

*Colorado Legislative Council Staff Fiscal Note*  
**STATE, LOCAL, and STATUTORY  
 PUBLIC ENTITY FISCAL IMPACT**

<b>Drafting Number:</b> LLS 14-0221	<b>Date:</b> January 24, 2014
<b>Prime Sponsor(s):</b> Rep. Priola	<b>Bill Status:</b> House Judiciary
Sen. Tochtrop	<b>Fiscal Analyst:</b> Kerry White (303-866-3469)

**SHORT TITLE:** ATTORNEY FEES FOR ALL MOTIONS TO DISMISS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
<b>State Revenue</b>		
General Fund	Potential increase.	
<b>State Expenditures</b>	<b>\$1,485,236</b>	<b>\$1,375,824</b>
General Fund	1,316,511	1,173,030
Centrally Appropriated Costs**	168,725	202,794
<b>FTE Position Change</b>	14.3 FTE	15.6 FTE
<b>Appropriation Required:</b> \$1,316,511 - Judicial Department (FY 2014-15)		

\* This summary shows changes from current law under the bill for each fiscal year.

\*\* These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

**Summary of Legislation**

Under current law, if a civil action on a tort claim for death or injury to a person or property is dismissed prior to trial on a Rule 12(b) motion, the court is required to award attorney fees to the defendant. This bill extends the award of attorney fees if a Rule 12(b) motion is granted to include all civil actions.

**Background**

Motions under Rule 12(b) of the Colorado Rules of Civil Procedure assert that a case should be dismissed based on one or more of the following rationales:

- lack of jurisdiction over the subject matter;
- lack of jurisdiction over the person;
- insufficiency of process;
- insufficiency of process service;
- failure to state a claim upon which relief can be granted; or
- failure to join a necessary party.

According to the Judicial Department, in the current mix of tort actions, Rule 12(b) motions are filed in about 50 percent of cases. Each motion can take up two months to resolve. While motions to dismiss are frequently filed, they are rarely granted. There are about 10,000 additional civil actions per year that HB14-1153 could apply to. These types of cases vary, but include breach of contract or warranty, construction defect, landlord-tenant, malpractice, and commercial litigation.

**State Revenue**

To the extent that the state is party to a civil action and is successful in having the court dismiss that claim under a Rule 12(b) motion, state revenue from an award of attorneys fees deposited to the General Fund could increase. As of this writing, there were no known cases against the state where this bill could have applied during the past two years. As a result, the fiscal note assumes any revenue received to reimburse attorney costs in the future will be minimal.

**State Expenditures**

This bill will increase state expenditures by about \$1.5 million and 14.3 FTE in FY 2014-15 and by \$1.4 million and 15.6 FTE in future years. The quantified impacts are to the Judicial Department and will be paid from the General Fund. Table 1 and the discussion that follows describe the increases in costs.

<b>Table 1. Expenditures Under HB14-1153</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Personal Services	\$1,044,710	\$1,139,685
FTE	14.3	15.6
Operating Expenses and Capital Outlay Costs	271,801	33,345
Centrally Appropriated Costs*	168,725	202,794
<b>TOTAL</b>	<b>\$1,485,236</b>	<b>\$1,375,824</b>

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

**Assumptions.** The fiscal note assumes the following:

- the state does not file civil claims that are subject to dismissal under Rule 12(b);
- in many of the other types of civil actions, attorneys are already filing Rule 12(b) motions, although the prospect of recovering attorneys fees provides an incentive for additional filings;
- of the estimated 10,000 additional civil actions that would be subject to the requirements of this bill, additional Rule 12(b) motions will be filed in 10 percent or 1,000 cases;
- each additional Rule 12(b) motion will require eight hours of court time to review;
- one percent of the additional Rule 12(b) motions, or 10 cases, will be approved, resulting in eight hours of court time to hear evidence on the reasonableness of attorneys fees and make awards in each instance; and
- of the 10 additional cases where the Rule 12(b) motion is granted, the court will save at least eight hours of court time.

**Personal services.** The increased workload for judges to review Rule 12(b) motions and make awards of attorneys fees is equivalent to 8,000 hours of judge time, or 3.9 FTE magistrates. Each 1.0 FTE magistrate requires 3.0 FTE support staff (division clerk, law clerk, and court reporter). Full year costs are for 15.6 FTE, which are prorated to 14.3 FTE in the first year to account for the General Fund pay date shift.

**Operating and capital outlay costs.** Standard operating costs of \$950 and capital outlay costs of \$4,703 for support staff are included. Magistrate operating costs are \$5,700 per year. Capital outlay costs per magistrate are calculated at \$46,170 per FTE.

**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.

<b>Table 2. Centrally Appropriated Costs Under HB14-1153*</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$96,176	\$114,458
Supplemental Employee Retirement Payments	72,549	88,336
<b>TOTAL</b>	<b>\$168,725</b>	<b>\$202,794</b>

\*More information is available at: <http://colorado.gov/fiscalnotes>

**Local Government and Statutory Public Entity Impact**

To the extent that local governments and statutory public entities are plaintiffs in civil actions, the bill could increase costs if they are required to pay attorneys fees. As defendants, revenue could increase if local governments or statutory public entities are awarded attorneys fees. Similar to the state, the fiscal note assumes that any such impact will be minimal.

**Effective Date**

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

**State Appropriations**

For FY 2014-15, the Judicial Department requires an appropriation of \$1,316,511 General Fund and an allocation of 14.3 FTE.

**State and Local Government Contacts**

Counties  
 Law

Higher Ed  
 Municipalities

Judicial  
 Personnel