Colorado Legislative Council Staff Fiscal Note

STATE, LOCAL and STATUTORY PUBLIC ENTITY REVISED FISCAL IMPACT

(replaces fiscal note dated February 20, 2013)

Drafting Number:	LLS 13-0580	**Date:**	February 27, 2013
Prime Sponsor(s):	Rep. Moreno	**Bill Status:**	House Local Government
		Fiscal Analyst:	Alex Schatz (303-866-4375)

TITLE: CONCERNING THE ABILITY OF LOCAL GOVERNMENTS TO FORM JOB CREATION DISTRICTS.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue General Fund	Potential increase. See State Revenue section.	
State Expenditures General Fund	Potential increase. See State Expenditures section.	
FTE Position Change		
Effective Date: August 7, 2013, if the General Assembly adjourns on May 8, 2013, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2013-2014: None required.		
Local Government Impact: See the Local Government Impact and School District Impact sections.		

Summary of Legislation

This bill defines and authorizes the formation of job creation districts (districts) as a means to generate the capital needed to attract employers and create new jobs. Local job creation authorities (authorities) oversee the operations of districts.

For up to 15 years, a local job creation authority may obligate up to 90 percent of increased tax revenue from participating taxing entities in a district to finance public improvements (both inside and outside the job creation district) or to provide payments to taxing entities or private entities in the district that meet the bill's job creation criteria. Base tax revenues plus 10 percent of increased revenues continue to be directed to participating taxing entities in the same manner as they are under current law.

A local government with jurisdiction over land use (*i.e.*, cities, towns, counties, city and county government) may form a district when:

- a district plan is submitted to the local government by a public or private entity;
- the district plan describes an "eligible project" by one or more private entities that is anticipated to generate new jobs;

- the district plan identifies each overlapping taxing entity participating in district financing and the amount that each participating taxing entity will contribute;
- the governing body of the local government finds that at least, depending on the population of the local community, 20 to 300 new jobs will be created, and the private entities will make a capital investment of at least, also depending on population, $1 million to $50 million in the community;
- the local governing body finds that the district will provide adequate financial support to public facilities, will not take more than 60 percent of the increased tax revenue from school mill levies, and will produce a net positive fiscal impact to the state General Fund; and
- the district plan is reviewed and approved in a public hearing with published notice and written notice to each overlapping taxing entity.

The Division of Local Government (DLG) in the Department of Local Affairs (DOLA) receives and keeps a record certifying the formation of a district.

The boundaries of a district must be contiguous and narrowly fixed to capture land area in which new jobs and tax revenue will be generated. Districts may not be created with boundaries that overlap an urban renewal area, and only under certain conditions may a district be formed if its boundaries overlap a regional tourism zone or an enterprise zone.

Base tax revenue does not include state taxes, and agricultural real property taxes are calculated for the purposes of the bill based on fair market value. The bill does not modify the property tax assessment process, but county assessors are required to calculate base tax revenue and increased revenue available to taxing entities and an authority. A local government forming a district must notify the assessor of its formation and when its obligations are discharged. The Property Tax Administrator in DOLA is required to publish manuals and define methods for county assessors to implement the bill.

The bill also defines the governance of an authority, confers bonding power on such authorities, and contains other provisions, including procedures for modifying the boundaries of a district.

Background

Tax increment financing (TIF) is a tool used by local governments in Colorado and nationally for the development of public improvements, typically in support of specific economic development activities. When designated tax revenue increases within a TIF area, the revenue above the established base tax revenue, or the "increment," is set aside for repayment of public improvements within the TIF area or other specific purposes. The increment may be all or a portion of increased revenue and may involve property taxes, sales and use taxes, other taxes, or some combination of increased taxes.

Urban renewal authorities (URAs), funded with an increment of sales or property taxes, are the most prevalent entity using TIF powers in Colorado. Colorado law also permits regional tourism authorities, using state sales taxes for TIF funding.

State Revenue

General Fund revenue may be increased by the bill, but this effect can not be estimated for the fiscal note.

State taxes are categorically excluded from the financing of a district, but the formation of a district requires a finding that the district will produce a net positive impact on state General Fund revenue. To the extent the bill results in the creation of primary employment in the state, increased state income taxes may be anticipated, as well as increased state sales and use taxes. However, once the local government makes its finding concerning the General Fund, there is no measurement or enforcement of the bill's effect on state revenue. The fiscal note assumes that job creation districts will be accompanied by capital investment and new jobs that would not have otherwise occurred. The amount of increased General Fund revenue will generally depend on the size of approved eligible projects.

