Colorado Legislative Council Staff

SB17-267

REVISED FISCAL NOTE

(replaces fiscal note dated April 13, 2017)

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

Drafting Number:	LLS 17-1080	**Date:**	May 5, 2017
Prime Sponsor(s):	Sen. Sonnenberg; Guzman Rep. Becker K.; Becker J.	**Bill Status:**	Senate Second Reading
		Fiscal Analyst:	Greg Sobetski (303-866-4105)

BILL TOPIC: SUSTAINABILITY OF RURAL COLORADO

Fiscal Impact Summary*	FY 2016-2017 *(current year)*	FY 2017-2018	FY 2018-2019	FY 2019-2020
State Revenue	<u>$0</u>	<u>$306.5 million</u>	<u>$539.3 million</u>	<u>$528.4 million</u>
Revenue Change				
General Fund		72.5 million	72.7 million	63.2 million
Healthcare Affordability Fund		264.1 million		
State Highway Fund			380.0 million	500.0 million
Marijuana Tax Cash Fund		(30.1 million)	(33.4 million)	(34.7 million)
Other Cash Funds			120.0 million	
State Transfers				
General Fund		($60.3 million)	$106.7 million	$104.6 million
Marijuana Tax Cash Fund		30.3 million	33.6 million	34.9 million
State Public School Fund		30.0 million	19.7 million	20.5 million
Highway Users Tax Fund			(160.0 million)	(160.0 million)
State Expenditures	<u>$3,750</u>	<u>$556,381,099</u>	<u>$166,668,212</u>	<u>$90,736,805</u>
General Fund	3,750	(320,035)	8,231,918	24,208,173
Healthcare Affordability Fund		264,035,165	(155,605)	(171,165)
State Highway Fund**			28,500,000	50,000,000
State Public School Fund		30,000,000	19,680,653	20,475,074
Other Cash Funds**			113,852,921	increase
Federal Funds		262,665,969	(3,441,675)	(3,785,842)
Centrally Appropriated Costs				10,566
TABOR Impact	Not applicable.		($288.6 million)	Not estimated.
FTE Position Change				0.6 FTE

Appropriation Required: $3,750 - DOR (FY 2016-17); $526,381,099 - HCPF (FY 2017-18).

Future Year Impacts: Ongoing General Fund revenue increase, Marijuana Tax Cash Fund revenue decrease, and state transfers to the Marijuana Tax Cash Fund and State Public School Fund. State Highway Fund revenue increase through FY 2021-22. Ongoing changes to state expenditures as shown in FY 2019-20, with increasing General Fund expenditures through FY 2021-22.

* *Totals may not sum due to rounding. The fiscal impact is presented relative to current law and SB17-256.*

** *Beginning in FY 2018-19, the bill also changes the amount of revenue available for transportation and capital construction projects. This spending will occur over multiple years based on future decisions by the Transportation Commission and the General Assembly.*

Summary of Legislation

This bill, ***as amended by the Senate Appropriations Committee***, makes several long-term changes to areas of state policy that affect rural communities. These are described in the following paragraphs.

Colorado Healthcare Affordability and Sustainability Enterprise. The bill creates the Colorado Healthcare Affordability and Sustainability Enterprise (enterprise) within the Department of Health Care Policy and Financing (HCPF) beginning in FY 2017-18. The enterprise is responsible for the collection of the new Healthcare Affordability and Sustainability Fee, which replaces the Hospital Provider Fee assessed under current law. The enterprise uses fee revenue to draw down federal matching funds and expends 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 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. Expenditures for enterprise administration will be limited to 3 percent according to a methodology approved by the Office of State Planning and Budgeting (OSPB) and the Joint Budget Committee (JBC) Staff.

The bill transfers all unexpended revenue from the existing Hospital Provider Fee Cash Fund to the newly created Unexpended Hospital Provider Fee Cash Fund at the end of FY 2016-17. Until October 30, 2018, 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 hospitals that paid the fees. The Unexpended Hospital Provider Fee Cash Fund is repealed effective November 1, 2018.

Enterprise status and TABOR limit adjustment. 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 adjusts the state TABOR limit as the new enterprise is created. For FY 2017-18, the TABOR limit (Referendum C cap) is reduced by $200.0 million relative to the level at which it would otherwise be set.

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.

Health care delivery system reform incentive payments program. The bill requires the enterprise to seek federal waivers necessary to form and implement a health care delivery system reform incentive payments program. The bill requires that implementation of the program begin on or after October 1, 2019. When implemented, the program will focus on care coordination, integration of physical and behavioral health services, chronic condition management, targeted population health, and data-driven accountability and outcome management.

Federal approval. The portion of the bill that creates the enterprise and reduces the Referendum C cap does not take effect if, prior to June 1, 2017, the federal Centers for Medicare and Medicaid Services determine that it does not comply with federal law.

Repeal of Senate Bill 17-256. This bill repeals SB17-256, which constrained Hospital Provider Fee revenue and correspondingly reduced appropriations to HCPF for hospital reimbursements by $528.2 million.

Lease-purchase agreements. The bill authorizes the creation of lease-purchase agreements on existing state facilities that are not part of the state emergency reserve. The bill requires the State Architect, in consultation with OSPB and higher education institutions, to select a list of state facilities with a net present value of at least $2.0 billion by December 31, 2017. Between FY 2018-19 and FY 2021-22, the State Treasurer will execute lease-purchase agreements on these facilities in amounts up to $500.0 million annually. The state's obligation for lease payments may not exceed $150 million annually, or $3.0 billion over 20 years.

