

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 11-0562.01 Nicole Myers

HOUSE BILL 11-1129

HOUSE SPONSORSHIP

Pabon and Lee, Duran, Ryden, Vigil, Williams A., Wilson

SENATE SPONSORSHIP

(None),

House Committees

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF CERTAIN PROCUREMENT**
102 **PREFERENCES TO BE APPLIED IN THE STATE PROCUREMENT**
103 **PROCESS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill modifies the procurement code to create preferences for products and services provided by Colorado, domestic, and veteran vendors that governmental bodies shall apply when considering responses to procurement solicitations.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Low tie bids - consideration of Colorado workforce and supplies. If, in response to an invitation for bids for a supply contract, low tie bids from 2 resident bidders or 2 nonresident bidders are received, the bill requires the procurement officer to take into consideration in awarding the contract the bidder's employment of a Colorado workforce and the bidder's use of supplies produced or manufactured in Colorado.

Use of domestic iron, steel, and manufactured goods. The bill requires that, if a governmental body's project for the construction, alteration, maintenance, or repair of a public building or public work is funded in whole or in part by state or federal moneys, all of the iron, steel, and manufactured goods used in the project shall be produced in the United States (U.S.). The bill specifies that a waiver of this requirement is allowed if the iron, steel, or manufactured goods are not produced in reasonably available quantities, quality, or cost to satisfy the needs of the governmental body.

Veterans' preference. When a contract for supplies or services is to be awarded through competitive sealed bidding, the bill requires a governmental body to give a bidder a 5% preference if the bidder is at least 51% veteran-owned or has a workforce that is at least 51% comprised of veterans. If the contract is to be awarded through a request for proposals, the bill requires that 5% weight be given to an offeror that is at least 51% veteran-owned or has a workforce that is at least 51% comprised of veterans. The bill requires a contractor that claims the veterans' preference to submit certification of the vendor's veteran status. The bill also requires the executive director of the department of personnel (director) to create the certification process through the promulgation of rules.

Preference for domestic products. The bill requires any procuring governmental body that issues an invitation for bids, a request for proposals, or any other solicitation for a contract for the purchase of procured products (products) to give preference to products that have been manufactured in the U.S. when awarding the contract.

The director or the director's designee may grant a waiver of the preference requirements on a case-by-case basis if the required products are not manufactured in the U.S. in reasonably available quantities, quality, or cost to satisfy the needs of the procuring governmental body.

The bill requires each contractor awarded a contract by a governmental body through the use of the preference to certify that the products provided pursuant to the contract are manufactured in the U.S. and requires the director to create a precertification process.

The bill specifies that nothing in the procurement preference shall be construed to contradict any existing U.S. treaty, law, agreement, or regulation and specifies penalties if a contractor is awarded a contract through the use of the preference and knowingly supplies products under the contract that are not manufactured in the U.S.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** This act shall be known and may be
3 cited as the "Colorado Hometown Investment and Return to Economic
4 Stability Act" (Colorado HIRES Act).

5 **SECTION 2.** 24-103-202.5 (1)(b)(I), Colorado Revised Statutes,
6 is amended to read:

7 **24-103-202.5. Low tie bids - award procedure and**
8 **determination - bid preference.** (1) If low tie bids are received in
9 response to an invitation for bids for a supply contract, the following
10 procedures are required:

11 (b) If the low tie bids are from resident bidders, the procurement
12 officer shall:

13 (I) Use a fair and reasonable procedure for determining which
14 bidder receives the contract award that at a minimum TAKES INTO
15 CONSIDERATION THE BIDDER'S EMPLOYMENT OF A COLORADO WORKFORCE
16 AND THE BIDDER'S USE OF SUPPLIES PRODUCED OR MANUFACTURED IN
17 COLORADO TO SATISFY THE REQUIREMENTS OF THE CONTRACT AND
18 provides for the presence, at the time and place the determination is made,
19 of the bidders or the bidders' representatives and an impartial witness
20 designated by the procurement officer who is not an employee of that
21 procurement officer's agency; and

22 **SECTION 3.** Part 2 of article 103 of title 24, Colorado Revised
23 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
24 SECTIONS to read:

25 **24-103-210. Use of American iron, steel, and manufactured**
26 **goods - definitions.** (1) IF A GOVERNMENTAL BODY UNDERTAKES A

1 PROJECT FOR THE CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR
2 OF A PUBLIC BUILDING OR PUBLIC WORK AND THE PROJECT IS FUNDED IN
3 WHOLE OR IN PART BY STATE OR FEDERAL MONEYS, ALL OF THE IRON,
4 STEEL, AND MANUFACTURED GOODS USED IN THE PROJECT SHALL BE
5 PRODUCED IN THE UNITED STATES.

