



Colorado Legislative Council Staff
**STATE and LOCAL
 FISCAL IMPACT**

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Prime Sponsor(s): Rep. Crane

Bill Status: House SVMA

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TITLE: CONCERNING MEASURES TO ENSURE THAT AN ILLEGAL ALIEN DOES NOT PERFORM WORK ON A PUBLIC CONTRACT FOR SERVICES.

Fiscal Impact Summary	FY 2006/07	FY 2007/08
State Revenues		
State Expenditures		
General Fund	\$1,492,506	\$1,432,317
FTE Position Change	20.6 FTE	20.6 FTE
Effective Date: Unless a referendum petition is filed, the bill will take effect August 9, 2006, assuming the General Assembly adjourns on May 10, 2006, as scheduled.		
Appropriation Summary for FY 2006/07:		
Department of Labor and Employment: \$1,492,506 GF & 20.6 FTE		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This legislation prohibits a state agency or political subdivision from entering into a public contract with a contractor who knowingly employs or contracts with a subcontractor who knowingly employs an illegal alien. A contractor is required to certify that it does not employ illegal aliens. Each public contract must include provisions stating that:

- the contractor shall not knowingly employ or contract with an illegal alien to perform work under a public contract;
- the contractor shall not enter into a contract with a subcontractor that employs or contracts with an illegal alien; and
- the contractor shall cooperate with reasonable investigations conducted by the Department of Labor and Employment (DOLE).

The DOLE is granted authority to investigate public contract compliance related to the employment of illegal aliens. It is a breach of contract for a contractor to violate these provisions and the contractor shall be liable for damages to the agency or political subdivision. The state agency or political subdivision may also terminate the contract. A contractor found in breach of contract shall not be eligible to enter into a public contract for services for a period of 10 years. The DOLE is required to operate a tipline to allow persons to report suspicions that illegal aliens may be employed under a public contract. The DOLE may investigate suspected violations.

State Revenues

If a contractor is found in breach of contract, a state department may be awarded actual and consequential damages. Since a department cannot be awarded damages in excess of its economic losses and may only be reimbursed for expenses incurred, the bill will not result in an increase in state revenues.

State Expenditures

The DOLE, Division of Labor will require \$1,492,506 GF and 20.6 FTE in FY 2006-07 and \$1,432,317 GF and 20.6 FTE in FY 2007-08.

All Departments. All public contracts, purchase orders, and lease agreements will require a provision stating that the contractor does not knowingly employ or contract with an illegal alien or contract with a subcontractor that knowingly employs or contracts with an illegal alien. It is estimated that these contractual provisions will be drafted by the Department of Personnel and Administration, Division of Finance and Procurement and reviewed and approved by the Department of Law. Each department's procurement officer will be required to certify contractors. It is anticipated that this will occur during the request for proposal phase to eliminate from consideration any contractors who are unwilling to abide by these requirements. The fiscal note assumes that most contractors doing business with the state presently follow this requirements of this bill. Therefore, contract costs are not anticipated to increase due to the lack of competitive bidders. Overall, the cost of this legislation to state departments is expected to be minimal and can be absorbed within existing budgetary resources.

Department of Labor and Employment. The bill requires the DOLE to establish a tipline to receive information regarding suspected violations of the bill. Based on tipline information and other reports of violations, the DOLE may investigate a contractor who is suspected of employing an illegal alien under a public contract. The DOLE is also required to notify state departments and political subdivisions of suspected violations. Expenses related to bill implementation do not fall within the allowable uses of the DOLE's cash fund and federal grants. Consequently, the bill will require General Fund moneys. Table 1 summarizes expenditures for the DOLE.

Table 1. Department of Labor & Employment Expenses		
	FY 2006/07	FY 2007/08
Personal Services, Operating, & Capital		
Personal Services (including PERA/Medicare)		
1.1 FTE - Administrative Assistant II	\$30,950	\$30,950
19.5 FTE - Criminal Investigator II	1,317,419	1,317,419
Operating & Lease Expenses	59,135	59,135
Non-Recurring Expenses	61,557	0
Subtotal	\$1,469,061	\$1,407,504
Program Operations		
Certified Notification Letter (1,297 @ \$3.00 per letter)	3,567	3,891
Travel (324 investigations @ 75 miles @ \$0.28 per mile)	6,237	6,804
Per Diem (32 investigations @ \$40 per investigation)	1,173	1,280
Hotel (32 investigations @ \$75 per investigation)	2,200	2,400
Tipline (4,244 calls @ 15 minutes per call @ \$0.065 per minute)	3,793	4,138
Tipline Subscription (\$525 per month @ 12 months)	5,775	6,300
Tipline Telephones (2 telephones @ \$350)	700	0
Subtotal	\$23,445	\$24,813
Total Expenses	\$1,492,506	\$1,432,317
Total FTE	20.6 FTE	20.6 FTE

Note: Program operation costs are prorated to reflect 11 months in FY 2006-07. For training and program implementation purposes, staff and operating costs assume employment for an entire fiscal year.

