

# Referendum H

Colorado Legislative Council Staff  
**FISCAL IMPACT STATEMENT**

**Date:** September 7, 2006

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**BALLOT TITLE:** CONCERNING THE ELIMINATION OF A STATE INCOME TAX BENEFIT FOR A BUSINESS THAT PAYS AN UNAUTHORIZED ALIEN TO PERFORM LABOR SERVICES, AND, IN CONNECTION THEREWITH, PROHIBITING CERTAIN WAGES OR REMUNERATION PAID TO AN UNAUTHORIZED ALIEN FOR LABOR SERVICES FROM BEING CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES UNLESS SPECIFIED EXCEPTIONS APPLY AND, TO THE EXTENT SUCH A PAYMENT WAS CLAIMED AS A DEDUCTION IN DETERMINING THE BUSINESS' FEDERAL INCOME TAX LIABILITY, REQUIRING AN AMOUNT EQUAL TO THE PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS' FEDERAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING STATE INCOME TAX LIABILITY.

<b>Fiscal Impact Summary</b>	<b>FY 2006/07</b>	<b>FY 2007/08</b>
<b>State Revenues</b> General Fund		Potential Increase*
<b>State Expenditures</b> General Fund		\$43,750**
<b>FTE Position Change</b>	0.0 FTE	0.0 FTE
<b>Effective Date:</b> Upon voter approval at the November 2006 general election; applies to income tax years beginning January 1, 2008.		
<b>Appropriation Summary for FY 2006/07:</b> None Required		
<b>Local Government Impact:</b> None		

\* Please see State Revenue section on page 2 of this fiscal impact statement for a discussion of this impact.

\*\* If this expense is included in programming expenses that are included in the FY 2007-08 Long Bill appropriations to the Department of Revenue, the appropriation would not be required to implement the bill.

## Summary of Referendum

Referendum H would eliminate the ability of businesses to claim wages for "unauthorized aliens" as an expense for state income tax purposes. The definition of an unauthorized alien is one that violates federal law regarding the employment eligibility of aliens. Furthermore, the employer must pay an individual at least \$600 in a year in order to be covered under the referendum. It must be found that the employer knew that the employee was an unauthorized alien when the employee was hired.

The referendum does not apply to the following:

- any business exempt from complying with federal employment verification procedures;
- employees hired prior to January 1, 2008;

- any workers not paid directly by the employer; or
- wages paid to an employee that presents a valid license or identification card issued by the Department of Revenue.

The referendum allows the executive director of the Department of Revenue to prescribe forms and promulgate rules necessary to implement the provisions of the measure.

## **State Revenues**

Because Referendum H disallows the claiming of some expenses that may be occurring under federal law, it may increase the state taxable income of some business taxpayers. However, in order for the state to see an increase in income tax collections, a company that is violating federal law by hiring illegal aliens would have to admit such a violation on their state income tax return. Effectively, a company that is already violating federal law would have no incentive to proclaim their guilt on their state income taxes. Therefore, staff believes that it is unlikely that the state will receive any additional revenue, except in cases where a company is audited and found guilty. However, this scenario is also fairly unlikely since the company would have to be found to have knowingly employed "unauthorized aliens" and then be found to owe taxes as a result of the audit. In addition, if the alien showed the employer a valid identification card or license, even if the card was obtained illegally, the employer would have no liability.

## **State Expenditures**

The Department of Revenue will require \$43,750 for computer programming in order to add a line for an expense add-back on the corporate income tax form. If this cost can be met with moneys included in the FY 2007-08 Long Bill appropriations to the Department of Revenue, new funding would not be required to implement the bill.