

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 2, 2010)

Drafting Number: LLS 10-0089
Prime Sponsor(s): Rep. Soper
Sen. Bacon

Date: March 31, 2010
Bill Status: House Appropriations
Fiscal Analyst: Kerry White (303-866-3469)

TITLE: CONCERNING PAYMENT OF AMOUNTS DUE UNDER A CONSTRUCTION CONTRACT.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue Multiple accounts	up to (\$1.2 million)	up to (\$1.2 million)
State Expenditures General Fund	<u>at least \$167,929</u> 97,484	<u>at least \$161,649</u> 113,372
Cash Funds State Highway Fund	70,445	48,277
FTE Position Change	3.3 FTE	3.3 FTE
Effective Date: August 11, 2010, assuming the General Assembly adjourns May 12, 2010, as scheduled and no referendum petition is filed.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

As amended by the House Business Affairs and Labor Committee, this bill sets payment standards for construction contracts between contractors and public entities with contracts exceeding \$150,000, and private property owners. It reduces the amount that may be withheld (retainage) from a contractor to ensure that work is satisfactorily completed. Payments to contractors are required to include interest earned on the investment of retainage and be accompanied by a detailed accounting statement. Unpaid balances are subject to interest, plus applicable penalties of 15 percent per year. The bill also provides for the use of substitute securities, which require the release of retainage within 7 days of receipt. Failure to pay interest may subject a private property to a mechanic's lien.

State Revenue

By changing the provisions for holding retainage, this bill will reduce interest earnings in the State Treasury by up to \$1,171,918 per year beginning in FY 2010-11. Under current law, retainage monies are held in restricted accounts within the Treasury and earn interest. Averaging the previous 9 years, \$46.9 million per year is held in retainage. Assuming these monies are earning compounded

interest at 2.53 percent and held for an average of 3 years, the average amount of revenue generated from interest on retainage is approximately \$1.2 million per year. This bill requires interest earned on the investment of retainage be distributed to contractors at the time retainage payments are made.

State Expenditures

State expenditures will increase by at least \$167,929 and 3.3 FTE in FY 2010-11 and \$161,649 and 3.3 FTE in FY 2011-12. All costs are for staff to manage accounting transactions related to the payment of retainage interest and administration of any substitute securities, as outlined in Table 1 and the discussion that follows.

Table 1. Expenditures Under HB10-1162		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$155,739	\$156,179
FTE	3.3	3.3
Operating Expenses and Capital Outlay	12,190	5,470
TOTAL	\$167,929	\$161,649

The Colorado Department of Transportation (CDOT) will require \$70,445 and 1.2 FTE in FY 2010-11 and \$48,277 and 1.0 FTE in FY 2011-12. Staff needs are greater in the first year to evaluate retainage and interest requirements for approximately 150 existing projects. Expenditures will be paid from the State Highway Fund.

The Department of Higher Education requires \$84,470 and 1.8 FTE in FY 2010-11 and \$86,899 and 1.8 FTE in FY 2011-12. Expenditures will be paid from the General Fund.

The Department of Corrections requires 0.3 FTE and \$13,014 in FY 2010-11 and 0.5 FTE and \$26,473 in FY 2011-12. Expenditures will be paid from the General Fund.

The Judicial Department may be impacted by additional construction defect and breach of contract lawsuits that arise from new requirements under this bill. It is anticipated that any such increases can be absorbed with existing resources.

Other Agencies will experience increased costs for construction due to interest and penalties for late payments. As these are based on failure to meet construction contract requirements, these amounts cannot be estimated. The bill's requirements may increase accounting and administrative workloads in order to manage interest payments on retainage for construction projects, but the fiscal note assumes these can be addressed with existing appropriations. Should an individual department experience a growth in construction projects, additional staffing needs can be addressed through the annual budget process.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$23,430	\$23,430
Supplemental Employee Retirement Payments	6,100	7,068
TOTAL	\$29,530	\$30,498

* More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>

Local Government Impact

Local governments will incur additional expenditures in managing construction contracts, the amount of which will depend on the projects undertaken. Local governments will be required to pay interest and applicable penalties for unpaid invoices, and may also be limited from using grant monies to pay for construction, depending on the retainage provisions required by the funder.

State Appropriations

The fiscal note indicates that the following appropriations adjustments should be made for FY 2010-11:

- ▶ The Department of Transportation requires \$70,445 State Highway Funds (under the legislatively appropriated Administration item) and 1.2 FTE,
- ▶ The Department of Corrections requires \$13,014 General Fund and 0.3 FTE, and
- ▶ The Department of Higher Education requires \$84,470 General Fund and 1.8 FTE.

Departments Contacted

All Departments