

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

**Drafting Number:** LLS 11-1042  
**Prime Sponsor(s):** Sen. Lambert  
 Rep. Joshi

**Date:** April 29, 2011  
**Bill Status:** Senate SVMA  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**TITLE:** SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING A REQUIREMENT THAT EMPLOYERS VERIFY THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES THROUGH THE FEDERAL ELECTRONIC VERIFICATION PROGRAM.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016
<b>State Revenue</b>				
Cash Funds				
E-Verify Program Cash Fund	<\$5,000	\$10,000	\$20,000	\$30,000
Fines Collection Cash Fund	<5,000	<5,000	<5,000	<10,000
<b>State Expenditures</b>				
General Fund	\$91,022	\$408,142	\$386,906	\$586,067
Cash Funds				
Division of Registrations Cash Fund	17,118	3,675		
E-Verify Program Cash Fund	5,000	10,000	20,000	30,000
<b>FTE Position Change</b>	1.0 FTE	5.0 FTE	5.0 FTE	7.0 FTE
<b>Effective Date:</b> Upon approval of the voters at the 2012 General Election.				
<b>Appropriation Summary for FY 2011-2012:</b> None.				
<b>Local Government Impact:</b> See Local Government Impact Section.				

**Summary of Legislation**

The resolution puts a measure on the 2012 statewide ballot that proposes a new section 16 in article XVIII of the state constitution to be known as the "Fair and Legal Employment for Coloradans Act". The resolution 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 is granted a new type of civil enforcement authority and with county or city attorneys is required to investigate complaints of employer non-compliance. When a complaint has merit, the Attorney General must 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. The hearings for these cases are required to take place within 90 days of the action being filed. 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.

An employer shall not be held civilly liable for hiring an unauthorized individual if the employer participates in the E-Verify Program and the program indicated the individual was eligible to work. In the opposite situation, an employer who refuses to hire a person based on nonconfirmation of work eligibility through E-Verify is not civilly liable for failing to hire a legal worker.

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 department must also post a notice on its web site that explains the requirements of the act.

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 resolution and to reimburse county or city attorneys for their costs.

### **State Revenue**

State cash funds revenue is expected to increase by less than \$5,000 in FY 2012-13, \$10,000 in FY 2013-14, \$20,000 in FY 2014-15 and \$30,000 in FY 2015-16 to the E-Verify Program Cash Fund. The resolution also includes the following deadlines and penalties by size of employer for E-Verify Program participation:

<b>Table 1. E-Verify Program Participation Deadlines for Employers</b>		
<b>Employer Size</b>	<b>Participation No Later than:</b>	<b>Penalty for Non Participation</b>
200 or more employees	January 1, 2013	\$5,000 to \$20,000
50 to 199 employees	July 1, 2013	\$3,000 to \$10,000
Less than 50 employees	July 1, 2015	\$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 2012-13, 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 2012-13, so a minimal amount of fine revenue is assumed (<\$5,000) with increases thereafter.

The resolution 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 Expenditures**

**The resolution has a conditional fiscal impact of \$113,140 and 1.0 FTE in FY 2012-13, \$421,817 and 5.0 FTE in FY 2013-14, \$406,906 and 5.0 FTE in FY 2014-15 and \$616,067 and 7.0 FTE in FY 2015-16.** The impact is conditioned upon the passage of the ballot measure and is a combination of General Fund and cash funds. Table 2 shows the expenditures by agency and funding source.

