

**Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 06-0916.01 Ed DeCecco

HOUSE BILL 06-1343

HOUSE SPONSORSHIP

Crane,

SENATE SPONSORSHIP

Keller,

House Committees

State, Veterans, & Military Affairs
Appropriations

Senate Committees

State, Veterans & Military Affairs
Appropriations

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits a state agency or a political subdivision from entering into or renewing 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 contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. Requires a prospective contractor to certify that it does not

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.*

SENATE
Amended 2nd Reading
May 4, 2006

HOUSE
3rd Reading Unamended
April 17, 2006

HOUSE
Amended 2nd Reading
April 14, 2006

knowingly employ or contract with an illegal alien.

Requires each public contract for services to include a provision prohibiting a contractor from using an illegal alien to perform work under the contract and a provision requiring a contractor to comply with investigations by the department of labor and employment (department) relating to illegal aliens performing work under the contract. Establishes penalties for a breach of these contractual provisions.

Requires the department to establish and operate a tipline for the purpose of allowing any person to report a suspected violation of a provision of a public contract for services relating to illegal aliens. Allows the department to investigate whether a contractor is complying with the provisions of a public contract for services relating to illegal aliens.

Defines terms.

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

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

4 **ARTICLE 17.5**

5 **Illegal Aliens - Public Contracts for Services**

6 **8-17.5-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "BASIC PILOT PROGRAM" MEANS THE BASIC PILOT
9 EMPLOYMENT VERIFICATION PROGRAM CREATED IN PUBLIC LAW 208,
10 104TH CONGRESS, AS AMENDED, AND EXPANDED IN PUBLIC LAW 156,
11 108TH CONGRESS, AS AMENDED, THAT IS ADMINISTERED BY THE UNITED
12 STATES DEPARTMENT OF HOMELAND SECURITY.

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

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

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

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

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

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

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

19 **8-17.5-102. Illegal aliens - prohibition - public contracts for**
20 **services.** (1) A STATE AGENCY OR POLITICAL SUBDIVISION SHALL NOT
21 ENTER INTO OR RENEW A PUBLIC CONTRACT FOR SERVICES WITH A
22 CONTRACTOR WHO KNOWINGLY EMPLOYS OR CONTRACTS WITH AN
23 ILLEGAL ALIEN TO PERFORM WORK UNDER THE CONTRACT OR WHO
24 KNOWINGLY CONTRACTS WITH A SUBCONTRACTOR WHO KNOWINGLY
25 EMPLOYS OR CONTRACTS WITH AN ILLEGAL ALIEN TO PERFORM WORK
26 UNDER THE CONTRACT. PRIOR TO EXECUTING A PUBLIC CONTRACT FOR
27 SERVICES, EACH PROSPECTIVE CONTRACTOR SHALL CERTIFY THAT, AT THE

1 TIME OF THE CERTIFICATION, IT DOES NOT KNOWINGLY EMPLOY OR
2 CONTRACT WITH AN ILLEGAL ALIEN AND THAT THE CONTRACTOR HAS
3 PARTICIPATED OR ATTEMPTED TO PARTICIPATE IN THE BASIC PILOT
4 PROGRAM IN ORDER TO VERIFY THAT IT DOES NOT EMPLOY ANY ILLEGAL
5 ALIENS.

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

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

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

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

16 (I) A PROVISION STATING THAT THE CONTRACTOR HAS VERIFIED OR
17 ATTEMPTED TO VERIFY THROUGH PARTICIPATION IN THE BASIC PILOT
18 PROGRAM THAT THE CONTRACTOR DOES NOT EMPLOY ANY ILLEGAL ALIENS
19 AND, IF THE CONTRACTOR IS NOT ACCEPTED INTO THE BASIC PILOT
20 PROGRAM PRIOR TO ENTERING INTO A PUBLIC CONTRACT FOR SERVICES,
21 THAT THE CONTRACTOR SHALL APPLY TO PARTICIPATE IN THE BASIC PILOT
22 PROGRAM EVERY THREE MONTHS UNTIL THE CONTRACTOR IS ACCEPTED OR
23 THE PUBLIC CONTRACT FOR SERVICES HAS BEEN COMPLETED, WHICHEVER
24 IS EARLIER. THE PROVISION SPECIFIED IN THIS SUBPARAGRAPH (I) SHALL
25 NOT BE REQUIRED OR EFFECTIVE IN A PUBLIC CONTRACT FOR SERVICES IF
26 THE BASIC PILOT PROGRAM IS DISCONTINUED.