Tipline Administration. In addition to state government, there are 2,638 county, municipal, and political subdivisions in the state. The fiscal note assumes that larger government entities will be the subject of more suspicions than small government entities. It is estimated that the DOLE will receive 4,716 total complaints and 4,244 (90 percent) will be received on the tipline. The average tipline call is estimated at 15 minutes and an additional 15 minutes will be required to process each call, for a total of 30 minutes. Mid-level administrative staff will answer each call, collect information supporting the suspicion, try to determine whether the suspected violation is from a public contract, and log calls for possible further investigatory review. Assuming 2,080 hours in a work year per FTE, the DOLE will require 1.1 FTE (2,358 hours / 2,080 hours) mid-level administrative staff.

Additionally, the DOLE will need to purchase telephone equipment and provide maintenance to operate the tipline. The annual cost is \$6,300 (\$525 per month X 12 months) plus a one-time cost of \$700 for two telephones. The DOLE will also be charged a usage cost at \$0.065 per minute. Assuming 4,244 calls per year at 15 minutes each the usage cost is estimated at \$4,138 annually.

Preliminary Complaint Investigation. The fiscal note assumes that the DOLE will perform a preliminary investigation on all reliable reports of contractor violations. It is estimated that 25 percent of all tips received from the tipline (1,061 tips) and 50 percent of all tips received from other sources (236 tips) will warrant a formal investigation, for a total of 1,297 investigations. Each

investigation will require the DOLE to mail a letter to the government entity to make it aware of the suspicion. It is estimated that all notification letters will be sent via certified mail.

Most preliminary investigations will be conducted at the business location of the public entity or at the public contract site. Consequently, 10 percent all preliminary investigations are anticipated to require a minimal amount of travel, per diem, and overnight stays. The preliminary investigation will follow-up on information received from the initial allegation and will include interviews with public officials, contractors, and subcontractors to determine worker status. The DOLE will also be required to review documentation the contractor or subcontractor relied upon to hire personnel, review the public contract to determine whether it contained the contractual provisions required by this bill, and ensure that the contractor had certified that it does not knowingly employ an illegal alien. Including travel time, each preliminary investigation is anticipated to take 25 hours. Total preliminary investigation time is therefore estimated at 32,423 hours.

Follow-up Investigation. If it is concluded that a contractor or subcontractor had employed or contracted with an illegal alien, the DOLE will be required to perform an additional investigation to determine if the contractor had knowledge of the alien's status prior to employment. It is estimated that 324 (25 percent) preliminary investigations will require additional investigation regarding contractor knowledge. Since "knowingly" is a difficult element to prove, it is estimated that each follow-up investigation will require 25 hours. Total follow-up investigation time is estimated at 8,106. Therefore, the combined preliminary investigation and follow-up investigation time is anticipated to equal 40,529 hours (32,423 preliminary investigation hours + 8,106 follow-up investigation hours). Assuming 2,080 hours in a work year per FTE, the DOLE will require 19.5 FTE (40,529 hours / 2,080 hours).

Judicial Branch. The Judicial Branch will be required to hear breach of contract cases between a state department or political subdivision and a contractor regarding contracts terminated for violations of this bill. These cases will center on whether the contractor knowingly employed or contracted with an illegal alien or contracted with a subcontractor that knowingly employed or contracted with an illegal alien. The number of follow-up investigations that result in an alleged violation for breach of contract cannot be quantified at this time. If the number is significant, the Judicial Branch may require additional funding. It is assumed this would be addressed through the annual budget process.

Local Government Impact

The same factors that impact revenues and expenditures for all state departments will impact local governments.

State Appropriations

The fiscal note indicates the Department of Labor and Employment, Division of Labor, requires a General Fund appropriation of \$1,492,506 and 20.6 FTE.

Departments Contacted

All Departments