



**Colorado  
Legislative  
Council  
Staff**

**HB17-1134**

**FISCAL NOTE**

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

**Drafting Number:** LLS 17-0386  
**Prime Sponsor(s):** Rep. Williams D.  
Sen. Marble

**Date:** February 16, 2017  
**Bill Status:** House SVMA  
**Fiscal Analyst:** Amanda Hayden (303-866-4918)

**BILL TOPIC:** HOLD CO GOVERNMENT ACCOUNTABLE SANCTUARY JURISDICTIONS

Fiscal Impact Summary	FY 2016-2017 <i>(current year)</i>	FY 2017-2018	FY 2018-2019
<b>State Revenue</b>			<b>&lt;\$5,000</b>
Cash Funds			<5,000
<b>State Expenditures</b>			
General Fund	Workload increase.		\$21,900
<b>TABOR Impact</b>			<b>&lt;\$5,000</b>
<b>Appropriation Required:</b> \$58,364 - Department of Corrections (FY 2017-18 - FY 2021-22).			
<b>Future Year Impacts:</b> Ongoing increase in state revenue and expenditures.			

**Summary of Legislation**

This bill outlines procedures relating to sanctuary jurisdictions. A sanctuary jurisdiction is defined as one that adopts a law, ordinance, or policy that prohibits or in any way restricts an official or employee from cooperating and complying with federal immigration law or from sending, receiving, maintaining, or using information regarding the immigration status of an individual. A sanctuary jurisdiction can be the state, a city, a county, or any other political subdivision of the state.

**Compliance and reporting requirements.** The bill prohibits any jurisdiction from limiting or prohibiting an elected official, employee, or law enforcement officer from communicating or cooperating with federal officials concerning the immigration status of any individual in Colorado. All jurisdictions in the state must provide written notice of the duty to cooperate with federal immigration enforcement to all employees. On or before January 1, 2018, and each year thereafter, each jurisdiction must submit a written report to the Department of Public Safety (DPS) that indicates that the jurisdiction is in compliance with these requirements. A law enforcement officer with reasonable cause to believe that an individual under arrest is not lawfully present in the United States must immediately report the individual to the U.S. Immigration and Customs Enforcement (ICE) office. On or before March 1, 2018, and each year thereafter, every jurisdiction in the state must report to DPS the number of law enforcement reports made to ICE. On or before April 1, 2018, and each year thereafter, DPS must compile the reports from jurisdictions regarding compliance with federal immigration law and the number of law enforcement reports to ICE and submit this information to the General Assembly and to the State Controller. The State Controller must withhold payment of state funds to any jurisdiction that does not submit timely reports to DPS.

**Civil penalties.** The bill allows an individual to sue a sanctuary jurisdiction, as well as the elected officials within that jurisdiction, if an undocumented immigrant residing there committed a crime that caused the individual a personal injury or that damaged the individual's real or personal property. The maximum amount of compensatory damages for injury to a person is \$700,000; for injury to property, the maximum is \$350,000. Governmental immunity is not a valid defense against an action brought under the above conditions.

**Criminal penalties.** An elected official commits the crime of rendering assistance to an illegal alien if he or she was responsible for creating a sanctuary jurisdiction in which an illegal alien has been convicted of a crime that caused injury to a person or to property. Rendering assistance to an illegal alien is a class 4 felony. Any person with knowledge of a crime committed by an undocumented immigrant as a result of a sanctuary jurisdiction may file an affidavit outlining the crime with the district attorney's office or the state Attorney General's office, which then must investigate the matter and determine whether or not to bring charges or impanel a grand jury within 49 days after the filing of the affidavit.

### **Background and 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. The crime created by this bill is similar to first degree official misconduct, which occurs when a public servant knowingly refrains from performing a duty imposed upon him or her by law or violates any statute or lawfully adopted rule or regulation relating to his or her office. First degree official misconduct is a class 2 misdemeanor. Over the last three years, there have been no convictions entered for this offense.

Current federal law prohibits state and local governments from enacting laws that limit communication with federal authorities about the immigration status of any individual. Federal agencies are solely responsible for enforcing immigration policy; however, state and local law enforcement agencies can choose to participate in cooperative agreements with ICE aimed at facilitating the deportation of undocumented immigrants. The Colorado Department of Corrections (DOC), for example, reports that offenders identified as undocumented are reported to ICE and are typically picked up by ICE officials upon release from DOC facilities.

### **State Revenue**

Beginning in FY 2017-18, this bill is anticipated to increase state cash fund revenue by less than \$5,000 per year, assuming that at least one jurisdiction creates a sanctuary policy and at least one elected official is convicted of the crime created by the bill.

**Criminal fines.** This 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 4 felony is \$2,000 to \$500,000. 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 criminal fines imposed in 2016, the fiscal note assumes that any revenue generated is likely to be minimal.

**Court and administrative fees.** Based on similar offenses, this bill may 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 and the type of court. Typical fees may include such items as probation supervision, genetic testing, victim compensation, and other administrative fees. Some fee revenue is shared with local governments; please refer to the Local Government Impact section for additional information.

**TABOR Impact**

This bill may increase state cash fund revenue from fines and fees, which may increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill may increase the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget may decrease by an identical amount.