Proceeds from the lease-purchase agreements totaling $120.0 million in FY 2018-19 are available for controlled maintenance and capital construction projects. The remaining proceeds are credited to the State Highway Fund (SHF). Proceeds are exempt from the TABOR limit as a property sale, and leases must be renewed by annual appropriation so as not to constitute multi-year debt requiring voter approval under subsection (4) of TABOR. Interest earned by participants in agreements is exempt from the state income tax.

State Highway Fund. Proceeds from the sale of lease-purchase agreements that are credited to the SHF must be used by the Department of Transportation (CDOT) for projects in the Strategic Transportation Project Investment Program that are designated for Tier 1 funding as ten-year development program projects. Additionally, at least 25 percent of proceeds credited to the SHF must be expended for projects located in counties with populations of 50,000 or fewer as of July 2015.

Controlled maintenance and capital construction. From proceeds allocated for capital construction in FY 2018-19, the first $113,852,921 will be used to fund controlled maintenance at levels identified in the bill. The remaining allocation will be used for construction projects as prioritized by the Capital Development Committee (CDC).

The bill stipulates that new academic buildings, or existing buildings repurposed for academic use, are not eligible to receive state controlled maintenance funding if their construction or repurposing is funded solely from cash funds in an institution of higher education.

Lease payments. The first $9.0 million in lease payments each year are required to be made from the General Fund or any other legally available source of money at the discretion of the General Assembly. The next $50.0 million in annual lease payments are paid from the SHF. Any additional amount may be paid from the General Fund or any other legally available source.

Medicaid copayments. For all services provided in 2018 and subsequent years, the bill requires that HCPF double copayments for certain Medicaid services in rule to the extent that this can be achieved without exceeding allowed federal maximums. Copayments affected are those for pharmaceuticals, outpatient services, and emergency services. HCPF is required to evaluate options for exempting recipients who are qualified for institutional care but who instead receive home care or community-based care.

Marijuana taxes. Beginning in FY 2017-18, the bill exempts sales of retail (recreational) marijuana from the 2.9 percent state sales tax assessed on the sale of tangible personal property. Local governments will continue to collect their general sales taxes on retail marijuana unless they adopt a specific exemption.

Beginning in FY 2017-18, the bill increases the rate of the special sales tax on retail marijuana to 15 percent. The distribution is adjusted so that the state receives 90 percent of tax revenue and local governments receive 10 percent. Revenue from the state share of the tax is deposited in the General Fund and allocated as follows:

- for FY 2017-18 and all subsequent years, 71.85 percent is transferred to the Marijuana Tax Cash Fund (MTCF);
- for FY 2017-18 only, $30.0 million is transferred to the State Public School Fund (SPSF);
- for FY 2018-19 and all subsequent years, 12.59 percent is transferred to the SPSF; and
- the remainder is retained in the General Fund. For FY 2018-19 and all subsequent years, this allocation is equal to 15.56 percent.

School funding. For FY 2017-18 only, marijuana tax revenue transferred from the General Fund to the SPSF is appropriated to the Department of Education (CDE) for disbursement to schools in rural and small rural school districts in shares proportionate to these schools' pupil counts. For FY 2018-19 and subsequent fiscal years, marijuana tax revenue transferred to the SPSF is appropriated to CDE to meet the state's share of total program funding for school finance, and for funding charter schools overseen by the Charter School Institute (CSI).

Business personal property tax income tax credit. Under current law, businesses that pay business personal property tax on property with an actual value of $15,000 or less, adjusted for inflation, may claim a state income tax credit equal to the amount of tax paid minus the tax benefit received from deducting the tax from their federal taxable income. This credit is set to expire after tax year 2019. The bill repeals this credit after tax year 2018.

Beginning in tax year 2019, the bill creates a refundable income tax credit equal to business personal property tax that a taxpayer pays on the first $18,000 in actual business personal property value. To claim the credit, the taxpayer must file a copy of the applicable property tax statement with the Department of Revenue. In contrast to the current credit, the new credit is available regardless of the total actual value of the property on which tax was paid. The credit only may be applied against the tax paid on locally assessed property; tax paid on state assessed property is not eligible for the credit.

Senate Bill 17-262 transfers. For FY 2018-19 and FY 2019-20, this bill repeals transfers to the Highway Users Tax Fund (HUTF) scheduled pursuant to SB17-262. Under SB17-262, these amounts are to be deposited in the SHF to be used for transportation projects. Under SB17-267, the amounts of the transfers, $160.0 million annually, will remain in the General Fund to be spent, saved, or transferred elsewhere at the discretion of the General Assembly. Transfers to the Capital Construction Fund (CCF) are unaffected.

TABOR refund mechanisms. The state disburses money to local governments to backfill property tax revenue that these governments forego as a result of the senior homestead exemption and disabled veterans property tax exemption. In future years in which the state administers a TABOR refund obligation, the bill decrees that these disbursements qualify as a refund mechanism. Revenue collected in excess of the Referendum C cap will be refunded via existing refund mechanisms, the six-tier sales tax refund and the temporary income tax rate reduction, only if the amount of the refund obligation exceeds aggregate disbursements to local governments to backfill the senior and veterans property tax exemptions.

Budget requests. The bill requires executive departments that submit budget requests to OSPB, except CDE and CDOT, to submit FY 2018-19 budget requests that are 2 percent lower than the amounts that they receive in FY 2017-18. OSPB is required to strongly consider the budget reduction proposals submitted by departments and shall seek to ensure that the executive budget proposal for each department is at least 2 percent lower than the department's actual budget for FY 2017-18. Final authority in matters relating to the executive budget remains with the Governor pursuant to current law.

Enhanced pediatric health home. Conditional on enactment of the federal Advancing Care for Exceptional Kids Act (ACE Kids Act), and subject to available appropriations, HCPF is required to seek federal waivers to fund an enhanced pediatric health home for children with complex medical conditions in cooperation with qualifying hospitals. The bill directs HCPF to follow procedures specified in the ACE Kids Act in seeking federal approval.

