HB13-1292

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL
REVISED FISCAL IMPACT

(replaces fiscal note dated April 10, 2013)

Drafting Number:	LLS 13-0398	**Date:**	April 17, 2013
Prime Sponsor(s):	Rep. Lee; Pabon Sen. Kerr; Nicholson	**Bill Status:**	House Finance
		Fiscal Analyst:	Kori Donaldson (303-866-4976)

TITLE: CONCERNING MODIFICATIONS TO PROCUREMENT REQUIREMENTS FOR GOVERNMENT CONTRACTS RELATED TO UNITED STATES DOMESTIC EMPLOYMENT.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue Cash Funds - Colorado Labor Enforcement Cash Fund		 $190,000
State Expenditures General Fund Cash Funds - State Highway Fund	 $462,617 95,815	 $423,664 53,112
FTE Position Change	4.0 FTE	7.0 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature. The act applies to new contracts for which invitation for bids or request for proposals are issued on or after January 1, 2014.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This fiscal note has been revised to reflect new information and amendments made by the House State, Veterans, and Military Affairs Committee. The bill makes changes to contracting requirements for state and local government agencies, including changes to the enforcement of the 80 percent labor law, the preference for resident bidders, the addition of competitive sealed best value bidding, and the modification of disclosure requirements related to outsourcing services, labor, and manufactured goods. It also requires the Public Utilities Commission to consider best value employment metrics in connection with the construction or expansion of generating facilities.

Colorado 80 percent labor law. Current law requires that construction projects financed in whole or part by state funds employ a workforce of at least 80 percent Colorado residents for certain classifications of skilled and common labor. The bill eliminates the application of the 80 percent labor law to certain classifications of skilled and common labor and requires that the 80 percent labor law be applied to the composition of the entire workforce employed on a construction project. The bill further directs the Colorado Department of Labor and Employment (CDLE) to enforce this requirement. The agency financing a project may waive the 80 percent requirement if there is reasonable evidence to demonstrate there is not sufficient Colorado labor available to perform the work.

Resident bidder preference. States with reciprocity laws grant preference to resident bidders by inflating bids from out-of-state vendors by a percent equal to the discount allowed by the home state. Under current law, if a state provides a preference to its resident bidders, Colorado increases bids received from vendors of that state by an equal percentage. The bill requires the Department of Personnel and Administration (DPA) to assemble and report a list of states with reciprocity laws. It also requires that notice of Colorado's nonresident bidder reciprocity law be included in any request for proposals issued by state or local entities.

Competitive sealed best value bidding. For construction contracts paid in whole or part from state funds, the bill adds another type of allowable bid: competitive sealed best value bidding (best value bids). Best value bids allow the entity soliciting bids to consider factors other than cost, such as a vendor's employment practices or reliability when awarding a bid. The bill lists the information that must be included in the invitation for best value bids. The bill also adds a requirement that a state agency, including an institution of higher education, must disclose its rationale for selecting a particular bidding process after it enters into a contract for a construction project.

Disclosure requirements. Current law requires prospective vendors for state service contracts to disclose where such services will be performed and whether any services are anticipated to be performed outside the state, including outside the United States. If a vendor anticipates that work will be performed outside the state, current law directs the vendor to provide information about why it is necessary or advantageous to go outside the state to perform the contract. The bill modifies this requirement to require prospective vendors to disclose in writing whether any subcontracted services are anticipated to be performed outside the state. Also, a vendor is required to provide written notice if, after a contract is signed, it decides to subcontract duties to a subcontractor that will perform work outside the state. In turn, agencies are required to notify the DPA of this information. Vendors are further required to certify that work under a contract will be performed in the United States or to seek a waiver of this requirement. Finally, the bill requires contractors for projects costing more than $500,000 to disclose to the DPA the cost and country of origin of the five most costly goods used on a project.

State Revenue

The bill directs the CDLE to impose fines on contractors found to be in violation of the 80 percent labor law, as follows:

- the lesser of $5,000 or 1 percent of the contract cost for the first violation;
- the lesser or $10,000 of 1 percent of the contract cost for the second violation; and
- the lesser of $25,000 or 1 percent of the contract cost for the third violation and any violation thereafter.

