

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 11, 2008)

Drafting Number: LLS 08-0450
Prime Sponsor(s): Rep. Judd
Sen. Veiga

Date: March 10, 2008
Bill Status: House Appropriations
Fiscal Analyst: Brad Denning (303-866-4777)

TITLE: CONCERNING MEASURES BY EXECUTIVE BRANCH AGENCIES TO REDUCE THE INCIDENTS OF DRUNK DRIVING, AND, IN CONNECTION THEREWITH, EXTENDING THE LENGTH OF SUSPENSION OF DRIVING PRIVILEGES FOR CERTAIN OFFENDERS, REQUIRING CERTAIN OFFENDERS TO USE AN IGNITION INTERLOCK DEVICE, INCREASING THE COST TO REINSTATE A DRIVER'S LICENSE, AND PROVIDING FOR HIGH-VISIBILITY DRUNK DRIVING LAW ENFORCEMENT EPISODES.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
Cash Funds		
Driver's License Administrative Revocation Account, HUTF	\$2,614,500	\$3,150,000
First Time Drunk Driving Offender Account, HUTF	2,614,500	3,150,000
Fines Collection Cash Funds	121,491	146,375
State Transfers or Diversions		
Transfer from the General Fund to the Capital Construction Fund	(\$125,165)	(\$12,517)
State Expenditures		
General Fund	\$0	\$28,758
Cash Funds -		
First Time Drunk Driving Offender Account, HUTF*	2,614,500	3,150,000
Capital Construction Fund Appropriation to the Corrections Expansion Reserve Fund	125,165	12,517
FTE Position Change	4.5 FTE	5.4 FTE
Effective Date: Sections 7 - 10 of the bill take effect September 1, 2008. Sections 1 - 6 take effect the later of August 6, 2008, unless a referendum petition is filed, or January 1, 2009.		
Appropriation Summary for FY 2008-2009: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

* Of this amount, \$20,142 may be funded by line item in the FY 2008-09 Long Bill for programming costs in the Department of Revenue for 2008 legislation.

This fiscal note is revised to reflect amendments adopted in the House Transportation and Energy Committee and to include revised information.

Summary of Legislation

The bill, *as amended by the House Transportation and Energy Committee*, clarifies drunk driving (DUI) laws effective the later of August 6, 2008, unless a referendum petition is filed, or January 1, 2009. It increases mandatory revocations, but expands the ability for some drivers to use the ignition interlock device which prevents a person who has been drinking from starting or operating the vehicle. The bill:

- increases administrative revocation for a first-time 0.08 BAC DUI conviction;
- decreases the period for a first-time DUI criminal conviction;
- increases the period for a third DUI offense by 1 year;
- requires the Colorado Department of Transportation to increase the number of high-visibility drunk driving law enforcement episodes to between 12 and 15 annually;
- requires the Department of Revenue to establish a program to assist certain offenders with the partial payment of an ignition interlock device; and
- increases the driver's license reinstatement fee from \$60 to \$130 beginning September 1, 2008.

State Revenue

State revenue is expected to increase by **\$5,350,491 in FY 2008-09 and \$6,446,375 each year thereafter.**

Fees. The bill will **increase reinstatement fee revenue by \$5,229,000 in FY 2008-09 and \$6,300,000 thereafter.** The first year reflects 10 months of collections of the \$70 increase in driver's license reinstatement fee due to the effective date of September 1, 2008. Each year, approximately 90,000 drivers reinstate their licenses. Half of the fee increase will continue to be credited to the Driver's License Administrative Revocation Account in the Highway Users Tax Fund (HUTF). The remaining revenue is deposited into the newly created First Time Drunk Driving Offender Account in the HUTF to pay a portion of the costs for the device for first time offenders. Year-end moneys in the account are required to remain in the account. 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.

Fines. At a minimum, fine revenue is anticipated **to increase by \$121,491 in FY 2008-09 and \$146,375 thereafter**, also prorated for the first year. Fines are due to the increased number of law enforcement actions required by the bill or for a felony conviction committed during the extended revocation period. The increase in roadside DUI stops will result in about 2,500 new tickets by the Department of Safety annually. The average fine for these tickets is \$58.55, or \$146,375.

The bill also increases the license revocation period for third-time DUI offenders by one year, which is anticipated to result in one additional class 6 felony annually. Aggravated driving with a revoked license is a class 6 felony if the violator is found to be an habitual offender and operates a vehicle while under the influence or while ability impaired and commits other offenses. Per Section 18-1.3-401 (III) (A), C.R.S., the fine penalty for a class 6 felony is \$1,000 to \$100,000. Unless

otherwise provided by law, fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration or imposing a fine, the impact to the cash fund and the General Fund cannot be quantified.

In addition to moneys deposited in the Fines Collection Cash Funds, fine revenue is also to be deposited into the Crime Victim Compensation Fund, Persistent Drunk Driver Cash Fund, and the Colorado Traumatic Brain Injury Trust Fund. This revenue has not been quantified as the court has the discretion to impose fines.

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 \$125,165 in FY 2008-09 and \$12,517 in FY 2009-10 from the General Fund to the Capital Construction Fund (CCF), then appropriates the money to the Corrections Expansion Reserve Fund (CERF). This amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, please see the sections related to the five-year fiscal impact on correctional facilities and state appropriations below.

Based on the December 2007 Legislative Council Staff revenue forecast, there is enough revenue to fully fund the diversion to the 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 2008-09, this amounts to \$83,485 from the HUTF and \$41,680 from capital construction.

