



Colorado
Legislative
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HB16-1435

REVISED
FISCAL NOTE

(replaces fiscal note dated April 26, 2016)

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

Drafting Number: LLS 16-0084 **Date:** May 2, 2016
Prime Sponsor(s): Rep. Duran; Becker K. **Bill Status:** House Appropriations
Sen. Kefalas; Ulibarri **Fiscal Analyst:** Amanda Hayden (303-866-4918)

BILL TOPIC: LOW-WAGE EMPLOYER CORPORATE RESPONSIBILITY ACT

| Fiscal Impact Summary | FY 2016-2017 | FY 2017-2018 | FY 2018-2019 |
|--|-----------------------------|-----------------------------|---|
| State Revenue Cash Funds | | | \$107-\$430 million 107-430 million |
| State Expenditures General Fund Cash Funds Reappropriated Funds Federal Funds Centrally Appropriated Costs | \$888,862 831,684 | \$865,930 793,896 | \$110-432 million 234,142 109.5-431.9 million 97,855 58,499 123,433 |
| FTE Position Change | 2.8 FTE | 5.0 FTE | 9.0 FTE |
| Appropriation Required: \$831,684 - Department of Health Care Policy and Financing (FY 2016-17). | | | |
| Future Year Impacts: Ongoing revenue and expenditure increases. | | | |

Summary of Legislation

This bill, **as amended by the House Health, Insurance, and Environment Committee**, creates an employment-related public benefits enterprise (enterprise) as a government-owned business and type 1 agency within the Department of Health Care Policy and Financing (HCPF). The enterprise's stated purpose is to improve the health of low-wage workers and their families and thereby benefit low-wage employers by giving them access to a healthier pool of workers. The board of directors of the enterprise consists of seven members appointed by the Governor, representing employers, organized labor, workers receiving assistance under a state-subsidized health care assistance program, and advocates that provide or support health care services for low-income individuals. The bill specifies the various powers of the enterprise.

Employment-related public benefits fee. On and after January 1, 2018, the enterprise must impose a fee on all covered employers, defined as any entity that employs 250 or more employees in Colorado and pays some of those employees \$12 per hour or less (low-wage employees). After 2018, the \$12 per hour or less "low-wage" designation is annually adjusted for inflation as measured by the consumer price index for the Denver-Boulder-Greeley metropolitan area. Low-wage employees do not include paid interns or pre-apprenticeship program participants,

if the program is temporary, sponsored by the federal or state government, and if the employee is expected to find full-time employment upon completing the program. The enterprise must set the fee as an amount reasonably calculated to reflect the benefit covered employers receive from the provision of state-subsidized health care assistance to low-wage employees, but the fee must be between 25 cents and one dollar per hour worked by each low-wage employee. A covered employer may credit health care expenditures to or on behalf of a low-wage employee against the fee for each low-wage employee's hours. As long as the enterprise meets the constitutional requirements for enterprise status under the taxpayer's bill of rights (TABOR), fee revenue does not count against the state fiscal year spending limit.

Employment-related public benefits fee fund. The employment-related public benefits fee fund (fund) is created in the state treasury, and all fee revenue and interest and income derived from the deposit and investment of the fund is credited to the fund. The enterprise may expend money from the fund to support and improve health care services provided to individuals who are eligible to receive services under the Colorado Medical Assistance Act and to defray its administrative expenses in implementing and administering provisions of the bill. No money in the fund may be transferred to any other state fund or department or agency of state government.

Prohibitions against retaliation. The bill prohibits employers from firing low-wage employees to avoid paying the fee or from deducting the amount of the fee from employees' wages. The bill prohibits employers from retaliating against employees for whistleblowing or taking various other specified actions relating to implementation or enforcement of the bill. Such retaliation is defined as an unfair employment practice, and an employee retaliated against may file a complaint with the Colorado Civil Rights Division within the Department of Regulatory Agencies (DORA). The attorney general and district attorneys are concurrently responsible for the enforcement of the bill.

Background

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.

