

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-0080
Prime Sponsor(s): Sen. Steadman

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Bill Status: Senate SVMA
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BILL TOPIC: INDEPENDENT ETHICS COMMISSION

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	Potential minimal increase. See State Revenue section.	
State Expenditures General Fund	Potential net increase. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None. See State Appropriations section.		

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

Summary of Legislation

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

- authorizes 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;
- 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, by amending seven different sections of statute, 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 Ethics¹ 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 in the Code of Ethics.

¹ Title 24, Article 18, C.R.S.

Independent Ethics Commission. The IEC was created by Amendment 41, a statewide initiated measure in 2006, found in the Colorado Constitution at Article XXIX. The IEC was originally situated in the Department of Personnel and Administration in the Executive Branch, but was reorganized in 2010 as an independent agency within the Judicial Branch by House Bill 10-1404.

The IEC takes actions involving either state or local government officials and employees. According to Section 5 (3)(e), Article XXIX, of the Colorado Constitution, the standard of proof in complaints brought before the IEC is a preponderance of evidence, unless the IEC determines that a heightened standard of proof is warranted.

Legal services for the IEC are currently provided through the Department of Law. The IEC's legal appropriation has fluctuated from 0.9 FTE to 0.6 FTE, its level in the current fiscal year. Based on increased demand, including costs that exceeded its budget in the last two fiscal years, the IEC requested an increase to 0.9 FTE in legal services from the Department of Law in FY 2015-16.

Board of Ethics for the Executive Branch. The Board of Ethics for the Executive Branch was enacted into law 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 monetary amount 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.

State Expenditures

Starting in FY 2015-16, the bill increases the workload and expenditures of the IEC. The Department of Law may experience a reduction of up to 0.9 FTE (up to \$153,106 in reappropriated funding), and the Office of Legislative Legal Services will experience a minimal workload reduction.

Assumptions. The IEC will determine whether or not to maintain legal representation by the Department of Law in FY 2015-16. The outcome of this deliberation cannot be determined at this time.

IEC. The workload of the IEC will increase in FY 2015-16 to consider its options for legal representation. If the IEC elects to obtain new legal counsel as a result of the bill, it will reallocate its legal budget to this new provider. The billing rates of a private law firm are likely to be substantially greater than those of the Department of Law. Thus, while the fiscal impact of this option cannot be estimated for this analysis, if the IEC elects to obtain independent legal counsel from a private firm, the fiscal note anticipates an increase in IEC expenditures on legal services.

The bill also results in a minimal increase in IEC costs to promulgate rules. The IEC has promulgated rules under current law, and the bill largely codifies current practice. However, the fiscal note anticipates implementation of the bill to require the IEC staff to make minor changes in rulemaking procedures and possibly to result in new rules (e.g., regarding standards of proof).

Department of Law. The bill potentially results in the elimination of work for an Assistant Attorney General to provide legal counsel to the IEC. In the current fiscal year, FY 2014-15, the Department of Law is appropriated \$106,931 and 0.6 FTE for legal services to the IEC. For FY 2015-16, the IEC is seeking 0.9 FTE, requiring reappropriation of \$153,106 to the Department of Law based on 1,620 hours at the blended rate of \$94.51. Depending on the outcome and timing of the IEC's deliberation concerning its legal service provider, state expenditures in the Department of Law may be reduced by up to \$153,106 and 0.9 FTE in FY 2015-16 and future fiscal years. See the State Appropriations section for further discussion.

Office of Legislative Legal Services. By removing the IEC from the legislative rules review process, the workload of the Office of Legislative Legal Services is reduced by a minimal amount. Based on the relatively small number of rules anticipated for IEC purposes, no change in appropriations is warranted.

Local Government Impact

Local government revenue will 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 monetary amount recovered by local governments in such cases. The number of ethics cases with monetary penalties is expected to be small, affecting a small number of local governments in any fiscal year, if any.

Effective Date

The bill takes effect July 1, 2015.

State Appropriations

No appropriation is required to implement this bill on July 1, 2015. If the IEC elects not to obtain legal services from the Department of Law, a negative supplemental appropriation would reserve the remaining budget for legal counsel. This budget adjustment will occur as part of the annual budget process if necessary in FY 2015-16.

State and Local Government Contacts

All Departments

Legislative Service Agencies

Judicial Branch