


Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
FISCAL IMPACT

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

Date: February 2, 2010
Bill Status: House Business Affairs and Labor
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	FY 2012-2013
State Revenue			
Multiple accounts	up to (\$1,212,108)	up to (\$1,212,108)	up to (\$1,212,108)
State Expenditures			
Multiple accounts*	\$443,172	\$760,148	\$1,057,813
Cash Funds			
State Highway Fund	314,176	251,476	251,476
FTE Position Change	3.1 FTE	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.			

* Including General Fund of at least \$98,529 in FY 2010-11, \$115,505 in FY 2011-12, and \$113,170 in FY 2012-13 relating to personal services for the Departments of Corrections and Higher Education.

Summary of Legislation

This bill sets payment standards for construction contracts between contractors and public entities with contracts exceeding \$150,000, or private property owners.

Among other things, the bill reduces the amount that may be withheld from a contractor to ensure that work is satisfactorily completed and requires this retainage be deposited in an escrow account. Retainage deposits and contract balances for completed work must be paid within 30 days, and a contractor is required to forward payments received for a subcontractor within 7 days. Unpaid balances are subject to interest of 15 percent per year, plus applicable penalties of 15 percent per year. Failure to pay interest may subject the 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 \$1,212,108 per year beginning in FY 2010-11. Under current law, an average of \$46.8 million per year in retainage monies are held in restricted accounts within the Treasury. Assuming these monies are earning compounded interest at the current rate of 2.53 percent and are held for an average of three years, the average amount of revenue currently generated from interest on retainage is approximately \$1.2 million per year. Under HB10-1162, varying amounts of retainage would be transferred in appropriate increments to newly established escrow accounts each month. Individual escrow accounts will earn interest, although escrow interest under this bill is to be used to pay the escrow agent and/or contractors, and will not benefit the state.

State Expenditures

HB10-1162 increases total state expenditures by at least \$757,348 in FY 2010-11 and \$1,011,624 in FY 2011-12. Table 1 and the discussion that follows address the cost components of the bill.

Table 1. Expenditures Under HB10-1162			
Cost Components	FY 2010-11	FY 2011-12	FY 2012-13
Personal Services	\$139,761	\$158,597	\$158,597
FTE	3.1	3.3	3.3
Operating Expenses and Capital Outlay	11,715	5,185	2,850
Legal Services	6,030	-	-
Escrow Account Operation	599,842	847,842	1,147,842
TOTAL	\$757,348	\$1,011,624	\$1,309,289

The Colorado Department of Transportation (CDOT) will require \$314,176 and 1.0 FTE in FY 2010-11 and \$251,476 and 1.0 FTE in FY 2011-12. In the first year, legal services are needed to establish a template for creating escrow account agreements. Due to the specialized nature of the construction projects within CDOT, there are about three times as many projects as there are vendors. For this reason, CDOT will establish an escrow account for each of its 104 vendors. CDOT will incur costs of \$255,199 to establish and maintain escrow accounts and \$58,977 for staff to manage the escrow accounts in FY 2010-11. Assuming that CDOT does not add new vendors, beginning in FY 2011-12, the annual cost for escrow accounts will be \$203,199 per year, and staff costs will total \$48,277. These expenditures will be paid from the State Highway Fund.

Department of Higher Education requires \$84,185 and 1.8 FTE in FY 2010-11 to manage escrow accounts related to construction projects for the University of Colorado, University of Northern Colorado, and Colorado Mountain College. In FY 2011-12 and future years, this cost will be \$86,614 per year. These expenditures will be paid from the General Fund.

Department of Corrections requires 0.3 FTE and \$14,344 in FY 2010-11 and 0.5 FTE and \$28,891 in FY 2011-12 to manage escrow accounts. These expenditures will be paid from the General Fund.

Escrow Account costs will total \$344,643 in FY 2010-11 and \$644,643 in FY 2011-12. As interest earned within escrow accounts will be insufficient to pay annual maintenance fees, this fiscal note assumes the remaining costs for escrow account operations will be allocated to individual construction projects. Based on trends within the Office of the State Architect and not including those managed by CDOT, it is assumed that 150 new construction contracts and related escrow accounts will be established each year, and that each new project will take 3 years to complete. Each escrow account will cost \$500 to establish, and \$2,000 per year to maintain, less interest earned at approximately 2 percent. The length of each project creates escalating account maintenance fees, so that costs for escrow accounts increase over a three year period. The source of these funds will vary by agency, and their fund distribution has not been estimated.

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 escrow accounts 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.

Table 2. Expenditures Not Included Under HB10-1162*		
Cost Components	FY 2010-11	FY 2011-12**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$22,010	\$23,430
Supplemental Employee Retirement Payments	5,510	\$7,177
TOTAL	\$27,520	\$30,607

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

** and future fiscal years

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 Department of Transportation requires an appropriation of 1.0 FTE in FY 2010-11, as State Highway Funds are continuously appropriated. The Department of Higher Education requires a General Fund appropriation of \$84,185 and 1.8 FTE for FY 2010-11. The Department of Corrections requires a General Fund appropriation of \$14,344 and 0.3 FTE for FY 2010-11.

An appropriation of \$344,643 will be required for escrow accounts, although it has not been determined how these costs would be allocated. It is possible this amount would be appropriated from multiple funds to the Department of Personnel & Administration, which houses the Office of the State Architect. This fiscal note will be updated as more information becomes available.

Departments Contacted

All departments