Type 1 agencies. A Type 1 agency is administered under the direction and supervision of its principal department; however, a Type 1 agency exercises its statutory powers, duties, and functions, including rule-making, independently of the executive director of its principal department. Any functions of a Type 1 agency not specifically established in statute, including all budgeting, purchasing, planning, and related management functions, are conducted under the direction and supervision of the executive director of its principal department.

State Revenue

The bill increases state cash fund revenue from fees by between **\$107,446,179 and \$429,787,715** beginning in FY 2018-19. The amount of revenue collected depends on the amount of the fee set by the enterprise.

Assumptions. The revenue increase is calculated based on the following assumptions:

- there are 1,155 employers in Colorado with 250 employees or more and these employers employ 1,134,764 workers;
- based on national labor data, approximately 21 percent of workers qualify as "low-wage," earning \$12 per hour or less (or \$25,000 per year or less for full-time employees);
- there are approximately 238,300 low-wage employees in Colorado; and
- average number of hours worked per year by low wage employees in Colorado is calculated using national labor data by industry.

Based on the above assumptions, the enterprise will collect between \$107,446,179 per year in fee revenue if the fee is set at \$0.25 and \$429,787,715 per year if the fee is set at \$1.00 per hour worked by each low wage employee. The enterprise will determine the amount of and begin collecting the fee July 1, 2018 (a timeline for implementation can be found below). The fiscal note expects that the fee will be adjusted each year based on actual employment data and will exclude interns and pre-apprenticeship program participants. As of this writing, the number of interns and pre-apprenticeship program participants that meet the bill's criteria for exemption from the fee is unknown.

Fee impact on business. State law requires legislative service agency review of measures that create or increase any fee collected by a state agency. The bill imposes a fee on any business with 250 employees or more that pays any of its employees \$12 per hour or less. The fee amounts displayed in Table 1 are estimates only; actual fee calculations are set by the enterprise. The exact impact on each business depends on the number of hours worked by each low wage employee working for the business and the fee amount set by the enterprise. The estimated number of employees affected is based on employment data from the Quarterly Census of Employment and Wages, as published by the Federal Bureau of Labor Statistics. The total fee impact is calculated using weighted averages of number of hours worked by industry; the average number of hours worked per week across industries is approximately 34.5 hours. Table 1 displays the estimated fee impact on covered employers.

Table 1. Fee Impact on Covered Employers

| Type of Fee | Proposed Fee | Employees Affected | Employers Affected | Total Fee Impact |
|--|---------------|--------------------|--------------------|----------------------------|
| Employment-related public benefits fee (lower limit) | \$0.25 / hour | 238,300 | 1,155 | \$107,446,179 |
| Employment-related public benefits fee (upper limit) | \$1.00 / hour | 238,300 | 1,155 | \$429,787,715 |
| FY 2018-19 | | | | \$107-\$430 million |

State Expenditures

The bill increases state expenditures by \$888,862 and 2.8 FTE in FY 2016-17 and by \$865,930 and 5.0 FTE in FY 2017-18. Beginning in FY 2018-19, the bill increases state expenditures by between approximately \$110 and \$432 million and 9.0 FTE.

In FY 2016-17 and FY 2017-18, the bill increases state General Fund expenditures in HCPF. In FY 2018-19, the bill increases state cash fund expenditures in HCPF by \$1,597,140 and 9.0 FTE to carry out the duties of the enterprise. These costs are shown in Table 2 and explained below. The bill also increases cash fund expenditures in HCPF by between \$107 and \$430 million as the enterprise expends the fee revenue.

Beginning in FY 2018-19, the bill increases state expenditures in agencies that will pay the fee, shown in Table 3. The bill also increases workload in the Department of Regulatory Agencies, the Department of Law, and the Judicial Department.

