



**Legislative Council Staff**  
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**Fiscal Note  
 Memorandum**

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**TO:** Representative Yeulin Willett  
 Members of the House State, Veterans, and Military Affairs Committee

**FROM:** Erin Reynolds, Senior Fiscal Analyst  
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**SUBJECT:** Fiscal Assessment of Proposed Amendment **HB1224\_L.005**.

This memorandum is an assessment of the fiscal impact of the attached proposed strike-below amendment L.005 to House Bill 18-1224. This fiscal assessment is for the impact of the bill with inclusion of this amendment **only**. Any other added amendment could influence the fiscal impact.

**Summary of Proposed Amendment**

In the introduced version of HB 18-1224, a licensee is eligible to request mediation when he or she has been notified by a state agency that the agency is taking action to revoke, suspend, annul, limit, or modify an occupational license. Amendment L.005 modifies the mediation timeline to allow a licensee to request mediation only after the notice of hearing is filed. Under current law, the notice of hearing takes place after the agency has notified a licensee it is taking action and has offered the licensee the opportunity to submit written comments, and — except in cases of deliberate and willful violations or of substantial danger to public health and safety — has given the licensee a reasonable opportunity to comply with lawful requirements.

**Fiscal Impact of Amendment**

As a result of Amendment L.005, the population that may request mediation is reduced to an estimated 100 individuals per year, down from an estimated 900 individuals per year, which reduces the revenue and expenditures estimated in the fiscal note dated March 20, 2018.

**State revenue.** Beginning in FY 2018-19, House Bill 18-1224, as amended by L.005, will increase state cash fund revenue by about \$130,000 per year to the Division of Professions and Occupations Cash Fund from fees that will be raised on licensees to cover the costs under the bill. This amount is subject to TABOR.

**State expenditures.** Beginning in FY 2018-19, House Bill 18-1224, as amended by L.005, will primarily increase state cash fund expenditures for DORA, by \$133,393 per year. It will also increase expenditures or workload for the other state agencies that regulate occupations or that will hear cases related to the bill, which include the Education, Judicial, Natural Resources, Public Health and Environment, Revenue, and State Departments.

**Bill's Revised Fiscal Impact with Amendment**

House Bill 18-1224, as amended by L.005, will increase state revenue and expenditures on an ongoing basis by the amounts shown in Table 1.

**Table 1  
State Fiscal Impacts Under HB 18-1224**

		FY 2018-19	FY 2019-20
<b>Revenue</b>	Cash Funds	\$130,000	\$130,000
	<b>Total</b>	<b>\$130,000</b>	<b>\$130,000</b>
<b>Expenditures</b>	Cash Funds	\$125,356	\$125,356
	Centrally Appropriated	\$8,037	\$8,037
	<b>Total</b>	<b>\$133,393</b>	<b>\$133,393</b>
	<b>Total FTE</b>	<b>0.8 FTE</b>	<b>0.8 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>	General Fund	\$130,000	\$130,000

HB1224\_L.005

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on State, Veterans, & Military Affairs.

HB18-1224 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 24-4-104, amend  
4 (6) as follows:

5 **24-4-104. Licenses - issuance, suspension or revocation,**  
6 **renewal.** (6) ~~No previously issued license shall be revoked, suspended,~~  
7 ~~annulled, limited, or modified, except as provided in subsection (3) of this~~  
8 ~~section~~ EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN  
9 AGENCY SHALL NOT REVOKE, SUSPEND, ANNUL, LIMIT, OR MODIFY A  
10 PREVIOUSLY ISSUED LICENSE until after HOLDING A hearing as provided in  
11 section 24-4-105.

12 SECTION 2. In Colorado Revised Statutes, 24-4-105, amend (4)  
13 as follows:

14 **24-4-105. Hearings and determinations.** (4) (a) Any agency  
15 conducting a hearing, any administrative law judge, and any hearing  
16 officer shall have authority to: Administer oaths and affirmations; sign  
17 and issue subpoenas; rule upon offers of proof and receive evidence;  
18 dispose of motions relating to the discovery and production of relevant  
19 documents and things for inspection, copying, or photographing; regulate  
20 the course of the hearing, set the time and place for continued hearings,  
21 and fix the time for the filing of briefs and other documents; direct the  
22 parties to appear and confer to consider the simplification of the issues,  
23 admissions of fact or of documents to avoid unnecessary proof, and  
24 limitation of the number of expert witnesses; issue appropriate orders  
25 ~~which~~ THAT shall control the subsequent course of the proceedings;  
26 dispose of motions to dismiss for lack of agency jurisdiction over the  
27 subject matter or parties or for any other ground; dispose of motions to  
28 amend or to dismiss without prejudice applications and other pleadings;  
29 dispose of motions to intervene, procedural requests, or similar matters;  
30 reprimand or exclude from the hearing any person for any improper or  
31 indecorous conduct in his OR HER presence; award attorney fees for  
32 abuses of discovery procedures or as otherwise provided under the  
33 Colorado rules of civil procedure; and take any other action authorized by  
34 agency rule consistent with this article 4 or in accordance, to the extent  
35 practicable, with the procedure in the district courts. All parties to the  
36 proceeding shall also have the right to cross-examine witnesses who  
37 testify at the proceeding. In the event more than one person engages in the  
38 conduct of a hearing, such persons shall designate one of their number to  
39 perform such of the above functions as can best be performed by one

1 person only, and thereafter such person only shall perform those functions  
2 ~~which~~ THAT are assigned to him OR HER by the several persons  
3 conducting such hearing.

