HB12-1255

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 12-0330	**Date:**	March 7, 2012
Prime Sponsor(s):	Rep. Baumgardner	**Bill Status:**	House Appropriations
		Fiscal Analyst:	Kirk Mlinek (303-866-4782)

TITLE: CONCERNING ENDING THE CONTINUOUS APPROPRIATION OF STATE MONEYS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
Multiple Fund Sources (General Fund and Cash Fund)	See State Expenditures section	
General Fund	$63,438	$25,776
FTE Position Change	0.7 FTE	0.3 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

Beginning July 1, 2012, the bill ends all continuous appropriations from the General Fund or any cash fund to any state agency. 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.

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. Two examples appear 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.

- Section 8-77-104 (1), C.R.S., concerns the Unemployment Insurance Fund in the Department of Labor and Employment (DOLE), stating that "Such expenditures shall not be subject to any provisions of law requiring specific appropriations for payment thereof." Unemployment claims and related payments are variable from week to week. During the economic downturn DOLE was distributing approximately $21 million per week in benefits for a period of time. Applying the bill to this fund would mean that the DOLE would need to request a very high amount of spending authority in order to ensure that benefits could be paid according to the law.

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 2012-13, and by $25,776 General Fund and 0.3 FTE in FY 2013-14 and beyond. Table 1 summarizes these costs.

Table 1. Expenditures Under HB12-1255

Cost Components	**FY 2012-13**	**FY 2013-14**
Department of Personnel and Administration		
Personal Services	$59,481	$25,491
FTE	0.7	0.3
Operating Expenses and Capital Outlay	3,957	285
TOTAL	**$63,438**	**$25,776**

Direct appropriations. The bill requires that the General Assembly annually appropriate an estimated $857,932,935 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.

Because the bill takes effect July 1, 2012, the General Assembly will need to act through the 2012 Long Bill to the extent that it desires to continue spending authority for the agencies listed on page 4. The bill does not outline a specific process for determining these decisions. Returning spending authority to the General Assembly for the 118 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.

State Appropriations

As of this writing, appropriations totaling $857,932,935 are required for FY 2012-13. Table 1 lists appropriations by department for the Executive Branch and totals for the Judicial and Legislative branches of government that require appropriations. All funds are assumed to be cash funds.

Table 1. Appropriations Required Under HB12-1255

Department/Branch	**FY 2012-13**
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
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	1,994,000
Subtotal Executive Branch	819,817,254
Judicial	33,375,000
Legislature	4,740,681
TOTAL	**$857,932,935**

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