

#139 - Employment Restrictions for State Contracts

1 The proposed amendment to the Colorado Constitution:

- 2 ♦ requires that all individuals employed under state contracts be United States
3 citizens or permanent legal resident aliens in the United States.

4 **Background**

5 Colorado law currently allows the state to contract with private companies to
6 perform services that state agencies cannot perform or that private companies can
7 perform more efficiently or for less cost. Contract awards are based upon competitive
8 bids, qualifications, and evaluation criteria specified in state rules. Generally, state
9 contracts are between the state and a private company, known as an independent
10 contractor. An independent contractor may be located within or outside of the United
11 States. State rules require state agencies, including state colleges and universities, to
12 ensure that contracts comply with all state laws.

13 ***Who is affected under the proposal?*** Currently, there are no state requirements
14 for citizenship and residency requirements for independent contractor employees. This
15 proposal allows only U.S. citizens and permanent legal resident aliens to be employed
16 under a state contract for services. A permanent legal resident alien is a person from
17 another county who is allowed to live and work in the U.S. as long as he or she wishes.
18 This person holds a "green card." In addition to green card holders, there are many
19 people residing legally in the U.S. with other types of federal work visas. These people
20 include temporary foreign workers, students, and refugees.

21 In addition to legal foreign residents in the U.S. without green cards, this
22 proposal may restrict companies using foreign workers from working on a state contract.
23 Currently, a number of state agencies have contracts with companies that operate outside
24 the U.S. For example, the state contracts with major computer manufacturers and
25 telecommunications companies who subcontract services to companies located in foreign
26 countries. The Colorado Lottery contracts with a Canadian vendor for scratch ticket
27 security testing services, and the state Division of Wildlife contracts with a Canadian
28 company for wildlife management services to support a state endangered species
29 program.

30 ***Other states.*** No states have enacted laws that restrict state contracts similar to
31 this proposal, although many states have considered the issue of employing foreign
32 workers. Four states, Tennessee, Michigan, Minnesota, and Arizona, each have rules

1 that allow a state agency to consider or give preference to a company that uses U.S.
2 workers when awarding a state contract.

3 **Arguments For**

4 1) The proposal may help to keep U.S. workers employed. State tax dollars are
5 drained from Colorado's economy when it contracts with companies using foreign labor.
6 The recent recession resulted in major job losses that have not fully come back. At the
7 same time, the number of U.S. jobs being lost to cheaper foreign labor is increasing.
8 When U.S. workers are unemployed, the demand for government-funded social and
9 medical services increases. This proposal ensures that Colorado taxpayer dollars for state
10 contracts will be spent only on U.S. workers and green card holders.

11 **Arguments Against**

12 1) This proposal limits the state's options when it contracts for services. State
13 contracting decisions should be based on getting the needed service for the best price,
14 not citizenship or residency requirements. Companies may also stop doing business with
15 the state, putting Colorado at a economic disadvantage. Approximately 9.5 percent of
16 jobs in the Denver metropolitan area are created due to international business. Colorado
17 competes in a global economy and restricting the state's ability to contract for services
18 will hurt its citizens.

19 **Estimate of Fiscal Impact**

20 **State.** The proposal will increase the cost of contract administration by requiring
21 the state to modify procurement rules, to monitor and audit contract employment
22 records, and to re-bid contracts for those contracts using non-U.S. citizens. The
23 proposal may increase the cost of a state contract by eliminating a contractor or
24 individual who may have submitted the lowest competitive bid. In some cases, the state
25 may not be able to acquire necessary services.

26 **Local government.** This proposal may affect state grants to local governments
27 or joint projects with the state if the local government or its contractors use non-U.S.
28 citizens, and may increase some contract costs for those local governments who use state
29 bids to select the lowest competitive bidder.