

CHAPTER 340

GOVERNMENT - STATE

HOUSE BILL 06-1343

BY REPRESENTATIVE(S) Crane, Berens, Butcher, Cadman, Carroll M., Decker, Garcia, Gardner, Hall, Harvey, Hoppe, Jahn, Kerr J., King, Knoedler, Liston, May M., Paccione, Penry, Romanoff, Schultheis, Stafford, Todd, Witwer, Clapp, Coleman, Lundberg, McCluskey, Riesberg, and Welker;
also SENATOR(S) Keller, Bacon, Boyd, Brophy, Dyer, Entz, Evans, Fitz-Gerald, Hagedorn, Isgar, Johnson, Jones, Lamborn, May R., Owen, Tapia, Taylor, Teck, Tochtrop, Tupa, Wiens, and Williams.

AN ACT

CONCERNING MEASURES TO ENSURE THAT AN ILLEGAL ALIEN DOES NOT PERFORM WORK ON A PUBLIC CONTRACT FOR SERVICES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 17.5
Illegal Aliens - Public Contracts for Services

8-17.5-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BASIC PILOT PROGRAM" MEANS THE BASIC PILOT EMPLOYMENT VERIFICATION PROGRAM CREATED IN PUBLIC LAW 208, 104TH CONGRESS, AS AMENDED, AND EXPANDED IN PUBLIC LAW 156, 108TH CONGRESS, AS AMENDED, THAT IS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY.

(2) "CONTRACTOR" MEANS A PERSON HAVING A PUBLIC CONTRACT FOR SERVICES WITH A STATE AGENCY OR POLITICAL SUBDIVISION OF THE STATE.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(4) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(5) "POLITICAL SUBDIVISION" MEANS ANY CITY, COUNTY, CITY AND COUNTY, TOWN, SPECIAL DISTRICT, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, OR ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION.

(6) "PUBLIC CONTRACT FOR SERVICES" MEANS ANY TYPE OF AGREEMENT, REGARDLESS OF WHAT THE AGREEMENT MAY BE CALLED, BETWEEN A STATE AGENCY OR POLITICAL SUBDIVISION AND A CONTRACTOR FOR THE PROCUREMENT OF SERVICES.

(7) "SERVICES" MEANS THE FURNISHING OF LABOR, TIME, OR EFFORT BY A CONTRACTOR OR A SUBCONTRACTOR NOT INVOLVING THE DELIVERY OF A SPECIFIC END PRODUCT OTHER THAN REPORTS THAT ARE MERELY INCIDENTAL TO THE REQUIRED PERFORMANCE.

(8) "STATE AGENCY" MEANS ANY DEPARTMENT, COMMISSION, COUNCIL, BOARD, BUREAU, COMMITTEE, INSTITUTION OF HIGHER EDUCATION, AGENCY, OR OTHER GOVERNMENTAL UNIT OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF STATE GOVERNMENT.

8-17.5-102. Illegal aliens - prohibition - public contracts for services. (1) A STATE AGENCY OR POLITICAL SUBDIVISION SHALL NOT ENTER INTO OR RENEW A PUBLIC CONTRACT FOR SERVICES WITH A CONTRACTOR WHO KNOWINGLY EMPLOYS OR CONTRACTS WITH AN ILLEGAL ALIEN TO PERFORM WORK UNDER THE CONTRACT OR WHO KNOWINGLY CONTRACTS WITH A SUBCONTRACTOR WHO KNOWINGLY EMPLOYS OR CONTRACTS WITH AN ILLEGAL ALIEN TO PERFORM WORK UNDER THE CONTRACT. PRIOR TO EXECUTING A PUBLIC CONTRACT FOR SERVICES, EACH PROSPECTIVE CONTRACTOR SHALL CERTIFY THAT, AT THE TIME OF THE CERTIFICATION, IT DOES NOT KNOWINGLY EMPLOY OR CONTRACT WITH AN ILLEGAL ALIEN AND THAT THE CONTRACTOR HAS PARTICIPATED OR ATTEMPTED TO PARTICIPATE IN THE BASIC PILOT PROGRAM IN ORDER TO VERIFY THAT IT DOES NOT EMPLOY ANY ILLEGAL ALIENS.