State Expenditures

Implementation of the bill increases workload and potentially increases expenditures for state agencies involved with local government taxation. These increased costs are described below for the Department of Local Affairs, the Department of Revenue, and public school finance. No new appropriations are identified for state agencies in FY 2013-14; however, depending on implementation of the bill by local governments, it may be necessary for certain agencies to request additional resources.

Department of Local Affairs - Division of Property Taxation. The Property Tax Administrator in the Division of Property Taxation (DPT) must generate a method to be used by county assessors to value agricultural land in districts at fair market value. This guidance is at variance with current (and continuing) assessment practices and may require significant effort to coordinate and disseminate information as required by the bill. In addition, DPT guidance related to districts must ensure the accurate reporting of property taxes for the purposes of calculating constitutional and statutory property tax limits. The DPT will produce guidance in FY 2013-14 without new appropriations.

Department of Local Affairs - Division of Local Government. The DLG is required to authenticate and maintain records of certificates of formation filed by new districts. The effort to perform this duty is minimal, as each certificate is processed by the DLG in one hour or less. The DLG must calculate the impact of diverted property tax revenue on constitutional and statutory property tax limits. Finally, the DLG is also responsible for monitoring the compliance of local government entities with budgeting laws. Overall, the impact of the bill on the DLG is minimal and does not require new appropriations.

Department of Revenue. The bill requires the Colorado Department of Revenue (CDOR) to assemble and transmit to county assessors information, on a district-by-district basis, concerning any taxes it collects for local governments or statutory public entities. The CDOR collects sales taxes and certain other taxes, such as use tax and lodging tax, for various local governments (*e.g.*, statutory cities and towns, counties) and statutory public entities. Based on the assumption that districts are relatively compact, with "narrowly fixed" boundaries, the analysis required to extract this information is assumed to be performed within the existing appropriations of CDOR. However, district boundaries are unlikely to conform to the boundaries of any existing taxing jurisdiction, and depending on the number and complexity of boundaries of districts, the CDOR may require additional resources to address increased workload, to be addressed in the annual budget process.

As noted in the Local Government Impact section below, the fiscal note assumes that the relevant county assessor must calculate the base and increased tax revenue for each district. In the event that this duty is not undertaken by the county assessor for some or all taxes, the fiscal note assumes CDOR will perform the calculation. Given a sufficient number of districts statewide, this workload could result in the need for additional staff, to be addressed in the annual budget process.

School finance impact. Based on a net reduction in property tax revenue, this bill may imply an increase in the amount of state General Fund contributions to the School Finance Act. Alternatively, the General Assembly may adjust public school funding through other mechanisms, including the potential for overall school district financing to be reduced due any reduction in the local share.

Statutory Public Entity Impact

The bill conditionally reduces statutory public entity revenue. Statutory public entities may rely on tax revenue for operational or capital funding. Depending on specific enabling statutes, certain statutory public entities rely on sales tax revenue (*e.g.*, the Regional Transportation District, the Scientific and Cultural Facilities District), while others rely on property taxes (*e.g.*, the Urban Drainage and Flood Control District).

Reduction of statutory public entity revenue is conditioned upon the implementation of a district within the taxing boundaries of such an entity and the decision of the statutory public entity to participate in district financing at a predetermined level.

Local Government Impact

The bill increases workload and redistributes revenue among local governments. Specific impacts on local governments that form districts and overlap districts, as well as impacts on county assessors and other local officials, are described below.

Municipal and county governments with land use jurisdiction. Cities, towns, counties, and city and county governments that either independently or cooperatively organize a district will experience increased costs associated with its formation. These costs include technical review of a district plan, notices and a public hearing, and legal counsel.

New districts will increase revenue to the local government or the authority that administers the district. This increase will vary depending on details of the eligible project and the district plan, but the increase is anticipated to be significant in order to achieve the purposes of the bill.

Operational costs once a district is formed include accounting, legal services, and general administrative services. The bill allows the local government that forms a district to furnish legal counsel and to potentially cover other costs for an authority administering a district, and the fiscal note assumes such costs generally impact the same local government.

