



*Colorado Legislative Council Staff Fiscal Note*  
**FINAL**  
**FISCAL NOTE**

**Drafting Number:** LLS 12-0045  
**Prime Sponsor(s):** Rep. Soper

**Date:** May 15, 2012  
**Bill Status:** Postponed Indefinitely  
**Fiscal Analyst:** Kori Donaldson (303-866-4976)

**TITLE:** CONCERNING THE PAYMENT OF PREVAILING COMPENSATION FOR WORKERS ON PUBLIC WORKS.

<b>Fiscal Impact Summary</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014</b>
<b>State Revenue</b> Cash Funds Prevailing Wage Enforcement Fund	Potential increase. See State Revenue section.	
<b>State Expenditures</b> General Fund Cash Funds Prevailing Wage Enforcement Fund State Highway Fund	\$289,744  Potential increase. \$17,900	\$289,479  Potential increase.
<b>FTE Position Change</b>	4.4 FTE	5.1 FTE
<b>Effective Date:</b> The bill was postponed indefinitely by the House Local Government Committee on January 25, 2012.		
<b>Appropriation Summary for FY 2012-2013:</b> The Department of Labor and Employment would have required a General Fund appropriation of \$289,744 and 4.1 FTE. Of this amount, \$37,855 and 0.3 FTE would have been reappropriated to the Department of Law.		
<b>Local Government Impact:</b> See Local Government section.		

**Summary of Legislation**

This bill would have required that contractors and subcontractors on state public works contracts worth more than \$100,000 pay prevailing wages and fringe benefits to their workers, and pay their employees at least weekly. Contractors and subcontractors also would have been required to furnish payroll records to the director of the Division of Labor in the Colorado Department of Labor and Employment (CDLE) each week and prominently post prevailing wages and fringe benefits information.

The CDLE may investigate contractors and has jurisdiction in remedying violations. The bill would have required the CDLE to publish a list of contractors and subcontractors who willfully fail to pay prevailing wages and fringe benefits and to debar these employers from receiving future state contracts after multiple violations. Procedures for filing complaints with the CDLE or the courts, and the resulting fines for violations also would have been established. If a contractor or

subcontractor failed to pay its workers prevailing wages and fringe benefits, the state could have terminated the contract and the contractor would have been liable for any resulting excess costs.

Contractors would have been required to submit a weekly statement totaling any unpaid prevailing wages and fringe benefits, and all unpaid wages and benefits would have had to been paid prior to receiving final payments from a state agency. State agencies were required to withhold these amounts and pay them directly to workers.

### **State Revenue**

State revenue may have increased by civil penalties created under the bill, as follows:

- a fine of \$100 per day for each day that certified payroll records are not provided;
- between 2 and 3 times the total amount due to workers if the CDLE finds that a contractor or subcontractor has willfully failed to pay prevailing wages and fringe benefits; and
- between \$1,000 and \$15,000 for each false or fraudulent representation found to have been willfully made on records requested by the CDLE.

Any collections received would have been credited to the Prevailing Wage Enforcement Fund. The bill allowed workers to pursue a private right of action in court in lieu of the administrative process, with damages for certain violations also paid to the fund. As the amount of penalty revenue was based on future actions of contractors and subcontractors, the increase in state revenue was not estimated.

### **State Expenditures**

**This bill would have increased state expenditures by at least \$307,644 and 4.4 FTE in FY 2012-13 and by \$289,479 and 5.1 FTE in FY 2013-14, as shown in Table 1.** These costs were based mainly on enforcement by the Department of Labor and Employment, but also included some one-time costs for the Colorado Department of Transportation (CDOT) to update contract materials. Since cash fund revenue was not expected to be sufficient to cover costs, this fiscal note assumed that General Fund moneys would have been needed.

The potential impact of the bill on construction costs was not included in Table 1, but is described in greater detail below. Current federal law already requires that prevailing wages be paid for construction projects paid with federal funds. Thus, costs for any state construction projects that have a federal funding component would not have been affected by this bill.

