



**Colorado  
Legislative  
Council  
Staff**

**HB16-1401**

**FINAL  
FISCAL NOTE**

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

**Drafting Number:** LLS 16-0260

**Date:** August 25, 2016

**Prime Sponsor(s):** Rep. Becker K.; Priola  
Sen. Woods; Hodge

**Bill Status:** Became Law without Signature  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** RETAIL FOOD ESTABLISHMENT LICENSURE AND INSPECTION

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018	FY 2018-2019
<b>State Revenue</b>	<b>(\$8,426)</b>	<b>\$284</b>	<b>\$8,995</b>
Cash Funds	(8,426)	284	8,995
<b>State Expenditures</b>	See State Expenditures section.		
<b>TABOR Impact</b>		\$284	Not estimated.
<b>Appropriation Required:</b> None.			
<b>Future Year Impacts:</b> Ongoing revenue increase.			

**Summary of Legislation**

The bill increases the annual licensing fees paid by retail food establishments beginning January 1, 2017. Additional increases on January 1, 2018, and January 1, 2019, are contingent upon compliance with the requirements explained below. Fee increases are delayed for new retail food establishments.

For the second fee increase to be effective on January 1, 2018, the Colorado Department of Public Health and Environment (CDPHE) must establish a uniform system to communicate health inspection reports to the public and the CDPHE, and local public health agencies must exclusively use the system to communicate inspection results by July 1, 2017. If the requirements are not met, this fee increase and the subsequent fee increase will be delayed.

For the third fee increase to be effective on January 1, 2019, the previous requirement must be met and the CDPHE must by April 1, 2017, respond to all retail food establishment plans and specifications and Hazard Analysis Critical Control Point Principles plan reviews within 14 working days. If this requirement is not met, the fee increase will be delayed.

The bill creates a new license for a limited retail food establishment that prepares or serves food that does not require time or temperature control for safety, provides self-service beverages, offers prepackaged commercially prepared food and beverages requiring time or temperature control or only reheating commercially prepared foods that require time or temperature control for safety for retail sale to consumers. The CDPHE is required to ensure significant statewide compliance with the federal Food and Drug Administration's voluntary National Retail Food Regulatory Program standards by December 31, 2019.

The bill specifies that counties may only spend the revenue from the increased fees on retail food-health related activities. The bill lowers the maximum period of suspension for a retail food establishment license from six months to one month, except in cases of closure due to an imminent health hazard. Finally, the bill allows the CDPHE or a local public health agency to issue cease- and-desist orders when a civil penalty has previously been issued and the person remains noncompliant.

## Background

***Retail food establishment inspections.*** State law requires retail food establishments to obtain a license before operating any business that sells food to the public. Retail food establishments include restaurants, catering operations, grocery stores, convenience stores, concession stands, and food trucks. Most counties issue their own licenses for food operations within the county. The CDPHE issues licenses and conducts inspections for retail food establishments in Clear Creek, Grand, Gunnison, Jackson, Moffat, and Rio Blanco counties.

***Retail food establishment licensing fees.*** Licensing fees are assessed annually and vary based on the type of license and the seating capacity or square footage of the establishment. Current retail food establishment licensing fees vary from \$115 to \$690 annually, and are established in statute. Colorado law permits the City and County of Denver to establish its own licensing fees by ordinance.

State and local public health agency food safety programs are funded by licence fees for retail food establishments. Forty-three dollars of each fee collected is applied to the Food Protection Cash Fund in the CDPHE to cover the administrative costs of the licensing program, to investigate complaints filed against licensees, to promulgate rules by the State Board of Health related to food safety, to develop and enforce uniform statewide food safety standards, and to provide technical assistance and training related to the implementation of food safety regulations. The remainder of the licensing fee is retained by the local public health agency or, in the case of the counties listed above, by the CDPHE for the costs of inspections. When shortages in funding occur, counties make up the deficit with general funds. The General Assembly last increased fees in 2009.

***Stakeholder group study of license fees for retail food establishments.*** House Bill 15-1226 required the CDPHE to convene a stakeholder group to study retail food establishments, retail food establishment license fees, and retail food inspection programs. A report was issued December 1, 2015, which included legislative recommendations reflected in this bill.

## Assumptions

The fiscal note assumes that the requirements for implementing the second and third fee increase will be met. There are an estimated 18,922 retail food establishments in the state, excluding those in the City and County of Denver. The fiscal note also assumes that Gunnison County will begin its own food safety program January 1, 2017. All fees are paid January 1 of each year.

**State Revenue**

This bill will reduce state cash fund revenue in FY 2016-17 by \$8,426 and increase revenue by \$284 in FY 2017-18 and by \$8,995 in FY 2018-19 to the Food Protection Cash Fund in the CDPHE. The change in revenue from the FY 2015-16 baseline level of \$128,662 are shown in Table 1 and explained below.

<b>Table 1. Revenue Impact by Counties Inspected by CDPHE Under HB 16-1401</b>			
<b>CDPHE Inspected Counties</b>	<b>FY 2016-17 Net Change</b>	<b>FY 2017-18 Net Change</b>	<b>FY 2018-19 Net Change</b>
Clear Creek	\$5,156	\$6,874	\$8,593
Grand	12,725	16,967	21,209
Gunnison*	12,469	16,626	20,782
Jackson	926	1,235	1,544
Moffat	4,054	5,405	6,757
Rio Blanco	3,268	4,358	5,447
<b>Totals</b>	<b>\$38,598</b>	<b>\$51,465</b>	<b>\$64,332</b>
<b>Revenue Retained by Gunnison County</b>	<b>(\$47,024)</b>	<b>(\$51,181)</b>	<b>(\$55,337)</b>
<b>Change in CDPHE Revenue</b>	<b>(\$8,426)</b>	<b>\$284</b>	<b>\$8,995</b>

\*Gunnison County will collect all but \$43 per license beginning January 1, 2017.