6 (2) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY IN THE
7 EVENT THAT THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
8 DESIGNEE FINDS THAT:

9 (a) IRON, STEEL, OR THE RELEVANT MANUFACTURED GOODS ARE
10 NOT PRODUCED IN THE UNITED STATES IN SUFFICIENT AND REASONABLY
11 AVAILABLE QUANTITIES;

12 (b) IRON, STEEL, OR THE RELEVANT MANUFACTURED GOODS
13 PRODUCED IN THE UNITED STATES ARE NOT OF A SATISFACTORY QUALITY;
14 OR

15 (c) INCLUSION OF IRON, STEEL, OR MANUFACTURED GOODS
16 PRODUCED IN THE UNITED STATES WILL INCREASE THE OVERALL COST OF
17 THE PROJECT BY MORE THAN TWENTY-FIVE PERCENT.

18 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
19 REQUIRES:

20 (a) "MANUFACTURED GOOD" MEANS A GOOD BROUGHT TO A
21 CONSTRUCTION SITE FOR INCORPORATION INTO A BUILDING OR WORK THAT
22 HAS BEEN PROCESSED INTO SPECIFIC FORM OR COMBINED WITH OTHER RAW
23 MATERIALS TO CREATE A QUALITATIVELY DIFFERENT MATERIAL.

24 (b) "PRODUCED IN THE UNITED STATES" MEANS EITHER WHOLLY
25 PRODUCED IN THE UNITED STATES OR SUBSTANTIALLY TRANSFORMED IN
26 THE UNITED STATES.

27 (c) "STEEL" MEANS AN ALLOY THAT INCLUDES AT LEAST FIFTY

1 PERCENT IRON, INCLUDES BETWEEN TWO ONE-THOUSANDTHS AND TWO
2 PERCENT CARBON, AND MAY INCLUDE OTHER ELEMENTS.

3 (d) "UNITED STATES" MEANS THE STATES OF THE UNITED STATES,
4 THE COMMONWEALTH OF PUERTO RICO, AND THE DISTRICT OF COLUMBIA.

5 **24-103-211. Veterans' preference - definitions.** (1) FOR
6 PURPOSES OF THIS SECTION, "VETERAN" MEANS A PERSON WHO IS
7 SEPARATED UNDER HONORABLE CONDITIONS AND WHO, OTHER THAN FOR
8 TRAINING PURPOSES:

9 (a) SERVED IN ANY BRANCH OF THE ARMED FORCES OF THE UNITED
10 STATES DURING ANY PERIOD OF ANY DECLARED WAR OR ANY
11 UNDECLARED WAR OR OTHER ARMED HOSTILITIES AGAINST AN ARMED
12 FOREIGN ENEMY; OR

13 (b) SERVED ON ACTIVE DUTY IN ANY SUCH BRANCH IN ANY
14 CAMPAIGN OR EXPEDITION FOR WHICH A CAMPAIGN BADGE IS
15 AUTHORIZED.

16 (2) WHEN A CONTRACT FOR SUPPLIES OR SERVICES IS TO BE
17 AWARDED THROUGH COMPETITIVE SEALED BIDDING PURSUANT TO SECTION
18 24-103-202 OR THROUGH COMPETITIVE SEALED BEST VALUE BIDDING
19 PURSUANT TO SECTION 24-103-202.3, AN AMOUNT EQUAL TO FIVE
20 PERCENT OF THE BID PRICE SHALL BE SUBTRACTED FROM THE BID OF EACH
21 BIDDER THAT IS EITHER A CONTRACTOR THAT IS AT LEAST FIFTY-ONE
22 PERCENT VETERAN-OWNED OR A CONTRACTOR WITH A WORKFORCE THAT
23 IS AT LEAST FIFTY-ONE PERCENT COMPRISED OF VETERANS.

24 (3) WHEN A CONTRACT FOR SUPPLIES, SERVICES, OR PROFESSIONAL
25 SERVICES IS TO BE AWARDED THROUGH A REQUEST FOR COMPETITIVE
26 SEALED PROPOSALS PURSUANT TO SECTION 24-103-203, ONE OF THE
27 EVALUATION FACTORS STATED IN THE REQUEST SHALL BE WHETHER THE

1 OFFEROR IS EITHER A CONTRACTOR THAT IS AT LEAST FIFTY-ONE PERCENT
2 VETERAN-OWNED OR A CONTRACTOR WITH A WORKFORCE THAT IS AT
3 LEAST FIFTY-ONE PERCENT COMPRISED OF VETERANS. THE RELATIVE
4 WEIGHT ASSIGNED TO THE OFFEROR'S STATUS AS A VETERAN OR AS HAVING
5 A WORKFORCE THAT IS AT LEAST FIFTY-ONE PERCENT COMPRISED OF
6 VETERANS SHALL BE FIVE PERCENT.

