



Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 11-0600
Prime Sponsor(s): Rep. Balmer

Date: February 9, 2011
Bill Status: House Local Government
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TITLE: CONCERNING MEASURES TO STRENGTHEN THE ENFORCEMENT OF LAWS AGAINST ILLEGAL ALIENS.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$15,000
State Transfers or Diversions		
Transfer from the General Fund to the Capital Construction Fund	(\$87,131)	(\$88,873)
State Expenditures		
General Fund		\$55,990
Cash Funds - Capital Construction Fund appropriation to the Corrections Expansion Reserve Fund	\$87,131	\$88,873
FTE Position Change		0.5 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature except that Section 2 takes effect 30 days after the U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency's Secure Communities Initiative is made available to each local government in the state; Section 3 takes effect July 1, 2011.		
Appropriation Summary for FY 2011-2012: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This bill prohibits local governments that do not participate in the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) Agency's Secure Communities Initiative (SCI) from receiving local government grants, severance taxes, local government mineral impact funds, and cigarette tax revenues. Funds that are forfeited are to be redirected proportionately to all eligible local governments. The director of the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) is tasked with implementing the SCI in consultation with law enforcement associations.

The bill also includes provisions that expand the laws on human smuggling. Transporting a person in violation of immigration laws in exchange for money or any other thing of value is currently a class 3 felony. Under HB11-1140, no evidence of an exchange is required for prosecution. A person who knows or recklessly disregards the fact that an alien is unlawfully present, and transports or hides the alien, commits a class 1 misdemeanor and is subject to at least a fine of \$1,000. A violation that involves 10 or more unauthorized aliens is a class 6 felony; the person is subject to at least a fine \$1,000 per alien and may also be subject to 1 to 2 years in prison and a mandatory period of parole of 1 year. The means of transportation used is subject to mandatory vehicle immobilization or impoundment. The bill provides an exception for child protective services workers and medical personnel.

Background

Former Governor Ritter signed Colorado onto the SCI on January 4, 2011. The SCI requires that everyone arrested and booked have their fingerprints checked against both FBI criminal records and Immigration and Customs Enforcement (ICE) immigration records. If there is a match with ICE records, ICE and the agency that processed the arrest will evaluate what enforcement action is needed and whether ICE has the resources to prosecute the case. Priority is given to individuals who pose the greatest threat to public safety. Denver, Arapahoe, and El Paso counties will serve as pilots to test the electronic system. Beginning in calendar year 2013, the FBI database will have sufficient capacity to handle records matching nationwide.

State Revenue

This bill is expected to increase revenue to the Fines Collection Cash Fund from fines paid for violations of human smuggling laws, by less than \$5,000 in FY 2011-12 and less than \$15,000 in FY 2012-13.

State law specifies that the fine penalty for a class 6 felony is \$1,000 to \$100,000. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000. Unless otherwise provided by law, the 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 state General Fund at the end of each fiscal year. The fiscal note assumes that the bill will result in fines of less than \$5,000 for class 1 misdemeanors in FY 2011-12. For FY 2012-13, the fiscal note assumes less than \$5,000 for class 1 misdemeanors and \$10,000 for 1 class 6 felony.

State Transfers or Diversions

Pursuant to the requirements of state law, this bill transfers \$87,131 from the General Fund to the Capital Construction Fund in FY 2011-12 and \$88,873 in FY 2012-13, then appropriates the money to the Corrections Expansion Reserve Fund. Thus, this amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, see the section related to the five-year impact on correctional facilities.

State Expenditures

This bill is expected to increase expenditures by \$87,131 in FY 2011-12 and \$88,873 in FY 2012-13 from the Corrections Expansion Reserve Fund. There is also a General Fund increase of \$28,011 in FY 2012-13 and a conditional General Fund increase of \$27,979 and 0.5 FTE in FY 2012-13.

Five-Year Fiscal Impact on Correctional Facilities. The fiscal note assumes that 1 person will be convicted of a class 6 felony under this bill annually beginning in FY 2012-13. 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, 17-1-104.9, and 17-1-105.5, 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 allocated between state correctional facilities and private contract prisons according to historical patterns.*

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 \$88.60 per bed per day or \$32,339 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 a rate of \$61.19 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$22,334 per private prison bed per year. Departmental data indicates that 33 percent of felonies are housed in private prisons, and both the construction and operating costs presented in Table 1 have been prorated accordingly.

Table 1. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2011-12		\$87,131		\$87,131
FY 2012-13	1.00	88,873	28,011	116,884
FY 2011-12	1.02		28,571	28,571
FY 2012-13	1.02		28,571	28,571
FY 2013-14	1.02		28,571	28,571
Total	4.06	\$176,004	\$113,724	\$289,728

Department of Local Government (DOLA). DOLA will have an increase in General Fund expenditures beginning in FY 2012-13 of \$10,219 and 0.5 FTE, conditional upon local governments not complying with the bill.

During the beginning of FY 2012-13, if the DPS reports that all local governments are in compliance with the SCI, the DOLA will not need to proceed with implementing the sanctions in the bill. If DPS reports that some local governments are not in compliance, the DOLA will develop rules for discontinuing those governments' shares in state revenues and developing formulas for redistributing the funds. This requires legal services for rule development, computer programming costs for system changes, and professional staff to implement the redistributions. In addition, DOLA may need to execute a memorandum of understanding with the DPS to share information. These costs are shown in Table 2.

Department of Revenue (DOR). DOR will have an increase in General Fund expenditures in FY 2012-13 only of \$17,760, conditional upon local governments not complying with the bill.

Like DOLA, if all local governments are in compliance with the SCI, the DOR will not need to proceed with implementing the sanctions in the bill. If the DOR does need to move forward with implementation, it will require computer programming services to make changes to its revenue accounting system. This is a General Fund conditional impact of \$17,760 in FY 2012-13 and is shown in Table 2.

Cost Components	FY 2011-12	FY 2012-13
Personal Services (DOLA)		\$8,749
FTE (DOLA)		0.5
Computer Programming (DOR)		17,760
Legal Services (DOLA)		1,470
TOTAL		\$27,979

Department of Public Safety. The DPS is expected to have a minimal increase in workload as a result of this bill. DPS troopers currently have contact with the majority of persons that may be subject to the increased human smuggling penalties. DPS currently collects information on cities participating in the SCI so will have no increase in workload for that section of the bill.

Judicial Branch. The Judicial Branch will likely see an increase in workload from more criminal cases brought for human smuggling violations. This is expected to add cases to trial court. Persons convicted of the Class 6 felony for human smuggling who serve jail time are required to spend 1 year on probation. Increase in caseloads for both trial courts and probation are expected to be minimal and addressed within current appropriations.

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 HB11-1140*		
Cost Components	FY 2011-12	FY 2012-13
Employee Insurance (Health, Life, Dental, and Short-term Disability)		\$1,075
Supplemental Employee Retirement Payments		396
TOTAL		\$1,471

**More information is available at: <http://colorado.gov/fiscalnotes>*

Local Government Impact

Local governments are subject to sanctions for noncompliance with the SCI resulting in loss of revenue. Local governments that are in compliance stand to receive increased revenues from redistribution of funds. Additional costs may be incurred for local governments to immobilize or impound vehicles used for human trafficking.

The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, 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 2011-12, the Department of Corrections requires an appropriation of \$87,131 from the Corrections Expansion Reserve Fund, plus the other 5-year costs detailed in Table 1.

Departments Contacted

Public Safety	Local Affairs	Natural Resources
Labor and Employment	Revenue	Corrections
Judicial		