The bill directs that fine revenue be deposited in the newly created Colorado Labor Enforcement Cash Fund. **Beginning in FY 2014-15, the increased revenue to the fund is estimated to be about $190,000 per year.** This fiscal note assumes an average of 1,025 contracts per year with a total cost of over $500,000 at the state and local level. Of this amount about

15 percent, or 154 contracts, is estimated to be subject to investigation annually. This fiscal note further assumes that of the 154 contracts subject to investigation, a contractor will be found in violation of the 80 percent labor law in 25 percent of the cases considered, or 38 cases, resulting in a fine of $5,000 each. The fiscal note only calculates costs associated with the first violation of the 80 percent labor law. It is anticipated that the total number of violations may decline in future years; however, the increased cost of a second or third violation of the 80 percent labor law may offset any decrease in fine revenue.

State Expenditures

This bill will increase state expenditures by at least $558,432 and 4.0 FTE in FY 2013-14 and by $476,776 and 7.0 FTE in FY 2014-15, as shown in Table 1. These costs are based on increased workload within three departments and on some one-time costs for computer programming and updates to contract manuals. The potential impact of the bill on contracting costs is not included in Table 1, but is described in greater detail below.

Table 1. Expenditures Under HB 13-1292		
Cost Components	**FY 2013-14**	**FY 2014-15**
Personal Services	$226,470	$409,667
FTE	4.0	7.0
Operating Expenses and Capital Outlay	22,612	20,759
Legal Services	46,350	46,350
Computer Programming	225,000	0
Updating Contract Manuals (CDOT)	38,000	0
TOTAL	**$558,432**	**$476,776**

Department of Personnel and Administration. The DPA will require 2.0 FTE and $127,511 for FY 2013-14, and 2.5 FTE and $175,127 for FY 2014-15. This amount will be payable from General Fund and includes operating and capital expenses. The department requires 2.0 FTE within the Office of the State Architect for FY 2013-14 and beyond to compile and report information about the five most costly goods used in construction projects costing more than $500,000. The Office of the State Architect currently monitors construction projects undertaken by state agencies, including institutions of higher education. The bill also requires the office to collect and report on projects over $500,000 in 3,438 local municipalities and 178 local school districts. The Office of the State Architect does not currently track or report on projects at the local level. This fiscal note assumes one-fifth, or about 725, of the local municipalities and school districts will have a project over $500,000 in a given year, and that each project will require about six hours to compile, review, and analyze information provided by contractors. This results in about 4,350 hours of review and requires 2.0 FTE at the General Professional IV level.

The FY 2014-15 costs also include 0.5 FTE for an Administrative Law Judge II so the department can conduct appeal hearings for contractors who are found to be in violation of the bill's requirements. Based on the assumed 154 investigations conducted by the CDLE each year, this fiscal note assumes that at least 25 of the 38 cases found to be in violation will be appealed annually.

The DPA will require $225,000 in one time costs for FY 2013-14 for computer programming. These costs include $25,000 to update the existing on line bid system in order to track information about the use of subcontractors located outside the state, and $200,000 to create an online system to track the five mostly costly goods used in construction projects costing more than $500,000.

The bill requires vendors to certify that work under a contract will be performed in the United States or seek a waiver of this requirement. If a vendor knowingly fails to notify an agency of any work that is outsourced under a contract, the state agency may terminate the contract. An estimated 150 hours of legal services, or $11,588, will be needed by the DPA in FY 2013-14 and beyond to manage claims by contractors who have been terminated under this provision of the bill. This fiscal note estimates one contractor per year will file a complaint of this nature. Legal services are paid at a rate of $77.25 an hour.

DPA will also be required to develop and maintain a list of states with resident bidder preferences, update rules and its website related to the use of best value bidding, and establish a waiver process for the 80 percent labor law as it applies to each specific type and class of labor and for subcontracting for work outside the United States. This fiscal note assumes this work will be absorbed within existing resources.

