

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-0641
Prime Sponsor(s): Sen. Todd

Date: February 10, 2015
Bill Status: Senate Business, Labor, and
Technology
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BILL TOPIC: REGULATION OF HOME INSPECTORS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	at least \$286,000	at least \$7,150
General Fund	< 500	< 500
Cash Funds	at least 286,000	at least 7,150
State Expenditures	\$170,857	\$116,004
Cash Funds	147,535	94,005
Centrally Appropriated Costs**	23,322	21,999
TABOR Set Aside	at least \$286,000	at least \$7,150
FTE Position Change	1.2 FTE	1.1 FTE
Appropriation Required: \$147,535 - Multiple Agencies (FY 2015-16)		

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

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

Summary of Legislation

Under current law, home inspectors are not subject to regulation or required to be licensed by any state agency. This bill creates the Home Inspector Licensure Act, which requires home inspectors to obtain a license before performing home inspections in Colorado by July 1, 2016. The bill defines "home inspections" as a limited visual survey of the components of a residential building.

The bill creates the five-member, Governor-appointed Home Inspectors Licensing Board (board) in the Division of Professions and Occupations (DPO) in the Department of Regulatory Agencies (DORA)—consisting of three licensed home inspectors and two homeowners. The board is required to establish certain licensing standards for home inspectors, including a competency examination; policies for license suspension, revocation, and renewal; requirements for continuing education; and a fee schedule.

Home inspector applicants seeking licensure by examination from the board must pay a fee and provide proof of the following:

- a high school diploma or equivalent;
- at least 90 hours of board-approved training;
- successful completion of competency exam and at least 10 training inspections;

- errors and omissions insurance and general liability insurance coverage in the minimum amount of \$100,000; and
- a fingerprint-based criminal history background check conducted by the Colorado Bureau of Investigation (CBI).

Licensure by prior practice and by endorsement is also available. Licensure by prior practice requires two years experience, the performance of at least 200 home inspections for compensation, insurance, a background check, and payment of the required fee. Licensure by endorsement may be issued to an applicant who holds a home inspector license in good standing in another state and pays the required fee.

Licenses expire after two years and are renewed upon payment of a renewal fee and proof of 20 hours of board-approved continuing education. Any professional in violation of the licensing requirements commits a class 1 misdemeanor, and subsequent violations of the act within five years of first conviction are class 5 felonies. The bill creates a one year statute of limitations for damages filed against home inspectors and specifies that only a home inspector's client may recover damages. The bill also outlines the allowable scope of a home inspection and other professional guidelines, and requires a home inspector to provide results in a confidential written report.

The program repeals on September 1, 2021 following a sunset review.

State Revenue

The bill increases fee revenue from licensing fees credited to the DPO Cash Fund in the DORA and background check fees credited to the CBI Identification Unit Cash Fund in the Department of Public Safety (DPS). Fine revenue from potential disciplinary actions and criminal penalties may also be received. Fees are outlined in Table 1 on the following page and all revenue impacts are discussed further below.

Assumptions. In estimating state revenue, the fiscal note assumes the following:

- based on the number of estimated home inspectors in the 2001 Sunrise Review and the Bureau of Labor Statistics (BLS) 2.5 percent growth rate for this profession, it is assumed there are 800 home inspectors who will seek licensure by July 1, 2016; and
- revenue fees must cover two years of program costs, since renewals are biennial;
- approximately 20 new home inspectors will seek credentials in subsequent years, based on the same BLS 2.5 percent growth rate.

Fee impact on individuals. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. The licensing fee amounts displayed in Table 1 are estimates only; actual fee amounts are set administratively by the DORA based on cash fund balance, estimated program costs, and the estimated number of home inspectors.

Table 1. Fee Impact on Home Inspectors			
Type of Fee	Fee	Number Affected	Total Fee Impact
FY 2015-16			
Home Inspector Licensing Fee	\$335.00	800	\$268,000
Background Check Fee	22.50		18,000
Subtotal			\$286,000
FY 2016-17			
Home Inspector Licensing Fee	\$335.00	20	\$6,700
Background Check Fee	22.50		450
Subtotal			\$7,150
Two-year Fee Total			\$293,150

Background check fees. Background check fees are \$22.50 for the fingerprint-based criminal history background check conducted by the CBI in the DPS, as the Federal Bureau of Investigation component is not required under the bill.