<b>Table1. State Expenditures Under HB 12-1082</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Personal Services	\$159,112	\$258,667
FTE	4.4	5.1
Operating Expenses and Capital Outlay	23,177	4,750
Legal Services	37,855	15,142
Travel Expenses	8,100	9,720
Computer Programming	60,500	0
Records Storage	1,000	1,200
Updating Contract Manuals (CDOT)	17,900	0
<b>TOTAL</b>	<b>\$307,644</b>	<b>\$289,479</b>

**Enforcement.** The CDLE would have been responsible for enforcing the requirements of the bill, which would have required 4.1 FTE at a cost of \$190,389 in FY 2012-13. In future years, a total of 5.0 FTE at a cost of \$274,337 was needed to analyze company records, investigate wage issues, audit and inspect records, coordinate and catalog weekly reports of wages submitted by contractors, and address complaints from employees and employee organizations. This amount included operating expenses, capital outlay, and travel expenses.

Other operating costs included \$100 per month for off-site storage of records that are required to be retained for 3 years, as well as one-time computer programming expenses in the amount of \$60,500 needed to track employers.

An estimated 500 hours (0.3 FTE) of legal services would have been needed in FY 2012-13 to promulgate rules and address legal questions. In FY 2013-14, a total of 200 hours of legal services (0.1 FTE) was expected to be needed. Legal services are paid at a rate of \$75.71 per hour.

Enforcement costs for the CDLE are paid from the Prevailing Wage Enforcement Fund, but since revenue to the fund is not expected to cover costs, this fiscal note assumed that a General Fund appropriation was required.

**Updating contract provisions.** The CDOT would have had to modify both its construction manuals and its construction management software to incorporate the requirements of this bill. These modifications were expected to require an estimated 480 hours of labor by a professional engineer at a one-time cost of \$17,900 in FY 2012-13. These costs would have been paid from the State Highway Fund, which is continuously appropriated to the department.

**Construction costs.** The fiscal note assumed that each 1 percent increase in labor costs would have increased state expenditures by \$4.9 million. To the extent that construction costs increased and no new appropriations were provided, the bill would have reduced the number of projects that could have been undertaken.

*Other issues.* The bill may also have affected the workload of state agencies in administering construction contracts, but this fiscal note assumed that all activities related to enforcement and maintaining records would have been shared between contractors and the CDLE. The bill may also have affected the workload of the courts in handling complaints that could not be resolved by the CDLE, but this workload was not expected to require any increase in appropriations. Finally, the bill may have affected the number of bids received for state construction projects, but the impact on bid prices received by the state was not determined.

### **Expenditures Not Included**

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

<b>Table 2. Expenditures Not Included Under HB 12-1082*</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$25,141	\$30,660
Supplemental Employee Retirement Payments	11,311	15,877
<b>TOTAL</b>	<b>\$36,452</b>	<b>\$46,537</b>

\*More information is available at: <http://1.usa.gov/CommonPolicies2012>

### **Local Government Impact**

The bill could have affected the costs for construction projects partially or fully funded with state funds, including those at the local level and school districts. For instance, under the Building Excellent Schools Today (BEST) Act, about \$484 million in state funds has been made available for public school construction. The potential impact on local government or school construction was not estimated.

### **Departmental Differences**

State agencies provided information for this fiscal note identifying a potential increase in construction costs ranging from 3 percent to 20 percent, in addition to a need for increased staff to oversee public works contracts. Specifically, the following FY 2012-13 cost estimates were provided:

- Department of Corrections — \$2.6 million and 1.0 FTE (over 5 years);
- Department and Institutions of Higher Education — \$50.9 million and 4.0 FTE; and
- Department of Transportation — \$1.9 million.

These costs were not included in the fiscal note because, under current law, major state construction projects are already subject to a competitive bid process and it is unclear how private contractors would have responded to the requirement to pay prevailing wages and fringe benefits. Although the bill could have increased costs for construction projects, the actual increase would have depended on the responses received from private contractors bidding on those projects.

### **State Appropriations**

The Department of Labor and Employment would have required a General Fund appropriation of \$289,744 and 4.1 FTE. Of this amount, \$37,855 and 0.3 FTE would have been reappropriated to the Department of Law. The Department of Transportation did not require an appropriation as State Highway Funds are continuously appropriated to the department.

### **Departments Contacted**

Corrections  
Personnel

Higher Education  
Transportation

Labor and Employment