

*Colorado Legislative Council Staff Fiscal Note*

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 12-0330  
**Prime Sponsor(s):** Rep. Baumgardner

**Date:** June 15, 2012  
**Bill Status:** Deemed Lost  
**Fiscal Analyst:** Kirk Mlinek (303-866-4782)

**TITLE:** CONCERNING ENDING THE CONTINUOUS APPROPRIATION OF STATE MONEYS.

<b>Fiscal Impact Summary</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>
<b>State Revenue</b>			
<b>State Expenditures</b> Multiple Fund Sources (General Fund and Cash Fund)		See State Expenditures section	
General Fund		\$63,438	\$25,776
<b>FTE Position Change</b>		0.7 FTE	0.3 FTE
<b>Effective Date:</b> The bill was deemed lost on May 9, 2012.			
<b>Appropriation Summary for FY 2012-2013:</b> None required.			
<b>Local Government Impact:</b> See Local Government Impact section.			

*The bill was on the House Second Reading calendar at the time that the legislature adjourned sine die on May 9, 2012, and, therefore, was deemed lost. The final fiscal note reflects the version of the bill as amended by the House Committee on Appropriations.*

**Summary of Legislation**

Beginning July 1, 2013, the bill ends all continuous appropriations from the General Fund or any cash fund to any state agency except for :

- the Unemployment Compensation Fund created in Section 8-77-101, C.R.S.;
- the Risk Management Fund created in Section 24-30-1510, C.R.S., including the State Employees' Workers Compensation Account created in Section 24-30-1510.7, C.R.S.;
- the Self-insured Property Fund created in Section 24-30-1510.5, C.R.S.;
- the Unclaimed Property Trust Fund created in Section 38-13-116.5, C.R.S.;
- the reserve created in Section 39-22-622, C.R.S., including refunds made pursuant to the section and grants made pursuant to Section 39-31-101 or 39-31-104, C.R.S.;
- the Local Government Severance Tax Fund created in Section 39-29-110, C.R.S.;
- the Old Age Pension Fund created in Section 1 of Article XXIV of the state constitution;
- an expenditure pursuant to "The Colorado High Risk Health Insurance Act," part 5 of article of 8 of title 10, C.R.S.;

- state contributions to local government for old hire pension plans pursuant to section 31-30.5-307, C.R.S.; or
- cigarette rebates pursuant to section 39-22-623 (1) (a) (II) (A), C.R.S.

The General Assembly is required to annually appropriate the moneys that were previously continuously appropriated, and it is prohibited from continuously appropriating moneys to a state agency in the future. The definition of state agency includes any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branches of state government.

The bill defines "continuously appropriate" to mean the authority to spend an unspecified amount of state moneys in a statutory provision, regardless of how it is described. Principal departments of state government are required to submit with annual budget submissions a report that addresses the continuous appropriation needs of the department.

**Background.** A continuous appropriation is unlimited spending authority that is renewed each year without further legislative action. In state law, this authority takes several different forms. As a result, the applicability of the bill is open to interpretation and it is unclear whether the bill applies to funds that are neither appropriated nor expressly continuously appropriated. Current law uses a variety of terms that seem to have the quality of continuous appropriations without using the term. An example appears below, but other examples exist.

- From current law (Section 37-60-121 (1)(b)(II), C.R.S.) governing the Colorado Water Conservation Board Construction Fund, "Such fund shall be a continuing fund to be expended in the manner specified in section 7-60-122 and shall not revert to the general fund of the state at the end of any fiscal year." Similar to other funds, moneys are first appropriated to the fund through a bill that lists specific projects. Once in the fund, moneys are continuously appropriated.

Table 1 shows the estimated continuous appropriations by department for the Executive Branch and totals for the Judicial and Legislative branches of government for FY 2011-12. All funds are assumed to be cash fund.

<b>Table 1. Estimated Continuous Appropriations for FY 2011-12</b>	
<b>Department/Branch</b>	<b>FY 2011-12</b>
Agriculture	\$6,905,994
Corrections	16,356,893
Education	61,360,369
Governor (Energy, OEDIT, OIT)	12,000,000
Higher Education	43,226,937
Human Services	8,298,167
Labor and Employment	23,200,000

<b>Table 1. Estimated Continuous Appropriations for FY 2011-12 (Cont.)</b>	
<b>Department/Branch</b>	<b>FY 2011-12</b>
Law	2,801
Military Affairs	863,000
Natural Resources	43,178,793
Personnel	10,002,500
Public Health and Environment	1,271,000
Public Safety	4,000,000
Revenue	25,190
State	4,100,000
Transportation	583,031,610
Treasury	1,194,000
<i>Subtotal Executive Branch</i>	819,017,254
Judicial	33,375,000
Legislature	4,740,681
<b>TOTAL</b>	<b>\$857,132,935</b>

### **State Revenue**

The fiscal note assumes that the bill will not affect overall revenue to any great extent. Existing fund balances are unaffected by the bill. Cash flow could be impacted to the extent that agencies are required to seek emergency or supplemental spending authority.

