


 Colorado Legislative Council Staff Fiscal Note
FINAL
FISCAL NOTE

Drafting Number: LLS 12-0462

Date: May 30, 2012

Prime Sponsor(s): Rep. Lee

Bill Status: Postponed Indefinitely

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TITLE: CONCERNING THE CREATION OF CERTAIN PROCUREMENT PREFERENCES TO BE APPLIED IN THE STATE PROCUREMENT PROCESS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
<u>Total</u>	<u>\$69,255</u>	At least <u>\$171,469*</u>
General Fund	62,767	62,908
Various Cash Funds		19,583
State Highway Fund	6,488	35,458
Reappropriated Funds		6,177
Federal Funds		47,343
FTE Position Change	0.9 FTE	2.8 FTE
Effective Date: The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on February 22, 2012.		
Appropriation Summary for FY 2012-2013: The Department of Personnel and Administration would have required a General Fund appropriation of \$62,767 and 0.9 FTE.		
Local Government Impact: See Local Government section.		

**The funding sources provided are an estimate based on affected agencies' funding sources at the department level.*

Summary of Legislation

This bill would have directed state agencies to grant up to a 5 percent preference to bidders for contracts expected to cost more than \$500,000. The bill also would have directed state agencies to offer a 2.5 percent preference to bidders who are veterans for contracts for the purchase of goods or services.

For construction contracts, the bill would have required state agencies to grant *up to a 5 percent preference* to bidders, as follows:

- **a 3 percent preference to a bidder** who certifies that at least 90 percent of the employees who will complete the contracted work are Colorado residents;

- **an additional 1 percent preference** if the bidder certifies that it will offer health care and retirement benefits to the employees who will perform the contracted work; and
- **an additional 1 percent preference** if the bidder certifies that the employees who will perform the contracted work will have access to a federally qualified apprenticeship training program.

For contracts for the purchase of goods or services, the bill would have required state agencies to grant *up to a 7.5 percent preference* to bidders, as follows:

- **a 3 percent preference to a bidder** who certifies that at least 90 percent of the employees who will complete the contracted work are Colorado residents;
- **an additional 2 percent preference** if the bidder certifies that it will offer health care and retirement benefits to the employees who will perform the contracted work; and
- **a 2.5 percent preference** if the bidder certifies that a majority of its business is veteran-owned.

The bill would not have permitted the 90 percent Colorado resident and veteran business preference to be offered to a noncompliant bidder, and a bidder would not have been permitted to use the preference to satisfy a minimum requirement of a contract. The Department of Personnel and Administration (DPA) was directed to promulgate rules for the administration of each preference, including a process for a bidder to certify, and an agency to verify, the bidder's eligibility for each preference.

Background

State procurement of goods and services. The purchase of goods and services by Colorado state agencies is generally governed by the state procurement code. Under current law, state procurement rules only apply to executive branch agencies, although higher education institutions may opt out of these rules. The legislative and judicial branches, and political subdivisions of the state such as local governments, may opt *in* to the rules. Procurement policy and rule-making for participating state agencies is overseen by the DPA. Procurement rules are in effect for most procurements, except those for certain professional services, road and bridge construction, public printing, goods for public resale, intergovernmental agreements, or in the case of emergencies.

Construction contracts. The construction, renovation, repair, or demolition of state-owned facilities is also governed by statute, but contracting for such projects is not included in the state procurement code. Rules concerning contracting for construction projects apply to all state agencies, including higher education institutions and the legislative and judicial branches. Most construction contracting is overseen by the Office of the State Architect, within the DPA. 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.

State Expenditures

This bill would have increased state expenditures by \$69,255 and 0.9 FTE in FY 2012-13, as shown in Table 1, and by at least \$171,469 and 2.8 FTE in FY 2013-14, as shown in Tables 1 and 2. These costs were based mainly on increased workload for verification of contracts, but also included some one-time costs for the Colorado Department of Transportation (CDOT) to update contract materials. This fiscal note assumed that General Fund moneys would have been needed, but the exact fund sources would have varied by agency. The potential impact of the bill on contracting costs was not included in Tables 1 or 2, but is described in greater detail below.

