



**Colorado  
Legislative  
Council  
Staff**

**HB16-1216**

**FISCAL NOTE**

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

**Drafting Number:** LLS 16-0248  
**Prime Sponsor(s):** Rep. McCann  
Sen. Steadman

**Date:** February 22, 2016  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Amanda Hayden (303-866-4918)

**BILL TOPIC:** INDEPENDENT ETHICS COMMISSION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>	Potential increase.	
<b>State Expenditures</b>	<b>(\$16,819)</b>	<b>\$7,191</b>
General Fund	(38,768)	(18,457)
Centrally Appropriated Costs	21,949	25,648
<b>FTE Position Change</b>	0.4 FTE	0.5 FTE
<b>Appropriation Required:</b> \$132,250 - IEC (FY 2016-17); (171,018) - Department of Law (FY 2016-17).		
<b>Future Year Impacts:</b> Ongoing increase and decrease in state expenditures.		

**Summary of Legislation**

This bill amends statutes related to the authority and administration of the Independent Ethics Commission (IEC). Specifically, the bill:

- requires the IEC to employ or retain independent legal counsel;
- defines the process for rulemaking by the IEC, including provisions to hold the IEC to statutory rulemaking standards but remove the IEC from legislative rules review;
- requires the IEC to adopt rules governing its own members in matters where a conflict of interest requires recusal and restricting involvement with political activity while serving on the IEC;
- amends the definition of individuals covered by ethics statutes to align with Article XXIX of the Colorado Constitution;
- provides for a financial penalty, censure, or reprimand when the IEC finds a breach of the public trust for private gain;
- clarifies that in cases under its jurisdiction, the IEC determines the appropriate standard of proof; and
- clarifies that the IEC is not required to adhere to advisory opinions issued by the Board of Ethics for the General Assembly.

## **Background**

**State Code of Ethics.** The state Code of Ethics enumerates rules of conduct applicable to government officers and employees. These rules are deemed to be fiduciary duties to the public. Local district attorneys are expressly authorized to enforce the Code of Ethics in a civil action against officials or employees that breach rules.

**Independent Ethics Commission.** The IEC was created by Amendment 41, a statewide initiated measure in 2006, found in Article XXIX of the Colorado Constitution. The IEC was originally situated in the Department of Personnel and Administration, but was reorganized in 2010 as an independent agency within the Judicial Branch. The IEC takes action involving either state or local government officials and employees. The Department of Law currently provides legal services for the IEC.

**Board of Ethics for the Executive Branch.** The Board of Ethics for the Executive Branch was enacted in 1988 and was active for close to two decades. The last appointment to this board was in 2006. While the board still exists in statute, it is inactive and generally assumed to have been superceded by the Independent Ethics Commission.

**Board of Ethics for the General Assembly.** Under current law, the four-member Board of Ethics for the General Assembly is empowered to issue advisory opinions regarding the conduct of members of the General Assembly and the Code of Ethics. This board is active but meets only as needed.

## **State Revenue**

The bill may increase state revenue by a minimal amount. By specifying penalties for which a local official or employee is liable to a state agency, including double damages, the bill may increase the damages recovered in ethics cases. The number of ethics cases with monetary penalties is expected to be small. Revenue from damage awards is exempt from TABOR and credited to the General Fund.

## **State Expenditures**

**The bill reduces General Fund expenditures by \$16,819 in FY 2016-17 and increases General Fund expenditures by \$7,191 in FY 2017-18.** The bill increases General Fund expenditures in the IEC by \$154,199 and 1.4 FTE in FY 2016-17 and by \$178,209 and 1.5 FTE in FY 2017-18. The bill reduces General Fund expenditures by \$171,018 and 1.0 FTE starting in FY 2016-17 in the Department of Law. These costs and savings are shown in Table 1 and explained below.

Table 1. Expenditures Under HB16-1216		
Cost Components	FY 2016-17	FY 2017-18
<b>IEC</b>		
Personal Services	\$126,597	\$150,661
FTE	1.4 FTE	1.5 FTE
Operating Expenses and Capital Outlay Costs	5,653	1,900
Centrally Appropriated Costs*	21,949	25,648
<b>Department of Law</b>		
Personal Services	(\$171,018)	(\$171,018)
FTE	(1.0 FTE)	(1.0 FTE)
<b>TOTAL</b>	<b>(\$16,819)</b>	<b>\$7,191</b>

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

**IEC.** The bill increases General Fund expenditures in the IEC by \$154,199 and 1.4 FTE in FY 2016-17 and by \$178,209 and 1.5 FTE in FY 2017-18. The fiscal note assumes that the IEC will hire rather than retain legal counsel. The IEC requires a small increase in legal support for the promulgation of rules and duties related to its expanded jurisdiction under the bill. Costs for personal services and FTE have been prorated in the first year to account for the General Fund pay date shift.

**Department of Law.** The bill reduces General Fund expenditures in the Department of Law by \$171,018 and 1.0 FTE, as the department will no longer need the legal resources to support the IEC.

**Judicial Department.** In its expanded capacity for rulemaking under the bill, the IEC may promulgate rules subject to judicial review. Requests for judicial review of these rules may increase workload in trial courts by a minimal amount. No increase in appropriations is required.

**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 HB16-1216		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$11,116	\$12,148
Supplemental Employee Retirement Payments	10,833	13,500
<b>TOTAL</b>	<b>\$21,949</b>	<b>\$25,648</b>

### **Local Government Impact**

Local government revenue may increase by a minimal amount under the bill. By specifying penalties for which a local official or employee is liable to the local government, the bill may increase the damages recovered by local governments in such cases. The number of ethics cases with monetary penalties is expected to be small, affecting only a small number of local governments in any fiscal year.

### **Effective Date**

The bill takes effect July 1, 2016, and applies to offenses committed on or after this date.

### **State Appropriations**

In FY 2016-17, the bill requires a General Fund appropriation of \$132,250 and an allocation of 1.4 FTE to the IEC and a reduction in General Fund appropriations of \$171,018 and 1.0 FTE in the Department of Law.

### **Departmental Difference**

The IEC estimated an increase of 2 Senior Attorney FTE and one part-time Administrative Law Judge, because the IEC believes the workload increase under the bill is substantial. The fiscal note agrees that the bill increases workload, but only minimally, and estimates that 1.5 Senior Attorney FTE is sufficient compared with the 1.0 FTE allocated under current law to the Department of Law.

### **State and Local Government Contacts**

Information Technology      Judicial      Law