Overlapping local taxing entities. The bill conditionally results in reduced revenue or increased costs for local government taxing entities, in an amount that depends on the decision of an affected taxing entity to participate, as well as the size and economic characteristics of a district formed inside its boundaries. Affected local government taxing entities may include special districts (*e.g.*, a metropolitan district providing water and wastewater service) and various improvement districts formed by counties (*e.g.*, public improvement districts) and municipalities (*e.g.*, business improvement districts), as well as school districts (see the School District Impact section below).

Taxing entities within a district may forego up to 90 percent of their share of tax revenue growth in the district based on their level of participation identified in the district plan. Taxing entities that participate in district financing will experience a workload increase and potential legal costs to negotiate agreements with the district authority. Submission of statements for the district plan also results in a minimal workload increase for participating overlapping taxing entities.

County assessors. County assessors are charged with calculating base tax revenue, increased tax revenue, and the amounts available to affected taxing entities. At a minimum, the calculation of a base and increased property tax revenue involves new workload for the assessor. To complete this calculation in districts containing agricultural land will also involve adopting new practices consistent with the method of determining fair market value of this agricultural land, as determined by the Property Tax Administrator in DOLA.

In a county with a district, the bill results in substantial new workload for assessors to compile tax information from numerous tax-collecting agencies, such as CDOR, municipal governments, other county agencies, and utility companies. The assessor must then apply specific rates of participation for each overlapping taxing entity. The fiscal note assumes the county assessor performs base and increment calculations for all taxes, as this function is required by the bill and no other agency is assigned this duty.

Other local government agencies. The bill potentially impacts additional offices of county government in a county where a district is located. County clerks collect certain sales taxes on motor vehicle transactions, and could be required to assemble and report this information to the assessor. Under the bill, county clerks receive filings concerning districts, for example when the governing body removes an officer of a local job creation authority. The involvement of county treasurers, as custodians of records concerning tax collections, may also be required depending on how base tax revenues are calculated. Workload increases associated with the involvement of these additional county offices are anticipated to be minimal.

School District Impact

This bill conditionally reduces the local share of funding for public schools where the school board has determined to participate in a district. The bill limits the amount that may be generated from school property taxes to 60 percent of total incremental revenue. In practice, this limits the geographic areas in which job creation districts may be formed, particularly presenting a barrier in rural areas. The 60 percent limit does not in any way limit the total amount of increased school property taxes that may be diverted to an authority.

The specific amount of reduced school property taxes depends on the size and location of districts with participating school boards, and the timing of financial agreements. This reduction in local funding share will either be replaced by state aid, or the negative factor in the school finance formula will grow, resulting in a reduction in overall funding for school districts.

Pursuant to Section 22-32-143, C.R.S., as specified by House Bill 11-1277, school districts and Boards of Cooperative Educational Services (BOCES) may submit estimates of fiscal impacts within seven days of a bill's introduction. As of the date of this fiscal note, no summaries of fiscal impacts were submitted by districts or BOCES for this bill. If summaries of fiscal impacts are submitted by districts or BOCES in the future, they will be noted in subsequent revisions to the fiscal note and posted at this address: http://www.colorado.gov/lcs

Technical Notes

As introduced, House Bill 13-1212 contains a number of ambiguous provisions. For this analysis, the fiscal note makes the assumptions noted below.

- A local governing body may approve the formation of, and operate, a job creation district without a local job creation authority, but only an authority receives the 90 percent increment of increased tax revenue. Therefore, fiscal note assumes that all local governments that approve a district will also form an authority.

- As a public entity, an authority is subject to various statutes regarding the conduct of its business, such as the Colorado Open Meetings Law. The bill states that an authority is a body corporate and politic but is not a state public body, local public body, a local government-financed entity, or a political subdivision of the state. It is unclear how these provisions affect the operation of an authority or how they are reconciled with other laws and other provisions of the bill. The fiscal note assumes that laws regarding the conduct of any other local government are generally applicable to an authority.

- Compilation and comparison of base tax revenue and increased tax revenue involves access to taxpayer information protected by privacy laws. The fiscal note generally assumes that such concerns will be addressed administratively or through appropriate amendment. In some cases, however, information required by the bill does not exist (*e.g.*, state income taxes "generated by" a physical address). The fiscal note assumes the bill is implemented to the extent legally and practically feasible.

Departments Contacted

Local Affairs	Office of Economic Development and International Trade
Municipalities	Regional Transportation District
Counties	Property Taxation
Revenue	Education