

Summary of Legislation

The bill modifies contractual requirements for most public construction projects administered by state departments and higher education institutions. The bill requires general contractors to employ apprentices on public project for most trades and to pay local prevailing wage. The Department of Personnel and Administration (DPA) is directed to determine the prevailing wage. The bill applies to project solicitations issued on or after July 1, 2021. Local government entities and the Colorado Department of Transportation are exempt from the requirements of the bill.

Apprenticeship utilization. Beginning in FY 2021-22, a general contractor must report on apprenticeship utilization for any public project that is not funded in part or whole by federal funds. Apprentices must be enrolled in certified apprenticeship programs that graduate a certain percentage of apprentices each year. The graduation rate is increased from 15 percent to 30 percent over time.

The apprenticeship utilization requirements can be waived by the contracting state agency; however, the waiver and its supporting rationale must be made public. In addition, the Department of Labor and Employment (CDLE) may award conditional approval to apprenticeship programs that do not satisfy the requirements of the bill in order to facilitate the development of new apprenticeship programs.

Prevailing wage. The federal Davis-Bacon Act requires that locally prevailing wages and fringe benefits be paid to workers in qualifying occupations for federal construction contracts that cost more than \$2,000. The U.S. Department of Labor determines the locally prevailing wage rates. Fringe benefits include things like medical insurance and retirement plans. The Davis-Bacon Act prevailing wage provisions also apply to construction projects that receive federal assistance through grants, loans, loan guarantees, and insurance. Currently CDOT and the City and County of Denver comply with prevailing wage requirements on most construction projects.

For public projects that are anticipated to cost more than \$500,000, the bill requires all contractors and subcontractors to pay local prevailing wages and fringe benefits to employees weekly. Prevailing wages and fringe benefit requirements must be included in a solicitation and remain the same for the duration of the project. Contractors must submit monthly reports to the contracting agency and keep daily logs of employees. If a contractor fails to pay the prevailing wage, the State Controller may not approve a demand for payment. In case of a dispute, the bill creates the Unclaimed Prevailing Wage Special Trust Fund to hold disputed wages until any disputes are resolved. DPA must maintain a list of all unclaimed, state-negotiated prevailing wage disputes and update the list monthly. After two years, any unclaimed funds will be transferred to the General Fund. DPA may promulgate rules to administer and enforce provisions of the bill.

Enforcement. The contracting agency must report any violations to the contractor within 48 hours of any violation. Contractors have 15 days to cure any violations; if the agency determines that the violation was willful, the agency must report the violation to CDLE. CDLE must investigate all complaints. If CDLE determines the violation was willful, the agency may find contractors liable for back pay and impose fines ranging from \$5,000 to \$25,000. CDLE must maintain a list of contractors who have been found to violate provisions of the bill on its website. If any wage claims are not resolved within 120 days, employees have the opportunity to file a civil action for injunctive relief or actual damages within three years of the violation.

Background

State law governs contracting for construction projects costing more than \$500,000. Public projects are defined as any construction, alteration, repair, demolition, or improvement of any land, building, structure, road, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and maintenance programs for the upkeep of such projects.

Assumptions

This fiscal note assumes that costs for public construction projects will increase up to 5 percent depending on the scope of each public project. Some projects might see little to no increase, while other projects might see higher increased costs. According to the Office of State Architect in the DPA, the state currently has \$2.8 billion in ongoing construction contracts, of which only 18 percent, approximately \$2.3 billion, are under \$500,000. In addition, according to the Capital Development Committee 2018 Annual Report, state agency and institution of higher education capital needs are projected to be \$332.0 million in FY 2021-22. This estimate does not include projects initiated outside the regular budget process. State agency and institution of higher education capital needs are not forecasted for FY 2022-23.

State Revenue

To the extent that funds are deposited into the General Fund from the Unclaimed Prevailing Wages Special Trust Fund, state revenue will increase. This increase will only occur if unclaimed prevailing wage claims are made more than two years after the date of the last underpayment of wages. In addition, to the extent that the CDLE imposes administrative fines on a contractor for willful violations, state revenue will increase. Fines range from \$5,000 to \$25,000. The fiscal note assumes most contractors and subcontractors will comply with the law and that any revenue generated will be minimal. Finally, to the extent that civil filings increase, revenue will increase for the Judicial Department.

State Expenditures

Beginning in FY 2021-22, the bill will increase expenditures from various sources for state agencies and institutions of higher education that contract for public projects that are anticipated to cost more than \$500,000 or \$1.0 million for projects solicited through the integrated project delivery approach. Expenditure increases are estimated at up to \$18.0 million in FY 2021-22 and FY 2022-23. Fund splits have not been calculated as of this writing. However, it should be noted that although the cost of individual projects may increase as a result of the bill, the amount of revenue available to projects is not anticipated to increase. Rather than increasing overall spending on public projects, the bill may instead lead to fewer public projects. These costs are displayed in Table 2 and discussed below.