4 (b) (I) (A) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE  
5 MEDIATION PROCESS GENERALLY SAVES THE STATE AND THE LICENSEE  
6 TIME AND MONEY. MEDIATION TAKES MUCH LESS TIME THAN MOVING A  
7 CASE THROUGH AGENCY PROCEEDINGS AND JUDICIAL REVIEW. THESE  
8 CASES TYPICALLY TAKE MONTHS OR YEARS TO RESOLVE, BUT MEDIATION  
9 TYPICALLY ACHIEVES A RESOLUTION IN A MATTER OF HOURS. TAKING LESS  
10 TIME MEANS EXPENDING LESS MONEY ON HOURLY FEES AND COSTS. THIS  
11 BENEFITS BOTH THE AGENCY AND THE LICENSEE, AND BECAUSE THE  
12 RESULT IS ATTAINED BY THE PARTIES WORKING TOGETHER, COMPLIANCE  
13 WITH THE MEDIATED AGREEMENT IS USUALLY HIGH. THIS FURTHER  
14 REDUCES COSTS BECAUSE AGENCIES DO NOT HAVE TO PAY AN ATTORNEY  
15 OR INVESTIGATORS TO FORCE COMPLIANCE.

16 (B) THE GENERAL ASSEMBLY HEREBY DECLARES THAT, IN ORDER  
17 TO SAVE TIME AND MONEY, THE POLICY OF COLORADO IS TO USE  
18 MEDIATION WHENEVER APPROPRIATE TO SETTLE DISPUTES BETWEEN  
19 AGENCIES AND LICENSEES.

20 (II) UPON PETITION OF THE AGENCY OR LICENSEE AFTER THE  
21 LICENSEE HAS RECEIVED THE NOTICE OF HEARING UNDER SUBSECTION  
22 (2)(a) OF THIS SECTION, THE HEARING OFFICER OR ADMINISTRATIVE LAW  
23 JUDGE SHALL ORDER MEDIATION BETWEEN THE AGENCY AND THE  
24 LICENSEE UNLESS THE LICENSE WAS SUMMARILY SUSPENDED IN  
25 ACCORDANCE WITH SECTION 24-4-104(4). WHEN MEDIATION IS ORDERED,  
26 THE AGENCY SHALL:

27 (A) ASSIGN A PERSON WITH AUTHORITY TO MAKE PREHEARING  
28 DECISIONS CONCERNING DISPOSITION OF THE MATTER TO BE PRESENT  
29 DURING MEETINGS RELATED TO SETTLEMENT COMMUNICATIONS OR  
30 MEDIATION COMMUNICATIONS AND TO BE INCLUDED IN ANY MATERIAL  
31 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S  
32 REPRESENTATIVE OVER THE MATTER; AND

33 (B) UPON THE LICENSEE'S REQUEST, ALLOW A PRIVATE OR PUBLIC  
34 MEDIATOR CHOSEN BY THE LICENSEE TO BE PRESENT DURING MEETINGS  
35 RELATED TO MEDIATION AND TO BE INCLUDED IN ANY MATERIAL  
36 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S  
37 REPRESENTATIVE OVER THE MATTER. IF THE MEDIATOR IS PRIVATELY  
38 RETAINED, THE LICENSEE MUST PAY THE MEDIATOR'S REASONABLE FEES.

39 (III) TO THE EXTENT FEASIBLE, FOR THE PURPOSE OF CARRYING  
40 OUT THIS SUBSECTION (4):

41 (A) ADMINISTRATIVE LAW JUDGES SHALL MAKE THEMSELVES  
42 AVAILABLE AS PUBLIC MEDIATORS WITHOUT COST TO THE LICENSEE;

43 (B) THE MEMBERS OF ANY GOVERNING BODY THAT REGULATES

1 THE LICENSEE SHALL MAKE A MEMBER OR OTHER PERSON AVAILABLE FOR  
2 MEDIATION AS A PERSON WITH AUTHORITY TO MAKE PREHEARING  
3 DECISIONS CONCERNING DISPOSITION OF THE MATTER.

