



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 22-0954	Date:	September 21, 2022
Prime Sponsors:	Rep. McCluskie; Tipper Sen. Moreno	Bill Status:	Signed into Law
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Bill Topic: HIGHER EDUCATION INSTITUTION ENTERPRISE STATUS

Summary of Fiscal Impact:

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

The bill requires that a state enterprise stop collecting fees or surcharges if additional collections would cause it to exceed a certain limit, and clarifies the circumstances under which higher education institutions may requalify as state enterprises. It potentially decreases state revenue, state expenditures and state TABOR refunds on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

The bill requires that a state enterprise stop collecting fees or surcharges, if the collection of additional fees or surcharges would cause it to collect more than \$100 million in its first five fiscal years of operation, and if voters had not previously approved such collections.

The bill also clarifies that certain higher education entities that were previously qualified as state enterprises do not require voter approval in order to requalify as enterprises when they again satisfy the applicable fiscal criteria. This provision applies to institutions of higher education and to auxiliary facilities managed by an institution of higher education or the Auraria Higher Education Center.

Background

Enterprises. An enterprise is a government-owned business that is authorized to issue revenue bonds and that receives less than 10 percent of its revenue from state and local government sources combined. Revenue collected by programs designated as enterprises is not subject to the state's TABOR limit.

All state higher education institutions were designated as enterprises in 2004. Some of the smaller institutions, including Adams State University, Fort Lewis College, and Western Colorado University, are occasionally disqualified as enterprises when state contributions exceed 10 percent of their revenue, often due to state-funded capital improvement projects. These institutions may requalify as enterprises once state contributions again fall below 10 percent of their revenue.

When a program is disqualified as an enterprise, a corresponding upward adjustment is made to the state TABOR limit. When a program requalifies as an enterprise, a corresponding downward adjustment is made to the state TABOR limit.

Proposition 117. Proposition 117, approved by voters in 2020, requires voter approval for a state enterprise to be qualified or created if its projected or actual revenue exceeds \$100 million in its first five fiscal years. The measure does not specifically address whether a previously qualified enterprise requires voter approval in order to requalify as an enterprise.

Assumptions

Enterprise collections of fees and surcharges. It is unclear what would happen under current law if an enterprise collected more than \$100 million in fees and surcharges during its first five years of operation without prior voter approval. If the enterprise would stop collecting fees and surcharges in order to avoid exceeding that threshold, then the provision of the bill that requires an enterprise to stop collecting fees and surcharges codifies current practice and has no fiscal impact. If the enterprise would collect the excess revenue, then the bill potentially decreases state revenue, as discussed below.

Requalification of enterprises. It is unclear whether requalification of higher education entities as enterprises would require voter approval under current law, and, if approval were required, whether a ballot measure would actually be referred to voters. If voter approval is not required under current law, then the bill has no fiscal impact. If voter approval is required under current law, then the bill potentially decreases state expenditures and decreases state TABOR refunds, as discussed below.

State Revenue

If the bill causes a state enterprise to cease collecting revenue that it otherwise would have collected, it will decrease cash fund revenue collected by the state enterprise. The amount and timing of the decrease are indeterminate.

State Expenditures

If the bill reduces the number of ballot measures referred to voters in the future, it will decrease expenditures for the Department of State and the Legislative Department related to holding the election, drafting the statewide voter guide (Blue Book), and related duties. The amount and timing of the decrease are indeterminate because they depend on the number of ballot measures that would otherwise be referred and when.

Other Budget Impacts

If the bill causes higher education entities to requalify as enterprises, it will reduce TABOR refunds to taxpayers in some future years. Refunds will decrease in years when revenue to the higher education entity grows faster than the combined rates of inflation and population growth.

Effective Date

The bill was signed into law by the Governor and took effect on June 7, 2022.

State and Local Government Contacts

Higher Education