



**Legislative  
Council Staff**

*Nonpartisan Services for Colorado's Legislature*

# FISCAL NOTE

**Drafting Number:** LLS 18-0408  
**Prime Sponsors:** Rep. Van Winkle

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**Bill Status:** House SVMA  
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**Bill Topic:** NO ENCRYPTION OF DISPATCH RADIO COMMUNICATIONS

**Summary of  
Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires the use of encrypted dispatch radio communications by all state and local government entities except in certain circumstances. It also creates a new crime for monitoring dispatch radio communications. A minimal increase in revenue may occur. Costs of at least \$2.1 million will be incurred in FY 2018-19; future fiscal year costs may also be incurred. Refer to the State Expenditures section for additional information.

**Appropriation  
Summary:** The bill requires an appropriation of at least \$2 million to the Office of Information Technology and \$101,250 to the Department of Human Services in FY 2018-19.

**Fiscal Note  
Status:** This preliminary fiscal note reflects the introduced bill. It should be noted that while all agencies were canvassed for the fiscal note, not all agencies were able to respond with complete information within the requested time frames. The fiscal note will be updated if new information becomes available.

**Table 1**  
**State Fiscal Impacts Under HB 18-1061**

		<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>Revenue</b>	General Fund and Cash Funds	Less than \$5,000	Less than \$5,000
	<b>Total</b>	<b>&lt;\$5,000</b>	<b>&lt;\$5,000</b>
<b>Expenditures</b>	General Fund	at least \$2.1 million	not estimated
	<b>Total</b>	at least \$2.1 million	
<b>Transfers</b>	<b>Total</b>	-	-

## **Summary of Legislation**

This bill requires that all state and local government agencies broadcast dispatch radio communications without encryption so that they may be monitored by commercially available radios receivers and scanners. The bill allows encryption for dispatch radio communications to be used:

- by a state entity, city, city and county, or county when necessary to preserve the tactical integrity of an operation, protect the safety of law enforcement officers or other emergency responders, or prevent the destruction of property; and
- by an investigative unit of a state or local government law enforcement agency engaged in the investigation of potential or actual criminal conduct.

Any state or local government entity that encrypts any of its dispatch radio communications, as permitted by House Bill 18-1061, must disclose on its public website or upon request a list of its radio communications channels; a description of the channels, including whether each channel is used for tactical or investigative communications; and an indication of which channels are always or sometimes encrypted. The bill's requirements do not apply to the use of cellular or other common-carrier telephonic communication by a state or local government entity.

**Civil actions.** The bill allows any person to bring a civil action in district court against any sheriff, police chief, fire chief, or other administrative head of any state or local government agency, for alleged violations of the bill.

**Crime of monitoring dispatch radio communications.** The bill creates a new class 3 misdemeanor for unauthorized interception of dispatch radio communications. This offense occurs when an intercepted communication is used to assist in the commission of a criminal offense or to avoid or escape arrest and prosecution by the interceptor or another person he or she knows to be a suspect in the commission of any criminal offense.

## **Comparable Crime**

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates the new crime of monitoring dispatch radio communications. The fiscal note assumes that because the crime requires other, more serious criminal actions to have occurred, in most cases this new crime will be added as a charge to those offenses. As of this writing, it is not known which offenses those may include.

## **State Revenue**

Beginning in FY 2018-19, this bill is anticipated to increase state revenue by less than \$5,000 per year.

**Criminal fines.** The bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 3 misdemeanor offense is \$50 to \$750. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed by the courts, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

**Court and administrative fees.** The bill will also increase state fee revenue by a minimal amount. Fees are imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Some fee revenue is shared with local governments; refer to the Local Government Impact section for additional information.

### **TABOR Refund**

The bill increases state revenue subject to TABOR by less than \$5,000 per year in FY 2018-19 and FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

### **State Expenditures**

The bill increases state expenditures by an estimated minimum of \$2.1 million General Fund in FY 2018-19. Future fiscal year costs may also be incurred, depending on the timing and scope of work that must be completed. These impacts are shown in Table 2 and described below.