State Expenditures

State expenditures are expected to **increase by \$2,739,665 and 4.5 FTE in FY 2008-09 and \$3,191,275 and 5.4 FTE in FY 2009-10**. These costs are shown in Table 1.

Table 1. Expenditures Under HB08-1194		
Departments	FY 2008-09	FY 2009-10
Department of Transportation	\$2,000,000	\$2,000,000
Department of Revenue	\$614,500	\$1,150,000
Department of Corrections	\$125,165	\$41,275
FTE	4.5	5.4
TOTAL	\$2,739,665	\$3,191,275

Department of Transportation. The amended bill directs \$2.0 million to the department from the First Time Drunk Driving Offender Account to fund additional high visibility drunk driving enforcement actions. The bill requires an increase in the number of actions that the department oversees by 5 to 8 annually. It currently conducts 7 annual actions at a cost of \$200,000 to \$250,000 per actions. Adding 5 to 8 new episodes is estimated at \$1.3 to \$2.0 million.

Department of Revenue. For FY 2008-09, expenditures for the department are estimated at \$614,500 and 4.5 FTE, and \$1,150,000 and 5.4 FTE in FY 2009-10.

Implementation costs. Funding is from the First Time Drunk Driving Offender Account for the department to implement the bill first, and then to assist first time offenders with the cost of the device. **Costs for the department to implement the bill are estimated at \$205,353 and 4.5 FTE in FY 2008-09 and \$215,158 and 5.4 FTE in FY 2009-10.** The 3-year average of first time DUI offenders for the last several years is 14,000. It is estimated that an additional 3,990 drivers will use the interlock device. Increased costs are expected to process these drivers, review and record lease agreements, maintain lease agreements, analyze reports regarding tampering with the device, and process the driver's license reinstatements. Additional costs are also expected due to the increase in penalty assessments from the enforcement actions. The bill eliminates probationary hearings for first time DUI drivers who have had their license suspended, and replaces them with hearings for interlock users who have 4 consecutive months without triggering or tampering with the device. The changes in types of hearings results in offsetting costs.

Computer programming. Additionally, 575 hours of computer programming is needed at \$35.03 per hour, or \$20,142 for FY 2008-09. This work will be conducted for the creation, modification, processing, and storing of driver record information. These costs are expected to be funded in the FY 2008-09 Long Bill, so no additional appropriation is required.

Ignition interlock program. **It is estimated that \$409,000 is available to fund this program in FY 2008-09 and \$935,000 in FY 2009-10.** The department is required to assist certain offenders with the partial payment of the device.

Department of Corrections. The bill will increase the department's expenditures by **\$125,165 in FY 2008-09 and \$41,275 in FY 2009-10** as indicated in Table 1. The five-year expenditure impact is estimated at \$261,341. The bill extends the period of time in which a person's license is revoked for a third DUI offense. The bill is expected to create 1 new admission to DOC for aggravated driving with a revoked license which is a Class 6 felony. This Class 6 offender is expected to be incarcerated for 12.8 months. In FY 2006-07, prison admissions included 133 offenders sentenced for a class 6 felony for driving after license revocation. This note assumes one additional admission per year in FY 2009-10, but the construction for one bed occurs in FY 2008-09.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., specifies that no bill can be passed by the General Assembly which results in a net increase in periods of imprisonment in *state correctional* facilities unless it contains an appropriation of money sufficient to cover the increased capital construction costs and operating costs in each of the first five fiscal years of the bill. Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions. *The fiscal note assumes that the new inmates identified in this bill will be placed in state correctional facilities, recognizing that some of these inmates could be placed in private contract prisons.*

If an inmate is placed in a state correctional facility, the additional construction costs are estimated to be \$125,165 per inmate bed. Operating costs are \$78.79 per bed per day or \$28,758 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. If an inmate is placed in a private contract prison, the state incurs no additional capital construction costs; however, the state pays private prisons at a rate of \$52.69 per bed per day and the department incurs other costs of \$5.15 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$21,112 per private prison bed per year.

Prison bed construction is funded through a General Fund transfer to the Capital Construction Fund, which is then transferred to the Corrections Expansion Reserve Fund. These appropriations are not subject to the 6 percent statutory General Fund appropriations limit. Money transferred to the Corrections Expansion Reserve Fund is typically appropriated each year for a variety of capital projects requested by the Department of Corrections; money is not held indefinitely for the construction of a new prison. General Fund appropriations for operating costs are subject to the 6 percent limit.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2008-09	0.0	\$125,165	\$0	\$125,165
FY 2009-10	1.0	\$12,517	\$28,758	\$41,275
FY 2010-11	1.1	\$0	\$31,634	\$31,634
FY 2011-12	1.1	\$0	\$31,634	\$31,634
FY 2012-13	1.1	\$0	\$31,634	\$31,634
Total		\$137,682	\$123,659	\$261,341

Local Government Impact

The bill will increase the number of defendants charged with both misdemeanors and felonies in county jails. If the Department of Corrections does not have space available, convicted felons are incarcerated in county jails until space becomes available in a state correctional facility. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of \$49.69 to house state inmates.

State Appropriations

For FY 2008-09, the bill requires a General Fund Transfer to Capital Construction Fund of \$125,165 and an appropriation of a like amount from that fund to the Corrections Expansion Reserve Fund, plus the other five-year costs identified in Table 1. It also requires the following appropriations:

Department of Transportation

First Time Drunk Driving Offenders Account, HUTF \$2,000,000

Department of Revenue

First Time Drunk Driving Offenders Account, HUTF \$ 614,500 4.5 FTE

Departments Contacted

Corrections	Human Services	Judicial	Local Affairs
Public Defender	Public Safety	Revenue	Transportation