



**Colorado
Legislative
Council
Staff**

HB17-1166

FISCAL NOTE

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

Drafting Number: LLS 17-0082
Prime Sponsor(s): Rep. Navarro
 Sen. Grantham

Date: February 16, 2017
Bill Status: House Transportation
Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: ACCESS BETWEEN HIGHWAYS & ADJOINING BUSINESSES

Fiscal Impact Summary	FY 2016-2017 <i>(current year)</i>	FY 2017-2018	FY 2018-2019
State Revenue			
State Expenditures Federal Funds General Fund Highway Users Tax Fund	Indeterminate increase. See State Expenditures section.		
Appropriation Required: None.			
Future Year Impacts: Ongoing indeterminate expenditure increase.			

Summary of Legislation

Under current law, the Colorado Department of Transportation (CDOT) and local governments are authorized to regulate vehicular access to any state highway under their jurisdiction in order to protect the public health, safety, and welfare; maintain smooth traffic flow; maintain highway right-of-way drainage; and to protect the functional level of public highways. This authorization is codified in the State Highway Access Code, as adopted by the Transportation Commission. The bill adds to the list of regulatory authority:

- convenience, and
- the provision of reasonable access to and from public highways and adjoining businesses.

As such, if CDOT or a local government denies a reasonable access variance to or from a business adjoining a divided state highway, the denial may amount to a taking under eminent domain law requiring just compensation as determined by the courts.

Background

All Colorado highways are considered "controlled-access highways." While adjacent properties have no right of state highway access except at points determined by CDOT, the State Highway Access Code entitles reasonable access to the general street system for these properties.

There is a substantial body of case law related to highway access, which has created certain tests to determine whether or not compensation may be sought in litigation. Property owners may also request an administrative hearing to review appropriateness of a CDOT action. The Transportation Commission or its proxy hears about five appeals annually. CDOT has not gone to litigation related to an access issue in over seven years, having been able to resolve all discussions with property owners in that time period.

State Expenditures

Beginning in FY 2016-17, the bill will create a potential expenditure increase for CDOT and the Department of Law. This increase comes from the following potential expenditures under the bill:

- just compensation, as determined by a court; and
- access-related road construction and right-of-way costs.

The fiscal note assumes that expenditures for just compensation would be paid by the Highway Users Tax Fund to an extent and, if past a certain threshold, would be addressed through the annual budget process and likely require General Fund. Road construction costs may be paid through Highway Users Tax Fund and flexible federal funds.

Local Government Impact

Local governments will also have potential expenditure increases similar to CDOT beginning in FY 2016-17. To the extent that a local government is required to create new access points and purchase rights-of-way, its transportation dollars will be diverted from other projects.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Counties Law Municipalities Transportation