

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number: LLS 10-0609	Date: March 1, 2010
Prime Sponsor(s): Sen. Schultheis	Bill Status: Senate SVMA
Rep. Baumgardner	Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE: CONCERNING THE VERIFICATION OF THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES THROUGH THE FEDERAL ELECTRONIC VERIFICATION PROGRAM.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
Cash Funds		
E-Verify Program Cash Fund	\$10,000	\$20,000
Fines Collection Cash Fund	<5,000	<5,000
State Transfers or Diversions		
Fund Balance Transfer from the Employment Verification Cash Fund to the E-Verify Program Cash Fund	<5,000	
State Expenditures		
General Fund	87,115	171,421
Cash Funds		
Employment Support Cash Fund	(212,447)	(212,447)
Division of Registrations Cash Fund	17,315	3,769
E-Verify Program Cash Fund	10,000	20,000
FTE Position Change	(3.0) FTE	(1.5) FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2010-2011: See State Appropriations Section.		
Local Government Impact: See Local Government Impact Section.		

Summary of Legislation

The bill repeals the current requirements for employers to examine and retain records concerning the legal work status of new employees and creates the Fair and Legal Employment for Coloradans Act. It requires all non-governmental employers in the state to participate in the federal Department of Homeland Security/Social Security Administration's E-Verify Program for purposes of verifying work eligibility status of all new employees by deadlines specific to the size of the employer. Employers who employ only persons who hold H-2A visas (temporary agricultural workers) are exempt from the program.

The Attorney General and county or city attorneys are required to investigate complaints of employer non-compliance, and when a complaint has merit, to notify the United States Immigration and Customs Enforcement and local law enforcement of the substance of the complaint. The appropriate county or city attorney is required to bring action against a non-compliant employer. Employers are subject to financial penalties up to \$20,000 for failure to participate in the E-Verify Program. An employer who hires an unauthorized alien is subject to penalties including a probationary period, suspension, and revocation of business licenses issued by any department, division, board, or commission of the state, as well as by cities and counties. In assessing license suspensions, courts are prohibited from considering the potential financial hardship on the employer.

It shall be a discriminatory or unfair employment practice for an employer to refuse to hire, or to discharge an employee who is legally in the country while hiring or retaining an employee who is not legally in the country. Any person may file a signed, sworn complaint with the Attorney General alleging that an employer is not participating in the E-Verify program, but anyone who knowingly files a false or frivolous complaint commits a class 3 misdemeanor.

Notification to employers of the program is to be included in the Department of Labor and Employment's quarterly electronic bulletin to employers. The Secretary of State's website will also post this information and link to the E-Verify website.

The E-Verify Program Cash Fund is created for fines collected for non-participation. These moneys are for the Department of Law to administer and enforce the bill and to reimburse county or city attorneys for their costs. This bill repeals the Employment Verification Cash Fund and any unencumbered and unexpended moneys are transferred to the new fund.

State Revenue

State cash funds revenue is expected to increase by \$10,000 in FY 2010-11 and \$20,000 in FY 2011-12 to the E-Verify Program Cash Fund. SB10-033 includes the following deadlines and penalties by size of employer for E-Verify Program participation:

Table 1. E-Verify Program Participation Deadlines for Employers		
Employer Size	Participation No Later than:	Penalty for Non Participation
200 or more employees	January 1, 2011	\$5,000 to \$20,000
50 to 199 employees	July 1, 2011	\$3,000 to \$10,000
Less than 50 employees	July 1, 2013	\$1,000 to \$3,000

Cash funds revenue will be generated from penalties for failure to participate in the E-Verify Program or for hiring an unauthorized alien. For the second half of FY 2010-11, only employers with 200 or more employees will be subject to the requirements. After receiving notification from the Attorney General that they are not in compliance, employers are given 90 days to comply before a penalty is levied. This lag will limit penalties collected in FY 2010-11, so a minimal amount of fine revenue is assumed (\$10,000). For FY 2011-12, the amount is expected to increase to \$20,000.

The bill makes the filing of a false or frivolous complaint a class 3 misdemeanor. According to Section 18-1.3-501, C.R.S., the penalty for a class 3 misdemeanor is 0 to 6 months imprisonment in a county jail, a fine of \$50 to \$750, or both. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined.

