

Colorado Legislative Council Staff Fiscal Note


**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0839	Date: June 16, 2015
Prime Sponsor(s): Rep. Salazar; Melton Sen. Kefalas	Bill Status: Postponed Indefinitely
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BILL TOPIC: HOMELESS PERSONS' BILL OF RIGHTS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue Cash Funds	Minimal reduction. See State Revenue section.	
State Expenditures	Workload and potential expenditure increase. See State Expenditures section.	
FTE Position Change		
TABOR Set-Aside	Minimal reduction.	
Appropriation Required: None.		

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

Summary of Legislation

This bill establishes a set of rights held by persons experiencing homelessness. A person experiencing homelessness is permitted to use public space in the same manner as any other person. Public spaces subject to the bill include any property partially or wholly owned by a state or local government and any other property with an easement for public use.

The rights of a person experiencing homelessness are enforceable against both public and private parties, and include the right to:

- rest, which includes sleep in public spaces and seeking shelter from the elements in a nonobstructive manner;
- share food;
- occupy a legally parked car; and
- maintain privacy over personal property.

The bill creates a private right of action for civil relief if a person's rights under the bill are violated. A person experiencing homelessness may seek various remedies, including injunctive and declaratory relief, restitution for the loss of property, actual damages, and compensatory damages up to \$1,000 per violation.

Providers of services to homeless persons are not obligated to provide shelter or other services that are unavailable.

Background

Homelessness affects people throughout the state of Colorado. In the six-county metropolitan Denver area, for example, a 2014 point-in-time study by the Metropolitan Denver Homeless Initiative found at least 5,812 men, women, and children without a home on January 27, 2014.

Sidewalk camping, food sharing programs, and other activities involving the homeless population in public spaces have been targeted in local ordinances and in other law enforcement actions. For example, the City and County of Denver recently banned unauthorized camping on city sidewalks and on other public and private land, displacing portions of the homeless population in certain Denver locations. In addition to the general police mission to maintain order and respond to any criminal activity, law enforcement interaction with persons experiencing homelessness includes assisting individuals in need to social services, monitoring personal property, and advising individuals concerning laws and events that may affect them.

State Revenue

The bill may result in a minimal reduction in state cash fund revenue from court fees, fines, and penalties. Prosecutions for offenses related to the use of public spaces by persons experiencing homelessness may be reduced by the bill, and any cases that are charged may be subject to a new affirmative defense. The overall reduction in revenue to the Fines Collection Cash Fund in the Judicial Department is expected to be minimal, however, as the affected population does not generally have resources to pay substantial fines.

TABOR Impact

This bill reduces state revenue, which will decrease the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

State expenditures will increase as a result of the enforcement of new legal rights under the bill, including new court procedures and increased security and maintenance requirements impacting state agencies that own or maintain property. Starting in FY 2015-16, the workload of the CSP and the Judicial Department will increase. The fiscal note does not estimate a specific need for state appropriations to implement the bill, but additional resources may be requested through the annual budget process if the bill results in significant new workload for an affected state agency.

Assumptions. The bill specifies that sleeping in public spaces and certain other activities should not be addressed as law enforcement issues, and some decrease in prosecution for these activities is expected. However, creating a safe harbor for encampments and other specified activities is also expected to increase the usage of certain public spaces for these purposes, especially in parks, public transportation hubs, certain educational campuses, the Capitol Complex and similar concentrations of civic buildings in other cities, and in public buildings with restroom facilities generally.

Usage of public spaces by persons experiencing homelessness is subject to hours of operation and, as articulated in the bill, other rules that apply to any other person and do not discriminate on the basis of housing status. See the Technical Note for further discussion of this assumption.

Department of Public Safety — CSP. Workload for the CSP will increase to the extent that a greater concentration of the homeless population is attracted to public spaces within the jurisdiction of patrol units and downtown Denver's Executive and Capitol Complex Security Units. In accordance with the bill, the CSP will monitor resting persons for their own security and the security of their possessions. In addition, a greater concentration of the homeless population is expected to require an increase in CSP workload to enforce various rules, including sanitation and hours of operation at public facilities, as well as more work to intervene in conflicts related to the use of public space. This increase in workload is not estimated in terms of budget needs, but the increase may be significant enough to warrant a request for additional resources in the annual budget process.