Disciplinary fines. The bill may increase state revenue from fines, although no fine revenue is expected in FY 2015-16, and less than \$500 in fine revenue is expected in FY 2016-17 and each year thereafter. Fines from disciplinary actions taken by the DORA are deposited in the General Fund.

Criminal penalties. Beginning in FY 2015-16, this bill is anticipated to increase fine revenue for criminal offenses by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. Any person in violation of professional licensing requirements commits a class 1 misdemeanor, and subsequent violations of the act within five years of the first conviction are class 5 felonies. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. The penalty for a class 5 felony is one to three years imprisonment, a fine of \$1,000 to \$100,000, or both. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000 per year. Any home inspector that receives probation will pay a fee of \$50 per month of probation to the county court; however, because the fiscal note assumes that violations will be minimal, revenues from probation fees are expected to be nominal.

TABOR Impact

This bill increases state cash fund revenue from fees and penalties, which will increase the amount required to be refunded under TABOR.

State Expenditures

This bill is expected to increase cash fund expenditures starting in FY 2015-16. Expenditures in the DORA are paid from the DPO Cash Fund and expenditures in the DPS are paid from the CBI Identification Unit Cash Fund. The bill is also anticipated to increase workload in the Judicial Department by a minimal amount, and may increase costs in the Department of Corrections. Expenditures are summarized in Table 2 and the new duties under the bill are described below.

Table 2. Expenditures Under SB 15-140*		
Cost Components	FY 2014-15	FY 2015-16
<i>Department of Regulatory Agencies</i>	\$156,090	\$115,821
Personal Service	\$62,810	\$62,810
FTE	1.1 FTE	1.1 FTE
Operating Expenses and Capital Outlay Costs	6,218	1,045
Temporary Staff	27,971	0
Legal Services	25,518	21,737
Board Per Diem and Expenses	3,000	3,000
Professional Examination Contractor	6,550	0
Test Administration Vendor	2,500	2,500
Continuing Education Audit - Printing Costs	30	30
Formal Investigation Consultant	0	2,700
Centrally Appropriated Costs	21,493	21,999
<i>Department of Public Safety</i>	\$14,767	\$183
Personal Services	5,555	0
FTE	0.1 FTE	0 FTE
Operating Background Check Costs	559	12
Information Technology	6,824	171
Centrally Appropriated Costs	1,829	0
Total - All Departments	\$170,857	\$116,004

Licensing program — DORA. The DPO is responsible for establishing the home inspector licensing program in the DORA. This involves working with the home inspector licensing board; researching licensing requirements and developing standards; administering and reviewing initial certification applications and biennial renewals; managing external affairs, such as outreach and complaints; conducting continuing education audits; overseeing vendors and contractors; and representing the program in disciplinary and judicial proceedings. The DORA will require 1.1 FTE beginning in FY 2015-16 to address these workload impacts, with standard operating expenses and capital outlay costs. In addition, to offset the initial licensing workload in FY 2015-16, 1,557 hours of temporary staff time is required at the rate of \$17.93 during the first three months of implementation.

Home Inspector Licensing Board. Five board members are eligible to receive compensation and reimbursement for their work on the board. The board is expected to hold four meetings a year. The estimated cost per meeting is \$50 per diem and \$100 expenses per member for a total of \$750 per meeting.

Legal services. In FY 2015-16, legal services at a rate of \$94.51 will be required for 120 hours during the rulemaking process, and 150 hours to establish enforcement criteria, for a total of 270 hours. In FY 2016-17 and each year thereafter, general counsel advice related to enforcement activity will be 75 hours, and another 155 hours will be required assuming one case a year is referred to the Office of the Attorney General for adjudication, for a total of 230 hours.

Enforcement and monitoring. The DPO will engage in disciplinary action of home inspectors who fail to comply with certification requirements. This work may include denying certification, mediating disputes, and investigating practice violations. The fiscal note expects that the DPO will receive at least 20 complaints a year, 6 of these are assumed to require formal investigation by the DPO's Office of Investigations. Of the 6, 3 are expected to require a formal investigation consultant to interview complainants, respondents, witnesses, audit pertinent documentation, and serve as an expert witness to the division as necessary, at an average rate of \$900 per case (15 hours at \$60 per hour).