7 (4) ANY CONTRACTOR THAT CLAIMS THE VETERANS' PREFERENCE
8 PURSUANT TO THIS SECTION WHEN SUBMITTING A BID OR OFFER SHALL
9 SUBMIT, ALONG WITH THE BID OR OFFER, CERTIFICATION OF THE
10 CONTRACTOR'S STATUS AS EITHER AT LEAST FIFTY-ONE PERCENT
11 VETERAN-OWNED OR AS HAVING A WORKFORCE THAT IS AT LEAST
12 FIFTY-ONE PERCENT COMPRISED OF VETERANS. THE EXECUTIVE DIRECTOR
13 OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL PROMULGATE RULES
14 THAT CREATE A CERTIFICATION PROCESS TO BE USED BY CONTRACTORS TO
15 SATISFY THE REQUIREMENTS OF THIS SUBSECTION (4) AND THAT MAY BE
16 RELIED UPON BY GOVERNMENTAL BODIES IN GIVING A PREFERENCE
17 PURSUANT TO THIS SECTION. SUCH RULES SHALL BE PROMULGATED IN
18 ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT",
19 ARTICLE 4 OF THIS TITLE.

20 **SECTION 4.** Article 103 of title 24, Colorado Revised Statutes,
21 is amended BY THE ADDITION OF A NEW PART to read:

22 **PART 9**

23 **PROCUREMENT OF DOMESTIC PRODUCTS**

24 **24-103-901. Short title.** THIS PART 9 SHALL BE KNOWN AND MAY
25 BE CITED AS THE "PROCUREMENT OF DOMESTIC PRODUCTS ACT".

26 **24-103-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE
27 CONTEXT OTHERWISE REQUIRES:

1 (1) "GOVERNMENTAL BODY" SHALL HAVE THE SAME MEANING AS
2 SET FORTH IN SECTION 24-101-301 (10).

3 (2) "MANUFACTURED IN THE UNITED STATES" MEANS ASSEMBLED
4 ARTICLES, MATERIALS, SUPPLIES, COMPONENTS, SUBCOMPONENTS, PARTS,
5 AND EQUIPMENT USED IN MANUFACTURING THAT HAVE UNDERGONE THE
6 FINAL ASSEMBLY, PROCESSING, PACKAGING, TESTING, OR OTHER PROCESS
7 THAT ADDS VALUE, QUALITY, OR RELIABILITY IN THE UNITED STATES.

8 (3) "PROCURED PRODUCTS" MEANS ASSEMBLED ARTICLES,
9 MATERIALS, GOODS, EQUIPMENT, OR SUPPLIES PURCHASED BY A
10 GOVERNMENTAL BODY.

11 (4) "UNITED STATES" MEANS THE STATES OF THE UNITED STATES,
12 THE COMMONWEALTH OF PUERTO RICO, AND THE DISTRICT OF COLUMBIA.

13 **24-103-903. Procurement preference for United States**
14 **products.** (1) ANY PROCURING GOVERNMENTAL BODY THAT ISSUES AN
15 INVITATION FOR BIDS, A REQUEST FOR PROPOSALS, OR ANY OTHER
16 SOLICITATION FOR A CONTRACT FOR THE PURCHASE OF PROCURED
17 PRODUCTS ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1)
18 SHALL, IN AWARDING THE CONTRACT, GIVE PREFERENCE TO
19 MANUFACTURED ARTICLES, MATERIALS, AND SUPPLIES THAT HAVE BEEN
20 MANUFACTURED IN THE UNITED STATES.

21 (2) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
22 DESIGNEE MAY GRANT A WAIVER OF THE REQUIREMENTS OF SUBSECTION
23 (1) OF THIS SECTION TO A GOVERNMENTAL BODY ON A CASE-BY-CASE
24 BASIS IF THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
25 DESIGNEE FINDS ANY OF THE FOLLOWING:

26 (a) THE REQUIRED PROCURED PRODUCTS ARE NOT MANUFACTURED
27 IN THE UNITED STATES IN REASONABLY AVAILABLE QUANTITIES TO

1 SATISFY THE NEEDS OF THE PROCURING GOVERNMENTAL BODY;

2 (b) THE REQUIRED PROCURED PRODUCTS THAT ARE
3 MANUFACTURED IN THE UNITED STATES ARE NOT OF A SATISFACTORY
4 QUALITY TO SATISFY THE NEEDS OF THE PROCURING GOVERNMENTAL
5 BODY; OR

6 (c) THE INCLUSION OF PROCURED PRODUCTS MANUFACTURED IN
7 THE UNITED STATES WILL INCREASE THE OVERALL COST OF THE PROJECT
8 BY MORE THAN TWENTY-FIVE PERCENT.