(2)(a) EACH PUBLIC CONTRACT FOR SERVICES SHALL INCLUDE A PROVISION THAT THE CONTRACTOR SHALL NOT:

(I) KNOWINGLY EMPLOY OR CONTRACT WITH AN ILLEGAL ALIEN TO PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES; OR

(II) ENTER INTO A CONTRACT WITH A SUBCONTRACTOR THAT FAILS TO CERTIFY TO THE CONTRACTOR THAT THE SUBCONTRACTOR SHALL NOT KNOWINGLY EMPLOY OR CONTRACT WITH AN ILLEGAL ALIEN TO PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES.

(b) EACH PUBLIC CONTRACT FOR SERVICES SHALL ALSO INCLUDE THE FOLLOWING PROVISIONS:

(I) A PROVISION STATING THAT THE CONTRACTOR HAS VERIFIED OR ATTEMPTED TO VERIFY THROUGH PARTICIPATION IN THE BASIC PILOT PROGRAM THAT THE CONTRACTOR DOES NOT EMPLOY ANY ILLEGAL ALIENS AND, IF THE CONTRACTOR IS NOT ACCEPTED INTO THE BASIC PILOT PROGRAM PRIOR TO ENTERING INTO A PUBLIC

CONTRACT FOR SERVICES, THAT THE CONTRACTOR SHALL APPLY TO PARTICIPATE IN THE BASIC PILOT PROGRAM EVERY THREE MONTHS UNTIL THE CONTRACTOR IS ACCEPTED OR THE PUBLIC CONTRACT FOR SERVICES HAS BEEN COMPLETED, WHICHEVER IS EARLIER. THE PROVISION SPECIFIED IN THIS SUBPARAGRAPH (I) SHALL NOT BE REQUIRED OR EFFECTIVE IN A PUBLIC CONTRACT FOR SERVICES IF THE BASIC PILOT PROGRAM IS DISCONTINUED.

(II) A PROVISION THAT PROHIBITS THE CONTRACTOR FROM USING BASIC PILOT PROGRAM PROCEDURES TO UNDERTAKE PREEMPLOYMENT SCREENING OF JOB APPLICANTS WHILE THE PUBLIC CONTRACT FOR SERVICES IS BEING PERFORMED.

(III) A PROVISION THAT, IF THE CONTRACTOR OBTAINS ACTUAL KNOWLEDGE THAT A SUBCONTRACTOR PERFORMING WORK UNDER THE PUBLIC CONTRACT FOR SERVICES KNOWINGLY EMPLOYS OR CONTRACTS WITH AN ILLEGAL ALIEN, THE CONTRACTOR SHALL BE REQUIRED TO:

(A) NOTIFY THE SUBCONTRACTOR AND THE CONTRACTING STATE AGENCY OR POLITICAL SUBDIVISION WITHIN THREE DAYS THAT THE CONTRACTOR HAS ACTUAL KNOWLEDGE THAT THE SUBCONTRACTOR IS EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN; AND

(B) TERMINATE THE SUBCONTRACT WITH THE SUBCONTRACTOR IF WITHIN THREE DAYS OF RECEIVING THE NOTICE REQUIRED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III) THE SUBCONTRACTOR DOES NOT STOP EMPLOYING OR CONTRACTING WITH THE ILLEGAL ALIEN; EXCEPT THAT THE CONTRACTOR SHALL NOT TERMINATE THE CONTRACT WITH THE SUBCONTRACTOR IF DURING SUCH THREE DAYS THE SUBCONTRACTOR PROVIDES INFORMATION TO ESTABLISH THAT THE SUBCONTRACTOR HAS NOT KNOWINGLY EMPLOYED OR CONTRACTED WITH AN ILLEGAL ALIEN.

