Colorado Legislative Council Staff

HB16-1420

REVISED FISCAL NOTE

(replaces fiscal note dated March 28, 2016)

FISCAL IMPACT: ☒ State ☐ Local ☐ Statutory Public Entity ☒ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 16-0236	**Date:**	March 30, 2016
Prime Sponsor(s):	Rep. Hullinghorst Sen. Crowder	**Bill Status:** **Fiscal Analyst:**	House Second Reading Greg Sobetski (303-866-4105)

BILL TOPIC: COLORADO HEALTHCARE AFFORDABILITY & SUSTAINABILITY ENTERPRISE

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	**$5.2 million**	**$10.5 million**
General Fund	5.2 million	10.5 million
State Transfers		
General Fund		(167.1 million)
Highway Users Tax Fund		111.4 million
Capital Construction Fund		55.7 million
State Expenditures	See State Expenditures section.	
TABOR Impact	($59.3 million)	($246.1 million)
Appropriation Required: See State Appropriations section.		
Future Year Impacts: Dependent on state TABOR situation; not estimated.		

Summary of Legislation

As amended by the House Appropriations Committee, the bill creates a Colorado Healthcare Affordability and Sustainability Enterprise (enterprise) within the Department of Health Care Policy and Financing (HCPF). Beginning FY 2016-17, the enterprise is responsible for the collection of a new Healthcare Affordability and Sustainability Fee that replaces the Hospital Provider Fee assessed under current law. The enterprise must use fee revenue to draw down federal matching funds and expend fee revenue and federal funds for administration, reimbursements to hospitals, and business support purposes including:

- consulting with hospitals to improve cost efficiency;
- advising hospitals regarding potential changes to federal and state laws and regulations;
- assisting hospitals with state performance tracking and payment systems; and
- providing other services to aid hospitals participating in state programs.

Fee revenue and federal matching funds are continuously appropriated to the enterprise, eliminating the authority of the General Assembly to constrain fee revenue via an appropriation in the Long Appropriations Bill. In FY 2016-17, the bill allows the enterprise to collect the maximum amount of fee revenue for which federal matching funds are available, $73.1 million more than the

Hospital Provider Fee allowance proposed in the introduced version of the 2016 Long Appropriations Bill. This revenue, and $73.5 million expected to be drawn in federal matching funds, is appropriated to the enterprise for expenditure in FY 2016-17.

The bill transfers all unexpended revenue from the existing Hospital Provider Fee to a newly created Unexpended Hospital Provider Fee Cash Fund at the end of FY 2015-16. Until October 30, 2017, the HCPF is authorized to use money in the fund to pay reimbursements to hospitals under the existing Hospital Provider Fee statute, and must refund any money not used for this purpose to the hospitals that paid the fees. The new cash fund is repealed effective November 1, 2017.

Enterprise status under TABOR. The Colorado Healthcare Affordability and Sustainability Enterprise is designated as an enterprise under the Taxpayer's Bill of Rights (TABOR) and has the authority to issue revenue bonds. Fee revenue collected by the enterprise is not subject to the state's TABOR limit.

The bill clarifies that termination of the HCPF's authority to assess and collect the existing Hospital Provider Fee, and creation of a new enterprise to assess and collect a new fee, does not require or authorize a downward adjustment to the TABOR limit (the Referendum C cap).

Enterprise board. The bill abolishes the Hospital Provider Fee Oversight and Advisory Board, which administers the existing Hospital Provider Fee, and the board's functions are transferred to a new Colorado Healthcare Affordability and Sustainability Enterprise Board in the enterprise. The enterprise board comprises the membership of the existing board at the time of its abolition, and future appointments are to be made by the Governor with the advice and consent of the Senate.

Federal approval. This bill takes effect only if, prior to July 1, 2016, the federal Centers for Medicare and Medicaid Services do not determine that it does not comply with federal law.

Impact on other legislation. House Bill 16-1421, if adopted, will take effect conditional upon the adoption of HB16-1420.

