balance, estimated program costs, and the estimated number of process server registrations subject to the fee.

Table 1. Fee Impact on Individuals, Families or Business			
Type of Fee	Estimated Fee	Number Affected	Fee Revenue Estimate
FY 2017-18			
Process server registration fee (FY 2017-18)	551.50	200	110,300
Background check fee	39.50	200	7,990
FY 2017-18 Total			118,200
FY 2018-19			
Process server renewal fee (FY 2018-19)	530	200	106,000
Background check fee	39.50	200	7,990
FY 2018-19 Total			113,900

Process server fines. By allowing process servers to be fined as part of disciplinary proceedings, this bill increases General Fund revenue. Because other disciplinary actions may be used and processes are in place to settle complaints against registered professionals, the impact from process server fines is expected to be minimal.

Background check fee. Any person that is not a peace officer or a licensed private investigator that applies to be registered as a process server must pass a fingerprint background check. The fee for this background check is \$39.50, of which \$27.50 is retained by the Colorado Bureau of Investigation and \$12 is passed through to the Federal Bureau of Investigation (FBI). Assuming 200 applicants, this fee will generate \$5,500 in revenue credited to the Colorado Bureau of Investigation Identification Unit Cash Fund in the Department of Public Safety (DPS), and \$2,400 passed through to the FBI.

Criminal fines. This bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 2 misdemeanor is \$250 to \$1,000. Subsequent violations are a class 1 misdemeanor with a fine penalty of \$500 to \$5,000. 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 criminal fines imposed in 2016, the fiscal note assumes that any fine revenue generated is likely to be less than \$5,000.

Court and administrative fees. Fees are also imposed for a variety of court-related costs, which vary based on the offense and the type of court credited to the General Fund and various cash funds. By creating a new crime of unlawful service of process, this bill increases court and administrative fee revenue; however, because a high level of compliance is expected any revenue collected will be minimal. Typical fees may include such items as probation supervision, victim compensation, late fees, and other administrative fees. Probation fee revenue is anticipated to increase by \$50 per month, per offender sentenced to probation. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

TABOR Impact

This bill increases state General Fund and cash fund revenue from fines and fees, which will increase 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. The federal pass-through moneys, which total \$2,400 per year under the bill, are not subject to TABOR.

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 increase in cash fund revenue increases the TABOR refund obligation, decreasing 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 state cash fund expenditures in the Department of Regulatory Agencies by \$110,297 and 0.8 FTE in FY 2017-18 and \$106,027 and 1.0 FTE in FY 2018-19 and future years. Costs and workload are also increased in the Judicial Department. These impacts are shown in Table 2 and discussed below.

Table 2. Expenditures Under HB17-1334		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	\$50,914	\$61,099
FTE	0.8 FTE	1.0 FTE
Operating Expenses and Capital Outlay Costs	5,463	950
Temporary Staff	18,647	0
Legal Services	24,238	30,416
Centrally Appropriated Costs*	11,035	13,562
TOTAL	\$110,297	\$106,027

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

Department of Regulatory Agencies. The Division of Professions and Occupations in the DORA requires 1.0 FTE to implement this bill. This staff will set up the process server registration program, which includes rulemaking and the creation of program-related policies and procedures. Staff will also perform outreach to process servers, respond to customer inquiries, process applications for registration, and review complaints against process servers. Standard operating and capital outlay costs are included. Staff costs in FY 2017-18 are prorated to reflect a September 1 start date. Temporary staff will be used in FY 2017-18 to aid in the processing of initial registration applications. For FY 2017-18, 120 hours of legal services at \$95.05 per hour are needed to assist DORA with promulgating process server registration and enforcement rules and 135 hours are needed for reviewing complaints issued against process servers. For FY 2018-19 and beyond, 320 hours of legal services at \$95.05 per hour will be needed to review process server complaints.

Background checks. This analysis assumes 200 applicants will apply in FY 2017-18 to become registered process servers and will be required to pass a background check which increases Colorado Bureau of Investigation costs to conduct the background check. These costs and the workload associated with performing the background check can be addressed within existing appropriations.

Judicial Department. This bill increases trial court workload in the Judicial Department to hear any misdemeanor cases related to serving process without being registering. Trial court workload also increases to conduct judicial reviews of disciplinary actions, injunctions, or cease and desist orders issued against process servers by DORA, if challenged. Workload in the probation services division will increase to the extent that offenders are sentenced to parole. Additionally, Office of the State Public Defender and Office of Alternate Defense Counsel workload may increase to represent persons deemed to be indigent. The fiscal note assumes a high level of compliance with process server registration requirements; therefore, any workload increase will be minimal and will not require an increase in appropriations for any agency within the Judicial Department.

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.

Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$6,473	\$8,087
Supplemental Employee Retirement Payments	4,562	5,475
TOTAL	\$11,035	\$13,562

Local Government Impact

This bill will affect local governments in several ways, as discussed below.

Sheriff service of process. By requiring non-peace officer process servers to register with DOLA, this bill may increase the use of private process servers from individuals that would have otherwise paid a fee to have a Sheriff deputy provide service of process for them. To the extent that private process server use increases, local government revenue and workload will decrease.

Court and administrative fees. Similar to the state, court and administrative fee revenue will increase. For all jurisdictions, revenue will increase as a result of any court and administrative fees shared with the state. However a high level of compliance is expected and any increases will be minimal.

Denver County courts. This bill is anticipated to increase revenue by less than \$5,000 per year for the City and County of Denver. The fine penalty for a class 2 misdemeanor is \$250 to \$1,000 and the fine penalty for a subsequent offenses which are class 1 misdemeanors is \$500 to \$5,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined.

The bill also increases workload for the Denver County Court to try misdemeanor unlawful service of process cases. Additionally, probation fee revenue is anticipated to increase by \$50 per month, per offender sentenced to probation. Probation services in the Denver County Courts may also experience a minimal increase in workload to supervise persons convicted under the bill.

Misdemeanor offenses in county court. First, the bill increases workload for district attorneys to prosecute any new misdemeanor under the bill. Second, 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 period of 3 to 12 months for a class 2 misdemeanor and a period of 6 to 18 months for subsequent offenses which are class 1 misdemeanors. 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. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

Technical Note

The Department of Regulatory Agencies requires up to 14 months to implement this bill due to background check and rulemaking requirements. Therefore, it will not be able to issue registrations by February 2018 given the bill's current effective date.

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.

State Appropriations

For FY 2017-18, this bill requires an appropriation of \$99,262 and an allocation of 0.8 FTE from the Professions and Occupations Cash Fund to the Department of Regulatory Agencies.

State and Local Government Contacts

Counties	Judicial	Law
Public Safety	Regulatory Agencies	Sheriffs