(IV) A PROVISION THAT REQUIRES THE CONTRACTOR TO COMPLY WITH ANY REASONABLE REQUEST BY THE DEPARTMENT MADE IN THE COURSE OF AN INVESTIGATION THAT THE DEPARTMENT IS UNDERTAKING PURSUANT TO THE AUTHORITY ESTABLISHED IN SUBSECTION (5) OF THIS SECTION.

(3) IF A CONTRACTOR VIOLATES A PROVISION OF THE PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE AGENCY OR POLITICAL SUBDIVISION MAY TERMINATE THE CONTRACT FOR A BREACH OF THE CONTRACT. IF THE CONTRACT IS SO TERMINATED, THE CONTRACTOR SHALL BE LIABLE FOR ACTUAL AND CONSEQUENTIAL DAMAGES TO THE STATE AGENCY OR POLITICAL SUBDIVISION.

(4) A STATE AGENCY OR POLITICAL SUBDIVISION SHALL NOTIFY THE OFFICE OF THE SECRETARY OF STATE IF A CONTRACTOR VIOLATES A PROVISION OF A PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION AND THE STATE AGENCY OR POLITICAL SUBDIVISION TERMINATES THE CONTRACT FOR SUCH BREACH. BASED ON THIS NOTIFICATION, THE SECRETARY OF STATE SHALL MAINTAIN A LIST THAT INCLUDES THE NAME OF THE CONTRACTOR, THE STATE AGENCY OR POLITICAL SUBDIVISION THAT TERMINATED THE PUBLIC CONTRACT FOR SERVICES, AND THE DATE OF THE TERMINATION. A CONTRACTOR SHALL BE REMOVED FROM THE LIST IF TWO YEARS HAVE PASSED SINCE THE DATE THE

CONTRACT WAS TERMINATED, OR IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT THERE HAS NOT BEEN A VIOLATION OF THE PROVISION OF THE PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION. A STATE AGENCY OR POLITICAL SUBDIVISION SHALL NOTIFY THE OFFICE OF THE SECRETARY OF STATE IF A COURT HAS MADE SUCH A DETERMINATION. THE LIST SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF THE SECRETARY OF STATE AND SHALL BE PUBLISHED ON THE INTERNET ON THE WEBSITE MAINTAINED BY THE OFFICE OF THE SECRETARY OF STATE.

(5) (a) THE DEPARTMENT MAY INVESTIGATE WHETHER A CONTRACTOR IS COMPLYING WITH THE PROVISIONS OF A PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE DEPARTMENT MAY CONDUCT ON-SITE INSPECTIONS WHERE A PUBLIC CONTRACT FOR SERVICES IS BEING PERFORMED, REQUEST AND REVIEW DOCUMENTATION THAT PROVES THE CITIZENSHIP OF ANY PERSON PERFORMING WORK ON A PUBLIC CONTRACT FOR SERVICES, OR TAKE ANY OTHER REASONABLE STEPS THAT ARE NECESSARY TO DETERMINE WHETHER A CONTRACTOR IS COMPLYING WITH THE PROVISIONS OF A PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE DEPARTMENT SHALL RECEIVE COMPLAINTS OF SUSPECTED VIOLATIONS OF A PROVISION OF A PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION AND SHALL HAVE DISCRETION TO DETERMINE WHICH COMPLAINTS, IF ANY, ARE TO BE INVESTIGATED. THE RESULTS OF ANY INVESTIGATION SHALL NOT CONSTITUTE FINAL AGENCY ACTION. THE DEPARTMENT IS AUTHORIZED TO PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION (5).

(b) THE EXECUTIVE DIRECTOR SHALL NOTIFY A STATE AGENCY OR POLITICAL SUBDIVISION IF HE OR SHE SUSPECTS THAT THERE HAS BEEN A BREACH OF A PROVISION IN A PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of labor and employment, for allocation to the executive director's office, for the fiscal year beginning July 1, 2006, the sum of one hundred forty thousand one hundred sixty-six dollars (\$140,166) and 1.9 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 9, 2006, if adjournment sine die is on May 10, 2006); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to public contracts for services that are entered into or renewed on or after the applicable effective date of this act.

Approved: June 6, 2006