Assumptions. The fiscal note makes the following assumptions:

- the board of directors of the enterprise will be appointed by September 1, 2016;
- by December 1, 2016, the enterprise will hire five full-time staff to begin implementation of the enterprise's duties;
- between January and May 2017, the enterprise will select consultants and negotiate contracts;
- between May and December 2017, the consultants will gather data on low-wage Colorado employers and health care costs; determine the fee amount, payment schedules, and reporting requirements for covered employers; and the enterprise will draft rules and policies and build information technology infrastructure to process fee payments;
- between January and May 2018, the enterprise will select and negotiate contract terms with an auditor, develop and staff a call center to handle inquiries from employers about the fee, and conduct a public rule review meeting and Medical Services Board initial and final reading of rules;
- in June 2018, the enterprise and call center staff will notify employers of fees due and finalize call center operations; and
- on July 1, 2018, the enterprise will begin collecting the fee.

Table 2. HCPF Expenditures Under HB16-1435

| Cost Components | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|---|------------------|------------------|--------------------|
| Personal Services | \$201,009 | \$354,834 | \$570,485 |
| FTE | 2.8 FTE | 5.0 FTE | 9.0 FTE |
| Operating Expenses and Capital Outlay Costs | 26,175 | 4,750 | 27,362 |
| Information Technology Services | 204,500 | 34,312 | 15,060 |
| Consultants | 400,000 | 400,000 | 400,000 |
| Auditor Services | 0 | 0 | 460,800 |
| Centrally Appropriated Costs* | 57,178 | 72,034 | 123,433 |
| TOTAL | \$888,862 | \$865,930 | \$1,597,140 |

*Centrally appropriated costs are not included in the bill's appropriation.

Department of Health Care Policy and Financing (HCPF). Beginning in FY 2016-17, HCPF requires five staff to assist the enterprise's board of directors in managing the duties of the enterprise (personal services costs in FY 2016-17 are prorated to 2.8 FTE to reflect a December 1 start date). These staff include an office director (to be hired September 1), an administrative assistant, a special financing analyst, a contract manager, and a senior budget and data analyst. HCPF requires approximately 2,470 hours of information technology (IT) services, provided by the

Office of Information Technology (OIT), to design, develop, and implement a system to calculate and track payments received. The enterprise requires the services of three consultants to assist the board in gathering data on employers and health care costs and to make recommendations regarding the fee calculation methodology, to provide data and recommendations on how the fee revenue is to be used, and to manage IT projects. The fiscal note assumes these expenditures require a General Fund appropriation.

In FY 2017-18, consultant services are expected to continue. IT services include the development of this customer service call center and interactive voice response (IVR) system to automate payments, to be operational by July 1, 2018.

In FY 2018-19, personal services costs include the hiring of an accountant and three customer service professionals to staff a customer service center that will allow employers to call with questions or concerns or to make payments. Expenditures also include \$1,255 per month for phone and IVR services and \$460,800 for auditor services. The enterprise requires auditors to verify compliance with the law by auditing payroll data on a quarterly basis at approximately one-quarter of qualifying covered employers (288 employers) per year. Based on current contracts within HCPF, auditor services cost approximately \$200 per hour and each audit is estimated to require 8 hours of work. Consultant services continue to allow for updates to fee calculations and uses. The fiscal note assumes that these expenditures will be paid from cash funds collected by the enterprise in fee revenue.

Beginning in FY 2018-19, the enterprise will expend the estimated \$107-\$430 million in revenue collected from fee payments by covered employers. The bill directs the enterprise to use the funds to support and improve health care services provided to individuals eligible to receive state-subsidized health care and to defray its administrative expenses. The exact amount expended and specific uses of the funds will be determined by the enterprise.

Fees paid by state agencies. Beginning in FY 2018-19 and in future years, the bill increases state expenditures for any state agency that qualifies as a low wage employer. Table 3 shows the expenditure impact on the agencies that have been identified as covered employers as of this writing. Expenditures in these departments will depend upon the fee amount decided by the enterprise; the figures below represent the estimated amount collected based on the maximum fee amount of \$1.00 per hour worked by each low-wage employee.

