

#139 - Employment Restrictions for State Contracts

1 The proposed amendment to the Colorado Constitution:

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

5 **Background**

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

14 *Who is affected under the proposal?* Currently, there are no state citizenship
15 or residency requirements for independent contractor employees. This proposal allows
16 only U.S. citizens and permanent legal resident aliens to be employed under a state
17 contract for services. A permanent legal resident alien is a person from another country
18 who is permitted to live and work in the U.S. as long as he or she wishes. This person
19 holds a "green card." In addition to green card holders, there are many people residing
20 legally in the U.S. with other types of federal work visas. These people, including
21 temporary foreign workers, students, and refugees, would not be able to work on state
22 contracts.

23 This proposal also restricts companies that employ foreign workers from using
24 these workers on a state contract. Currently, a number of state agencies have contracts
25 with companies that operate outside the U.S. For example, the state contracts with
26 major computer manufacturers and telecommunications companies who subcontract
27 services to companies located in foreign countries. The Colorado Lottery contracts with
28 a Canadian vendor for scratch ticket security testing services, and the state Division of
29 Wildlife contracts with a Canadian company for wildlife management services to support
30 a state endangered species program.

31 *Other states.* No states have enacted laws that restrict state contracts similar to
32 this proposal, although many states have considered the issue of employing foreign
33 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 **Argument For**

4 1) The proposal may help 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 tax dollars for state
10 contracts will be spent only on U.S. workers and green card holders.

11 **Argument 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. About 9.5 percent of jobs in the Denver
15 metropolitan area are created due to international business. The federal government
16 estimates that in 2001 there were over 83,000 people employed in Colorado by
17 companies that have more than 50 percent foreign ownership. Colorado competes in
18 a global economy but companies may stop doing business with the state as a result of this
19 proposal. Colorado would then be at a economic disadvantage compared to other states.

20 **Estimate of Fiscal Impact**

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

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