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 coverage under the Medicaid and Child Health Plan Plus (CHP+) programs. Currently, 37.4 percent of Medicaid and CHP+ caseload is funded with Hospital Provider Fee revenue and federal matching funds. Under current law, Hospital Provider Fee revenue is subject to the TABOR limit.

Actual and projected Hospital Provider Fee revenue and interest earnings through FY 2018-19 under current law and SB17-256 are shown in Table 1. The permitted amounts of Hospital Provider Fee collections for FY 2016-17 and FY 2017-18 were limited in the 2016 Long Bill and SB17-256, respectively.

Table 1. Hospital Provider Fee Forecast through FY 2018-19

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Hospital Provider Fee Revenue	$804.0 million	$656.6 million	$600.6 million	$859.2 million

Source: Legislative Council Staff Economic and Revenue Forecast, March 2017, and Senate Bill 17-256.

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 state 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.

Lease-purchase agreements. The state enters into lease-purchase agreements using financial instruments called certificates of participation (COPs). In this type of lease-purchase agreement, the state transfers its interests in a property to a lessor in exchange for cash and then leases the property back through annual lease payments. The lessor assigns its interests to a trustee, usually a commercial bank, who holds the title to the property, collects lease payments from the state, and makes payments to the investors. The state renews the lease each year and makes annual payments authorized through the Long Bill. The interest rate paid by the state is fixed and depends on market conditions at the time COPs are priced for sale. When the lease ends, the state owns the facility at no or minimal additional cost.

Medicaid copayments. Medicaid copayments are set in rules promulgated by HCPF and are subject to certain restrictions under federal law. Most significantly, total copayments paid by a recipient may not exceed 5 percent of the recipient's income. Under this requirement, copayments are not collected from recipients with no income.

Copayments for pharmaceuticals differ by client circumstances but averaged $1.27 in FY 2015-16. Copayments for outpatient and emergency services were $3.00. Copayments for outpatient services are capped at $4.00 under federal law and regulations, while copayments for pharmaceuticals and emergency services may be doubled without exceeding federal maximums.

Marijuana taxes. Retail (recreational or non-medical) marijuana is subject to three state taxes. Two of these are sales taxes assessed when marijuana is sold to a consumer. Like most tangible personal property, retail marijuana is subject to the 2.9 percent state sales tax. Revenue from the state sales tax is subject to TABOR. Additionally, retail marijuana is subject to a special sales tax approved by voters as a component of Proposition AA in 2013. This tax is currently assessed at a rate of 10 percent, but voters have authorized the General Assembly to raise or lower the rate without further voter approval so long as it does not exceed 15 percent. Under current law, the rate of the special sales tax is scheduled to fall to 8 percent beginning in FY 2017-18. Revenue from the special sales tax is exempt from TABOR as a voter-approved revenue change.

Revenue from the 2.9 percent state sales tax on retail marijuana is collected in the MTCF. Revenue from the special sales tax is collected in the General Fund and transferred to the MTCF upon receipt. Revenue credited to the MTCF is spent in arrears; for example, revenue credited to the fund in FY 2016-17 is subject to appropriation by the General Assembly during the 2017 legislative session and expended to fund programs in FY 2017-18.

Business personal property tax. Unless they have adopted a specific exemption, local governments collect taxes on business personal property. Personal property generally includes machinery and equipment that is used by a business. Business personal property taxes are paid to counties and revenue from the tax is distributed by county treasurers to the appropriate taxing jurisdictions. Business personal property that spans multiple counties, such as railroads, pipelines, and utilities, are assessed by the Division of Property Taxation in the Department of Local Affairs. The division allocates these property values to different areas of the state.

TABOR refund mechanisms. For fiscal years when state revenue subject to TABOR exceeds the TABOR limit (Referendum C cap), the state is required to set aside the excess and issue refunds to taxpayers in the following fiscal year. The refund obligation also includes underrefunds of and other adjustments to previous TABOR refunds. TABOR allows the state to use any reasonable method for refunds. Under current law, two mechanisms exist. When the refund obligation is sufficiently large, the state income tax rate is temporarily reduced from 4.63 percent to 4.50 percent. Other than the amount refunded through the temporary income tax rate reduction, all refunds are administered through a tiered sales tax refund available on annual income tax returns. Taxpayers are allowed to claim refund amounts in tiers according to their adjusted gross income, and per taxpayer refund amounts are set in order to approximate the amount of the total refund obligation.

Senior homestead exemption and disabled veterans property tax exemption. The Colorado Constitution allows a property tax exemption to qualifying seniors and disabled veterans. Currently, state policy is set so that 50 percent of the first $200,000 of a senior or disabled veteran's home is exempt from taxation. The General Assembly is constitutionally empowered to adjust the $200,000 threshold for the exemption, and this was set to $0 during tax years 2003 to 2005 and 2009 to 2011. The state is required to reimburse local governments for lost property tax revenue attributable to the exemptions. Actual and projected state expenditures for reimbursements are presented in Table 2.

Table 2. State Expenditures for Senior and Disabled Veterans Exemptions through FY 2019-20

	FY 2016-17 ***tax year 2016***	**FY 2017-18** ***tax year 2017***	**FY 2018-19** ***tax year 2018***	**FY 2019-20** ***tax year 2019***
Senior Homestead Exemption	$133.1 million	$144.8 million	$157.2 million	$171.2 million
Disabled Veterans Exemption	2.9 million	3.3 million	3.5 million	3.8 million
Total State Expenditures	**$136.0 million**	**$148.0 million**	**$160.7 million**	**$175.0 million**

Source: Legislative Council Staff Economic and Revenue Forecast, March 2017. Totals may not sum due to rounding.

