

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 12-0416	Date: June 1, 2012
Prime Sponsor(s): Sen. Hudak Rep. Duran; Ryden	Bill Status: Postponed Indefinitely
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TITLE: CONCERNING CONTRACTING PREFERENCES FOR PERSONS WHO EMPLOY AT LEAST A SPECIFIED PERCENTAGE OF COLORADO RESIDENTS TO PERFORM THE REQUIREMENTS OF A GOVERNMENT CONTRACT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue	See State Revenue section.	
State Expenditures		
<u>Total</u>	<u>\$69,255</u>	At least <u>\$84,039*</u>
General Fund	62,767	54,328
Various Cash Funds		10,860
State Highway Fund	6,488	
Reappropriated Funds		3,223
Federal Funds		15,628
FTE Position Change	0.9 FTE	1.4 FTE
Effective Date: The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on April 25, 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: None.		

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

Summary of Legislation

This bill is also known as the "Hiring Coloradans First Act," and would have granted up to a 5 percent preference to bidders for construction or services contracts costing more than \$1 million. This preference would have been offered to bidders that certified that at least 90 percent of the employees who completed the contract work were Colorado residents. Specifically, the bill required state agencies to:

- grant a **3 percent preference to a bidder for a construction or services contract** that certifies that at least 90 percent of the employees who will complete the contracted work are Colorado residents.

Additionally, the bill required state agencies to grant bidders for *integrated project delivery (IPD) construction contracts and service contracts who qualified for the 3 preference*:

- **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.

An IPD contract is one in which there is a contractual agreement between an agency and a single participating entity for the financing, design, construction or renovation, maintenance or operation, or any combination of these services, for a public project.

The bill required state agencies to grant bidders for *construction contracts (other than IPD contracts) who qualified for the 3 percent preference*:

- **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.

These preferences would not have been offered to a noncompliant bidder, and a bidder could not have used a 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. 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 Revenue

To the extent that the passage of this bill would have been the sole determining factor for contractors to conduct their work exclusively within the geographic boundaries of the state, the bill could have increased employment, wages, and contractor purchases within the state, and thus increased state sales and income tax revenue. However, to the extent that passage of this bill would have increased the costs of contractors who would have conducted their work in the state regardless, this bill may have reduced employment, wages, and contractor purchases within Colorado, and therefore also may have reduced state sales and income tax revenue. As it was unknown how contractors would have responded to the passage of this bill, no increase or decrease in state revenue was estimated.

State Expenditures

This bill would have increased state expenditures by at least \$69,255 and 0.9 FTE in FY 2012-13 and by \$84,039 and 1.4 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 rules and materials. This fiscal note assumed that General Fund moneys would have been required, but the exact fund sources would have varied by agency. The potential impact of the bill on contracting costs is not included in Tables 1 and 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 DPA 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 CDOT would have had to update rules and modify both its construction manuals and its construction management software to conform to the requirements of this 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 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 the contracts issued by each agency, and 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 \$1.0 million 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. Staffing was assumed to be at the General Professional IV level for all agencies.

Agency	Number of Eligible Contracts*	Staff Time Required (Hours)	FTE	Total
Corrections	11	176	0.1	\$5,680
Health Care Policy and Financing	40	640	0.3	17,039
Human Services	33	528	0.2	11,359
Public Health and Environment	7	112	0.1	5,680
Revenue	12	192	0.1	5,680
TOTAL	103	1,648	0.8	\$45,438

* 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 and services contracts for state agencies by up to 5 percent, or \$50,000 per \$1.0 million 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 construction contract. Similarly, a bidder for a services or IPD construction contract that certified that it would employ at least 90 percent Colorado residents and offer health care and retirement benefits to its employees could also have submitted a bid up to 5 percent greater than the next lowest bid to win the services contract. Therefore, the overall cost of construction projects and service contracts could have increased by as much 5 percent.

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 SB 12-001*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,513	\$3,690
Supplemental Employee Retirement Payments	2,281	2,334
TOTAL	\$7,794	\$6,024

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

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