



## Fiscal Estimate Narratives

DHS 2/5/2018

LRB Number 17-5307/1	Introduction Number SB-745	Estimate Type Original
<b>Description</b> deference by courts to agency interpretations of law, notice and comment requirements for guidance documents issued by agencies, and agency rule-making authority		

### Assumptions Used in Arriving at Fiscal Estimate

This bill prohibits a court from according deference to agency interpretation of law in certain proceedings and prohibits agencies from seeking deference in any proceeding to agency interpretation of the law.

This bill provides that a settlement agreement, consent decree, or court order does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. This bill provides that no agency may agree to promulgate a rule as a term in any settlement agreement, consent decree, or stipulated order of the court unless the agency has explicit statutory authority to promulgate the rule at the time the settlement agreement, consent decree, or stipulated order of a court is executed.

Further, this bill defines "guidance document" as any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that 1) explains the agency's implementation of a statute or rule enforced or administered by the agency; or 2) provides guidance with respect to how the agency is likely to apply any statute or rule enforced by the agency.

Under this bill, existing "guidance documents" would need to be posted for comment for 21 days on the Department's internet site or be signed by the Secretary with a statement containing certifications that the "guidance document" contains no standard or requirement that is more restrictive than a standard or requirement in statute, among other certifications by July 1, 2018 or the document is considered to be rescinded. The Department estimates 700 handbooks, manuals, memos, and other documents exist that, to some extent, may provide guidance or explanation on implementation or administration of statutes or rules. Review of all 700 documents for certification by July 1, 2018 would require two attorneys working full-time on this task. Considering timelines related to receiving position authority, recruiting, hiring, and training employees, review of these documents would need to be done through re-assignment of existing staff. Re-assignment of existing staff to perform this review will likely result in a delay of other legal matters.

This bill requires the Department to post on the Department's internet site and submit to LRB for publication in the register proposed "guidance documents" 21 days prior to the adoption of the document. The Department must maintain all written comments submitted during the public comment period and consider those comments in determining whether to adopt or modify the document. Each "guidance document" must be signed by the Secretary below a statement containing certain certifications.

Maintaining compliance with this bill and meeting the needs of the Department's customers and their need for additional information on interpretation of administrative rules will require an additional agency staff. It is determined the Department may generate 300 documents per year that meet the "guidance document" definition. Review, response to comments, and certification of these documents will require 1.0 FTE GPR Attorney, with a cost of \$135,600 GPR per year and a one-time cost of \$2,500 GPR for office set up.

### Long-Range Fiscal Implications

## Fiscal Estimate Worksheet - 2017 Session

Detailed Estimate of Annual Fiscal Effect

Original
  Updated
  Corrected
  Supplemental

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<b>Description</b> deference by courts to agency interpretations of law, notice and comment requirements for guidance documents issued by agencies, and agency rule-making authority			
<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>  One-time office set-up cost of \$2,500			
<b>II. Annualized Costs:</b>		<b>Annualized Fiscal Impact on funds from:</b>	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations - Salaries and Fringes		\$124,700	\$
(FTE Position Changes)		(1.0 FTE)	
State Operations - Other Costs		10,900	
Local Assistance			
Aids to Individuals or Organizations			
<b>TOTAL State Costs by Category</b>		<b>\$135,600</b>	<b>\$</b>
<b>B. State Costs by Source of Funds</b>			
GPR		135,600	
FED			
PRO/PRS			
SEG/SEG-S			
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, ets.)</b>			
		Increased Rev	Decreased Rev
GPR Taxes		\$	\$
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
<b>TOTAL State Revenues</b>		<b>\$</b>	<b>\$</b>
<b>NET ANNUALIZED FISCAL IMPACT</b>			
		<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS		\$135,600	\$
NET CHANGE IN REVENUE		\$	\$
<b>Agency/Prepared By</b>		<b>Authorized Signature</b>	<b>Date</b>
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