**FY 2016-17 — decrease of \$8,426** - Fees for counties currently inspected by CDPHE are increased by 30 percent beginning January 1, 2017, resulting in a revenue increase of \$38,598 in FY 2016-17. Because Gunnison County will begin its own food safety program, revenue to the CDPHE is reduced by \$47,024 which includes the existing fee revenue of \$41,564 and new revenue of \$5,460 less \$7,009 for the \$43 state portion of each license, resulting in a net decrease from FY 2015-16 of \$8,426 for CDPHE in FY 2016-17.

**FY 2017-18 — increase of \$284** - Fees for counties currently inspected by CDPHE are increased by 40 percent beginning January 1, 2018, resulting in revenue increase of \$51,465 in FY 2016-17. Gunnison County will retain \$51,181 of those funds resulting in a total increase in revenue to the CDPHE of \$284 from FY 2015-16. CDPHE will retain \$7,009 from fees from Gunnison County retail food establishments.

**FY 2018-19 - increase of \$8,995** — Fees for counties currently inspected by CDPHE are increased by 50 percent beginning January 1, 2019, resulting in a revenue increase of \$64,332 in FY 2016-17. Gunnison County will retain \$55,337 of those funds resulting in a total revenue increase to the CDPHE of \$8,995 from FY 2015-16. CDPHE will retain \$7,009 from fees from Gunnison County retail food establishments.

**Fee impact on business.** State law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 2 below identifies the fee impact of this bill by license type.

<b>Table 2. Fee Impact on Retail Food Establishments Under HB 16-1401</b>					
<b>Type of Fee</b>	<b>Current Fee</b>	<b>1/1/2017 Fee</b>	<b>1/1/2018 Fee</b>	<b>1/1/2019 Fee</b>	<b>Number Affected</b>
<b>Restaurants by Seating Capacity</b>					11,675
up to 100 seats	\$255	\$330	\$360	\$385	
101 to 200 seats	\$285	\$370	\$400	\$430	
over 200 seats	\$310	\$405	\$435	\$465	
<b>Grocery Stores by Square Footage</b>					
<i>With Deli</i>					1,385
up to 15,000 sq. feet	\$207 to \$338	\$325	\$350	\$375	
over 15,000 sq. feet	\$360 to \$690	\$620	\$665	\$715	
<i>Without Deli</i>					550
up to 15,000 sq. feet	\$115 to \$180	\$170	\$183	\$195	
deli over 15,000 sq. feet	\$200 to \$500	\$305	\$330	\$353	
<b>Temporary Living for Quarters for Oil and Gas Workers by Seating Capacity</b>					12
up to 50 seats	\$750/\$275*	\$740	\$800	\$855	
over 50 seats	\$1,250/\$500	\$740	\$800	\$855	
<b>Limited Retail Food Service</b>	Various	\$235	\$253	\$270	3,800
<b>Mobile Vendors/Temporary Events</b>					1,500
Mobile Unit-prepackaged potentially hazardous food	\$155	\$150	\$160	\$175	
Mobile Unit	\$255	\$330	\$360	\$385	
Temporary Events	\$115 or \$255	License fees will be established by the county or district public health agency.			

\*Under current law, temporary living quarters pay an initial licensing fee and a renewal license fee.

Under current law, the retail food establishments that will be licensed as limited retail food establishments include restaurants, and grocery stores with and without delis. The new fee for the limited retail food establishments will be lower than the fees for the categories under which they are currently licensed. The bill reduces the number of square footage categories for grocery stores to two. These two changes preclude a direct comparison of license fees by license type.

### **TABOR Impact**

This bill decreases state revenue from fees in FY 2016-17, which will decrease the amount of money required to be refunded under TABOR. In FY 2017-18, this bill increases state revenue from fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

## State Expenditures

This bill is not expected to change the workload of CDPHE for the following reasons. The requirements that must be met in order for the second and third fee increases to take effect are already included in CDPHE's workload. If Gunnison County or any other county begins conducting its own food safety inspections, the CDPHE will use that extra time to address its backlog of inspections and to work towards increasing compliance with federal inspection standards.

The Department of Law may have a minimal increase in workload to assist the CDPHE in creating a template for cease-and-desist orders allowed under the bill. The hours needed for this or to support enforcement of cease-and-desist orders is expected to be accomplished with CDPHE's existing appropriation for legal services.

## Local Government Impact

This bill increases fee revenue to county and district public health agencies that operate food safety programs by approximately \$1.3 million in FY 2016-17, \$1.7 million in FY 2017-18, and \$2.2 million in FY 2018-19. For those public health agencies that currently use county general fund to support food safety programs, this additional revenue will be available to fund those programs and will reduce county general fund obligations.

By operating its own food safety program, Gunnison County is expected to have an increase in revenue of \$47,024 in FY 2016-17, \$51,181 in FY 2017-18, and \$55,337 in FY 2018-19. Gunnison County will also have an increase in workload to conduct inspections of retail food establishments.

The increases in local revenue in the second and third years depend on CDPHE and county and district public health agencies meeting their requirements under the bill.

## Effective Date

The bill became law without the Governor's signature on June 11, 2016, and it became effective on August 10, 2016.

## State and Local Government Contacts

Counties	Information Technology
Law	Public Health & Environment

## Research Note Available

An LCS Research Note for HB 16-1401 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.