Background

Hospital Provider Fee. Pursuant to House Bill 09-1293, the state collects a provider fee from hospitals. Hospital Provider Fee revenue is matched with federal dollars and used to reimburse hospitals for uncompensated care and to expand Medicaid and Child Health Plan Plus programs. Under current law, Hospital Provider Fee revenue is subject to the TABOR limit.

Actual and projected Hospital Provider Fee revenue through FY 2017-18 under current law is shown in Table 1. Fees were increased in October 2015 based on a new federal cost model dictating reimbursements to hospitals, triggering a jump in revenue in FY 2015-16. The introduced version of the 2016 Long Appropriations Bill proposes reducing the FY 2016-17 allowance for Hospital Provider Fee revenue to $656.9 million.

Table 1. Hospital Provider Fee Revenue Forecast through FY 2017-18

	FY 2014-15*	FY 2015-16	FY 2016-17	FY 2017-18
Hospital Provider Fee Revenue	$528.8 million	$805.5 million	$730.1 million	$772.7 million

Source: Legislative Council Staff Economic and Revenue Forecast, March 2016.
**Preliminary and un-audited revenue collections.*

State enterprises. TABOR defines an enterprise as "a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined." Because the share of revenue that an enterprise may receive from government sources is capped, enterprises are largely financially independent of core government agencies. Additionally, enterprises cannot levy taxes.

TABOR limits the amount of money that can be spent or saved by the state government and all local governments within the state. However, revenue collected by enterprises is not subject to these constraints. When an existing government entity becomes an enterprise, its revenue is exempted from the state TABOR limit, and a corresponding downward adjustment is made to the level at which the TABOR limit is set. This adjustment is not required when a new enterprise is created.

State Revenue

The bill increases state General Fund revenue by **$5.2 million in FY 2016-17** and **$10.5 million in FY 2017-18**.

Assumptions. Under current law, part of the gross conservation easement income tax credit becomes refundable during tax years following fiscal years for which the state incurs a TABOR surplus. Taxpayers claiming a conservation easement credit, or carrying forward credit from prior tax years, receive up to $50,000 as a refundable credit in tax years following fiscal years for which the state incurs a TABOR surplus. Under current law, the state is expected to incur a TABOR surplus in both FY 2016-17 and FY 2017-18, and the tax credit is expected to become refundable in tax years 2017 through at least 2018. Under the bill, state revenue subject to TABOR is expected to be reduced below the Referendum C cap for FY 2016-17 and FY 2017-18, and the tax credit is expected not to be refundable during tax years 2017 and 2018. The revenue estimate for FY 2016-17 assumes a half-year impact for tax year 2017 on an accrual accounting basis.

SB09-228 transfers. For FY 2017-18, General Fund transfers to the Highway Users Tax Fund (HUTF) and the Capital Construction Fund (CCF) will increase by $111.4 million and $55.7 million, respectively. Senate Bill 09-228 requires transfers to the Highway Users Tax Fund (HUTF) and the Capital Construction Fund (CCF) to occur each year through FY 2019-20. When the TABOR surplus is between 1.0 percent and 3.0 percent of General Fund revenue, the transfers are halved; when the TABOR surplus exceeds 3.0 percent the transfers are suspended. The bill will eliminate the TABOR surplus in FY 2017-18, which is expected to exceed 1.0 percent of General Fund revenue under current law.

Revenue increase relative to 2016 Long Appropriations Bill. The bill increases Healthcare Affordability and Sustainability Fee revenue by $73.1 million relative to the allowance for Hospital Provider Fee revenue in the 2016 Long Appropriations Bill. This amount is anticipated to draw an additional $73.5 million in federal matching funds. The bill is not expected to increase General Fund revenue in FY 2016-17 relative to the introduced version of the 2016 Long Appropriations Bill, because the introduced version of the Long Appropriations Bill, if adopted, is expected to eliminate the TABOR refund obligation expected for FY 2016-17 under current law. This bill would increase General Fund revenue in FY 2017-18 by only $5.2 million.

