Colorado Legislative Council Staff

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REVISED FISCAL NOTE

(replaces fiscal note dated March 21, 2017)

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

Drafting Number:	LLS 17-0823	**Date:**	May 9, 2017
Prime Sponsor(s):	Rep. Kraft-Tharp; Lawrence Sen. Williams A.; Coram	**Bill Status:**	Senate Appropriations
		Fiscal Analyst:	Anna Gerstle (303-866-4375)

BILL TOPIC: AGENCY DISCRETION ENFORCING RULES SMALL BUSINESS

Fiscal Impact Summary	FY 2016-2017 *(current year)*	FY 2017-2018	FY 2018-2019
State Revenue General Fund Cash Funds	Minimal decrease.		
State Expenditures General Fund Cash Funds	Workload increase.		
TABOR Impact	Minimal decrease.		
Appropriation Required: None.			
Future Year Impacts: Ongoing minimal revenue decrease and workload increase.			

Summary of Legislation

The ***reengrossed*** bill allows state agencies to exercise discretion over imposing a fine on a small business for a first-time, minor violation. A small business is defined as having 50 employees or fewer for the purposes of the bill, and a minor violation:

- relates to operational or administrative matters;
- is enforced by a fine of $500 or less;
- either relates to a rule promulgated within one year of the violation occurring, or, if a business has been operating for less than one year prior to the violation, relates to any rule; and
- does not include any matter that places persons or the public health, safety, or environment at risk; or any violations related to the issuance or denial of benefits or compensation to employees or activities required by federal law.

When an agency determines that a first-time, minor violation by a small business has occurred, the agency must identify the rule violated, the fine amount, and indicate the steps the business needs to take to address the violation. The agency may give the business 30 days to cure the violation and, if the violation is cured within that period, must waive or reduce the penalty or fine amount. If the business cures the minor violation after the 30-day period, the agency may reduce the penalty or fines. The bill does not apply in situations where an agency is required by statute to assess a fine for noncompliance with a statute or rule.

The bill also requires that state agencies conduct an annual analysis of noncompliance with its rules and specifies what must be included. Based on the analysis, agencies must consider and review whether a rule is unclear and should be rewritten, and whether more education or training of regulated businesses would improve compliance. Each department must submit the analysis to the Department of Regulatory Agencies (DORA). DORA must compile and summarize those analyses into one analysis, and present it at its annual SMART Act hearing.

State Revenue

The bill decreases state revenue by a minimal amount beginning in the current FY 2016-17. The bill gives state agencies discretion in waiving or reducing fines for first-time, minor violations and giving businesses time to address the violation. To the extent that agencies assess fewer fines or lower fine amounts, revenue will decrease. The fiscal note assumes that a minimal amount is collected from first-time, minor violations, and as a result, revenue will decrease by a minimal amount. Fine revenue is deposited into the General Fund or various cash funds, depending on the agency.

TABOR Impact

This bill reduces state revenue from fines, which will reduce 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. TABOR refund obligations are not expected for FY 2016-17. In years when the state collects revenue above the TABOR limit, the reduction 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 decrease by equal amounts. However, the reduction in cash fund revenue reduces 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 reduce money available for the General Fund budget.

State Expenditures

Beginning in the current FY 2016-17, the bill increases the workload for all state agencies, including DORA specifically, as discussed below.

Department of Regulatory Agencies. The bill increases the workload in DORA to compile and summarize the agency analyses and include the information in the department's annual SMART Act presentation. The workload increase is expected require approximately 180 hours, which the fiscal note assumes can initially be accomplished within existing appropriations. Should additional resources be required, this will be requested through the annual budget process.

All agencies. The bill increases the workload for state agencies in several ways. First, workload increases to annually produce the required analysis, as well as to consider whether to rewrite rules or provide additional education to impacted businesses. Workload may also increase for agencies that adjust enforcement and fining procedures, or implement any of the bill's

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suggestions for informing businesses about rules. Current practices vary among agencies; as a result, the extent of the workload increase will vary depending on the agency. In addition, agencies may require additional legal services for rulemaking, or may need to modify databases or procedures to track and determine which businesses regulated have under 50 employees. The fiscal note assumes that the workload increase will be accomplished within each agency's existing appropriation; however, should an agency require additional resources, it will be requested through the annual budget process.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

All State Agencies