Statutory transfers. Senate Bill 17-262 amends transfers previously authorized by Senate Bill 09-228. Pursuant to SB17-262, these transfers are scheduled as follows:

- for FY 2017-18, $79.0 million to the HUTF;
- for FY 2018-19, $160.0 million to the HUTF and $60.0 million to the CCF; and
- for FY 2019-20, $160.0 million to the HUTF and $60.0 million to the CCF.

Advancing Care for Exceptional (ACE) Kids Act. First introduced in Congress in 2015, the ACE Kids Act proposes changes to the coordination of health care for children with complex medical conditions who receive health care coverage through Medicaid. Under the act, states would be authorized to coordinate care through medical homes providing comprehensive health services. The ACE Kids Act has not yet been enacted at the federal level.

State Revenue

The bill increases state revenue by the amounts shown in Table 3. The impacts presented are described in detail below.

Table 3. State Revenue through FY 2019-20 under SB17-267*

	FY 2017-18	**FY 2018-19**	**FY 2019-20**
Repeal of SB17-256	$264,100,000		
Healthcare Affordability Fee Cash Fund[1]	264,100,000		
Lease-Purchase Agreements		$500,000,000	$500,000,000
State Highway Fund		380,000,000	500,000,000
Departmental Cash Funds		120,000,000	
Marijuana Taxes	$39,892,603	$44,187,163	$45,970,802
General Fund (Special Tax Increased to 15%)	70,026,375	77,564,927	80,695,879
Marijuana Tax Cash Fund (2.9% Sales Tax)	(30,133,772)	(33,377,764)	(34,725,077)

Table 3. State Revenue through FY 2019-20 under SB17-267* (Cont.)			
	FY 2017-18	**FY 2018-19**	**FY 2019-20**
Business Personal Property Tax Credits		**($9,794,009)**	**($19,950,727)**
General Fund (Repeal Existing Credit)		180,616	185,622
General Fund (Authorize Expanded Credit)		(9,974,625)	(20,136,349)
Conservation Easement Nonrefundability	**$2,523,360**	**$4,937,008**	**$2,413,648**
General Fund	2,523,360	4,937,008	2,413,648
Total State Revenue	**$306,515,962**	**$539,330,162**	**$528,433,723**
General Fund	72,549,734	72,707,926	63,158,800
State Highway Fund		380,000,000	500,000,000
Healthcare Affordability Fee Cash Fund[1]	264,100,000		
Marijuana Tax Cash Fund	(30,133,772)	(33,377,764)	(34,725,077)
Departmental Cash Funds		120,000,000	

**Totals may not sum due to rounding.*
[1] Revenue to the Healthcare Affordability and Sustainability Fee Cash Fund is presented relative to current law revenue to the Hospital Provider Fee Cash Fund, and revenue to the Hospital Provider Fee cash fund is not shown.

Repeal of Senate Bill 17-256. This bill repeals SB17-256, which constrained Hospital Provider Fee collections by $264.1 million in FY 2017-18. Relative to Hospital Provider Fee Cash Fund revenue that would otherwise be collected, the bill increases Healthcare Affordability and Sustainability Fee Cash Fund revenue by $264.1 million in FY 2017-18 only.

Lease-purchase agreements. Beginning in FY 2018-19, state revenue will increase from the sale of COPs through the execution of lease-purchase agreements. The amount of new revenue is expected to total $500.0 million for each of four fiscal years between FY 2018-19 and FY 2021-22. For FY 2018-19 only, $120.0 million is allocated for capital projects and $380.0 million is deposited in the SHF. The amount allocated for capital projects is assumed to be deposited in cash funds for the affected agency or higher education institution; the specific cash funds affected are unknown at this time. For FY 2019-20, FY 2020-21, and FY 2021-22, the bill increases SHF revenue by $500.0 million.

Marijuana taxes. Effective in FY 2017-18, the bill exempts retail marijuana from the 2.9 percent state sales tax. The exemption is expected to reduce MTCF revenue by $30.1 million in FY 2017-18 and $33.4 million in FY 2018-19.

Effective in FY 2017-18, the bill increases the retail marijuana special sales tax rate from 8 percent to 15 percent, and increases the state allocation of retail marijuana special sales tax revenue from 85 percent to 90 percent. These provisions are expected to increase General Fund revenue by $70.0 million in FY 2017-18 and $77.6 million in FY 2018-19. Portions of this revenue are transferred to the MTCF and the SPSF as described in the state transfers section, below.

Estimates for marijuana tax revenue are based on the March 2017 Legislative Council Staff forecast and do not incorporate assumptions for changes in purchaser behavior resulting from the increased tax rate. To the extent that consumers respond to the increase by reducing retail marijuana consumption, the revenue impact presented in this fiscal note is overstated.

Income tax credits for business personal property tax paid. Under current law, a state income tax credit is available for businesses with less than $15,000 in personal property. The bill repeals this credit after tax year 2018, one year before the credit is scheduled to repeal under current law. Repealing the existing credit is expected to increase General Fund revenue by $366,000 in tax year 2019. This estimate is based on the amount of credit claimed for tax year

2015, grown annually by the 2016 Legislative Council Staff forecast for nonresidential property values. The estimate reflects an 8.7 percent utilization rate based on county-level property tax data reported for 2015.

