

**HF812 - 0 - "Abortion Facility Licensure Requirements"**

Chief Author: **Debra Kiel**  
 Committee: **Health and Human Services Finance**  
 Date Completed: **02/22/2017**  
 Lead Agency: **Health Dept**  
 Other Agencies:  
     Administrative Hearings      Supreme Court

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Administrative Hearings</b>	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
<b>Health Dept</b>					
State Government Special Rev	-	34	34	34	34
<b>State Total</b>					
Administrative Hearings	-	-	-	-	-
State Government Special Rev	-	34	34	34	34
<b>Total</b>	-	<b>34</b>	<b>34</b>	<b>34</b>	<b>34</b>
<b>Biennial Total</b>			<b>68</b>		<b>68</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
<b>Health Dept</b>					
State Government Special Rev	-	.32	.32	.32	.32
<b>Total</b>	-	<b>.32</b>	<b>.32</b>	<b>.32</b>	<b>.32</b>

**Lead Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Paul Moore      Date: 02/22/2017  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>	<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands	FY2017	FY2018	FY2019	FY2020	FY2021
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Health Dept					
State Government Special Rev	-	34	34	34	34
<b>Total</b>	<b>-</b>	<b>34</b>	<b>34</b>	<b>34</b>	<b>34</b>
<b>Biennial Total</b>			<b>68</b>		<b>68</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	44	44	44	44
Health Dept					
State Government Special Rev	-	53	53	53	53
<b>Total</b>	<b>-</b>	<b>97</b>	<b>97</b>	<b>97</b>	<b>97</b>
<b>Biennial Total</b>			<b>194</b>		<b>194</b>
<b>2 - Revenues, Transfers In*</b>					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	44	44	44	44
Health Dept					
State Government Special Rev	-	19	19	19	19
<b>Total</b>	<b>-</b>	<b>63</b>	<b>63</b>	<b>63</b>	<b>63</b>
<b>Biennial Total</b>			<b>126</b>		<b>126</b>

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 Committee: **Health and Human Services Finance**  
 Date Completed: **02/22/2017**  
 Agency: **Health Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2017	FY2018	FY2019	FY2020	FY2021
State Government Special Rev	-	34	34	34	34	34
<b>Total</b>	<b>-</b>	<b>34</b>	<b>34</b>	<b>34</b>	<b>34</b>	<b>34</b>
<b>Biennial Total</b>			<b>68</b>			<b>68</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
State Government Special Rev	-	.32	.32	.32	.32
<b>Total</b>	<b>-</b>	<b>.32</b>	<b>.32</b>	<b>.32</b>	<b>.32</b>

**Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

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### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2017	FY2018	FY2019	FY2020	FY2021	
State Government Special Rev	-	34	34	34	34	34
<b>Total</b>	<b>-</b>	<b>34</b>	<b>34</b>	<b>34</b>	<b>34</b>	<b>34</b>
<b>Biennial Total</b>			<b>68</b>			<b>68</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
State Government Special Rev	-	53	53	53	53	53
<b>Total</b>	<b>-</b>	<b>53</b>	<b>53</b>	<b>53</b>	<b>53</b>	<b>53</b>
<b>Biennial Total</b>			<b>106</b>			<b>106</b>
<b>2 - Revenues, Transfers In*</b>						
State Government Special Rev	-	19	19	19	19	19
<b>Total</b>	<b>-</b>	<b>19</b>	<b>19</b>	<b>19</b>	<b>19</b>	<b>19</b>
<b>Biennial Total</b>			<b>38</b>			<b>38</b>

### Bill Description

Section 1. Subd. 1(a) requires the Commissioner of Health to license all clinics, health centers, or other facilities that provide 10 or more abortions per month. These clinics, health centers, and facilities are subject to the licensure requirements of Minnesota Rules, chapter 4675. A facility licensed as a hospital or outpatient surgical center, pursuant to Minnesota Statutes, section 144.55 is not required to obtain separate license, but such facility may be subject to inspections and investigations as permitted under subdivision 2.

Section 1. Subd. 1(b) authorizes the Commissioner of Health, attorney general, county attorney or a woman upon whom an abortion has been performed in an unlicensed facility to seek an injunction in district court against the continuing operation of the facility.

Section 1. Subds. 1(c) and 2 address sanctions and inspections. Subd. 1(c) states that sanctions provided in this section do not restrict other available sanctions. Subd. 2 requires the Commissioner of Health to perform routine and comprehensive inspections and investigations of affected clinics, health facilities, and hospitals no more than two times per year and without advance notice.

Section 1. Subd. 3 sets a license fee of \$3,712 per year from each licensee.

Section 1. Subd. 4 authorizes the Commissioner of Health to take enforcement action such as refusing to renew, suspensions of a license or revocations for various violating licensing requirements.