4 (IV) IF AN AGENCY FAILS TO COMPLY WITH AN ORDER OF  
5 MEDIATION, A LICENSEE ADVERSELY AFFECTED BY THE FAILURE MAY  
6 PETITION THE ADMINISTRATIVE LAW JUDGE OR HEARING OFFICER TO  
7 SUSPEND THE PROCEEDINGS AND REQUIRE COMPLIANCE WITH THE ORDER,  
8 TO BE COMPLETED IN GOOD FAITH AS SOON AS PRACTICABLE, UNDER THE  
9 ADMINISTRATIVE LAW JUDGE'S OR THE HEARING OFFICER'S SUPERVISION.

10 (V) IF MEDIATION FAILS, THE AGENCY SHALL NOTIFY THE  
11 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER, AND THE  
12 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL LIFT THE  
13 SUSPENSION AND PROCEED WITH THE HEARING.

14 (VI) WHEN DETERMINING THE PLACE TO HOLD THE MEDIATION,  
15 THE AGENCY SHALL GIVE DUE CONSIDERATION TO THE LOCATION OF THE  
16 LICENSEE'S OCCUPATION OR RESIDENCE, THE AVAILABILITY OF AN  
17 ADMINISTRATIVE LAW JUDGE TO MEDIATE, AND THE AVAILABILITY OF A  
18 MEMBER OF THE GOVERNING BODY THAT REGULATES THE LICENSEE TO BE  
19 A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS  
20 CONCERNING DISPOSITION OF THE MATTER.

21 (VII) THIS SUBSECTION (4)(b) APPLIES ONLY TO AGENCY  
22 PROCEEDINGS THAT CONCERN AN INDIVIDUAL WHO IS LICENSED TO  
23 PRACTICE AN OCCUPATION OR PROFESSION; EXCEPT THAT THIS SUBSECTION  
24 (4)(b) DOES NOT APPLY TO A COMMERCIAL DRIVER'S LICENSE ISSUED  
25 UNDER PART 4 OF ARTICLE 2 OF TITLE 42.

26 **SECTION 3.** In Colorado Revised Statutes, 24-4-106, **amend** (7)  
27 as follows:

28 **24-4-106. Judicial review.** (7) (a) If the court finds no error, it  
29 shall affirm the agency action.

30 (b) THE COURT SHALL HOLD UNLAWFUL AND SET ASIDE THE  
31 AGENCY ACTION AND SHALL RESTRAIN THE ENFORCEMENT OF THE ORDER  
32 OR RULE UNDER REVIEW, COMPEL ANY AGENCY ACTION TO BE TAKEN THAT  
33 HAS BEEN UNLAWFULLY WITHHELD OR UNDULY DELAYED, REMAND THE  
34 CASE FOR FURTHER PROCEEDINGS, AND AFFORD OTHER RELIEF AS MAY BE  
35 APPROPRIATE if it THE COURT finds that the agency action is:

36 (I) Arbitrary or capricious;

37 (II) A denial of statutory right;

38 (III) Contrary to constitutional right, power, privilege, or  
39 immunity;

40 (IV) In excess of statutory jurisdiction, authority, purposes, or  
41 limitations;

42 (V) Not in accord with the procedures or procedural limitations  
43 of this article 4 or as otherwise required by law;

1 (VI) An abuse or clearly unwarranted exercise of discretion;  
2 (VII) Based upon findings of fact that are clearly erroneous on the  
3 whole record;  
4 (VIII) Unsupported by substantial evidence when the record is  
5 considered as a whole; or  
6 (IX) Otherwise contrary to law, ~~then the court shall hold unlawful~~  
7 ~~and set aside the agency action and shall restrain the enforcement of the~~  
8 ~~order or rule under review, compel any agency action to be taken which~~  
9 ~~has been unlawfully withheld or unduly delayed, remand the case for~~  
10 ~~further proceedings, and afford such other relief as may be appropriate~~  
11 INCLUDING FAILING TO COMPLY WITH SECTION 24-4-104 (3)(a) OR  
12 24-4-105 (4)(b).  
13 (c) In making the ~~foregoing determinations~~ FINDINGS SPECIFIED IN  
14 THIS SUBSECTION (7), the court shall review the whole record or ~~such~~  
15 ~~portions thereof as may be~~ OF THE RECORD cited by any party.  
16 (d) In all cases under review, the court shall determine all  
17 questions of law and interpret the statutory and constitutional provisions  
18 involved and shall apply ~~such~~ THE interpretation to the facts duly found  
19 or established.  
20 **SECTION 4. Applicability.** This act applies to hearings brought  
21 to discipline the holder of a license, registration, or certification; to  
22 actions brought to enforce the "State Administrative Procedure Act"; and  
23 to judicial review of an agency's actions under preexisting law, on or after  
24 the effective date of this act.  
25 **SECTION 5. Safety clause.** The general assembly hereby finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, and safety."

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