### **State Expenditures**

The bill affects state expenditures in several ways. First, it requires the direct appropriation of over \$850 million in state funds that are currently not subject to annual appropriation. Although this represents no net change in state expenditures, it could result in some change in funding for specific programs. Second, it will require greater reporting and monitoring of state funds by state agencies. Finally, it is expected to increase the number of situations in which mid-year adjustments are necessary to ensure that appropriations are sufficient to cover actual costs, especially in the short term. These adjustments will affect the workload of the state controller in the Department of Personnel and Administration, as well as the Office of State Planning and Budgeting and the Joint Budget Committee. These impacts are described below.

**In the aggregate, state expenditures are expected to increase by \$63,438 General Fund and 0.7 FTE in FY 2013-14, and by \$25,776 General Fund and 0.3 FTE in FY 2014-15 and beyond.** Table 2 summarizes these costs.

<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
<i>Department of Personnel and Administration</i>		
Personal Services	\$59,481	\$25,491
FTE	0.7	0.3
Operating Expenses and Capital Outlay	3,957	285
<b>TOTAL</b>	<b>\$63,438</b>	<b>\$25,776</b>

**Direct appropriations.** Beginning in FY 2013-14, the bill requires that the General Assembly annually appropriate an estimated \$857,132,935 in state funds that were previously continuously appropriated. This total is based on the most recent reported actual expenditures. However, it should be noted that this fiscal note does not account for every permutation of language that could be construed as qualifying as being continuously appropriated. As a result, the bill could apply to a different set of funds than identified here. The fiscal note will be updated upon clarification of the applicability of the bill. Where an agency's costs vary over time, this figure include appropriations at the higher end of the range to ensure adequate program operation and to give some flexibility to account for variability and unanticipated costs.

Returning spending authority to the General Assembly for the 116 funds identified in this fiscal note that are currently continuously appropriated could result in a shift in how the funds in question will be appropriated.

**Reporting and monitoring.** Prospectively, the fiscal note assumes that budget requests for the discontinuously appropriated funds will follow the normal budget process, meaning that most decision items for the Executive Branch will be submitted to the Office of State Planning and Budgeting for review and approval, and upon approval will be included in the Governor's budget submission to the Joint Budget Committee (JBC). As with other budget items, the Long Bill will reflect the General Assembly's final funding decisions.

The preparation of budget decision items for each fund will increase the workload of affected agencies. The number of regular and emergency supplementals also is expected to increase. This impact could be mitigated if the legislature appropriates at the highest anticipated level of spending in a given fiscal year.

**Mid-year adjustments.** The bill's implementation is expected to increase the number of requests made by agencies pursuant to Section, 24-75-111, C.R.S., to allow expenditures in excess of appropriations. Under this provision of law, Executive Branch agencies may first submit such a request to the Governor's Office of State Planning and Budgeting and, upon approval, the request is then submitted to the Joint Budget Committee (JBC). Once approved by the JBC, the request is forwarded to the State Controller for final approval.

A separate provision of law, Section 24-75-109, C.R.S, generally allows the controller to approve agency overexpenditures up to a maximum of \$3.0 million statewide, a process that includes offsetting appropriation restrictions in the ensuing fiscal year. Processing the increased number of requests in the aforementioned areas will require the work of a person at the Controller II level as identified in Table 1.

### **Local Government Impact**

The bill has the potential to impact local governments to the extent that timing issues resulting from the discontinuation of continuous appropriations cause a delay in moneys flowing to the local level, and to the extent that the General Assembly changes current allocations of program spending authority, some of which could impact local governments.

### **Departmental Differences**

The departments of Local Affairs and Transportation identified costs for implementing the bill. These costs are discussed below.

*Department of Local Affairs (DOLA).* DOLA estimates that resources totaling \$411,000 and 5.3 FTE are required to adjust its annual contract administration process. Loss of continuous spending authority means that DOLA could be required to terminate contracts on or before June 30 each year and to recontract according to the spending authority granted in the Long Bill. Positions would be funded from the Local Government Severance Tax Fund, Local Government Mineral Impact Fund, and the Local Government Gaming Limit Impact Fund.

*Department of Transportation (DOT).* The DOT reports that the loss of continuous spending authority will require changes to DOT budget, accounting, and cash management systems in order to ensure that spending authority is not exceeded and that vendors can be paid. The DOT estimates these costs at \$245,000 cash funds and 4.0 FTE per year.

### **Departments Contacted**

All            Judicial            Legislature