Beginning in tax year 2019, the bill authorizes an expanded state income tax credit available to all locally-assessed businesses that pay business personal property tax. This credit is expected to reduce General Fund revenue by $10.0 million in FY 2018-19 and $20.1 million in FY 2019-20. The estimate for FY 2018-19 represents a half-year impact on an accrual accounting basis. Estimates are based on 2015 property tax data reported by county assessors, grown annually by the forecast for nonresidential property values. Relative to the current credit, this fiscal note assumes a higher rate of utilization for the new credit based on the assumption that a larger credit will be more attractive to businesses, and that larger eligible businesses are able to access additional tax preparation resources. Specifically, these rates of utilization are assumed:

- for taxpayers with less than $15,000 in business personal property, 8.7 percent;
- for taxpayers with between $15,000 and $50,000 in business personal property, 50 percent; and
- for taxpayers with greater than $50,000 in business personal property, 100 percent.

Conservation easement income tax credit refundability. General Fund revenue is expected to increase by $2.5 million in FY 2017-18 and $4.9 million in FY 2018-19 because the conservation easement income tax credit is expected to become nonrefundable in these years. 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 refund obligation. Under current law, the tax credit is expected to be refundable in both tax years 2018 and 2019. Under the bill, state revenue subject to TABOR is expected to be reduced below the Referendum C cap, and the tax credit is expected not to be refundable. The revenue estimate for FY 2017-18 assumes a half-year impact for tax year 2018 on an accrual accounting basis.

State transfers. The bill's effects on state transfers relative to current law are summarized in Table 4. The impacts presented are described in detail below.

Table 4. State Transfers under SB17-267*

	FY 2017-18	FY 2018-19	FY 2019-20
Transfers under Current Law			
General Fund	($150.1 million)	($238.7 million)	($241.9 million)
Highway Users Tax Fund	79.0 million	160.0 million	160.0 million
Marijuana Tax Cash Fund	71.1 million	78.7 million	81.9 million
Transfers under SB17-267			
General Fund	($210.4 million)	($132.0 million)	($137.3 million)
Highway Users Tax Fund	79.0 million		
Marijuana Tax Cash Fund	101.4 million	112.3 million	116.8 million
State Public School Fund	30.0 million	19.7 million	20.5 million
Change to Transfers under SB17-267			
General Fund	($60.3 million)	$106.7 million	$104.6 million
Highway Users Tax Fund		(160.0 million)	(160.0 million)
Marijuana Tax Cash Fund	30.3 million	33.6 million	34.9 million
State Public School Fund	30.0 million	19.7 million	20.5 million

Marijuana Tax Cash Fund. Under current law, the state share of the retail marijuana special sales tax is credited to the General Fund and transferred to the MTCF. Based on the March 2017 Legislative Council Staff forecast, transfers are expected to equal $71.1 million in FY 2017-18 and $78.7 million in FY 2018-19. The bill increases the special sales tax rate from 8 percent to 15 percent, increases the state share from 85 percent to 90 percent, and decreases the portion of the state share transferred to the MTCF from 100 percent to 71.85 percent. The net impact of these changes is a 42.6 percent increase in the amount of the transfer.

State Public School Fund. For FY 2017-18 only, the bill transfers $30.0 million from the General Fund to the SPSF. For FY 2018-19 and subsequent years, this transfer is equal to 12.59 percent of the state share of retail marijuana special sales tax revenue. This amount is estimated at $19.7 million in FY 2018-19 and $20.5 million in FY 2019-20.

Highway Users Tax Fund. The bill repeals General Fund transfers to the HUTF scheduled in FY 2018-19 and FY 2019-20 under SB17-262. In each year, the amount of the transfer scheduled under current law is $160.0 million. Revenue transferred to the HUTF is paid to the SHF.

TABOR Impact

This bill eliminates the $288.6 million TABOR refund obligation expected to be set aside in the budget for FY 2018-19 under current law. Table 5 presents the effects of the bill on state revenue subject to TABOR and the Referendum C cap. These are described in detail below.

Table 5. TABOR Impact of SB17-267*

	FY 2017-18	FY 2018-19
TABOR Situation under Current Law and SB17-256		
State Revenue Subject to TABOR	$13,884.6 million	$14,825.8 million
Referendum C Cap	13,884.6 million	14,537.2 million
Revenue Above (Below) Referendum C Cap	0	288.6 million
Changes to TABOR Computation under SB17-267		
General Fund Revenue Subject to TABOR	$2.5 million	($4.9 million)
Conservation Easement Credit Nonrefundability	*2.5 million*	*4.9 million*
Repeal Existing BPPT Income Tax Credit		*0.2 million*
Authorize New BBPT Income Tax Credit		*(10.0 million)*
Cash Fund Revenue Subject to TABOR	(615.0 million)	(876.9 million)
Repeal of Hospital Provider Fee	*(600.6 million)*	*(859.2 million)*
Enterprise Expenditures to HCPF	*15.7 million*	*15.7 million*
Retail Marijuana Sales Tax Exemption	*(30.1 million)*	*(33.4 million)*
Adjustment to Referendum C Cap	(200.0 million)	(209.4 million)
State TABOR Situation under SB17-267		
State Revenue Subject to TABOR	$13,272.1 million	$13,944.1 million
Referendum C Cap	13,684.6 million	14,327.8 million
Revenue (Below) Referendum C Cap	(412.5 million)	(383.7 million)
Change from Current Law		
State Revenue Subject to TABOR	($612.5 million)	($881.7 million)
Referendum C Cap	(200.0 million)	(209.4 million)
Revenue Relative to Referendum C Cap	(412.5 million)	(672.3 million)

**Totals may not sum due to rounding.*

State revenue subject to TABOR. The bill is expected to reduce state revenue subject to TABOR by $612.5 million in FY 2017-18 and $881.7 million in FY 2018-19.

General Fund revenue. General Fund revenue subject to TABOR will increase by $2.5 million in FY 2017-18 and decrease by $4.9 million in FY 2018-19. In both years, state income tax revenue is expected to increase because the bill results in the conservation easement income tax credit remaining nonrefundable in tax years 2018 and 2019. In FY 2018-19 only, this effect is expected to be more than offset by the net impact of repealing the existing credit for business personal property tax paid and authorizing the expanded credit in the bill.