Colorado Department of Labor and Employment. The CDLE will require 1.0 FTE and $63,757 for FY 2013-14, and 3.5 FTE and $202,190 for FY 2014-15. This amount will be payable from General Fund and includes operating and capital expenses. Although the bill directs the use of fine revenue to pay costs associated with the administration and enforcement of the 80 percent labor law, this fiscal note assumes that fine revenue won't be collected until FY 2014-15 and won't be available to offset costs until FY 2015-16. The FY 2013-14 costs are required to promulgate rules and begin initial, limited implementation of the enforcement of the 80 percent labor law. The FY 2014-15 costs are required to process and investigate complaints and to maintain information about debarred contractors. Based on an assumed 154 contracts subject to investigation, and an estimate of between 24 and 80 hours to process each complaint, a total of 3.5 FTE is needed to fully implement the bill, including 3.0 FTE compliance officers and 0.5 FTE administrative assistant.

The bill permits CDLE to debar a contractor if he/she has been fined three times within a five-year period for a violation. An estimated 450 hours of legal services, or $34,762, will be needed by CDLE in FY 2013-14 and beyond to manage claims by debarred contractors and to oversee rule-making. Legal services are paid at a rate of $77.25 an hour.

Colorado Department of Transportation. The Colorado Department of Transportation (CDOT) will require 1.0 FTE and $53,112 for FY 2013-14 and FY 2014-15. These costs are required to hire 1.0 FTE at the General Profession III level to work with contractors and to analyze, prepare, and deliver reports to the DPA. In addition, the CDOT will have to update its rules to incorporate the evaluation of best value bids. These modifications are expected to require an estimated one-time cost of $38,000 in FY 2013-14. All CDOT costs will be paid from the State Highway Fund, which is continuously appropriated to the department.

Potential impact of House Bill 13-1292 on contracting costs. The enforcement of Colorado's reciprocity law could increase the total cost of a contract issued by a state or local government entity. To the extent the low bidder for a project is from a state with a reciprocity law, an agency will incur higher costs to move to the next lowest, in-state bid. The increased cost is the difference between the low, out-of-state bid, and the next lowest in-state bid . It is unknown how often the low bid on a project will be from a vendor from a state with a reciprocity law. Application of the existing reciprocity law in Colorado is infrequent.

The new reporting required by the bill may increase contractor costs. This fiscal note assumes that the administrative work load associated with the bill's disclosure and enforcement requirements will largely be the responsibility of vendors and not agencies, and may increase costs between 0.5 and 1.0 percent for select projects.

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 HB 13-1292*

Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$26,886	$47,072
Supplemental Employee Retirement Payments	13,901	28,449
TOTAL	**$40,787**	**$75,521**

**More information is available at: http://colorado.gov/fiscalnotes*

Local Government Impact

As discussed earlier in the fiscal note, contracts issued by local government entities are required to comply with many of the provisions of the bill, including the 80 percent labor law, the resident bidder preference, and the disclosure requirements. This fiscal note assumes any additional administrative costs will be absorbed within existing resources. The bill's potential impact on the total cost of contracts discussed above may also impact local governments.

Departmental Differences

The CDLE requested an additional 3.0 FTE at a cost of $251,810 General Fund to meet the requirements of the bill, beginning in FY 2014-15. The department estimates a higher number of contracts will be issued and investigated each year, thus requiring additional FTE.

The Department of Natural Resources requested 1.4 FTE at a cost of $80,941 General Fund in order to use the best value bid approach for about half of the estimated 70 contracts it awards each year. The department anticipates that it will opt to use best value bidding in lieu of the existing competitive sealed bid approach for about 35 contracts a year and that this approach will require additional staff within the Purchasing Office to evaluate and award bids. These costs are not reflected in the fiscal note because the bill does not require the use of the best value bid approach.

State Appropriations

For FY 2013-14, the Department of Personnel and Administration requires a General Fund appropriation of $364,099 and 2.0 FTE, and the Department of Labor and Employment requires a General Fund appropriation of $98,519 and 1.0 FTE. The CDOT requires 1.0 FTE for FY 2013-14, but it does not require an appropriation as State Highway Funds are continuously appropriated to the department.

Departments Contacted

All Departments