TABOR Impact

State revenue subject to TABOR will decrease by **$724.9 million in FY 2016-17** and by **$762.2 million in FY 2017-18**, eliminating anticipated TABOR refund obligations of $59.3 million and $246.1 million, respectively, in these years. TABOR refunds are paid out of the General Fund. Estimated reductions in TABOR revenue primarily reflect the creation of a TABOR-exempt enterprise to collect hospital fees. Enterprise impacts are partially offset by increases in General Fund revenue resulting from non-refundability of the gross conservation easement income tax credit.

Table 2 shows the projected impact on the mechanisms used to refund the TABOR surplus in current law. Revenue is refunded in the year following the year in which it is collected.

Table 2. Impact of HB16-1420 on Current Refund Mechanisms
Millions of Dollars

	FY 2016-17 Surplus FY 2017-18 Refund Tax Year 2017	FY 2017-18 Surplus FY 2018-19 Refund Tax Year 2018
Current Law		
TABOR Refund Obligation	$59.3 million	$246.1 million
Income Tax Rate Reduction		*230.1 million*
Sales Tax Refund	*59.3 million*	*16.0 million*
House Bill 16-1420		
TABOR Refund Obligation	$0	$0
Income Tax Rate Reduction		
Sales Tax Refund		
Change from Current Law		
TABOR Refund Obligation	($59.3 million)	($246.1 million)
Income Tax Rate Reduction		*(230.1 million)*
Sales Tax Refund	*(59.3 million)*	*(16.0 million)*

Source: Legislative Council Staff Economic and Revenue Forecast, March 2016.

State Expenditures

Department of Health Care Policy and Financing. State expenditures for the HCPF are not expected to change as a result of the bill. Because the bill does not change the primary purpose or use of funds compared with the existing Hospital Provider Fee, this fiscal note assumes that the HCPF can accomplish all transition activities within existing appropriations, and that no changes to service costs will result from the bill.

General Fund budget. For FY 2016-17, the amount available for the General Fund budget in excess of the statutory reserve will increase by $64.4 million. This amount represents the net fiscal impact of:

- a $59.3 million increase from reduced expenditures on TABOR refunds (see TABOR Impact section); and
- a $5.2 million increase in General Fund revenue (see State Revenue section).

This amount is not budgeted for expenditure, and may be spent or saved in the FY 2016-17 state budget at the discretion of the General Assembly.

The General Fund budget for FY 2017-18 will depend significantly on the budget enacted for FY 2016-17; however, the obligation for TABOR refunds will decrease by $246.1 million, the obligation for SB09-228 transfers will increase by $167.1 million, and General Fund revenue will increase by $10.5 million.

Expenditure increase relative to 2016 Long Appropriations Bill. The bill increases distributions of Healthcare Affordability and Sustainability Fee revenue to hospitals by $146.7 million relative to Hospital Provider Fee distributions in the introduced version of the 2016 Long Appropriations Bill, including a $73.1 million increase in Healthcare Affordability and Sustainability Fee Cash Fund expenditures and a $73.5 million increase in expenditures from federal funds. The bill is not expected to affect the amount available for the General Fund budget relative to the introduced version of the 2016 Long Appropriations Bill, because the introduced version of the Long Appropriations Bill, if adopted, is expected to eliminate the TABOR refund obligation expected for FY 2016-17 under current law.

Effective Date

Conditional on the determination by the Centers for Medicare and Medicaid Services that the bill complies with federal law, the bill takes effect upon signature of the Governor, or upon becoming law without his signature. The enterprise begins operation on July 1, 2016.

State Appropriations

For FY 2016-17, the bill appropriates $73.1 million from the Healthcare Affordability and Sustainability Fee Cash Fund and $73.5 million from federal funds to the Colorado Healthcare Affordability and Sustainability Enterprise.

State and Local Government Contacts

Health Care Policy and Financing
Legislative Council Staff Economics Section