Cost Components	FY 2012-13	FY 2013-14
Personal Services	\$57,679	\$38,031
FTE	0.9	0.6
Operating Expenses and Capital Outlay	5,088	570
Updating Contracting Manuals (CDOT)	6,488	0
TOTAL	\$69,255	\$38,601

The Department of Personnel and Administration would have required 0.9 FTE at a cost of \$62,767 for FY 2012-13, and 0.6 FTE at a cost of \$38,601 in FY 2013-14 and in future years. This amount would have been payable from the General Fund and included operating expenses and capital outlay. These costs were required to promulgate and manage new rules and to support certification of a vendor's eligibility for certain preferences. This fiscal note assumed that verification of a bidder's eligibility would have only occurred during the contracting process, rather than throughout the term of a contract.

The Colorado Department of Transportation (CDOT) would have updated its rules and modified both its construction manuals and construction management software to conform to the requirements of the bill. These modifications were expected to require an estimated one-time cost of \$6,488 in FY 2012-13. These costs would have been paid from the State Highway Fund, which is continuously appropriated to the department.

All state agencies. The bill would have directed state agencies to verify a bidder's eligibility for each preference. The verification process would have been determined by rules promulgated by the DPA after the bill became law. Several state agencies would have experienced increased staff costs, which would have varied by the volume and complexity of contracts issued by each agency, and would have depended on the level of review required by the DPA rules. This fiscal note assumed that the promulgation of rules and training of agency staff would have taken several months, and that the new verification procedures would not have gone into effect until FY 2013-14.

This fiscal note assumed that the verification process would have required an additional 4 hours per bid per contract, that the average contract received 4 bids, and that the total workload would have increased by 16 hours per contract. Table 2 lists agencies with eligible contracts over \$500,000 issued since the beginning of FY 2010-11, as recorded in the state contracting database. The listed agencies issued a high enough volume of contracts to qualify for at least 0.1 additional FTE, based on the formula above. The staffing level for two agencies rose to the 0.5 FTE minimum required for standard operating and capital outlay expenses. These costs were reflected as additional costs in Table 2. Staffing was assumed to be at the General Professional IV level for all agencies.

Agency	Number of Eligible Contracts*	Staff Time Required (Hours)	Additional Costs	FTE	Total
Corrections	18	288	N/A	0.1	\$5,680
Health Care Policy and Financing	65	1,040	2,827	0.5	31,225
Human Services	53	848	N/A	0.4	22,718
Natural Resources	13	208	N/A	0.1	5,680
Public Health and Environment	14	224	N/A	0.1	5,680
Revenue	14	224	N/A	0.1	5,680
Transportation	114	1,824	5,088	0.9	56,204
Total	291	4,656	7,915	2.2	\$132,866

* The number of eligible contracts is an estimate based on a survey of the information listed in the state contracting website.

Increased contracting costs. This bill may have increased the cost of some construction contracts for state agencies by up to 5 percent, or \$25,000 per \$500,000 expended. A bidder for a construction contract that certified that it would employ at least 90 percent Colorado residents, offer health care and retirement benefits to its employees, and provide access to a federally qualified apprenticeship training program could have submitted a bid up to 5 percent greater than the next lowest bid to win a contract. Therefore, the overall cost of construction projects could have increased by as much 5 percent.

This bill may have increased the cost of some contracts for the purchase of goods or services for state agencies by up to 7.5 percent, or \$37,500 per \$500,000 expended. A bidder for a contract for goods or services that certified that it would employ at least 90 percent Colorado residents, offer health care and retirement benefits to its employees, and that the business was veteran owned could have submitted a bid up to 7.5 percent greater than the next lowest bid to win a contract.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill would have been 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 3.

Table 3. Expenditures Not Included Under HB 12-1113*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,597	\$12,301
Supplemental Employee Retirement Payments	3,075	7,781
TOTAL	\$8,672	\$20,082

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

Departmental Difference

In addition to the CDOT expenditures reflected in Tables 1 and 2, CDOT also believed this bill would have precluded the department from accessing its annual apportionment of federal highway funding, which was projected to be \$398.7 million for FY 2012-13. Typically, the annual apportionment is consistently \$500 million. The department explained that its participation in the federal highway program is voluntary, and certain costs for eligible projects are reimbursed from the federal treasury provided CDOT abides by federal law. Federal law generally prohibits bidder preferences in contracting. CDOT believed that it would have no legal authority to disregard the provisions of HB 12-1113, therefore making it ineligible for federal highway funding. These costs were not included in the fiscal note because it was not clear how any potential conflict would have been resolved.

State Appropriations

For FY 2012-13, the Department of Personnel and Administration would have required a General Fund appropriation of \$62,767 and 0.9 FTE. The Department of Transportation would not have required an appropriation as State Highway Funds are continuously appropriated to the department.

Departments Contacted

All Departments