Table 3. Expenditures in Covered Employer State Agencies

| | FY 2018-19 |
|--|-------------------|
| Department of Agriculture | 65,000 |
| Department of Human Services | 417,854 |
| Department of Natural Resources | 500,100 |
| Department of Personnel and Administration | 14,284 |
| TOTAL | \$997,238 |

Other agencies. Agencies or institutions other than those listed above may be affected. The Colorado Department of Transportation, for example, has one low-wage employee, but may hire employees in the future at wages below \$12. Several other institutions of higher education qualify as covered employers. The expenditure impact to agencies that qualify as covered employers depends upon the number of hours worked by each low-wage employee and the fee amount set by the enterprise and has not been estimated.

Institutions of Higher Education. Preliminary analysis indicates that the bill will affect institutions of higher education beginning in FY 2018-19. With the fee set at \$1.00 per hour, at Colorado State University the estimated impact is \$7,187,440 and at the University of Colorado the estimated impact is \$2,502,377. The fiscal note assumes that every institution of higher education will be affected and the note will be updated if additional information becomes available.

Other workload impacts. Beginning in FY 2017-18, the bill also increases workload in the following agencies.

Department of Regulatory Agencies (DORA). Beginning in FY 2017-18, the bill may increase workload by a minimal amount in the Civil Rights Division within DORA. To the extent that low-wage employees of any entity affected by the bill file complaints about retaliation by their employers, workload associated with processing and investigating these complaints may increase. The fiscal note assumes that any increase can be accomplished within existing appropriations.

Department of Law. The bill may also increase workload for the Department of Law, as the Attorney General, together with district attorneys, is tasked with enforcing the bill. The fiscal note assumes that if the Department of Law requires additional appropriations, it will request them through the annual budget process.

Judicial Department. Beginning in FY 2017-18, the bill may increase workload in trial courts by a minimal amount. The bill creates a new cause of action for employers that violate the law, which may increase the number of cases filed in state trial courts. Any increase is likely to be minimal and can be accomplished within existing appropriations.

Centrally appropriated costs. 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 estimated in the fiscal note for informational purposes and summarized in Table 4.

| Table 4. Centrally Appropriated Costs Under HB16-1435 | | | |
|--|-------------------|-------------------|-------------------|
| Cost Components | FY 2016-17 | FY 2017-18 | FY 2018-19 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$39,977 | \$40,239 | \$72,314 |
| Supplemental Employee Retirement Payments | 17,201 | 31,795 | 51,119 |
| TOTAL | \$57,178 | \$72,034 | \$123,433 |

Local Government, School District, and Statutory Public Entity Impact

Beginning in FY 2018-19, costs will increase for any local government, school district, or statutory public entity that qualifies as a covered employer and must pay the employment-related public benefits fee. Because the number of low-wage employees and the number of hours worked by those employees at qualifying entities is unknown, the precise impact to local governments, school districts, and statutory public entities has not been estimated.

Under current law, school districts and Boards of Cooperative Educational Services (BOCES) may submit a separate estimate of fiscal impacts within seven days of a bill's introduction. Estimates submitted by districts or BOCES for this bill can be found on the Legislative Council website at this address: <http://1.usa.gov/23AxLIT>

The bill may also increase workload for district attorneys, who are charged with enforcing the bill. The fiscal note assumes that most businesses will comply with the requirements of the bill and that any increase in workload for district attorneys will be minimal.

Technical Note

The bill specifies that the enterprise must impose the fee on and after January 1, 2018. The fiscal note estimates that the time required to hire staff, build IT infrastructure, draft rules and policies, identify businesses subject to the fee, and impose, collect, and process fee payments precludes HCPF from being able to begin fee collection on January 1, 2018. The fiscal note assumes fee collection will begin July 1, 2018.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

In FY 2016-17, the bill requires a General Fund appropriation of \$831,684 and an allocation of 2.8 FTE to HCPF. Of the total, \$204,500 should be reappropriated to the Office of Information Technology.

State and Local Government Contacts

All Departments
Municipalities

Counties
RTD

District Attorneys
Special Districts