


Colorado Legislative Council Staff Fiscal Note
STATE
FINAL FISCAL IMPACT

Drafting Number: LLS 07-0390
Prime Sponsor(s): Sen. Renfroe
 Rep. Lambert

Date: June 28, 2007
Bill Status: Postponed Indefinitely
Fiscal Analyst: Marc Carey (303-866-4102)

TITLE: CONCERNING A PROHIBITION ON ABORTION, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue	\$0	\$0
Transfers or Diversions Transfer from General Fund through the Capital Construction Fund to the Corrections Expansion Reserve Fund	(\$1,376,815)	(\$1,376,815)
State Expenditures General Fund	\$0	\$303,457
Cash Funds Exempt - Capital Construction Fund appropriation to the Corrections Expansion Reserve Fund	\$1,376,815	\$1,376,815
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: The bill was postponed indefinitely by the Senate Judiciary Committee on February 12, 2007.		
Appropriation Summary for FY 2007-2008: See State Appropriations Section.		
Local Government Impact: None.		

Summary of Legislation

This bill makes it a Class 3 felony to knowingly terminate a pregnancy by either procedural or pharmacological means. Specifically, the bill prohibits anyone from administering, prescribing, procuring or selling a pregnant woman any medicine, drug, or other substance, or employing any instrument or procedure with the intent of terminating the pregnancy.

The bill exempts from criminal penalty cases where a licensed physician:

- performs a medical procedure designed to prevent the death of a pregnant mother, if the physician makes reasonable medical efforts to preserve both the life of the mother and the unborn child; and
- provides medical treatment to the mother that results in the accidental or unintentional injury or death to the unborn child.

The bill also specifies that the pregnant woman upon whom an abortion is performed or attempted is not subject to a criminal penalty. The bill allows the sale, use, prescription or administration of contraceptives, if administered prior to the time when a pregnancy could be determined through conventional medical testing. Finally, the bill makes a conviction related to the abortion prohibition a condition for establishing unprofessional conduct when licensing a physician.

Transfers or Diversions

Pursuant to the requirements of Section 2-2-703, C.R.S. and Section 17-1-116 C.R.S., this bill transfers \$1,376,815 in FY 2007-08 and in FY 2008-09 from the General Fund to the Capital Construction Fund (CCF), then appropriates the money to the Corrections Expansion Reserve Fund (CERF). Thus, this amount will not be otherwise available for General Fund appropriations. For a further explanation of this transfer and appropriation, please see the sections related to the 5-year fiscal impact on Correctional Facilities and State Appropriations below.

Based on the December 2006 Legislative Council Staff revenue forecast, there is enough revenue to fully fund the diversion to the Highway Users Tax Fund (HUTF) under the provisions of SB 97-1 for the next five fiscal years and have additional revenue flow into the General Fund excess reserve. Under the provisions of HB02-1310, revenue in the General Fund excess reserve is diverted two-thirds to the HUTF and one-third to capital construction. Construction costs for new prison beds are funded outside of the 6 percent appropriations limit. Therefore, the increased expenditure needed to fund this element of the bill would serve to reduce the amount of money available for diversion to the HUTF and to capital construction. In FY 2007-08, this amounts to \$917,877 from the HUTF and \$458,938 from capital construction.

State Expenditures

Department of Corrections (DOC). This bill makes an appropriation to the CERF, estimated at \$1,376,815 in FY 2007-08 and \$1,680,272 in FY 2008-09. The bill creates a new Class 3 felony for any person who performs an abortion in violation of the new provisions. According to the most recent statistics from the Center for Disease Control, there were 4,633 abortions performed by 40 providers in Colorado in 2001. Because the number of abortions had been declining at a slow rate, this fiscal note assumes approximately 4,500 abortions were performed in Colorado in 2006. It is assumed that 5 percent of these procedures will continue to be performed illegally, resulting in 225 abortions annually. Assuming that 10 percent of these cases result in the prosecution and conviction of the person performing the procedure, there would be 22 new Class 3 felony convictions per year. Due to the severity of the felony class, Class 3 felony convictions have a high percentage of DOC sentences. This fiscal note assumes a 50 percent incarceration rate, resulting in 11 new prison admissions (and 11 new probation cases) annually.

Judicial Branch. This bill establishes a new offense, primarily for members of the medical and pharmacy professions. Any new offense carries with it the potential for additional cases to be filed with the courts. It is anticipated that members of these professions will comply with the law, and that any new offenders will be black-market providers. The number of providers is anticipated to be relatively small, so that these new cases can be absorbed within existing resources. The Branch is anticipated to see a minimal number new probation cases annually, however the associated cost of these cases can also be absorbed within existing resources.

Five-Year Fiscal Impact on Correctional Facilities

The adoption of this bill will result in a net increase in periods of imprisonment in a state correctional facility. Section 2-2-703, C.R.S., requires that such bills cannot be passed without five years of appropriations for prison bed construction and operating costs. Construction costs are estimated to be \$125,165 per inmate bed. Operating costs are \$75.58 per bed per day or \$27,587 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing.

Prison bed construction is funded through a General Fund transfer to the CCF, which is then appropriated to the CERF. These appropriations are not subject to the 6 percent statutory General Fund appropriations limit. General Fund appropriations for operating costs are subject to the 6 percent limit.

However, in the event state correctional facilities are at capacity, Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the Department of Corrections to permanently place state inmates classified as medium custody and below in private contract prisons. The state pays private prisons at a rate of \$51.91 per bed per day or \$18,947 per bed per year.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2007-08	11.0	\$1,376,815	\$0	\$1,376,815
FY 2008-09	22.0	\$1,376,815	\$303,457	\$1,680,272
FY 2009-10	33.0	\$1,376,815	\$606,914	\$1,983,729
FY 2010-11	44.0	\$1,376,815	\$910,371	\$2,287,186
FY 2011-12	55.0	\$1,376,815	\$1,213,828	\$2,590,643
Total		\$6,884,075	\$3,034,570	\$9,918,645

State Appropriations

For FY 2007-08, the Department of Corrections will require an a \$1,376,815 General Fund transfer to the Capital Construction Fund and an appropriation of a like amount from than fund to the Corrections Expansion Reserve Fund, plus the five-year costs identified in Table 1.

Departments Contacted

Corrections
State Public Defender

Judiciary

District Attorney's Council