Cash fund revenue. Repeal of the existing Hospital Provider Fee removes fee revenue from the state's current TABOR computation. Consistent with the forecast in Table 1, this effect is estimated to reduce state revenue subject to TABOR by $600.6 million in FY 2017-18, relative to the reduction in SB17-256, and $859.2 million in FY 2018-19. The reduction is partially offset by the amount of enterprise revenue assumed to be spent on other HCPF programs under SB17-267. The bill permits the expenditure of enterprise fee revenue to offset lost federal matching moneys for HCPF programs. This amount is estimated at $15.7 million annually, which would be moved across TABOR district boundaries and would remain subject to TABOR under the bill.

Exempting retail marijuana from the state sales tax is expected to reduce MTCF revenue subject to TABOR by $30.1 million in FY 2017-18 and by $33.4 million in FY 2018-19. Additional revenue collected from the special sales tax is exempt from TABOR as a voter-approved revenue change.

Revenue from lease-purchase agreements is exempt from TABOR as a property sale.

Referendum C Cap. The bill makes a downward adjustment to the Referendum C cap. The amount of the adjustment is specified at $200.0 million in FY 2017-18, and is effectively grown thereafter by the inflation and population growth adjustments applied to the total cap each year. Based on projections for inflation and population adjustment factors, the bill is expected to reduce the cap by $209.4 million in FY 2018-19 relative to current law.

TABOR refund mechanisms. The bill decrees that reimbursements paid to local governments for their property tax revenue losses attributable to the senior homestead exemption and the disabled veterans property tax exemption constitute a TABOR refund mechanism in years when the state administers a refund obligation. Reimbursements for these exemptions supplant the six-tier sales tax refund as the first refund mechanism triggered when a TABOR refund is administered. Based on the forecast in Table 2, revenue collected in excess of the Referendum C cap, up to $160.7 million in FY 2017-18 and up to $175.0 million in FY 2018-19, is refunded via reimbursements to local governments. Revenue that exceeds the Referendum C cap by more than this amount is refunded by the mechanisms in current law.

Under the bill, the state is not expected to refund a TABOR surplus for either FY 2017-18 or FY 2018-19. Fiscal years beyond FY 2018-19 are not estimated.

State Expenditures

The bill increases state expenditures by the amounts shown in Table 6. Expenditures of proceeds from COP sales for transportation and capital construction projects will occur when authorized by the Transportation Commission and the CDC and, as such, are omitted from Table 6. Expenditures from the Healthcare Affordability and Sustainability Fee Cash Fund are presented relative to current law expenditures from the Hospital Provider Fee Cash Fund, and expenditures from the Hospital Provider Fee Cash Fund are not shown. The impacts presented are described in detail below.

Table 6. State Expenditures through FY 2019-20 under SB17-267*

	FY 2016-17 *(current year)*	FY 2017-18	FY 2018-19	FY 2019-20
Repeal of SB17-256		<u>$528,200,000</u>		
Healthcare Affordability Fee Fund		264,100,000		
Federal Funds		264,100,000		
Medicaid Copayments		<u>($1,818,901)</u>	<u>($4,365,362)</u>	<u>($4,801,898)</u>
General Fund		(320,035)	(768,082)	(844,890)
Healthcare Affordability Fee Fund		(64,835)	(155,605)	(171,165)
Federal Funds		(1,434,031)	(3,441,675)	(3,785,842)
Lease Payments[1]			<u>$37,500,000</u>	<u>$75,000,000</u>
General Fund			9,000,000	25,000,000
State Highway Fund			28,500,000	50,000,000
Controlled Maintenance[2]			<u>$113,852,921</u>	
Other Cash Funds			113,852,921	
K-12 School Funding		<u>$30,000,000</u>	<u>$19,680,653</u>	<u>$20,475,074</u>
SPSF - Rural Schools		30,000,000		
SPSF - Total Program and CSI			19,680,653	20,475,074
Tax Policy Implementation[3]	<u>$3,750</u>			<u>$63,629</u>
General Fund	3,750			53,064
FTE[3]				0.6 FTE
Centrally Appropriated Costs				10,566
Total State Expenditures	<u>$3,750</u>	<u>$556,381,099</u>	<u>$166,668,212</u>	<u>$90,736,805</u>
General Fund	3,750	(320,035)	8,231,918	24,208,173
Healthcare Affordability Fee Fund[4]		264,035,165	(155,605)	(171,165)
State Highway Fund[2]			28,500,000	50,000,000
State Public School Fund		30,000,000	19,680,653	20,475,074
Other Cash Funds			113,852,921	
Federal Funds		262,665,969	(3,441,675)	(3,785,842)
Centrally Appropriated Costs				10,566
FTE[3]				0.6 FTE

**Totals may not sum due to rounding.*

1 Lease payments are expected to reach $150.0 million annually beginning in FY 2021-22. $50.0 million will be paid from the SHF, and the remainder will be paid from the General Fund.

2 The bill requires that $113.9 million from COP proceeds be expended for controlled maintenance. Other COP proceeds will be expended for transportation and capital construction projects on a schedule determined by the Transportation Commission and the CDC.

3 For FY 2020-21 and subsequent fiscal years, the Department of Revenue will require General Fund expenditures of $120,634 and an allocation of 1.4 FTE.

4 Expenditures from the Healthcare Affordability and Sustainability Fee Cash Fund are presented relative to current law expenditures from the Hospital Provider Fee Cash Fund, and expenditures from the Hospital Provider Fee cash fund are not shown.