<b>Table 2. Expenditures Under SCR 11-004 by Agency and Funding Source</b>				
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Department of Law (General Fund)	\$91,022	\$408,142	\$386,906	\$586,067
FTE	1.0	5.0	5.0	7.0
Dept. of Regulatory Agencies (Cash Fund)	17,118	3,675		
Reimbursements to Local Government Attorneys (Cash Fund)	5,000	10,000	20,000	30,000
<b>Cash Fund Total</b>	<b>\$22,118</b>	<b>\$13,675</b>	<b>\$20,000</b>	<b>\$30,000</b>
<b>General Fund Total</b>	<b>\$91,022</b>	<b>\$408,142</b>	<b>\$386,906</b>	<b>\$586,067</b>
<b>TOTAL CHANGE</b>	<b>\$113,140</b>	<b>\$421,817</b>	<b>\$406,906</b>	<b>\$616,067</b>
<i>FTE</i>	<i>1.0</i>	<i>5.0</i>	<i>5.0</i>	<i>7.0</i>

**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. This will require statewide travel to investigate complaints. The department will maintain copies of all court orders and make those available on the department website. Because of the graduated compliance schedule, few employers will be required to use the E-Verify Program in FY 2012-13. All employers are not required to comply until July 1, 2015. As such, the increase in staffing is staggered over four years. These costs are detailed in Table 3.

<b>Table 3. Department of Law General Fund Expenditures Under SCR 11-004</b>				
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$71,450	\$357,246	\$357,246	\$513,330
FTE	1.0	5.0	5.0	7.0
Operating Expenses and Capital Outlay	13,962	28,456	7,220	27,857
Travel	5,610	22,440	22,440	44,880
<b>TOTAL</b>	<b>\$91,022</b>	<b>\$408,142</b>	<b>\$386,906</b>	<b>\$586,067</b>

The department will reimburse county and city attorneys for their enforcement expenses. For purposes of the fiscal note, reimbursements are assumed to be \$5,000 for FY 2012-13, \$10,000 for FY 2013-14, \$20,000 for FY 2014-15, and \$30,000 for FY 2015-16 from the E-Verify Program 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 \$17,118 cash funds expenditure from the Division of Registrations Cash Fund for FY 2012-13 and \$3,675 for FY 2013-14.

*Judicial Branch - Trial Courts* — will now try lawsuits in state courts to enforce federal immigration laws related to employment. Additional civil cases are expected to be filed in district court. Because hearings are required to take place within 90 days of the filing, the courts may need additional staff to meet the expedited deadline. Should such an increase require additional appropriations, the fiscal note assumes that the annual budget process will be used.

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this resolution are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this resolution. The centrally appropriated costs subject to this policy are summarized in Table 4.

<b>Table 4. Expenditures Not Included Under SCR 11-004*</b>				
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Employee Insurance	\$7,100	\$35,500	\$35,500	\$49,700
Supplemental Employee Retirement Payments	3,233	19,047	19,047	31,508
<b>TOTAL</b>	<b>\$10,333</b>	<b>\$54,547</b>	<b>\$54,547</b>	<b>\$81,208</b>

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

**Local Government Impact**

This resolution creates a new class 3 misdemeanor. 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.

The resolution allows for the Department of Law to reimburse local government attorneys for their enforcement expenses. This is estimated at \$5,000 in FY 2012-13, \$10,000 in FY 2013-14, \$20,000 in FY 2014-15 and \$30,000 in FY 2015-16. Reimbursement levels are dependent on the number of violations and the amount of fines paid.

**Election Expenditure Impacts (For Informational Purposes Only)**

The resolution refers a measure to the voters at the November 2012 general election. This measure will be published in newspapers and an analysis of the measure will be included in the Blue Book mailed to all registered voter households prior to the election. Under current law, costs for these functions will be paid through a General Fund line item in the Long Appropriations Bill. Table 5 below identifies the anticipated costs for the 2012 Blue Book.

<b>Table 5. Cost to Produce and Distribute the 2012 Blue Book to All Registered Voter Households</b>	
Printing	\$400,000
Postage	\$450,000
Translation	\$20,000
Newspaper Publication (English & Spanish)	\$500,000
<b>Total Cost (14 issues)</b>	<b>\$1,370,000</b>
<b>Average Cost per Issue</b>	<b>\$97,857</b>

**Departments Contacted**

Labor and Employment  
Judicial

Regulatory Agencies  
Law