



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

**Drafting Number:** LLS 06B-2062  
**Prime Sponsor(s):** Rep. Penry  
 Sen. Mitchell

**Date:** July 5, 2006  
**Bill Status:** House SVMA  
**Fiscal Analyst:** Chris Ward (303-866-5834)

**TITLE:** CONCERNING MEASURES TO DISCOURAGE ILLEGAL IMMIGRATION.

<b>Fiscal Impact Summary</b>	<b>FY 2006/07</b>	<b>FY 2007/08</b>
<b>State Revenues</b>		
Cash Funds -		
Employment Support Fund	\$150,000	\$360,000
Fines Collection Cash Fund	less than 5,000	less than 5,000
<b>State Expenditures</b>		
General Fund	\$558,985	\$8,232,273
Cash Funds -		
Employment Support Fund	159,296	290,821
Division of Registrations Cash Fund	7,500	
<b>FTE Position Change</b>	8.3 FTE	11.0 FTE
<b>Effective Date:</b> Sections 6, 8, and 9 take effect upon signature of the Governor; Section 7 takes effect only if voters approve a ballot measure that restricts state and local governments to providing public benefits only to persons lawfully present in the United States; all other sections take effect July 1, 2007		
<b>Appropriation Summary for FY 2006/07:</b> See State Appropriations section on Page 5		
<b>Local Government Impact:</b> Increase costs for local governments		

**Summary of Legislation**

The bill makes several changes to state law regarding illegal immigration.

Section 1 of the bill requires employers in Colorado to apply to participate in the federal basic employment verification pilot program. Employers must submit records concerning the employer's application to and participation in the program to Department of Labor and Employment upon request. The bill also establishes penalties for failing to submit records or submitting false records.

Section 2 makes it an extraordinary aggravating circumstance for purposes of felony sentencing if the defendant is not legally in the country. Section 3 prohibits a court from considering the possibility that a defendant may be deported as a mitigating circumstance.

Section 4 directs the Colorado State Patrol to negotiate with the federal government for the training of peace officers to enforce federal immigration and customs laws.

Section 5 requires county sheriffs to determine the citizenship or immigration status of any person incarcerated in a county jail for a felony or an alcohol- or drug-related driving offense. The sheriff is required to notify the federal Department of Homeland Security of any person determined not to be lawfully present in the United States.

Section 6 directs the Department of Regulatory Agencies to prepare an analysis and evaluation of the regulation of people who provide immigration assistance services but are not licensed to practice law in Colorado.

Section 7 is contingent on voters approving a ballot measure that restricts state and local governments to providing public benefits only to persons lawfully present in the United States. If such a measure is approved by voters, an applicant for public benefits would be required to submit an affidavit confirming that he or she is in the country legally and the person's eligibility for benefits would have to be confirmed through the federal Systematic Alien Verification of Entitlement (SAVE) program operated by the federal Department of Homeland Security. A person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit would be considered to have committed 2<sup>nd</sup> degree perjury, a class 1 misdemeanor. State and local agencies would have to report annually to the legislature on their compliance.

### **State Revenues**

Section 1 of the bill establishes penalties for failing to submit records or submitting false records related to the federal Basic Employment Verification Pilot Program, which is estimated to generate **\$150,000 in FY 2006-07** in new fine revenue. Beginning in FY 2007-08, the bill is expected to generate an estimated \$360,000 in fine revenue per year. Further information on this estimate is available in the Legislative Council Staff offices. However, it should be noted that these estimates could vary widely due to the lack of data regarding the potential number of complaints and the rate of successful collections. All fine revenue will be credited to the Employment Support Fund in the Department of Labor and Employment.

Section 7 establishes a new class 1 misdemeanor, which could also generate additional fine revenue. Per Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is six to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration or imposing a fine, the revenue impact to the Fines Collection Cash Fund cannot be determined. However, a minimal amount of fine revenue (< \$5,000 per year) is assumed under the bill.

### **State Expenditures**

The bill will increase state expenditures by an estimated **\$725,771 in FY 2006-07**. The costs are identified by bill section below.

**Section 1 will increase state expenditures by an estimated \$159,286 and 2.3 FTE in FY 2006-07.** These costs relate to efforts by the Division of Labor in the Department of Labor and Employment to establish program compliance measures, notify and educate employers, determine methods of investigation, create program policies, and implement the website requirements of the bill. Costs for FY 2007-08 are estimated to be \$290,821 for 5.0 FTE.

**Section 2 will increase state expenditures by an estimated \$559,000 and 6.0 FTE in FY 2006-07 and \$8.2 million and 6.0 FTE in FY 2007-08.** The bill establishes an extraordinary aggravating circumstance for purposes of sentencing when a defendant commits a felony while in the country illegally, which will likely increase the length of stay for such defendants who are sentenced to state prison. The presence of an aggravating circumstance requires the court to sentence a defendant to a term of between the midpoint of the presumptive range and twice the maximum term in the presumptive range. The estimated cost includes prison construction and operating costs in the Department of Corrections for an increase in the length of stay, as well as an increase in staffing for the Public Defender's Office in the Judicial Branch.

**The fiscal impact of section 4 is conditional** and would likely be addressed through the regular budget process. Any costs would depend on the specific terms of an agreement between the Colorado State Patrol in the Department of Public Safety and the U.S. Immigration and Customs Enforcement Agency (ICE) in the Department of Homeland Security for the training of peace officers to enforce federal immigration and customs laws. The most significant cost components would include:

- travel and lodging expenses for out-of-state training for state troopers (training would be provided at no cost to the state) and overtime expenses to cover shifts for officers being trained;
- incarceration of persons who not have otherwise been detained for a violation of state law; and
- computer and other systems for immigration enforcement communication activities.

