

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 11-0336  
**Prime Sponsor(s):** Sen. Morse  
 Rep. Waller

**Date:** July 15, 2011  
**Bill Status:** Deemed Lost  
**Fiscal Analyst:** Kirk Mlinek (303-866-4782)

**TITLE:** CONCERNING THE ESTABLISHMENT OF AN ALTERNATIVE BOND PROGRAM.

<b>Fiscal Impact Summary</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
<b>State Revenue</b>	See State Revenue section	
<b>State Expenditures</b>	See State Expenditures section	
<b>FTE Position Change</b>		
Effective Date: The bill was deemed lost on May 11, 2011.		
<b>Appropriation Summary for FY 2011-2012:</b> None.		
<b>Local Government Impact:</b> See Local Government section.		

**This final fiscal note reflects the reengrossed version of the bill. The bill was amended by the House Judiciary Committee on May 10, 2011, and the bill was referred, as amended, to the House Appropriations Committee. The House Appropriations Committee did not meet for purposes of considering this bill and, therefore, the bill was deemed lost.**

**Summary of Legislation**

The bill permits chief judges of judicial districts with pretrial services programs to create and administer alternative bond programs. In such districts, the alternative bond program will join unsecured and secured bonds as options available to judges when authorizing the pretrial release of a defendant. Defendants released as part of an alternative bond program are required to post with the court up to 15 percent of the amount of the bond set by the court. The full amount of an alternative bond set by the court must be secured in the manner required by the court.

Defendants whose bonds are set at \$5,000 or less are eligible for the alternative bond program immediately after the court sets the bond amount. Defendants whose bonds are higher than \$5,000 are eligible for the alternative bond program five days after the court sets the bond amount.

The pretrial services program may retain up to 50 percent of the moneys posted through the alternative bond program for 1) development and administration of pretrial treatment services for defendants; 2) costs of securing a defendant's appearance in court when the defendant fails to appear; or 3) any other costs that are reasonable and necessary for the program's administration. Defendants appearing in court pursuant to the terms and conditions of the alternative bond receive any remaining moneys at the conclusion of the defendant's case. If the defendant is convicted, the remaining moneys are first used to pay assessed fines, fees, costs, surcharges, and restitution.

**Background**

Under current law, most defendants qualify for release to supervision by a pretrial services program on either a secured or unsecured bond. There are ten pretrial services programs that are publicly funded, serving more than 70 percent of the state's population. The programs primarily are located along the Front Range, with the exceptions of Weld, Pueblo, and Mesa counties.

Pretrial services programs provide two primary functions. First, they assess defendants and provide information and recommendations to the court regarding a defendant's risk to public safety and the likelihood that he or she will appear in court. The court uses this information in setting the defendant's bail and bond. Second, pretrial services programs provide community-based supervision to monitor defendants prior to trial through various methods, such as periodic visits with the defendant, drug testing, and substance abuse treatment. Failure to comply with the pretrial services conditions may result in the defendant being returned to jail while awaiting trial.

Table 1 is a five-year history of the number of surety and cash bonds posted for felony, misdemeanor, and traffic cases for \$5,000 or below and the number posted for more than \$5,000, the thresholds established in the bill.

Type of Bond	Table 1. Number of Bonds Issued by Type for the Period CY 2006-2010 Based on SB11-186 Thresholds						
	2010	2009	2008	2007	2006	Total	% of Total
<b>Surety (all types)*</b>							
≤ \$5,000	43,099	45,764	49,697	54,331	57,221	250,112	79%
> \$5,000	12,448	12,896	13,338	13,814	13,204	65,700	21%
<b>Total Surety</b>	55,547	58,660	63,035	68,145	70,425	315,812	
<b>Cash bonds posted with the court</b>							
≤ \$5,000	11,485	12,603	15,049	17,583	17,151	73,871	98%
> \$5,000	232	266	278	323	334	1,433	2%
<b>Total Posted with Court</b>	11,717	12,869	15,327	17,906	17,485	75,304	
<b>Grand Total</b>	<b>67,264</b>	<b>71,529</b>	<b>78,362</b>	<b>86,051</b>	<b>87,910</b>	<b>391,116</b>	

\* Bonds posted by cash bonding agents, professional cash bail agents, and surety bail bonding agents; 95 percent of the bonds written by cash agents are for \$5,000 or less (5,016 bonds written in CY 2010) and 77 percent of the bonds written by surety agents are for \$5,000 or less (38,083 bonds written in CY 2010).

## **State Revenue**

Allowing for the establishment of alternative bond programs could affect state revenue in two key ways. New programs would increase state cash fund revenue from fees, fines, and recoveries, but reduce state General Fund and other revenue from private bail bonding activity. The overall impact on state revenue is unknown, but will depend on the number, size, and scope of alternative bond programs adopted.

***New Program Revenue.*** The bill may increase state revenue from the collection of fines and fees from defendants who post an alternative bond and who are then convicted, and from the provision that permits pretrial services programs to retain up to 50 percent of posted bond amounts for the purposes stated above. Current law already provides a mechanism for the courts to deduct fines, fees, and restitution from defendants before returning bond moneys to defendants, and for retaining forfeited bonds. Revenues resulting from the alternative bond program have not been estimated.

***Reduced Revenue from Private Bond Activity.*** A reduction in private bail bonding activity would reduce revenue from bond forfeitures, fees, and insurance premium taxes. The potential reduction, if any, has not been estimated.

- **Bond forfeitures** for bonds other than DUI- and traffic-related offenses are credited to the General Fund. Revenue from forfeitures averaged about \$2 million per year over the past five years, but varies widely from year to year. It is expected that private bail bond providers will continue to operate and that forfeitures will continue to occur. Further, forfeiture revenue from the alternative bond program will accrue to the courts to the extent that secured bonds are used.
- **Fees paid by bail bonding agents** to the Division of Insurance include those for examinations and licensing and total approximately \$40,000 each year. Fees for fingerprint background checks are paid to the Colorado Bureau of Investigation.
- **Taxes** are paid by cash bonding agents and professional cash bail agents on bail bond fees charged and by surety bail bonding agents on premiums collected. Insurers domiciled in Colorado pay a 1 percent tax on premiums; those domiciled outside of Colorado pay 2 percent. Bond activity accounts for about \$500,000 in revenue, between the General Fund and the Division of Insurance. These revenues are first used to fund the division's bail bond licensing and oversight activities, which total approximately \$288,000 annually.

## **State Expenditures**

The overall impact on state expenditures is unknown, but will depend on the number, size, and scope of alternative bond programs adopted. Establishment of alternative bond programs will increase workloads of chief judges and judicial district administrators. This increase will be absorbed by the courts. Once established, alternative bond programs are not expected to increase courts' workloads.

A reduction in bail bond activity could result in a corresponding reduction in regulatory expenses incurred by the Division of Insurance.

**Local Government Impact**

Local governments that operate pretrial services programs and that establish alternative bond programs are subject to the same potential revenue increases identified above. Counties are required to provide courtrooms and office space for court personnel. Local government costs are not expected to increase in districts with existing pretrial services programs that establish alternative bond programs.

**Departments Contacted**

Judicial  
Regulatory Agencies

Public Safety  
Colorado Municipal League

Sheriffs  
Colorado Counties