**State Expenditures**

Beginning in the current FY 2016-17, this bill increases workload for several state agencies, as discussed below. Beginning in FY 2018-19, this bill increases state General Fund expenditures by \$58,364 in the Department of Corrections.

**Five-Year Fiscal Impact on Correctional Facilities.** This bill is anticipated to increase state General Fund expenditures by an estimated \$58,346 over the five-year period beginning in FY 2017-18 for the Department of Corrections (DOC). This increase assumes at least one elected official in a sanctuary jurisdiction will be prosecuted and convicted of the crime created by the bill and that one offender will be sentenced to prison for a class 4 felony every five years and have an average length of stay of 32 months. Should additional convictions occur, the fiscal note assumes the DOC will request additional appropriations through the annual budget process.

Table 1 shows the estimated impact to correctional facilities over the next five fiscal years.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2017-18	0.0*	\$0	\$0	\$0
FY 2018-19	1.0	0	21,900	21,900
FY 2019-20	1.0	0	21,900	21,900
FY 2020-21	0.7	0	14,564	14,564
FY 2021-22	0.0	0	0	0
<b>Total</b>			<b>\$58,364</b>	<b>\$58,364</b>

\*No impact expected in first year due to time required for criminal filing, trial, disposition, and sentencing.

Once an offender is released from a correctional facility, he or she is assigned to parole. Table 2 shows the estimated impact on parole over the next five fiscal years.

<b>Fiscal Year</b>	<b>Annualized Parole Impact</b>	<b>Annualized Operating Cost</b>	<b>Total Cost</b>
FY 2016-17	0.0	\$0	\$0
FY 2017-18	0.0	0	0
FY 2018-19	0.0	0	0
FY 2019-20	0.3	1,549	1,549
FY 2020-21	1.0	4,625	4,625
<b>Total</b>		<b>\$6,174</b>	<b>\$6,174</b>

*\*\*No impact expected until the first year's cohort of offenders is released to parole.*

**Judicial Department.** To the extent that the bill increases civil cases where individuals sue state or local government entities claiming they are sanctuary jurisdictions, workload for trial courts will increase. The fiscal note assumes that any increase in workload related to civil actions can be accomplished within existing appropriations. The bill also increases workload for trial courts to hear any new felony cases filed and may increase workload for probation services should an offender be sentenced to probation. To the extent that defendants are deemed indigent and appointed counsel by the state, workload and costs may increase for the Office of the State Public Defender and the Office of the Alternate Defense Counsel. The fiscal note assumes that only a small number of new cases will be filed, and that any increase in workload for any agency of the Judicial Department can be accomplished within existing appropriations.

**Department of Public Safety (DPS).** DPS must compile and present yearly reports to the General Assembly from all jurisdictions in the state. The department must also submit its own reports regarding Colorado State Patrol contacts with individuals believed to be undocumented immigrants. No additional appropriations are required at this time.

**Department of Law (DOL).** The bill increases workload in the Attorney General's office within the DOL to investigate affidavits filed alleging criminal activity by undocumented immigrants in sanctuary jurisdictions. The DOL may also be required to provide legal representation to a state entity facing civil action. Should the court rule against the state in any civil proceeding and require the state to pay penalties, expenditures may increase. The fiscal note assumes that the state complies with federal immigration law and that any increase in workload or costs related to these scenarios would be minimal. Should the DOL require additional appropriations, it will request them through the annual budget process.

**Other state agencies.** The bill requires the governing body of each jurisdiction in the state to provide notice to all employees of the requirement to cooperate with federal immigration law and requires each jurisdiction to submit a report to DPS regarding its compliance. The fiscal note assumes a minimal increase in workload as executive, legislative, and judicial branch agencies provide notice to all employees and submit reports to DPS.

**Local Government, Statutory Public Entity, and School District Impact**

This bill increases workload for and may reduce the revenue of local governments, statutory public entities, and school districts, as described below.

**All local government entities.** This bill requires all political subdivisions of the state, including school districts, to report to DPS that they are in compliance with federal law. It also requires all law enforcement agencies to report to DPS the number of contacts with the public that lead to a report to ICE. To the extent that a local government, statutory public entity, or school district is found to be a sanctuary jurisdiction, the state may withhold funding for that entity, leading to a potentially substantial reduction in revenue. The precise impact to local governments associated with these provisions will vary across jurisdictions and has not been estimated for this analysis. In addition, any local government facing a civil action for creating a sanctuary jurisdiction may incur legal costs, court fees, or penalties under the bill. The fiscal impact will depend upon the number of lawsuits filed and the outcome of those cases and has not been estimated.

**District attorneys.** This bill may increase workload for district attorneys, who are tasked with investigating reports of crimes committed by undocumented immigrants in sanctuary jurisdictions and potentially bringing charges against elected officials.

**Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to acts, omissions, or crimes committed on or after this date.

**State Appropriations**

The bill requires the five-year General Fund appropriations to the DOC of \$58,364 shown in Table 1 above.

**State and Local Government Contacts**

Corrections	Counties	District Attorneys
Information Technology	Judicial	Law
Municipalities	Personnel	Public Safety
School Districts	Secretary of State	Sheriffs