**Section 6 will increase state expenditures by \$7,500 in FY 2006-07.** The bill directs the Department of Regulatory Agencies to prepare an analysis and evaluation of the regulation of immigration assistance services providers who are not licensed to practice law in Colorado. The department prepares several such "sunrise" analyses each year, but requiring that a report be submitted by January 1, 2007, will cause this project to overlap existing projects and will require an 150 in additional contractor hours. Contractors are paid at a rate of \$50 per hour.

**The fiscal impact of section 7 is conditional** based on voters approving a restriction on the provision of state and local public services and would likely be addressed through the regular budget process. If such a restriction is approved, the bill establishes requirements for state agencies and political subdivisions to enforce the restriction. Each state agency will be required to subscribe to the federal SAVE Program. The fiscal note assumes that each department's human resources office

will have one subscription to provide immigration and citizenship verification for the entire department. SAVE Program searches range in cost between \$0.20 and \$0.26 per search, depending computer access method. A minimum monthly search charge of \$25 is billed to users whose user volume does not exceed \$25.

Only those applicants who have executed an affidavit claiming lawful presence will require a search. The fiscal note assumes that if an applicant is willing to execute an affidavit, he or she is likely to be in this country lawfully. Further, searches will not be required for lawful or unlawful aliens applying for services not prohibited by this legislation. As such, the fiscal note estimates a minimum annual SAVE Program cost of \$300 per year (\$25 X 12 months) for each state agency. It is also anticipated that the maximum charge will not be considerably higher than the \$300 minimum.

The bill also creates additional acts that fall within the definition of 2<sup>nd</sup> degree perjury, which will create additional work for state trial courts. It estimated that approximately 200 new cases will be created annually by this legislation. However, since Class 1 misdemeanors are typically take very little time to resolve, it is estimated that the increased caseload can 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 \$87,194 per inmate bed. Operating costs are \$73.46 per bed per day, or \$26,813 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 sentence.

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 capital-related appropriations are not subject to the 6 percent statutory General Fund appropriations limit, but 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 \$50.28 per bed per day or \$18,352 per bed per year. Including administration and overhead, the state's total cost to incarcerate in a private contract prison is \$54.37 per bed per day, or \$19,845 per bed per year.

<b>Table 1. Five-Year Fiscal Impact on Correctional Facilities</b>				
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
<b>FY 2006-07</b>	0	\$217,985	\$0	\$217,985
<b>FY 2007-08</b>	2.5	\$7,838,741	\$67,033	\$7,905,774
<b>FY 2008-09</b>	92.4	\$24,780,535	\$2,477,521	\$27,258,056
<b>FY 2009-10</b>	376.6	\$34,973,513	\$10,097,776	\$45,071,289
<b>FY 2010-11</b>	777.7	\$35,078,146	\$20,852,470	\$55,930,616
<b>Total</b>		\$102,888,920	\$33,494,800	\$136,383,720

**Other State Impacts**

Based on the June 2006 Legislative Council Staff revenue forecast, there is enough revenue to fund a partial diversion to the Highway Users Tax Fund (HUTF) under the provisions of SB 97-1 beginning in FY 2006-07. 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 by an equal amount. In FY 2006-07, this amounts to \$217,985.

**Local Government Impact**

Section 5 requires law enforcement agencies to determine the immigration status of any person incarcerated in a county jail for a felony or an alcohol- or drug-related driving offense before the person may post bail. Determining a defendant's immigration status may increase the amount of time that defendants are required to remain in jail, which would increase local costs. In addition, the effort required to determine a person's immigration status may affect local law enforcement agency costs, depending on the number of individuals who cannot provide the documentation required by the bill.

Under section 4, which allows for state and local law enforcement agencies to be authorized to enforce federal immigration law, the same factors that may impact state expenditures may also impact local sheriff and police departments. However, the overall impact at the local level is likely to be even greater than that at the state level due to fewer law enforcement personnel and small law enforcement budgets. Additionally, small municipal police departments employ very few officers. If one or more officers are attending out-of-state training, this may cause a disruption in public safety services.

Section 7 would affect local governments similar to the impacts estimated for the state. In addition, each local government that administers state benefits shall provide a report to the House and Senate State, Veterans, and Military Affairs committees outlining compliance with the restriction on providing state services to legal residents.

### **State Appropriations**

For FY 2006-07, the Department of Corrections will require a \$217,985 General Fund transfer to the Capital Construction Fund, plus the five-year costs identified in Table 1 above. The following appropriations would also be required for FY 2006-07:

- \$159,286 from the Employment Support Fund and 2.3 FTE to the Department of Labor and Employment, Division of Labor;
- \$340,983 General Fund and 6.0 FTE to the Judicial Branch - State Public Defender; and
- \$7,500 Division of Registrations Cash Fund to the Department of Regulatory Agencies.

### **Departments Contacted**

Corrections	Education
Governor	Health Care Policy & Financing
Higher Education	Human Services
Judicial	Labor & Employment
Law	Local Affairs
Military Affairs	Natural Resources
Personnel & Administration	Public Health & Environment
Public Safety	Regulatory Agencies
Revenue	State
Transportation	Treasury