



**Colorado  
Legislative  
Council  
Staff**

**HB16-1420**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated March 30, 2016)

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

**Drafting Number:** LLS 16-0236  
**Prime Sponsor(s):** Rep. Hullinghorst  
Sen. Crowder

**Date:** May 10, 2016  
**Bill Status:** Senate Finance  
**Fiscal Analyst:** Greg Sobetski (303-866-4105)

**BILL TOPIC:** COLORADO HEALTHCARE AFFORDABILITY & SUSTAINABILITY ENTERPRISE

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>
<b>State Revenue</b>	<b><u>\$73.1 million</u></b>	<b><u>\$5.2 million</u></b>
General Fund		5.2 million
Cash Funds	73.1 million	
<i>State Transfers</i>		
General Fund		(167.1 million)
Highway Users Tax Fund		111.4 million
Capital Construction Fund		55.7 million
<b>State Expenditures</b>	<b><u>\$146.6 million</u></b>	
Cash Funds	73.1 million	See State Expenditures section.
Federal Funds	73.5 million	
<b>TABOR Impact</b>		(\$267.7 million)
<b>Appropriation Required:</b> \$146.6 million - Dept of Health Care Policy and Financing (FY 2016-17).		
<b>Future Year Impacts:</b> Dependent on state TABOR situation; not estimated.		

**This fiscal note has been revised based on new information.**

**Summary of Legislation**

The **reengrossed bill** creates a Colorado Healthcare Affordability and Sustainability Enterprise (enterprise) within the Department of Health Care Policy and Financing (HCPF). Beginning FY 2016-17, the enterprise is responsible for the collection of a new Healthcare Affordability and Sustainability Fee that replaces the Hospital Provider Fee assessed under current law. The enterprise must use fee revenue to draw down federal matching funds and expend fee revenue and federal funds for administration, reimbursements to hospitals, and business support purposes including:

- consulting with hospitals to improve cost efficiency;
- advising hospitals regarding potential changes to federal and state laws and regulations;
- assisting hospitals with state performance tracking and payment systems; and
- providing other services to aid hospitals participating in state programs.

Fee revenue and federal matching funds are continuously appropriated to the enterprise, eliminating the authority of the General Assembly to constrain fee revenue via an appropriation in the Long Appropriations Bill. In FY 2016-17, the bill allows the enterprise to collect the maximum amount of fee revenue for which federal matching funds are available, \$73.1 million more than the Hospital Provider Fee allowance in the 2016 Long Appropriations Bill. This revenue, and \$73.5 million expected to be drawn in federal matching funds, is appropriated to the enterprise for expenditure in FY 2016-17.

The bill transfers all unexpended revenue from the existing Hospital Provider Fee to a newly created Unexpended Hospital Provider Fee Cash Fund at the end of FY 2015-16. Until October 30, 2017, the HCPF is authorized to use money in the fund to pay reimbursements to hospitals under the existing Hospital Provider Fee statute, and must refund any money not used for this purpose to the hospitals that paid the fees. The new cash fund is repealed effective November 1, 2017.

**Enterprise status under TABOR.** The Colorado Healthcare Affordability and Sustainability Enterprise is designated as an enterprise under the Taxpayer's Bill of Rights (TABOR) and has the authority to issue revenue bonds. Fee revenue collected by the enterprise is not subject to the state's TABOR limit.

The bill clarifies that termination of the HCPF's authority to assess and collect the existing Hospital Provider Fee, and creation of a new enterprise to assess and collect a new fee, does not require or authorize a downward adjustment to the TABOR limit (the Referendum C cap).

**Enterprise board.** The bill abolishes the Hospital Provider Fee Oversight and Advisory Board, which administers the existing Hospital Provider Fee, and the board's functions are transferred to a new Colorado Healthcare Affordability and Sustainability Enterprise Board in the enterprise. The enterprise board comprises the membership of the existing board at the time of its abolition, and future appointments are to be made by the Governor with the advice and consent of the Senate.

**Federal approval.** This bill takes effect only if, prior to July 1, 2016, the federal Centers for Medicare and Medicaid Services do not determine that it does not comply with federal law.

**Impact on other legislation.** House Bill 16-1421 and HB16-1450, if adopted, will take effect conditional upon the adoption of HB16-1420.

## **Background**

**Hospital Provider Fee.** Pursuant to House Bill 09-1293, the state collects a provider fee from hospitals. Hospital Provider Fee revenue is matched with federal dollars and used to reimburse hospitals for uncompensated care and to expand Medicaid and Child Health Plan Plus programs. Under current law, Hospital Provider Fee revenue is subject to the TABOR limit.

Actual and projected Hospital Provider Fee revenue through FY 2017-18 under current law is shown in Table 1. Fees were increased in October 2015 based on a new federal cost model dictating reimbursements to hospitals, triggering a jump in revenue in FY 2015-16. The 2016 Long Appropriations Bill reduces the FY 2016-17 allowance for Hospital Provider Fee revenue to \$656.7 million.

<b>Table 1. Hospital Provider Fee Revenue Forecast through FY 2017-18</b>				
	<b>FY 2014-15*</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Hospital Provider Fee Revenue	\$528.8 million	\$805.5 million	\$656.7 million	\$772.7 million

Source: Legislative Council Staff Economic and Revenue Forecast, March 2016, and House Bill 16-1405.

\*Preliminary and un-audited revenue collections.

**State enterprises.** TABOR defines an enterprise as "a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined." Because the share of revenue that an enterprise may receive from government sources is capped, enterprises are largely financially independent of core government agencies. Additionally, enterprises cannot levy taxes.