Section 1. Subd. 5 states that a licensee may appeal actions of the Commissioner of Health to the Office of Administrative Hearings (OAH) and that a new license may be granted after another inspection is done and all requirements have been completed.

Section 1. Subd. 6 states that this section is severable in the event that any portion of it is found to be unconstitutional.

Section 2 appropriates \$32,000 from the state government special revenue fund in FY 2018 for licensing activities under this legislation. Money is appropriated one-time in FY 2018. There is no appropriation in FY 2019, so there is no ongoing base appropriation for this activity.

### Assumptions

According to the Minnesota Department of Health's (MDH) "Induced Abortions in Minnesota: January December 2015: Report to the Legislature" report issued in July of 2016, 5 clinics, health centers or other facilities provided 10 or

more abortions per month in calendar year 2015, the most recent reporting period. On this basis, it is assumed that MDH would regulate 5 clinics, health centers or other facilities and each of the facilities would pay an annual license fee.

It is assumed that the initial licensing activities such as reviewing and communicating about the license application forms enough for MDH to be able to issue a license would take 24 hours of staff time per license application.

It is assumed that MDH would conduct one inspection per year of each licensed facility. Based on our experience in conducting inspections of outpatient surgical centers, we assume that each inspection would take an average of 73 hours and would require an additional 10 hours per inspection of blue print plan review and on-site inspection by engineers and the Fire Marshal.

Based on averages for outpatient surgical centers overseen by MDH, it is assumed that MDH would conduct one complaint investigation per licensee per year, and that each investigation would take an average of 26 hours of staff time.

The bill limits the number of inspections and investigations to two per year. It is assumed that MDH would not conduct any follow-up inspections or more than one investigation per year.

Based on these assumptions, the ongoing regulatory activity would require 0.32 FTE per year for MDH plus supplies and expenses and travel costs for staff.

We do not have data on the exact number of potential appeals to the Office of Administrative Hearings (OAH) that might result from this legislation. For purposes of this fiscal note, we project the cost of one appeal hearing every two years with the OAH. OAH bills MDH for the costs of the hearing. Each hearing will cost approximately \$20,000. This fiscal note splits the cost of a potential hearing for each year of the biennium.

The bill appropriates \$32,000 in one-time money from the state government special revenue fund for this activity. A fee amount of \$3,712 would not be sufficient for revenue to equal the appropriation in FY 2018 (\$3,712 fee x 5 facilities = \$18,560). Furthermore, the fee amount would not be sufficient to recover the estimated cost of performing this activity in FY 2018, which totals \$53,000. The fee amount would need to be set at \$10,600 per facility (total of 5) each year to recover the costs of regulating this activity. An appropriation beyond FY 2018 would be necessary to perform this activity on an ongoing basis.

**Expenditure and/or Revenue Formula**

The summary table below assumes the activity is ongoing beyond FY 2018 and reflects a fee amount of \$3,712 per facility each year.

FUND BACT	EXPENDITURES (dollars in thousands)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SGSR 1200 BACT 3	Salary and Fringe Benefits	-	34	34	34	34
	Other Operating Costs	-	13	13	13	13
	Grants	-	-	-	-	-
	Administrative Services	-	-	-	-	-
	<b>OR Indirect Cost</b>	-	7	7	7	7
	<b>TOTAL EXPENSES</b>	-	53	53	53	53
	<b>TOTAL REVENUES</b>	-	19	19	19	19
	<b>NET COST &lt;SAVINGS&gt;</b>	-	34	34	34	34

**Long-Term Fiscal Considerations**

State law requires that fees be set at a level to recover the cost of regulation. Assuming ongoing regulatory activities and an appropriation equal to estimated expenditures, a fee of \$3,712 would result in a net cost of \$170,000 to the state government special revenue fund over the five-year period of FY 2018-22.

**Local Fiscal Impact**

**References/Sources**

*Induced Abortions in Minnesota, January December 2015: Report to the Legislature* (Minnesota Department of Health, July 2016)

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**HF812 - 0 - "Abortion Facility Licensure Requirements"**

Chief Author: **Debra Kiel**  
 Committee: **Health and Human Services Finance**  
 Date Completed: **02/22/2017**  
 Agency: **Administrative Hearings**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
<b>Local Fiscal Impact</b>		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

<b>State Cost (Savings)</b>	Biennium			Biennium		
	Dollars in Thousands	FY2017	FY2018	FY2019	FY2020	FY2021
Administrative Hearings	-	-	-	-	-	-
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

<b>Full Time Equivalent Positions (FTE)</b>	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
Administrative Hearings	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

EBO Signature: Laura Logsdon      Date: 2/21/2017 1:43:40 PM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2017	FY2018	FY2019	FY2020	FY2021	
Administrative Hearings	-	-	-	-	-	-
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
Administrative Hearings	-	44	44	44	44	44
<b>Total</b>	-	44	44	44	44	44
<b>Biennial Total</b>			88			88
<b>2 - Revenues, Transfers In*</b>						
Administrative Hearings	-	44	44	44	44	44
<b>Total</b>	-	44	44	44	44	44
<b>Biennial Total</b>			88			88

**Bill Description**

SF704-0 requires the Minnesota Department of Health (MDH) to license facilities that perform 10 or more abortions per month, with the exception of facilities licensed as a hospital or outpatient surgical center. The bill establishes an annual license fee, requires the commissioner of MDH to perform mandatory inspections and investigations, and provides the commissioner the authority to suspend, revoke, or refuse to renew a facility's license. It also provides the licensee with a right to an administrative hearing as provided in Minn. Stat. § 14.57-.69 (2016).