**Table 2
 Expenditures Under SB 19-186**

Cost Components	FY 2021-22	FY 2022-23
Department of Labor and Employment		
Personal Services	\$266,825	\$288,264
Operating Expenses and Capital Outlay Costs	\$28,075	\$4,560
Centrally Appropriated Costs*	\$63,337	\$68,838
FTE - Personal Services	4.4 FTE	4.8 FTE
CDLE (Subtotal)	\$358,237	\$361,662
Department of Personnel and Administration		
Personal Services	\$99,855	\$108,933
Operating Expenses and Capital Outlay Costs	\$7,914	\$1,425
Centrally Appropriated Costs*	\$22,132	\$23,889
FTE - Personal Services	1.4 FTE	1.5 FTE
DPA (Subtotal)	\$129,901	\$134,247
Increase in Construction Costs	up to \$16,770,273	up to \$16,600,000
Software Licenses for State Agencies	\$700,000	\$700,000
Total Cost	up to \$17,958,411	up to \$17,790,909
Total FTE	5.8 FTE	6.3 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Assumptions. The fiscal note assumes that the changes in funding and FTE allocation, as initially estimated in this fiscal note, will be addressed through the annual budget process.

Department of Labor and Employment. The bill increases state General Fund expenditures for CDLE by \$294,900 and 4.4 FTE in FY 2021-22 and \$292,824 and 4.8 FTE in FY 2022-23. The Division of Employment and Training will handle conditional approvals for apprenticeship programs, review approvals, and conduct annual reviews. In addition, the Division of Labor and Statistics will establish the bill's investigation process and promulgate rules related to enforcement. Staff will also conduct investigations and issues decisions, along with holding appeals hearings. Costs are based on similar cost for the implementation of the Keep Jobs in Colorado Act in 2013.

Department of Personnel and Administration. The bill will increase General Fund expenditures and workload for DPA by \$107,769 in FY 2021-22 and \$110,358 in FY 2022-23. Addition FTE will perform data verification and reporting, program supervision, CORE transaction entry, and process additional documentation related to the Capitol Complex. Additionally, workload will increase to update rules, technical guidance, existing documentation, and administer the Unclaimed Prevailing Wage Special Trust Fund. This fiscal note assumes additional costs will be requested through the annual budget process.

Institutions of higher education. The bill will increase expenditures and workload for institutions of higher education. Specific increases will vary by the scope of each public project and the institution sponsoring the project. As stated above, if the costs of individual projects increases as a result of this bill, institutions of higher education may instead undertake fewer public projects

rather than increase overall expenditures.

Increased construction costs. As stated above, costs on state and institutions of higher education constructions projects may increase by up to 5 percent under the requirements of the bill. Projected capital need for FY 2021-22 is \$332.0 million, thereby increasing constructions state and institution of higher education costs by up to \$16.8 million in FY 2021-22. Costs will vary by the scope and specifications of each project. However, it should be noted that though the cost of individual projects may increase as a result of the bill, the amount of revenue available to projects is not anticipated to increase. Rather than increasing overall spending on public projects, the bill may instead lead to fewer public projects.

Software licenses. CDOT and other states that pay prevailing wage use software to track certain contract requirements. The software license costs approximately \$70,000 per year. This fiscal note assumes that initially up to 10 state agencies will each need a separate license to access this software at a total cost of \$700,000 per year.

Judicial Department. The bill may increase costs by up to \$170,273 for the Judicial Department from the Justice Center Maintenance Fund for FY 2021-22 controlled maintenance projects. Alternately, the bill may reduce the number or scope of projects paid from the fund since spending from this source depends on the availability of funding. In addition, to the extent that this bill increases appeals of agency actions, trial court workload will increase. The fiscal note assumes that the impact will be minimal and can be accomplished within existing resources.

All state agencies and institutions of higher education. In addition, this fiscal note assumes that workload will increase for most state agencies in order to manage and monitor projects, oversee contractors, write contracts, review and certify payroll paperwork. In addition, several agencies, such as the Departments of Corrections, quantified anticipated costs associated with additional project oversight responsibilities. These costs range from \$80,000 to \$145,000 for additional FTE. This fiscal note assumes additional staff requirements will be requested through the annual budget process in FY 2021-22 and based on the actual number of projects undertaken by individual agencies. Additional factors that may increase expenditures include:

- fewer available project contractors;
- higher cost bids;
- project award delays;
- increased workload for contract solicitation and management; and
- updating rules and existing documentation for public projects.

Centrally appropriated costs. 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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$85,469 in FY 2021-22 and \$92,727 in FY 2022-23.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

All State Agencies