



Colorado Legislative Council Staff
STATE and LOCAL
REVISED FISCAL IMPACT
 (replaces fiscal impact dated February 28, 2006)

Drafting Number: LLS 06-0916
Prime Sponsor(s): Rep. Crane

Date: March 10, 2006
Bill Status: House Appropriations
Fiscal Analyst: Gary J. Estenson (303-866-4976)

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	\$140,166	\$134,725
FTE Position Change	1.9 FTE	1.9 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:	\$140,166 GF & 1.9 FTE	
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

As amended in House Business Affairs and Labor Committee, 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. The DOLE may investigate suspected violations. State agencies and political subdivisions are required to notify the Secretary

of State's Office if a contractor violates the provisions of this bill. The Secretary of State's Office shall maintain a list of contractors who had public contracts terminated. A contractor shall be removed from the list two years after the contract terminates or if a court of competent jurisdiction determines that there was no violation. The list shall be made available to the public and posted on the internet.

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 \$140,166 GF and 1.9 FTE in FY 2006-07 and \$134,725 GF and 1.9 FTE in FY 2007-08. The reduction in cost from the previous fiscal note is due to the elimination of the tipline to report allegations that illegal aliens may be employed under a public contract.

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 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 and Employment Expenditures		
	FY 2006/07	FY 2007/08
Personal Services	\$129,815	\$129,815
Operating Expenses	960	960
Capital Outlay	5,770	0
Program Costs	3,621	3,950
Total	\$140,166	\$134,725

Note: Program 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.

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 the DOLE will investigate 100 suspected violations on an annual basis. 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 of 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 2,500 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 50 (50 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 30 hours. Total follow-up investigation time is estimated at 1,500 hours. Therefore, the combined preliminary investigation and follow-up investigation time is anticipated to equal 4,000 hours (2,500 preliminary investigation hours + 1,500 follow-up investigation hours). Assuming 2,080 hours in a work year per FTE, the DOLE will require 1.9 FTE (4,000 hours / 2,080 hours = 1.9 FTE) to implement the provisions of this bill.

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.

Secretary of State's Office. The Secretary of State's Office will be required to maintain a list on its website of contractors who have had public contracts terminated for violations of this bill. It is anticipated that the Secretary's of State's Office will post a form on its website that will allow state agencies and political subdivisions to reported terminated contracts electronically. Each time a notification is received the list will be updated. The amount of staff time to update the list is anticipated to be minimal and can be absorbed within existing resources.

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 \$140,166 and 1.9 FTE.

Departments Contacted

All Departments