TABOR limits the amount of money that can be spent or saved by the state government and all local governments within the state. However, revenue collected by enterprises is not subject to these constraints. When an existing government entity becomes an enterprise, its revenue is exempted from the state TABOR limit, and a corresponding downward adjustment is made to the level at which the TABOR limit is set. This adjustment is not required when a new enterprise is created.

## **State Revenue**

The bill increases state revenue by **\$73.1 million in FY 2016-17** and by **\$5.2 million in FY 2017-18**. The amount for FY 2016-17 is revenue to the Colorado Healthcare Affordability and Sustainability Enterprise Cash Fund. The amount for FY 2017-18 is revenue to the state General Fund.

**Colorado Healthcare Affordability and Sustainability Enterprise.** The bill increases enterprise revenue by \$73.1 million relative to the allowance for Hospital Provider Fee revenue in the 2016 Long Appropriations Bill. Under current law, the State Medical Services Board is permitted to set the Hospital Provider Fee so that collections are approximately equal to or less than the appropriation in the Long Bill.

**General Fund.** Under current law, part of the gross conservation easement income tax credit becomes refundable during tax years following fiscal years for which the state incurs a TABOR surplus. Taxpayers claiming a conservation easement credit, or carrying forward credit from prior tax years, receive up to \$50,000 as a refundable credit in tax years following fiscal years for which the state incurs a TABOR surplus. Under current law, the state is expected to incur a TABOR surplus in FY 2017-18, and the tax credit is expected to become refundable in tax year 2018. Under the bill, state revenue subject to TABOR is expected to be reduced below the Referendum C cap, and the tax credit is expected not to be refundable. The revenue estimate for FY 2017-18 assumes a half-year impact for tax year 2018 on an accrual accounting basis.

**SB09-228 transfers.** For FY 2017-18, General Fund transfers to the Highway Users Tax Fund (HUTF) and the Capital Construction Fund (CCF) will increase by \$111.4 million and \$55.7 million, respectively. Senate Bill 09-228 requires transfers to the Highway Users Tax Fund (HUTF) and the Capital Construction Fund (CCF) to occur each year through FY 2019-20. When the TABOR surplus is between 1.0 percent and 3.0 percent of General Fund revenue, the transfers are halved; when the TABOR surplus exceeds 3.0 percent the transfers are suspended. The bill will eliminate the TABOR surplus in FY 2017-18, which is expected to exceed 1.0 percent of General Fund revenue under current law.

**TABOR Impact**

State revenue subject to TABOR will decrease by **\$656.7 million in FY 2016-17** and by **\$767.5 million in FY 2017-18**. The bill eliminates the TABOR refund obligation of \$267.7 anticipated for FY 2017-18. TABOR refunds are paid out of the General Fund. Estimated reductions in TABOR revenue primarily reflect the creation of a TABOR-exempt enterprise to collect hospital fees. In FY 2017-18, the enterprise impact is partially offset by an increase in General Fund revenue resulting from non-refundability of the gross conservation easement income tax credit.

Table 2 shows the projected impact on the mechanisms used to refund the TABOR surplus in current law. Revenue is refunded in the year following the year in which it is collected.

<b>Table 2. Impact of HB16-1420 on Current Refund Mechanisms</b>		
<i>Millions of Dollars</i>		
	<b>FY 2016-17 Surplus FY 2017-18 Refund Tax Year 2017</b>	<b>FY 2017-18 Surplus FY 2018-19 Refund Tax Year 2018</b>
<b>Current Law</b> TABOR Refund Obligation <i>Income Tax Rate Reduction</i> <i>Sales Tax Refund</i>	\$0	\$267.7 million <i>230.1 million</i> <i>37.6 million</i>
<b>House Bill 16-1420</b> TABOR Refund Obligation <i>Income Tax Rate Reduction</i> <i>Sales Tax Refund</i>	\$0	\$0
<b>Change from Current Law</b> TABOR Refund Obligation <i>Income Tax Rate Reduction</i> <i>Sales Tax Refund</i>	\$0	(\$267.7 million) <i>(230.1 million)</i> <i>(37.6 million)</i>

Source: Legislative Council Staff Economic and Revenue Forecast, March 2016, and House Bill 16-1405.

**State Expenditures**

**Department of Health Care Policy and Financing.** Administrative expenditures for the HCPF are not expected to change as a result of the bill. Because the bill does not change the primary purpose or use of funds compared with the existing Hospital Provider Fee, this fiscal note assumes that the HCPF can accomplish all transition activities within existing appropriations.

The bill increases distributions of Healthcare Affordability and Sustainability Fee revenue to hospitals by \$146.6 million relative to Hospital Provider Fee distributions in the 2016 Long Appropriations Bill, including a \$73.1 million increase in Healthcare Affordability and Sustainability Fee Cash Fund expenditures and a \$73.5 million increase in expenditures from federal funds.

**FY 2017-18 General Fund budget.** For FY 2017-18, the obligation for TABOR refunds will decrease by \$267.7 million, the obligation for SB09-228 transfers will increase by \$167.1 million, and General Fund revenue will increase by \$5.2 million.

**Effective Date**

Conditional on the determination by the Centers for Medicare and Medicaid Services that the bill complies with federal law, the bill takes effect upon signature of the Governor, or upon becoming law without his signature. The enterprise begins operation on July 1, 2016.

**State Appropriations**

For FY 2016-17, the bill appropriates \$73.1 million from the Healthcare Affordability and Sustainability Fee Cash Fund and \$73.5 million from federal funds to the Colorado Healthcare Affordability and Sustainability Enterprise.

**State and Local Government Contacts**

Health Care Policy and Financing  
Legislative Council Staff Economics Section