9 (3) ANY WAIVER GRANTED PURSUANT TO THIS SECTION SHALL BE
10 MADE PUBLIC AND SHALL BE POSTED FOR A THIRTY-DAY COMMENT
11 PERIOD.

12 **24-103-904. Contracts - certification.** (1) EACH CONTRACT
13 AWARDED BY A PROCURING GOVERNMENTAL BODY THROUGH THE USE OF
14 THE PREFERENCE REQUIRED PURSUANT TO THIS PART 9 SHALL CONTAIN
15 CERTIFICATION FROM THE CONTRACTOR THAT THE PROCURED PRODUCTS
16 PROVIDED PURSUANT TO THE CONTRACT OR A SUBCONTRACT ARE
17 MANUFACTURED IN THE UNITED STATES.

18 (2) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
19 DESIGNEE SHALL CREATE A PROCESS FOR SUPPLIERS AND CONTRACTORS TO
20 BECOME PRECERTIFIED AS PROVIDERS OF PROCURED PRODUCTS THAT ARE
21 MANUFACTURED IN THE UNITED STATES.

22 **24-103-905. Federal and state law.** (1) NOTHING IN THIS PART
23 9 SHALL BE CONSTRUED TO CONTRAVENE ANY EXISTING TREATY, LAW,
24 AGREEMENT, OR REGULATION OF THE UNITED STATES. CONTRACTS
25 ENTERED INTO IN ACCORDANCE WITH ANY TREATY, LAW, AGREEMENT, OR
26 REGULATION OF THE UNITED STATES SHALL NOT BE IN VIOLATION OF THIS
27 PART 9 TO THE EXTENT OF THAT ACCORDANCE. A PREFERENCE SHALL NOT

1 BE GRANTED UNDER THIS PART 9 IF THE PREFERENCE WOULD CONTRAVENE
2 ANY TREATY, LAW, AGREEMENT, OR REGULATION OF THE UNITED STATES.

3 (2) THE PREFERENCE REQUIRED BY THIS PART 9 IS IN ADDITION TO
4 ANY OTHER PREFERENCE AUTHORIZED PURSUANT TO THIS CODE OR ANY
5 OTHER PROVISION OF STATE LAW.

6 **24-103-906. Penalties.** (1) IF A CONTRACTOR IS AWARDED A
7 CONTRACT THROUGH THE USE OF A PREFERENCE PURSUANT TO THIS PART
8 9 AND KNOWINGLY SUPPLIES PROCURED PRODUCTS UNDER THE CONTRACT
9 THAT ARE NOT MANUFACTURED IN THE UNITED STATES:

10 (a) THE CONTRACTOR SHALL BE BARRED FROM OBTAINING ANY
11 STATE CONTRACT FOR FIVE YEARS AFTER THE VIOLATION IS DISCOVERED
12 BY THE PROCURING GOVERNMENTAL BODY;

13 (b) THE PROCURING GOVERNMENTAL BODY MAY VOID THE
14 CONTRACT; AND

15 (c) THE PROCURING GOVERNMENTAL BODY MAY RECOVER
16 DAMAGES IN A CIVIL ACTION IN AN AMOUNT EQUAL TO THREE TIMES THE
17 DIFFERENCE BETWEEN THE AMOUNT OF THE AWARDED BID AND THE NEXT
18 HIGHEST BID.

19 **24-103-907. Rules.** THE EXECUTIVE DIRECTOR SHALL
20 PROMULGATE RULES IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE
21 PROCEDURE ACT", ARTICLE 4 OF THIS TITLE, FOR THE ADMINISTRATION OF
22 THIS PART 9.

23 **SECTION 5. Act subject to petition - effective date.** This act
24 shall take effect January 1, 2012; except that, if a referendum petition is
25 filed pursuant to section 1 (3) of article V of the state constitution against
26 this act or an item, section, or part of this act within the ninety-day period
27 after final adjournment of the general assembly, then the act, item,

1 section, or part shall not take effect unless approved by the people at the
2 general election to be held in November 2012 and shall take effect on the
3 date of the official declaration of the vote thereon by the governor.