Testing of home inspectors. An examination must be created and administered independently of any home inspector association, training program, school, or franchise; therefore, the DPO will identify subject matter experts to contract with a computer-based testing vendor for the purposes of developing handbooks and exams at a one-time cost of \$6,500 in FY 2015-16. In FY 2016-17 and each year thereafter, the annual vendor fee is estimated to be \$2,500.

Background checks — DPS. Based on the anticipated number of 800 CBI background checks to be performed in the first year, the DPS will have costs of \$19,090 and 0.1 FTE in FY 2015-16; second year costs, assuming 20 background checks, are estimated at \$183.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with bills are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. Because this bill stipulates that no fee revenue may be used to cover the program's indirect costs, the standard centrally appropriated costs subject to this policy are assumed in the fiscal note to be General Fund expenditures, summarized in Table 3.

Table 3. Indirect Costs Under SB 15-140*		
Cost Components	FY 2015-16	FY 2016-17
Department of Regulatory Agencies	\$21,493	\$21,999
Employee Insurance (Health, Life, Dental, and Short-Term Disability)	8,844	8,844
Supplemental Employee Retirement Payments	4,868	5,375
Indirect Costs	7,781	7,780
Department of Public Safety	1,829	\$0
Employee Insurance (Health, Life, Dental, and Short-Term Disability)	431	0
Supplemental Employee Retirement Payments	804	0
Indirect Costs	594	0
TOTAL	\$23,322	\$21,999

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

Judicial Department. To the extent that a home inspector aggrieved by a final board action seeks judicial review under the bill, workload in the Judicial Department may increase. However, the bill may also slightly decrease Judicial Department workload with its one-year statute of limitations for damages filed against home inspectors and the specification that only the client may file for damages. Probation services in the Judicial Department may experience a minimal increase in workload to supervise any offenders convicted under the bill. Finally, the bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. Because the fiscal note assumes that most matters involving home inspectors will be settled within the DPO disciplinary process, any workload increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Corrections. A home inspector who violates the licensing requirements within five years of a first violation will be charged with a class 5 felony. To the extent that they will be sentenced to a term of incarceration, costs for the Department of Corrections (DOC) will increase. For informational purposes, offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 per offender per day for medical care provided by the DOC. The fiscal note assumes that a sentence to incarceration is unlikely; therefore, any increase in costs are minimal and will not require an increase in appropriations for the Department of Corrections.

Local Government Impact

This bill impacts local governments by creating a new class 1 misdemeanor. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both.

Misdemeanor offenses in county courts. First, the bill may increase workload for district attorneys to prosecute any new offenses under the bill. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

Denver County Court. The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. Probation services in the Denver County Courts may also experience a minimal increase in workload to supervise persons convicted under the bill.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. Under current law, real estate appraisers in violation of their professional licensing act are subject to the same crimes as home inspectors under the bill. In the past three years, no real estate appraiser has been charged for a violation; therefore the fiscal note assumes few violations will occur under the bill.

Technical Issue

Page 7, Line 19 of the introduced bill states that the fees established for home inspection applications must be the minimum amount necessary to pay for the direct costs for the administration of the program. Current law requires that each licensing board within the DORA, with some exceptions, adjust its fees so that the revenue generated from the fees covers the direct and indirect costs of each program. The fiscal note assumes that the program fees will cover direct and indirect costs.

Effective Date

The bill takes effect upon signature of the Governor, or on becoming law without his signature. Program implementation will begin on July 1, 2015, and all home inspectors must be licensed by July 1, 2016.

State Appropriations

In FY 2015-16, the DORA requires an appropriation of \$134,597 and an allocation of 1.1 FTE from the Division of Professions and Occupations Cash Fund. Of this amount, the Department of Law requires \$25,518 in reappropriated funds. The DPS requires an appropriation of \$17,902 and an allocation of 0.1 FTE from the CBI Identification Unit Cash Fund.

State and Local Government Contacts

Regulatory Agencies

Public Safety

Law

Judicial