Judicial Department — trial courts. Overall, the bill results in a minimal increase in workload for state trial courts. Trial courts will receive new case filings for the civil cause of action created by the bill, as a person may seek enforcement of their rights when experiencing homelessness. Use of the bill as an affirmative defense, and in the context of privacy, is also expected to increase the workload of the courts. However, law enforcement is assumed to receive training such that a minimal number of new cases will arise under the bill. The safe harbor aspect of the bill is assumed to reduce the number of state court prosecutions, but most prosecutions related to activities affected by the bill are filed in municipal court. Any reduction of state trial court workload due to provisions creating a safe harbor for these activities will be minimal.

State agencies that own or maintain public spaces. Various state agencies own or manage property that may be used by persons experiencing homelessness for the exercise of rights enumerated in the bill. This includes the Department of Personnel and Administration, which manages the Capitol Complex, and institutions of higher education, with campuses such as the Auraria Higher Education Center in Denver. The bill increases workload for these state agencies to maintain public spaces, post signage explaining rules regarding their use, and provide appropriate security. Affected agencies may seek legal counsel regarding implementation of the bill, increasing the workload of the Attorney General's Office in the Department of Law.

Local Government, School District, and Statutory Public Entity Impact

The bill affects municipalities, counties, special districts, school districts, statutory public entities, and other local entities that own or maintain public spaces. These local entities will experience an increase in costs related to security, law enforcement, and maintenance of public spaces. Municipal courts are also affected by the bill, with a minimal reduction in workload resulting from the bill's provisions.

Assumptions. The bill has the same effects on local government as noted above for state agencies. The bill applies to all forms of local entities, though legal action challenging the application of the bill to home rule jurisdictions is possible.

Local entities that own or maintain public spaces. The expenditures of local entities will increase to amend rules, regulations, and policies to conform with the bill; to monitor the security of persons experiencing homelessness and their possessions; and to manage public spaces within the parameters of the bill. At the same time, the number of individuals jailed or prosecuted for activities covered by the bill will be reduced, decreasing associated local expenditures (e.g, the cost to house an offender in county jails varies from about \$53 to \$114 per day). Fines revenue for municipal ordinance violations would also decrease, though by a minimal amount due to the indigence of the affected population.

Overall, the potential magnitude of increased expenditures is expected to result in a net increase in local entity costs. School districts may hire additional security officers. A roving security patrol to cover properties owned by a school district would cost about \$50,000 per year, for example. The Regional Transportation District (RTD) anticipates significant cost increases for security and custodial services across its territory; a 20 percent increase in these budget lines for RTD would result in annual costs of over \$2 million. Law enforcement is likely to be involved in any solution that involves the use of public space, and the bill is likely to require the implementation of new training and procedures, as well as ongoing costs to protect both the homeless population and the general public.

Municipal courts. Municipal courts will experience a reduction in the number of cases prosecuted under municipal ordinances for loitering and similar violations. When a person experiencing homelessness is cited with a municipal violation for such activities, the bill creates an affirmative defense, which is expected to increase the effort of the local prosecutor and the municipal court. Overall, the bill results in a minimal reduction in the workload of municipal courts.

Technical Note

Current state law indicates that public buildings and other property are subject to rules, regulations, and policies that the government owner adopts as reasonably necessary for the administration, protection, and maintenance of the public space (Section 18-9-117, C.R.S.). This includes prohibition of nuisance activities; rules for health and sanitation; and restrictions on the time, place, and manner of camping, picnicking, and other individual or group uses of public space.

The fiscal note assumes that neutral rules for state and local public spaces, such as hours of operation, remain in force and effect based on the bill's provision that a person experiencing homelessness is permitted to use public space in the same manner as any other person. However, some rules may be alleged to target the homeless population or may naturally tend to affect the homeless population disproportionately. For example, it may not be possible to implement a right to sleep in a parked vehicle without conflicting with generally applicable rules. To the extent that such conflicts with existing rules, regulations, and policies arise, the fiscal impact of the bill may be greater than estimated in this fiscal note.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on April 27, 2015.

State and Local Government Contacts

Local Affairs
Public Safety
Transportation
Judicial Department
Human Services
Regulatory Agencies

Personnel and Administration
Regional Transportation District
Natural Resources
Higher Education
Education
Special Districts

Law
Counties
Municipalities
Sheriffs
Corrections