Colorado Healthcare Affordability and Sustainability Enterprise. Expenditures expected to be paid from the Hospital Provider Fee Cash Fund under current law will be paid from the Healthcare Affordability and Sustainability Fee Cash Fund under the bill. Relative to Hospital Provider Fee expenditures under current law, expenditures from the cash fund are expected to increase by $528.2 million in FY 2017-18 only, as fee revenue and corresponding federal matching funds will no longer be constrained as required under SB17-256. Expenditures will increase by $264.1 million from each of the Healthcare Affordability and Sustainability Fee Cash Fund and federal funds.

Administration. Administrative expenditures for HCPF will be constrained according to a methodology developed by OSPB and the JBC Staff. To the extent that administrative costs are reduced, reimbursements to hospitals are expected to increase by a corresponding amount. Because the bill does not change the primary purpose or use of the enterprise fee compared with the existing Hospital Provider Fee, this fiscal note assumes that the enterprise portion of the bill entails no net impact on workload to the department and that all transition activities can be accomplished within existing appropriations. Technical changes to appropriations will be required to allow spending authority from the new cash fund. It is assumed that contracts for consultant services for the development of a health care delivery system reform incentive payments program will be addressed through the annual budget process.

Medicaid copayments. Beginning in 2018, the bill requires that copayments be doubled relative to their amounts for FY 2015-16, unless doubling the copayments would exceed their allowed maximum under federal law. Medicaid copayments are expected to increase by the amounts shown in Table 7. Additional copayments received by healthcare providers will offset the amounts required to be spent for medical services premiums from the General Fund, the Healthcare Affordability and Sustainability Fee Cash Fund, and federal funds by the amounts presented in Table 6.

Table 7. Medicaid Copayments under SB17-267

	FY 2015-16 Copayment	CY 2018 Copayment	FY 2018-19** Expenditures
Pharmaceuticals	$1.27*	$2.54*	($4.0 million)
Outpatient Services	3.00	4.00	(0.2 million)
Emergency Services	3.00	6.00	(0.1 million)

**Average amounts.*
**First full year impact.*

Federal law and regulations exempt a significant portion of Medicaid recipients, accounting for 53.4 percent of pharmaceutical purchases, from paying copayments at or above the levels in current law. The estimates in this fiscal note anticipate that the bill has no expenditure impact attributable to services provided to these clients. Among clients for whom copayments are increased, the additional costs could decrease health care utilization. Future costs attributable to different utilization rates and consequent health outcomes are not estimated in this fiscal note.

Lease payments. Lease-purchase agreements will be executed in four $500.0 million installments beginning in FY 2018-19. The state will be required to make lease payments beginning in FY 2018-19, and lease payments are expected to reach their maximum level, $150.0 million annually, in FY 2021-22. For a given fiscal year, the first $9.0 million in lease payments will be made from the General Fund or another available revenue source identified by the General Assembly. The next $50.0 million will be made from the State Highway Fund. Any remaining payment amount, up to $91.0 million, will be made from the General Fund or another available source. Beginning in FY 2021-22, annual expenditures for lease payments from the General Fund and the State Highway Fund are expected to total $100.0 million and $50.0 million, respectively.

Transportation and capital construction projects. Transportation and capital construction projects are funded from the SHF and departmental cash funds, respectively, at the discretion of the Transportation Commission and the General Assembly, particularly the CDC.

State Highway Fund allocation. Between FY 2018-19 and FY 2021-22, the bill makes $1.8 billion available for transportation projects eligible for Tier 1 funding as ten-year development program projects. The specific projects funded will be determined by the Transportation Commission, subject to the requirement that at least 25 percent of funds, or $450 million, be spent for projects in counties with fewer than 50,000 people as of July 2015.

Capital construction allocation. The bill requires that the first $113,852,921 in COP proceeds allocated for capital construction be used for controlled maintenance as follows:

- $13,006,081 for level I controlled maintenance;
- $60,637,305 for level II controlled maintenance; and
- $40,209,535 for level III controlled maintenance.

Any amount remaining after controlled maintenance allocations are paid, totaling up to $6,147,079, may be expended for capital construction projects as prioritized by the CDC. Proceeds for controlled maintenance and capital construction projects will be deposited in the departmental cash fund associated with the project, and construction and maintenance expenditures will be paid from these funds.

K-12 school funding. Marijuana tax revenue deposited in the SPSF is required to be expended by CDE for K-12 school funding. In FY 2017-18, $30.0 million will be allocated to rural school districts, with $13.5 million paid to small rural school districts with fewer than 1,000 pupils and $16.5 million paid to large rural school districts with between 1,000 and 6,500 pupils. Distributions to individual districts and schools will be made on a proportionate basis according to these districts' total funded pupil counts for the 2016-17 school year. In FY 2018-19 and subsequent fiscal years, marijuana tax revenue allocated to the SPSF will be expended for the state share of total program funding and for charter schools overseen by the CSI.

Implementation of tax policy changes. General Fund expenditures for the Department of Revenue (DOR) will increase by $3,750 in the current FY 2016-17 in order to program changes to the retail marijuana special sales tax rate in the state's tax software system. Notification of marijuana retailers can be accomplished within existing appropriations.

Beginning in FY 2019-20, General Fund expenditures for DOR will increase in order to implement the business personal property tax credit in the bill. The department is expected to require call center personnel to assist taxpayers eligible for the credit. Additionally, departmental costs will increase for document management and form processing. Expenditures for DOR are summarized in Table 8. For FY 2019-20 and subsequent years, expenditures are based on the assumed rate of utilization of the new credit. To the extent that the utilization rate is different than expected, expenditures could be higher or lower than presented here.

