


Colorado Legislative Council Staff Fiscal Note
FINAL
FISCAL NOTE

Drafting Number: LLS 11-0719
Prime Sponsor(s): Sen. Harvey

Date: May 16, 2011
Bill Status: Postponed Indefinitely
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TITLE: CONCERNING THE VERIFICATION OF THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES THROUGH THE FEDERAL ELECTRONIC VERIFICATION PROGRAM.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015
State Revenue				
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
State Transfers or Diversions				
Fund Balance Transfer from the Employment Verification Cash Fund to the E-Verify Program Cash Fund	(<20,000)			
State Expenditures				
General Fund	\$91,022	\$408,142	\$386,906	\$586,067
Cash Funds				
Employment Support Cash Fund	(212,447)	(212,447)	(212,447)	(212,447)
Division of Registrations Cash Fund	17,118	3,675		
E-Verify Program Cash Fund	5,000	10,000	20,000	30,000
FTE Position Change	(3.0) FTE	1.0 FTE	1.0 FTE	3.0 FTE
Effective Date: The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on February 16, 2011.				
Appropriation Summary for FY 2011-2012: 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 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. 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. 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 Secretary of State's website will also post this information and a 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 less than \$5,000 in FY 2011-12, \$10,000 in FY 2012-13, \$20,000 in FY 2013-14 and \$30,000 in FY 2014-15 to the E-Verify Program Cash Fund. SB11-129 includes the following deadlines and penalties by size of employer for E-Verify Program participation:

Employer Size	Participation No Later than:	Penalty for Non Participation
200 or more employees	January 1, 2012	\$5,000 to \$20,000
50 to 199 employees	July 1, 2012	\$3,000 to \$10,000
Less than 50 employees	July 1, 2014	\$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 2011-12, 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 2011-12, so a minimal amount of fine revenue is assumed (<\$5,000) with increases thereafter.

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 \$17,377 to transfer to the E-Verify Program Cash Fund. The fiscal note assumes <\$20,000 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 \$99,307 and 3.0 FTE in FY 2011-12. In FY 2012-13 forward, costs increase.*** The first-year impact includes a decrease in cash funds expenditures of \$190,329 and 4.0 FTE, and an increase in General Fund expenditures of \$91,022 and 1.0 FTE.

Table 2. Expenditures Under SB11-129 by Agency				
Cost Components	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Department of Law (General Fund)	\$91,022	\$408,142	\$386,906	\$586,067
FTE	1.0	5.0	5.0	7.0
Dept. of Labor and Employment (Cash Fund)	(212,447)	(212,447)	(212,447)	(212,447)
FTE	(4.0)	(4.0)	(4.0)	(4.0)
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
Cash Fund Total	(\$190,329)	(\$198,772)	(\$192,447)	(\$182,447)
General Fund Total	\$91,022	\$408,142	\$386,906	\$586,067
TOTAL CHANGE	(\$99,307)	\$209,370	\$194,459	\$403,620
<i>FTE</i>	<i>(3.0)</i>	<i>1.0</i>	<i>1.0</i>	<i>3.0</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 2011-12. All employers are not required to comply until July 1, 2014. As such, the increase in staffing is staggered over four years. General Fund expenditures will be \$91,022 and 1.0 FTE for FY 2011-12, \$408,142 and 5.0 FTE for FY 2012-13, \$386,906 and 5.0 FTE for FY 2013-14, and when fully staffed in FY 2014-15, \$586,067 and 7.0 FTE. These costs are detailed in Table 3.

Table 3. Department of Law General Fund Expenditures Under SB11-129				
Cost Components	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
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
TOTAL	\$91,022	\$408,142	\$386,906	\$586,067

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 2011-12, \$10,000 for FY 2012-13, \$20,000 for FY 2013-14, and \$30,000 for FY 2014-15 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 2011-12 and FY 2012-13 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 \$17,118 cash funds expenditure from the Division of Registrations Cash Fund for FY 2011-12 and \$3,675 for FY 2012-13.

Judicial Branch - Trial Courts — will now try lawsuits in state courts to enforce federal immigration laws related to employment. Since the three 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.

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 4.

Table 4. Expenditures Not Included Under SB11-129*				
Cost Components	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Employee Insurance	\$7,100	\$35,500	\$35,500	\$49,700
Supplemental Employee Retirement Payments	3,233	19,047	19,047	31,508
TOTAL	\$10,333	\$54,547	\$54,547	\$81,208

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

Local Government Impact

This bill 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 bill allows for the Department of Law to reimburse local government attorneys for their enforcement expenses. This is estimated at \$5,000 in FY 2011-12, \$10,000 in FY 2012-13, \$20,000 in FY 2013-14 and \$30,000 in FY 2014-15. Reimbursement levels are dependent on the number of violations and the amount of fines paid.

State Appropriations

For FY 2011-12, the following appropriations are required:

- ▶ Department of Law - \$103,740 Total
 - General Fund - \$91,022 and 1.0 FTE
 - E-Verify Program Cash Fund - \$5,000
 - Division of Registrations Cash Fund - \$7,718 (reappropriated funds)
- ▶ Department of Regulatory Agencies – Division of Registrations Cash Fund - \$17,118
- ▶ 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