**Table 2**  
**Expenditures Under HB 18-1061**

	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Office of Information Technology	at least \$2 million	not estimated
Department of Human Services	\$101,250	-
Colorado State University System	up to \$4,500	-
<b>Total Cost</b>	<b>at least \$2.1 million</b>	<b>not estimated</b>

**Office of Information Technology (OIT).** The OIT estimates that the bill's cost will be in excess of several million dollars; with exact costs available only after an assessment study is completed. Costs may include reprogramming or acquiring new radios and costs associated with ensuring interoperability among all first responder and law enforcement agencies. To the extent that publicly listing radio channels causes agencies to create new encrypted talk groups, additional site channels may also be needed. Depending on how the system growth is accommodated, additional FTE may also be required. The fiscal note shows costs in the first year but notes that additional costs are possible and may span multiple years. It is assumed that the office will request any additional adjustments in appropriations through the annual budget process once precise costs data are available.

**Department of Human Services.** The Division of Youth Services in the Department of Human Services currently operates 10 youth detention facilities across the state which use encrypted digital trunk radios to communicate between control centers and other locations such as classrooms, medical clinics, and living units, among others. It has 810 radios that will need reprogramming to comply with the requirements of the bill at a cost of \$125 per radio, for a total of \$101,250 General Fund.

**Colorado State University (CSU) System.** Similar to the Department of Human Services, CSU Police would be required to reprogram its' 105 radios. The department's maintenance cost includes one reprogramming of its radios per year by its vendor; if the bill is enacted after the annual reprogramming, CSU Police will incur an estimated cost of \$4,500.

**Judicial Department.** The bill creates workload for district courts to hear any civil actions brought in accordance with the bill. In addition, if single filings of the new class 3 misdemeanor crime of monitoring dispatch radio communications occur, county court workload will increase. The fiscal note assumes that any new filings will be minimal and no additional appropriations for the trial courts are required at this time.

**Judicial agencies providing representation to indigent persons.** Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel will increase under the bill should there be any single filings of the new class 3 misdemeanor crime of monitoring dispatch radio communications. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

**Administrative costs.** Other state agencies that use dispatch radio communications, including the Departments of Natural Resources and Public Safety and other institutions of higher education, may incur administrative costs and workload to ensure compliance with the bill. Except for costs managed by the OIT and described above, these impacts can be accomplished within existing appropriations.

**Legal costs.** To the extent that any civil actions are filed as a result of this bill, costs will increase for affected state agencies and may result in costs and workload for the Department of Law. The fiscal notes assumes that should this occur, affected state agencies will request additional appropriations through the annual budget process.

## **Local Government**

Beginning in FY 2018-19, local governments will have increased administrative workload and costs in order to develop policy for encrypted dispatch radio communications and to publish information about its radio channels. To the extent that any civil actions are filed, legal costs will also increase. Other potential impacts are described below.

**District attorneys.** Some district attorneys' offices have criminal investigators that use radio communications. To the extent that these offices are not already in compliance with the bill, workload and costs will increase.

**Criminal filings.** The bill creates a new class 3 misdemeanor, which may increase workload for district attorneys to prosecute any offenses not otherwise connected to another crime. Under current law, a court may sentence an offender to jail for a class 3 misdemeanor for a period of between 0 and 6 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Estimated costs to house an offender in a county jail varies from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates. For class 3 misdemeanors committed in Denver County, criminal fine and court fee revenue is collected by Denver County Court. Because the court has discretion to impose a term of incarceration, a fine, or both, the precise impact to Denver County has not been estimated. Please refer to the State Revenue section above for information about fine penalty ranges and court fees.

**Radio and system costs.** Similar to the state, some local governments that use dispatch radio communications may incur costs to reprogram or purchase new radios and other equipment, or to ensure interoperability. These impacts have not been estimated.

**Regional Transportation District (RTD).** RTD expects that it may incur costs to purchase additional secure radios and group transmitters and to acquire additional channel licenses. As of this writing, the exact costs for these changes have not been estimated.

### **Effective Date**

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed. It applies to dispatch radio communications of each state and local government entity on and after the bill's effective date.

### **State Appropriations**

For FY 2018-19, the bill requires a General Fund appropriation of \$2 million to the Office of Information Technology and \$101,250 to the Department of Human Services.

### **State and Local Government Contacts**

All Local and State Agencies