Table 8. Department of Revenue Expenditures under SB17-267			
	FY 2016-17 *current year*	FY 2019-20	FY 2020-21
Personal Services		$28,086	$65,538
FTE		0.6 FTE	1.4 FTE
Operating Expenditures and Capital Outlay Costs		570	6,033
Programming Costs (GenTax)	$3,750		
Document Management and Postage		24,408	24,408
Centrally Appropriated Costs		10,566	24,656
Total Expenditures	**$3,750**	**$63,629**	**$120,634**

Implementation of lease-purchase agreements. Beginning in FY 2017-18, the bill potentially increases expenditures for the preparation and administration of lease-purchase agreements. The amounts of these expenditures and the agencies for which they will be required depend on the structure of the lease-purchase agreements and what state facilities are chosen as collateral. For this reason, expenditures are indeterminate and assumed to be addressed through the annual budget process. Workload impacts affect the Departments of Personnel and Administration, Higher Education, Law, and Treasury as described in the following paragraphs.

Department of Personnel and Administration. Workload in the Office of the State Architect will increase during FY 2017-18 to identify facilities that can be collateralized in lease-purchase agreements. This increase can be accomplished within existing departmental appropriations. To the extent that lease-purchase agreements are executed on facilities in the Capitol Complex, DPA will require additional staff, up to 0.3 FTE at the Accountant II level, to execute and administer lease-purchase agreements.

Department of Higher Education. Institutional workload will increase for accounting and legal staff responsible for the execution and ongoing administration of lease-purchase agreements made for facilities at institutions of higher education. Because facilities are to be selected by DPA and OSPB, it is unknown which institutions will be affected by the policy change.

Department of Law. To the extent that lease-purchase agreements are executed on facilities outside of institutions of higher education, expenditures in the Department of Law may increase for legal services. Depending on the structure of agreements, legal services are estimated at up to 150 hours per building on which a lease-purchase agreement is executed and assessed at a cost of $95.05 per hour.

Department of the Treasury. The bill is expected to increase workload in the Department of the Treasury for the execution and ongoing administration of lease-purchase agreements. Workload for any new lease-purchase agreements is expected to be accomplished within existing departmental appropriations.

Executive budget. All executive departments except CDE and CDOT are required to submit FY 2018-19 budget requests to OSPB that are 2 percent lower than the agency budgets received for FY 2017-18. All agencies employ staff responsible for the preparation of annual budget requests, and this requirement is not expected to increase budget staff workload by more than a minimal amount. OSPB is required to seriously consider reduced agency budget requests when preparing the executive budget request for the JBC. Any workload increase resulting from consideration of budget cuts can be accomplished within existing office appropriations.

The bill does not by itself reduce departmental appropriations for FY 2018-19. Appropriations will be set by the JBC and the General Assembly in the 2018 Long Bill.

General Fund budget. The bill increases the amount available for the FY 2017-18 General Fund budget by $12.5 million relative to current law. This amount represents the net impact of the following changes:

- $70.0 million in increased revenue from the retail marijuana special sales tax;
- $2.5 million in increased revenue attributable to the conservation easement income tax credit remaining nonrefundable in tax year 2018;
- $0.3 million in reduced General Fund expenditures attributable to the increase in Medicaid copayments; and
- $60.3 million in new transfers to the MTCF ($30.3 million) and the SPSF ($30.0 million).

ACE Kids Act - conditional impact. Subject to available appropriations, HCPF will incur an additional workload increase conditional on the federal passage of the ACE Kids Act. The timing and magnitude of the impact depends on the date of passage and final content of the ACE Kids Act. For this reason, this impact is assessed as an indeterminate potential expenditure increase.

Local Government Impact

The bill increases local government distributions from the retail marijuana special sales tax by $3.1 million in FY 2017-18 and $3.5 million in FY 2018-19. While the bill reduces the local government share of special sales tax revenue from 15 percent to 10 percent, this impact is more than offset by the increase in the tax rate from 8 percentage points to 15 percentage points in these years. The local government share of retail marijuana special sales tax revenue is distributed to counties and municipalities that have allowed retail marijuana sales in their jurisdictions.

Local governments will continue to collect their general sales taxes on retail marijuana unless they adopt a specific exemption.

School District Impact

The bill increases distributions from the SPSF for school districts and institute charter schools beginning in FY 2017-18. For FY 2017-18 only, $30.0 million is disbursed from the fund to rural ($16.5 million) and small rural ($13.5 million) school districts. For FY 2018-19 and all subsequent fiscal years, the amount disbursed from the fund is equal to 12.59 percent of retail marijuana special sales tax collections. This amount is estimated at $19.7 million for FY 2018-19 and $20.5 million for FY 2019-20.

Effective Date

Unless the Centers for Medicare and Medicaid Services determine that they do not comply with federal law, the portions of the bill that create the Colorado Healthcare Affordability and Sustainability Enterprise, adjust the Referendum C cap, repeal SB17-256, and make corresponding appropriations take effect on July 1, 2017. The remainder of the bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For the current FY 2016-17, the bill requires and includes a General Fund appropriation of $3,750 to the Department of Revenue.

For FY 2017-18, the bill requires and includes technical adjustments to appropriations for the Department of Health Care Policy and Financing to reflect the replacement of the Hospital Provider Fee Cash Fund with the Healthcare Affordability and Sustainability Fee Cash Fund. In addition, the bill requires and includes a $526,381,099 increase in departmental appropriations for medical services premiums as follows:

- a decrease of $320,035 in appropriations from the General Fund;
- an increase of $264,035,165 in appropriations from the Healthcare Affordability and Sustainability Fee Cash Fund relative to what would otherwise be appropriated from the Hospital Provider Fee Cash Fund; and
- an increase of $262,665,969 in appropriations from federal funds.

State and Local Government Contacts

All State Agencies