State Transfers or Diversions

Currently the Employment Verification Cash Fund has no money to transfer to the E-Verify Program Cash Fund. The fiscal note assumes a small amount (<\$5,000) in penalties will be available by the end of the fiscal year.

State Expenditures

The bill drives both increases and decreases in state expenditures, as shown in Table 2. *Overall, it reduces costs by \$98,017 and 3.0 FTE in FY 2010-11 and \$17,257 and 1.5 FTE in FY 2011-12.* The first-year impact includes a decrease in cash funds expenditures of \$185,132 and 4.0 FTE and an increase in General Fund expenditures of \$87,115 and 1.0 FTE.

Department of Law - Attorney General — will require additional legal, investigative and administrative staff to track compliance, investigate complaints of violations, and coordinate cases with city and county attorneys. The department will maintain copies of all court orders and make those available on the department web site. General Fund expenditures will be \$87,115 and 1.0 FTE for FY 2010-11 and \$171,421 and 2.5 FTE for FY 2011-12. The department will reimburse county and city attorneys for their enforcement expenses. For purposes of the fiscal note, reimbursements are assumed to be \$10,000 for FY 2010-11 and \$20,000 for FY 2011-12 from the E-Verify Program Cash Fund.

Department of Labor and Employment — currently investigates complaints of hiring unauthorized aliens and audits employers for compliance. This function will be eliminated reducing cash funds expenditures by \$212,447 and 4.0 FTE for both FY 2010-11 and FY 2011-12 from the Employment Support Cash Fund.

Department of Regulatory Agencies — will need to modify its computer systems to enable the department to suspend business licences upon request of the courts. Legal services will be required to assist programs with rulemaking related to license suspension and revocation. This requires a \$17,315 cash funds expenditure from the Division of Registrations Cash Fund for FY 2010-11 and \$3,769 for FY 2011-12.

Judicial Branch - Trial Courts — will now try lawsuits in state courts to enforce federal immigration laws related to employment. Since the 3 new causes of action created by this bill have the potential for as many as 100,000 violators against whom a complaint could be filed, the fiscal impact on the branch is conditional on the resulting increase in cases. Should such an increase require additional appropriations, the fiscal note assumes that the annual budget process will be used.

Table 2. Expenditures Under SB10-033		
Cost Components	FY 2009-10	FY 2010-11
Department of Law		
Personal Services	\$65,708	\$153,954
<i>FTE</i>	1.0	2.5
Contract Services	9,600	4,800
Operating Expenses and Capital Outlay	11,807	12,667
<i>Department of Law Subtotal</i>	<i>87,115</i>	<i>171,421</i>
Department of Labor and Employment		
Personal Services	(208,647)	(208,647)
<i>FTE</i>	-4.0	-4.0
Operating Expenses	(3,800)	(3,800)
<i>Dept. of Labor and Employment Subtotal</i>	<i>(212,447)</i>	<i>(212,447)</i>
Department of Regulatory Agencies		
Computer Programming	9,400	
Legal Services	7,915	3,769
<i>Dept. of Regulatory Agencies Subtotal</i>	<i>17,315</i>	<i>3,769</i>
Reimbursements to Local Government Attorneys	10,000	20,000
Cash Fund Total	(\$185,132)	(\$188,678)
General Fund Total	\$87,115	\$171,421
TOTAL	(\$98,017)	(\$17,257)
<i>FTE</i>	<i>(3.0)</i>	<i>(1.5)</i>

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

Table 3. Expenditures Not Included Under SB10-033*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$21,330)	(\$10,665)
Supplemental Employee Retirement Payments	(5,315)	(2,475)
TOTAL	(\$26,645)	(\$13,140)

**More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>*

Local Government Impact

The penalty for a class 3 misdemeanor is 0 to 6 months imprisonment in a county jail, a fine of \$50 to \$750, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. 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 a daily rate of \$50.44 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

State Appropriations

For FY 2010-11, the following appropriations are required:

- ▶ Department of Law - \$105,030 Total
 - General Fund - \$87,115 and 1.0 FTE
 - E-Verify Program Cash Fund - \$10,000
 - Division of Registrations Cash Fund - \$7,915 (reappropriated funds)
- ▶ Department of Regulatory Agencies – Division of Registrations Cash Fund - \$17,315
- ▶ Department of Labor and Employment - Employment Support Fund - **Reduction** of \$212,447 and 4.0 FTE

Departments Contacted

Labor and Employment
Judicial

Regulatory Agencies
Law

State