

**STATE  
FISCAL IMPACT**

<b>Drafting Number:</b> LLS 12-0416	<b>Date:</b> February 8, 2012
<b>Prime Sponsor(s):</b> Sen. Hudak Rep. Duran; Ryden	<b>Bill Status:</b> Senate Local Government <b>Fiscal Analyst:</b> Kori Donaldson (303-866-4976)

**TITLE:** CONCERNING CONTRACTING PREFERENCES FOR PERSONS WHO EMPLOY AT LEAST A SPECIFIED PERCENTAGE OF COLORADO RESIDENTS TO PERFORM THE REQUIREMENTS OF A GOVERNMENT CONTRACT.

<b>Fiscal Impact Summary</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014</b>
<b>State Revenue</b>		
<b>State Expenditures</b>		
<u>Total</u>	<u>\$69,255</u>	At least <u>\$121,509*</u>
General Fund	62,767	54,328
Various Cash Funds		10,860
State Highway Fund	6,488	23,639
Reappropriated Funds		3,388
Federal Funds		29,294
<b>FTE Position Change</b>	0.9 FTE	2.0 FTE
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2012-2013:</b> See State Appropriations section.		
<b>Local Government Impact:</b> None.		

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

**Summary of Legislation**

This bill, also known as the "Hiring Coloradans First Act," grants up to a 5 percent preference to bidders for construction or services contracts costing more than \$1 million. This preference is offered to bidders that certify that at least 90 percent of the employees who will complete the contracted work are Colorado residents. Specifically, the bill requires state agencies to:

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

Additionally, the bill requires state agencies to grant bidders for *construction contracts who qualify 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.

The bill requires state agencies to grant bidders for *service contracts who qualify for the 3 percent 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.

These preferences may not be offered to a noncompliant bidder, and a bidder may not use a preference to satisfy a minimum requirement of a contract. The Department of Personnel and Administration (DPA) is 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 Expenditures**

**This bill will increase state expenditures by at least \$69,255 and 0.9 FTE in FY 2012-13 and by \$121,509 and 2.0 FTE in FY 2013-14, as shown in Tables 1 and 2.** These costs are based mainly on increased workload for verification of contracts, but also include some one-time costs for the Colorado Department of Transportation (CDOT) to update contract rules and materials. This fiscal note assumes that General Fund moneys will be needed, but the exact fund sources will vary 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.

<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
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
<b>TOTAL</b>	<b>\$69,255</b>	<b>\$38,601</b>

The DPA will require 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 will be payable from the General Fund and includes operating expenses and capital outlay. These costs are required to promulgate and manage new rules and to support certification of a vendor's eligibility for certain preferences. This fiscal note assumes that verification of a bidder's eligibility will only occur during the contracting process, rather than throughout the term of a contract.

The CDOT will have to update rules and modify both its construction manuals and its construction management software to conform to the requirements of this bill. These modifications are expected to require an estimated one-time cost of \$6,488 in FY 2012-13. These costs will be paid from the State Highway Fund, which is continuously appropriated to the department.

**All state agencies.** The bill directs state agencies to verify a bidder's eligibility for each preference. The verification process will be determined by rules promulgated by the DPA after the bill becomes law. Several state agencies will experience increased staff costs, which will vary by the volume and complexity of the contracts issued by each agency, and depend on the level of review required by the DPA rules. This fiscal note assumes that the promulgation of rules and training of agency staff will take several months, and that the new verification procedures will not go into effect until FY 2013-14.

This fiscal note assumes that the verification process will require an additional 4 hours per bid per contract, that the average contract receives 4 bids, and the total workload will increase 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. The staffing level for one agency rises to the 0.5 FTE minimum required for standard operating and capital outlay expenses. This cost is reflected as an additional cost in Table 2. Staffing is assumed to be at the General Professional IV level for all agencies.

<b>Table 2. Expenditures Beginning in FY 2013-14 by Agency under SB 12-001</b>					
<b>Agency</b>	<b>Number of Eligible Contracts*</b>	<b>Staff Time Required (Hours)</b>	<b>FTE</b>	<b>Additional Costs</b>	<b>Total</b>
Corrections	11	176	0.1	N/A	<b>\$5,680</b>
Health Care Policy and Financing	40	640	0.3	N/A	<b>17,039</b>
Human Services	33	528	0.2	N/A	<b>11,359</b>
Public Health and Environment	7	112	0.1	N/A	<b>5,680</b>
Revenue	12	192	0.1	N/A	<b>5,680</b>
Transportation	85	1360	0.6	3,392	<b>37,470</b>
	<b>188</b>	<b>3,008</b>	<b>1.4</b>	<b>3,392</b>	<b>\$82,906</b>

\* 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 increase 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 certifies that it will 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 submit a bid up to 5 percent greater than the next lowest bid and win the construction contract. Similarly, a bidder for a services contract that certifies that it will employ at least 90 percent Colorado residents and offer health care and retirement benefits to its employees could also submit a bid up to 5 percent greater than the next lowest bid and win the services contract. Therefore, the overall cost of construction projects and service contracts could increase by as much 5 percent.

### **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 3.

<b>Table 3. Expenditures Not Included Under SB 12-001*</b>		
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,513	\$7,381
Supplemental Employee Retirement Payments	2,281	4,669
<b>TOTAL</b>	<b>\$7,794</b>	<b>\$12,050</b>

*\*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 believes this bill will preclude the department from accessing its annual apportionment of federal highway funding, which is projected to be \$398.7 million for FY 2012-13. Typically, the annual apportionment is consistently \$500 million. The department explains 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 believes that it would have no legal authority to disregard the provisions of SB 12-001, as introduced, therefore making it ineligible for federal highway funding. These costs are not included in the fiscal note because it is not clear how any potential conflict would be resolved.

### **State Appropriations**

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

### **Departments Contacted**

All Departments