# HB11-1129

*Colorado Legislative Council Staff Fiscal Note*

# STATE FISCAL IMPACT

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| **Drafting Number:** | LLS 11-0562 | **Date:** | February 2, 2011 |
| **Prime Sponsor(s):** | Rep. Pabon; Lee | **Bill Status:** | House Economic & Business Development |
| | | **Fiscal Analyst:** | Kerry White (303-866-3469) |

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

| Fiscal Impact Summary | FY 2011-2012 | FY 2012-2013 |
|---|---|---|
| **State Revenue** | <$5,000 | <$5,000 |
| **State Expenditures** | | |
| General Fund | 87,976 | 181,781 |
| Cash Funds | | |
| State Highway Fund | 31,259 | 53,112 |
| Reappropriated Funds | 36,870 | 64,335 |
| **FTE Position Change** | 2.2 FTE | 5.0 FTE |
| **Effective Date:** January 1, 2012, if no referendum petition is filed. | | |
| **Appropriation Summary for FY 2011-2012:** See State Appropriations section. | | |
| **Local Government Impact:** None. | | |

## Summary of Legislation

This bill requires that state agencies, when purchasing supplies or services, prefer certain bidders and products under specified conditions, as described below.

***Low-tie bids among resident bidders.*** Under current law, when two or more bids for a competitive solicitation tie as offering the lowest price (referred to as a low-tie bid), the state can prefer Colorado bidders (resident bidders) to those from other states. Under this bill, in the event of a low-tie bid among resident bidders, state agencies are to take into account each bidder's employment of Colorado workers and use of supplies produced in-state.

***Use of domestic iron, steel, and manufactured goods and preference for domestic products.*** If the construction or alteration of a public work requires the use of iron, steel or manufactured goods, these materials are required to be produced in the United States. Competitive solicitations for other materials are required to include a preference for domestic products. Exemptions are provided if any of these materials are not produced in sufficient quantity or quality, or their inclusion increases the overall project cost by more than 25 percent. Requests for an exemption are analyzed on a case-by-case basis and require public notice for a minimum of 30 days.

***Veteran's preference.*** The bill adds a preference for contractors that are owned by or employ a 51 percent majority of veterans, as certified by the Department of Personnel & Administration (DPA). When a contract for supplies or services is awarded through a competitive bidding process, an amount equal to 5 percent of the bid price is to be subtracted from the offer of each bidder that qualifies for the veteran's preference. Additionally, when contracts are awarded through a request for competitive sealed proposals, one of the stated evaluation factors is to include a 5 percent weight to the bidder's veteran's status.

The DPA is authorized to promulgate rules to create a certification process for obtaining a veteran's preference or designation as provider of goods produced in the United States. Contractors found to have violated the provisions requiring the use of products manufactured in the United States can be barred from obtaining state contracts for 5 years and be liable for civil penalties of up to 3 times the difference of the awarded bid and the next highest bid received.

## Background

Under current law, state procurement rules apply only to executive branch agencies, although the legislative and judicial branches of government, and political subdivisions may choose to opt in. Institutions of higher education are included in the procurement code unless they formally elect to be exempted. Procurement rules are in effect for most procurements, except those for professional services, road and bridge construction, public printing, intergovernmental agreements between the state and its political subdivisions, goods purchased for public resale, and those where no state funds are expended.

State procurement is overseen by the State Purchasing Office of the DPA. The DPA is responsible for rule-making, and also coordinates state-wide purchasing efforts, including price agreements. Price agreements are contracts awarded to vendors for providing an unspecified quantity of goods and services at a specified, per-unit price. These contracts are issued on a competitive basis, usually for one-year periods with an option to renew. Examples of price agreements include contracts for travel, vehicles, furniture, and medical supplies. Due to the volume of procurements and specialized needs of certain departments, a portion of DPA's procurement authority is delegated to individual state entities in order to manage routine, local, or discretionary purchases. Typically, a state entity with "delegated purchasing authority" has dedicated staff responsible for knowing and applying procurement rules and overseeing the resulting purchase orders and contracts for goods and services.

## State Revenue

The bill may increase state revenue by less than $5,000 in FY 2011-12 and each fiscal year thereafter. Contractors who are found to have knowingly violated contract provisions requiring the use of domestic products are liable for civil penalties of up to 3 times the difference of the awarded bid and the next highest bid received. This analysis assumes that existing remedies for breach of contract, as well as the certification requirements imposed under the bill, will create a high level of compliance among contractors and that any violations will generate less than $5,000 in revenue each fiscal year.

## State Expenditures

This bill will increase state expenditures by $156,105 and 2.2 FTE in FY 2011-12 and $299,228 and 5.0 FTE in FY 2012-13, as shown in Table 1 and discussed below.