27 (II) A PROVISION THAT PROHIBITS THE CONTRACTOR FROM USING

1 BASIC PILOT PROGRAM PROCEDURES TO UNDERTAKE PREEMPLOYMENT
2 SCREENING OF JOB APPLICANTS WHILE THE PUBLIC CONTRACT FOR
3 SERVICES IS BEING PERFORMED.

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

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

12 (B) TERMINATE THE SUBCONTRACT WITH THE SUBCONTRACTOR IF
13 WITHIN THREE DAYS OF RECEIVING THE NOTICE REQUIRED PURSUANT TO
14 SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) THE
15 SUBCONTRACTOR DOES NOT STOP EMPLOYING OR CONTRACTING WITH THE
16 ILLEGAL ALIEN.

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

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

1 SUBDIVISION.

2 (4) A STATE AGENCY OR POLITICAL SUBDIVISION SHALL NOTIFY
3 THE OFFICE OF THE SECRETARY OF STATE IF A CONTRACTOR VIOLATES A
4 PROVISION OF A PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO
5 SUBSECTION (2) OF THIS SECTION AND THE STATE AGENCY OR POLITICAL
6 SUBDIVISION TERMINATES THE CONTRACT FOR SUCH BREACH. BASED ON
7 THIS NOTIFICATION, THE SECRETARY OF STATE SHALL MAINTAIN A LIST
8 THAT INCLUDES THE NAME OF THE CONTRACTOR, THE STATE AGENCY OR
9 POLITICAL SUBDIVISION THAT TERMINATED THE PUBLIC CONTRACT FOR
10 SERVICES, AND THE DATE OF THE TERMINATION. A CONTRACTOR SHALL
11 BE REMOVED FROM THE LIST IF TWO YEARS HAVE PASSED SINCE THE DATE
12 THE CONTRACT WAS TERMINATED, OR IF A COURT OF COMPETENT
13 JURISDICTION DETERMINES THAT THERE HAS NOT BEEN A VIOLATION OF
14 THE PROVISION OF THE PUBLIC CONTRACT FOR SERVICES REQUIRED
15 PURSUANT TO SUBSECTION (2) OF THIS SECTION. A STATE AGENCY OR
16 POLITICAL SUBDIVISION SHALL NOTIFY THE OFFICE OF THE SECRETARY OF
17 STATE IF A COURT HAS MADE SUCH A DETERMINATION. THE LIST SHALL BE
18 AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF THE SECRETARY OF
19 STATE AND SHALL BE PUBLISHED ON THE INTERNET ON THE WEBSITE
20 MAINTAINED BY THE OFFICE OF THE SECRETARY OF STATE.

21 (5) (a) THE DEPARTMENT MAY INVESTIGATE WHETHER A
22 CONTRACTOR IS COMPLYING WITH THE PROVISIONS OF A PUBLIC CONTRACT
23 FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION.
24 THE DEPARTMENT MAY CONDUCT ON-SITE INSPECTIONS WHERE A PUBLIC
25 CONTRACT FOR SERVICES IS BEING PERFORMED, REQUEST AND REVIEW
26 DOCUMENTATION THAT PROVES THE CITIZENSHIP OF ANY PERSON
27 PERFORMING WORK ON A PUBLIC CONTRACT FOR SERVICES, OR TAKE ANY

1 OTHER REASONABLE STEPS THAT ARE NECESSARY TO DETERMINE
2 WHETHER A CONTRACTOR IS COMPLYING WITH THE PROVISIONS OF A
3 PUBLIC CONTRACT FOR SERVICES REQUIRED PURSUANT TO SUBSECTION (2)
4 OF THIS SECTION. THE DEPARTMENT SHALL RECEIVE COMPLAINTS OF
5 SUSPECTED VIOLATIONS OF A PROVISION OF A PUBLIC CONTRACT FOR
6 SERVICES REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION AND
7 SHALL HAVE DISCRETION TO DETERMINE WHICH COMPLAINTS, IF ANY, ARE
8 TO BE INVESTIGATED. THE RESULTS OF ANY INVESTIGATION SHALL NOT
9 CONSTITUTE FINAL AGENCY ACTION. THE DEPARTMENT IS AUTHORIZED TO
10 PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.,
11 TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION (5).

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

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

23 **SECTION 3. Effective date - applicability.** (1) This act shall
24 take effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly that is
26 allowed for submitting a referendum petition pursuant to article V,
27 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine

1 die is on May 10, 2006); except that, if a referendum petition is filed
2 against this act or an item, section, or part of this act within such period,
3 then the act, item, section, or part, if approved by the people, shall take
4 effect on the date of the official declaration of the vote thereon by
5 proclamation of the governor.

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