



Legislative
Council Staff

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FISCAL NOTE

Drafting Number: LLS 18-0870 **Date:** March 13, 2018
Prime Sponsors: Rep. Williams D. **Bill Status:** House SVMA
 Sen. Lundberg; Marble **Fiscal Analyst:** Kerry White | 303-866-3469
 Kerry.White@state.co.us

Bill Topic: HOLD CO GOVERNMENTS ACCOUNTABLE SANCTUARY JURISDICTIONS

Summary of Fiscal Impact:

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

Conditional upon voter approval, this bill creates civil and criminal penalties for creating sanctuary jurisdictions. It increases state revenue and expenditures, as well as workload for all political subdivisions of the state on an ongoing basis.

Appropriation Summary: If approved by the voters, the bill requires five-year appropriations of \$62,335 to the Department of Corrections.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 18-1178

		FY 2018-19	FY 2019-20
Revenue	General Fund and Cash Funds	-	less than \$5,000
Expenditures	General Fund	-	\$22,072
Transfers		-	-

Summary of Legislation

Conditional upon voter approval, this bill creates civil and criminal penalties for creating 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, or using information regarding the immigration status of an individual. A sanctuary jurisdiction can be the state, a city, a county, a school district, a special district, an institution of higher education, 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, 2019, 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) or successor office. On or before March 1, 2019, 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, 2020, 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 unlawfully present person 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 a person not lawfully present has been convicted of a crime that caused injury to a person or to property. The crime of rendering assistance to an illegal alien is a class 4 felony. Any person with knowledge of a crime committed by a person not lawfully present 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

Subject to voter approval and beginning in FY 2018-19, 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 this crime.

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 Refund

If approved by voters, 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

Subject to voter approval, this bill increases workload for several state agencies beginning in FY 2018-19. Beginning in FY 2019-20, this bill increases state General Fund expenditures in the DOC, as discussed below.

Prison beds. This bill is anticipated to increase state General Fund expenditures for prison beds by an estimated \$62,335 for the 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 5 years with an average length of stay of 33.9 months. The fiscal note assumes no impact will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. If impacts arise in the first year, this analysis assumes the DOC will request any required appropriations through the annual budget process. Table 2 shows the estimated cost of the bill for prison beds over the next five fiscal years.

**Table 2
 Prison Costs Under HB 18-1178**

	Inmate Bed Impact	Operating Cost
FY 2018-19	-	-
FY 2019-20	1.00	\$22,072
FY 2020-21	1.00	\$22,072
FY 2021-22	0.82	\$18,191
FY 2022-23	-	-
Total Cost		\$62,335

Parole. Once an offender is released from prison, he or she is assigned to parole. The average length of stay on parole for a class 4 felony is 26.1 months. Table 3 shows the estimated impact on parole over the next five fiscal years. No impact is expected until the first year's cohort of offenders is released to parole.

**Table 3
 Parole Costs Under HB 18-1178**

	Annualized Parole	Annualized Operating
FY 2018-19	-	-
FY 2019-20	-	-
FY 2020-21	-	-
FY 2021-22	0.18	\$836
FY 2022-23	1.00	\$4,756
Total Cost		\$5,592

For additional information about costs in fiscal notes for bills affecting the DOC, please visit: leg.colorado.gov/fiscalnotes.

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.

State Expenditures

Election expenditure impact — existing appropriations. This bill includes a referred measure that will appear before voters at the November 2018 general election. While no additional appropriation is required in this bill, certain election costs are incurred by the state when ballot measures are referred to voters. These costs, paid using existing appropriations, are in two areas. First, current law requires the state to reimburse counties for costs incurred conducting a ballot measure election, paid from the Department of State Cash Fund in the Secretary of State's Office, estimated at \$3.2 million in FY 2018-19. Second, the text and title of the measure must be published in one legal newspaper per county and an analysis of the measure must be included in the Ballot Information Booklet mailed to all registered voter households, paid from the Ballot Analysis Revolving Fund in the Legislative Department, which is estimated to cost \$2.1 million in FY 2018-19. Publication costs will increase by approximately \$115,000 per measure beyond this base amount for any additional referred or initiated measures placed on the ballot.

Local Governments, Statutory Public Entities, and School Districts

If approved by the voters, the 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 after the date of the official declaration of the vote by proclamation of the Governor, not later than 30 days after the votes have been canvassed. Sections 2 and 3 apply to acts or omissions and criminal offenses occurring on or after this date.

Appropriations

If approved by the voters, the bill requires a five-year appropriation of \$62,335 General Fund to the Department of Corrections for prison beds, as shown in Table 2 above.

State and Local Government Contacts

All Local and State Agencies