**Assumptions**

The Office of Administrative Hearings (OAH) bases this fiscal note only on the provisions of the bill that provide for an administrative hearing upon suspension, revocation or refusal to renew a facility license.

According to MDH, five facilities would be subject to the provisions of the bill. Assuming that all five facilities are subject to suspension, revocation, or nonrenewal of their license, as many as five matters could be appealed to OAH annually.

OAH assumes that each hearing, as a case of first impression, would be complex and require multiple days of testimony as well as review of a voluminous documentary record. As such, OAH estimates that each hearing will require an estimated 52 hours of Administrative Law Judge time at the current MMB-approved billable rate of \$170 per hour. (See Minn. Stat. §16A.126, subd. 1 (2016).)

Minn. Stat. § 14.53 (2016) requires OAH to assess agencies the costs of all services provided to them with respect to contested case hearings.

**Expenditure and/or Revenue Formula**

Estimated 52 hours of ALJ time at \$170/hr = \$8,840 per hearing  
 \$8,840 x 5 appeals/year = \$44,200

**Long-Term Fiscal Considerations**

The estimated costs would continue in future years.

**Local Fiscal Impact**



**References/Sources**

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**HF812 - 0 - "Abortion Facility Licensure Requirements"**

Chief Author: **Debra Kiel**  
 Committee: **Health and Human Services Finance**  
 Date Completed: **02/22/2017**  
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Total</b>	-	-	-	-	-

**Executive Budget Officer's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2017	FY2018	FY2019	FY2020	FY2021	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

SF704-0 sets forth new law that requires licensure of certain facilities that perform 10 or more abortions each month; exempts licensed hospitals and outpatient surgical centers from having to obtain a separate license; establishes an annual licensing fee to be paid by such facilities; provides for mandatory inspections and investigations of certain facilities by the commissioner of health; provides the commissioner of health with the authority to suspend, revoke, or refuse to renew licensure based on statutory factors; the licensee’s right to an administrative hearing prior to any suspension, revocation, or refusal to renew a license; authorizes the commissioner of health, the attorney general, an appropriate county attorney, or a woman upon whom an abortion has been performed or attempted to be performed at an unlicensed facility to seek injunctive relief; and appropriates money for fiscal year 2018 for licensing activities.

**Assumptions**

It is assumed that this bill limits injunctive relief to be commenced only by the commissioner of health, the attorney general, an appropriate county attorney, or a woman upon whom an abortion has been performed or attempted to be performed. This bill assumes that injunctive relief might be sought against a health facility for one or more statutory violations listed in this bill. It is further assumed that this bill allows for other sanctions to be brought in the district court. The Minnesota Judicial Branch does not have the ability to track the number of case filings in which injunctive relief was requested. It is presumed this bill may result in injunctive relief or other sanctions being pursued against certain health facilities that perform abortions, but it is not possible to predict with any certainty the fiscal impact to the courts. This bill provides the licensee with the right to an administrative hearing prior to the suspension, revocation, or denial to renew licensure of facilities that perform abortions. This bill further assumes the administrative law judge’s decision is final, and a licensee who has had his/her license revoked, suspended, or renewal denied may only seek to have a new license granted by the commissioner of health upon the licensee’s submission of evidence to support the statutory violations have been corrected. Assuming this bill provides no post-hearing relief to a licensee by the district court and the only remedy available is to correct the violations and to seek a new license, this bill will have no fiscal impact to the district courts as it pertains to the suspension, revocation, or refusal to renew licenses. If it is assumed that a licensee may seek judicial review of the commissioner’s decision as allowed by law, this bill may have a limited fiscal impact on the courts. An action to seek judicial review of an administrative agency decision is filed with the district court and is assigned the case type of Appeal from Administrative Agency. There were 56 case filings seeking judicial review of an administrative agency decision in FY14, 54 case filings in FY15, and 39 case filings in FY16. Given the small number of agency appeals already being handled by the district court, it is assumed that the impact to the courts, if any, will be minimal.

**Expenditure and/or Revenue Formula**

No fiscal impact to the Judicial Branch.

**Long-Term Fiscal Considerations**

None

**Local Fiscal Impact**

None

**References/Sources**

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