**Table 1. Expenditures Under HB11-1129**

| **Cost Components** | **FY 2011-12** | **FY 2012-13** |
|---|---|---|
| Personal Services | $130,215 | $294,478 |
| FTE | 2.2 | 5.0 |
| Operating Expenses and Capital Outlay | 25,890 | 4,750 |
| **TOTAL** | **$156,105** | **$299,228** |
| **General Fund** | **87,976** | **181,781** |
| **Cash Funds (State Highway Fund)** | **31,259** | **53,112** |
| **Reappropriated Funds** | **36,870** | **64,335** |

***Procurement costs.*** Several state agencies will experience increased staff costs as a result of HB11-1129. Staff will be responsible for developing and following procedures to resolve tie bids among resident bidders, ensuring that goods meet the domestic production requirement and their inclusion does not increase the project cost by more than 25 percent, certifying contractors, and reviewing exemption requests. Staffing levels vary by the volume and complexity of each entity's procurement needs. It should be noted that the bill takes effect January 1, 2012. The fiscal note assumes that staffing costs will begin as of this date, although approximately six months are needed for the affected state agencies to hire staff, develop standards, train staff, and update technical guides.

- *Department of Personnel & Administration* oversees procurement for the state and will be required to provide technical guidance to state agencies, as well as ensure that its procurements, including price agreements, comply with the bill's requirements. DPA requires $61,064 General Fund and 0.8 FTE in FY 2011-12, and $128,669 General Fund and 2.0 FTE in FY 2012-13.

- *Governor's Office of Information Technology* (OIT) requires $36,870 reappropriated funds and 0.5 FTE in FY 2011-12, and $64,335 reappropriated funds and 1.0 FTE in FY 2012-13. The OIT manages procurements for all state information technology services and resources.

- *Department of Corrections* (DOC) requires $26,912 General Fund and 0.4 FTE in FY 2011-12, and $53,112 and 1.0 FTE in FY 2012-13. The DOC manages procurement for prisons and correctional industries.

- *Colorado Department of Transportation* (CDOT) will require $31,259 cash funds and 0.5 FTE in FY 2011-12, and $53,112 cash funds and 1.0 FTE in FY 2012-13. These costs are paid for with State Highway Fund (SHF) moneys.

- *Other agencies* will likely experience increases in workload as a result of the bill. The fiscal note assumes that any unmet staffing needs for individual state agencies will be addressed through the annual budget process.

***Bid costs.*** The bill requires the state to reduce the bid price of any contractor that qualifies for a veteran's preference by 5 percent. It also requires that the domestic products be used, unless their inclusion increases the overall project cost by more than 25 percent. These provisions create conditional fiscal impacts, which depend on future offerings of contractors. For this reason, no fiscal impacts have been estimated or included in this fiscal note. To the extent that these provisions increase state costs, agencies will either address these impacts through the annual budget process, or reduce their contracting.

***Judicial Department.*** The bill may increase state expenditures from breach of contract lawsuits that arise from requirements concerning the use of domestic products under this bill. It is anticipated that any such increase will be minimal and not require new appropriations.

## Expenditures Not Included

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. The centrally appropriated costs subject to this policy are summarized in Table 2.

**Table 2. Expenditures Not Included Under HB11-1129***

| Cost Components | FY 2011-12 | FY 2012-13 |
|---|---|---|
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | $15,738 | $35,500 |
| Supplemental Employee Retirement Payments | 5,892 | 15,700 |
| **TOTAL** | **$21,630** | **$51,200** |

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

## Departmental Differences

The DPA believes that in order to implement the bill, the department requires 3.0 FTE beginning in FY 2012-13, rather than the 2.0 FTE identified in the fiscal note. It is the position of the department that this bill requires them to conduct ongoing post-award inspections of procured goods and services to ensure contract compliance. The fiscal note does not include these costs as the bill does not specifically require state agencies to do post-award verifications of goods and products. The fiscal note assumes that the pre-procurement verifications are sufficient to meet the bill's requirements as written. If these costs were included, the DPA would require an additional $64,335 General Fund and 1.0 FTE beginning in FY 2012-13, for a total of $193,004 General Fund and 3.0 FTE.

Institutions of Higher Education believe that the bill will increase their costs by 5 to 25 percent, depending on the affected institution and its specific procurements. For example, the Metropolitan State College of Denver identified impacts of between $5,000 to $6 million, and the University of Colorado system identified impacts of between $195,000 and $19.6 million. As these amounts are speculative, they have not been included in the fiscal note.

## State Appropriations

For FY 2011-12, the bill requires the following appropriations to be made:

- **Department of Personnel & Administration** - $61,064 General Fund and 0.8 FTE;
- **Department of Corrections** - $26,912 General Fund and 0.4 FTE;
- **Department of Transportation**, Administration Division - $31,259 in cash funds from the State Highway Fund and 0.5 FTE; and
- **Governor's Office of Information Technology** - $36,870 reappropriated funds and 0.5 FTE.

## Departments Contacted

All departments