


Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
FISCAL IMPACT

Drafting Number: LLS 11-0366
Prime Sponsor(s): Rep. Soper
 Sen. Tochtrop

Date: January 25, 2011
Bill Status: House SVMA
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TITLE: CONCERNING THE PAYMENT OF PREVAILING COMPENSATION FOR WORKERS ON PUBLIC WORKS.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue	Potential Increase	
Cash Funds	See State Revenue section	
Prevailing Wage Enforcement Fund		
State Expenditures		
General Fund	\$323,377*	\$288,077*
Cash Funds		
Prevailing Wage Enforcement Fund	Potential Increase	Potential Increase
State Highway Fund	\$20,547	
FTE Position Change	4.4 FTE	5.1 FTE
Effective Date: September 1, 2011, if no referendum petition is filed.		
Appropriation Summary for FY 2011-2012: See State Appropriations section.		
Local Government Impact: Increase in costs.		

**These costs will be paid from the General Fund, unless a sufficient amount of cash funds are generated.*

Summary of Legislation

This bill requires 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 must also 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 requires the CDLE to publish a list of contractors and subcontractors who willfully fail to pay prevailing wages and fringe benefits and 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 are also established. If a contractor or subcontractor fails to pay its workers prevailing wages and fringe benefits, the state may terminate the contract and the contractor is liable for any resulting excess costs.

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

State Revenue

State revenue may be 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 will be credited to the Prevailing Wage Enforcement Fund. The bill allows 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 is based on future actions of contractors and subcontractors, the increase in state revenue has not been estimated.

State Expenditures

This bill will increase state expenditures by at least \$343,924 and 4.4 FTE in FY 2011-12 and by \$288,077 and 5.1 FTE in FY 2012-13, as shown in Table 1. These costs are based mainly on enforcement by the Department of Labor and Employment, but also include some one-time costs for the Colorado Department of Transportation (CDOT) to update contract materials. Since cash fund revenue is not expected to be sufficient to cover costs, this fiscal note assumes that General Fund moneys will be needed.

The potential impact of the bill on construction costs is 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 will not be affected by this bill.

Table1. State Expenditures Under HB 11-1070		
Cost Components	FY 2011-12	FY 2012-13
Personal Services	\$194,470	\$258,667
FTE	4.4	5.1
Operating Expenses and Capital Outlay	23,177	4,750
Legal Services	36,750	14,700
Travel Expenses	7,300	8,760
Computer Programming	60,680	0
Records Storage	1,000	1,200
Updating Contract Manuals (CDOT)	20,547	0
TOTAL	\$343,924	\$288,077

Enforcement. The CDLE is responsible for enforcing the requirements of the bill and will require 4.1 FTE at a cost of \$224,947 in FY 2011-12. In future years, a total of 5.0 FTE at a cost of \$272,177 are 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 includes operating expenses, capital outlay, and travel expenses.

Other operating costs include \$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 \$60,680 needed to track employers.

An estimated 500 hours (0.3 FTE) of legal services will be needed in FY 2011-12 to promulgate rules and address legal questions. In FY 2012-13, a total of 200 hours of legal services (0.1 FTE) are expected to be needed. Legal services are paid at a rate of \$73.50 per hour.

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

Updating Contract Provisions. The CDOT will have to modify both its construction manuals and its construction management software to incorporate the requirements of this bill. These modifications are expected to require an estimated 480 hours of labor by a professional engineer at a one-time cost of \$20,547 in FY 2011-12. These costs will be paid from the State Highway Fund, which is continuously appropriated to the department.

Construction Costs. The fiscal note assumes that each 1 percent increase in labor costs will increase state expenditures by \$4.5 million. To the extent that construction costs increase and no new appropriations are provided, the bill will reduce the number of projects that can be undertaken.

Other Issues. The bill may affect the workload of state agencies in administering construction contracts, but this fiscal note assumes that all activities related to enforcement and maintaining records will be shared between contractors and the CDLE. The bill may also affect the workload of the courts in handling complaints that cannot be resolved by the CDLE, but this workload is not expected to require any increase in appropriations. Finally, the bill may affect the number of bids received for state construction projects, but the impact on bid prices received by the state cannot be determined.

Expenditures Not Included

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

Table 2. Expenditures Not Included Under HB 11-1070*		
Cost Components	FY 2011-12	FY 2012-13
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$30,748	\$35,550
Supplemental Employee Retirement Payments	10,530	13,791
TOTAL	\$41,278	\$49,291

**More information is available at: http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2009/comsched/CommonPolicies2009.pdf*

Local Government Impact

The bill could affect 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, an estimated \$500 million in state funds is made available for public school construction. The potential impact on local government or school construction has not been estimated.

Departmental Differences

State agencies provided information for this fiscal note identifying a potential increase in construction costs ranging from 2 percent to 20 percent, in addition to a need for increased staff to oversee public works contracts. Specifically, the following FY 2011-12 cost estimates were provided:

- Department of Corrections — \$2.6 million and 1.0 FTE (over 5 years);
- Department and Institutions of Higher Education — \$24.1 million and 4.0 FTE; and
- Department of Transportation — \$1.5 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 will respond to the requirement to pay prevailing wages and fringe benefits. Although the bill may increase costs for construction projects, the actual increase will depend on the responses received from private contractors bidding on those projects.

State Appropriations

The Department of Labor and Employment requires a General Fund appropriation of \$323,377 and 4.4 FTE. Of this amount, \$36,750 and 0.3 FTE should be reappropriated to the Department of Law. The Department of Transportation does not require an appropriation as State Highway Funds are continuously appropriated to the department.

Departments Contacted

Corrections
Personnel

Higher Education
Transportation

Labor and Employment