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Final Fiscal Note

Drafting Number: LLS 22-0294
Prime Sponsors: Sen. Scott

Date: June 27, 2022
Bill Status: Postponed Indefinitely
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Bill Topic: **TRANSPORTATION PROJECT PROCUREMENT MONITORING**

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill would have required the Colorado Transportation Commission to contract with a fairness monitor to review and monitor any projects that are not procured using design-bid-build contracting. The bill also would have created the Contracting Fairness Committee, which would have been required to report its assessment of any recommendations from the fairness monitor to the Transportation Commission. The bill would have increased state revenue and expenditures on an ongoing basis, beginning in FY 2022-23.

Appropriation Summary:

The State Highway Fund is continuously appropriated to the Department of Transportation. See State Appropriations section.

Fiscal Note Status:

The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 22-074

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	State Highway Fund	\$105,840	\$105,840
	Total Revenue	\$105,840	\$105,840
Expenditures	State Highway Fund	\$529,786	\$529,786
	Total Expenditures	\$529,786	\$529,786
	Total FTE	0.1 FTE	0.1 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	\$105,840	\$105,840

Summary of Legislation

Beginning in FY 2022-23, this bill requires the Transportation Commission to create a Contracting Fairness Committee, and annually contract with a fairness monitor to review and monitor the procurement process for Department of Transportation (CDOT) projects that do not use design-bid-build contracting. The committee is comprised of six members from the executive and legislative branches, as well as a representative chosen by the Colorado Contractors Association.

Alternative contract planning. Before CDOT uses an alternative form of contracting, the fairness monitor must review:

- the overall decision making process;
- whether the alternative form of contracting will result in completion of the project sooner or at lower cost; and
- the project criteria development, project advertisement, and contractor selection process to ensure each step is conducted without creating any actual or perceived unfair advantage.

The fairness monitor must make recommendations to the Contracting Fairness Committee as to whether the alternative form of contracting for proposed projects should be used, and the committee must review these recommendations and report its assessment to the Transportation Commission.

Alternative contract monitoring. When using an alternative form of contracting for a project, CDOT must pay for a third-party team, designated by the fairness monitor, to monitor the fairness of the procurement process. CDOT must impose a fee on contractors seeking selection for the project, set at a level so that total fee revenue is equal to half the costs for the third-party project monitoring.

Alternative contract reporting. The fairness monitor is required to review completed projects and report to the Contracting Fairness Committee. The reports must include a comparison of each project's actual and estimated costs and schedule, as well as a record of any claims, disputes or pending litigation related to the project.

Background

Design bid build contracting requires CDOT to design a project, or contract for the design of a project, and then solicit competitive bids for the construction of the project. CDOT currently uses various procurement methods for contracted construction work, including by invitation for bids. CDOT uses a project delivery selection matrix to make recommendations on which procurement method is best suited to a project.

Assumptions

The fiscal note assumes that CDOT will use an alternate contracting methodology for three projects a year, and that costs related to the Contract Fairness Committee and fairness monitor will be similar across these projects.

State Revenue

The bill is anticipated to raise state cash fund revenue by \$105,840 in FY 2022-23 and FY 2023-24 and ongoing in future years as shown in Table 2. This revenue is subject to TABOR.

Fee impact on CDOT Contractors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by CDOT based on estimated costs per project and the number of project applicants subject to the fee. The table below identifies the fee impact of this bill.

**Table 2
Fee Impact on SB 22-074**

Fiscal Year	Type of Fee	Proposed Fee Total	Projects Affected	Total Fee Impact
FY 2022-23	Third-party Fee	\$35,280	3	\$105,840
FY 2023-24	Third-party Fee	\$35,280	3	\$105,840

Third-party fees. CDOT is required to impose a fee on contractors seeking selection for projects using an alternative contract methodology. The total amount of fees collected must equal half the costs of third-party project monitoring for each project. The amount of fees charged to individual contractors for any given project will depend on the total cost of the third-party monitoring, and the number of contractors seeking to be selected. This fiscal note assumes that total costs for third-party monitoring will be \$70,560 per project.

State Expenditures

The bill increases state cash fund expenditures for CDOT by \$529,786 in FY 2022-23 and FY 2023-24 and ongoing in future years. Expenditures are shown in Table 3 and detailed below.

**Table 3
Expenditures Under SB 22-074**

	FY 2022-23	FY 2023-24
Department of Transportation		
Personal Services	\$56,763	\$56,763
Fairness Monitor	\$229,500	\$229,500
Third-party Teams	\$211,680	\$211,680
Committee Per Diems	\$7,200	\$7,200
Legal Services	\$24,643	\$24,643
FTE – Legal Services	0.1 FTE	0.1 FTE
Total Cost	\$529,786	\$529,786
Total FTE	0.1 FTE	0.1 FTE

Colorado Department of Transportation. The department will require director level staff to support activities related to the fairness monitor and Contract Fairness Committee. This will include around 220 hours of staff time per project, at a rate of \$85 an hour, to answer questions and provide information to the fairness monitor through each project's planning, monitoring and reporting phases. This work can be accomplished using existing FTE.

- **Fairness monitor.** The fairness monitor will require around 340 hours per project, at a rate of \$250 an hour, to monitor and report on each project that uses an alternative contract methodology, including coordination with the third-party contractor and CDOT staff, as well as reporting to the Contract Fairness Committee.
- **Third-party teams.** Third-party teams will require around 390 hours per project, at a rate of \$180 an hour, to monitor the fairness of the procurement process for each project that uses an alternative contract methodology. CDOT, or the enterprise overseeing a project, will charge a fee on contractors seeking to be selected for each project, which must equal half of the third-party team monitoring costs.
- **Committee per diems.** The Contract Fairness Committee will meet two times per project to review reports from the fairness monitor and make recommendations to the Transportation Commission. The per diems are set at \$150 a day for seven committee members and the fairness monitor.
- **Legal services.** Beginning in FY 2022-23, CDOT will require 250 hours of legal services related to their procurement methodology determinations and additional review and documentation from related contracts. The Department of Law provides legal services at a rate of \$98.57 per hour and will require an allocation of 0.1 FTE.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Effective Date

This bill was postponed indefinitely by the Senate Finance Committee on February 9, 2022.

State Appropriations

The State Highway Fund is continuously appropriated to the Department of Transportation. All state expenditures, except for legal services, would have occurred in CDOT's Construction, Maintenance, and Operations Long Bill line item. For FY 2022-23, the bill would have required a reappropriation from the State Highway Fund of \$24,643 to the Department of Law with 0.1 FTE.

State and Local Government Contacts

Information Technology
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Transportation

Law
Office of Legislative Legal Services