

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

**REREVISED**

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

LLS NO. 08-0965.02 Ed DeCecco

**SENATE BILL 08-193**

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**SENATE SPONSORSHIP**

**McElhany**, Groff, Kester, Morse, Spence, and Tapia

**HOUSE SPONSORSHIP**

**Judd**, Gardner B., Garza-Hicks, Liston, Looper, Marostica, Merrifield, and White

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**Senate Committees**

State, Veterans & Military Affairs  
Appropriations

**House Committees**

State, Veterans, & Military Affairs

HOUSE  
3rd Reading Unamended  
April 28, 2008

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**A BILL FOR AN ACT**

101 **CONCERNING REQUIREMENTS RELATING TO PUBLIC CONTRACTS FOR**  
102 **SERVICES.**

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HOUSE  
2nd Reading Unamended  
April 25, 2008

**Bill Summary**

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

Updates the definition of a federal electronic employment eligibility program to reflect the program's new name. Excludes certain types of agreements from the definition of public contract for services, as used in the law relating to public contracts for services and illegal aliens.

Requires the executive director of the department of labor to establish a program to allow a contractor to verify or otherwise provide evidence of the employment eligibility of all employees who are newly

SENATE  
3rd Reading Unamended  
April 16, 2008

SENATE  
Amended 2nd Reading  
April 15, 2008

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.*

hired for employment to perform work under a public contract for services. Modifies the precontract certification required of a prospective contractor to limit the scope of the statement about its employees and to require future participation in the federal electronic employment eligibility program or the department program to verify the employment eligibility of certain employees. Requires all public contracts for services to include a provision that requires a contractor to use the federal electronic employment eligibility program or the department program to verify the employment eligibility of certain employees. Clarifies that nothing in the act as requiring a contractor to violate any terms of participation in the federal electronic employment eligibility program.

Makes conforming amendments.

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

**SECTION 1.** 8-17.5-101 (1), (5), and (6), Colorado Revised Statutes, are amended, and the said 8-17.5-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**8-17.5-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) ~~"Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States department of homeland security.~~

(3.3) "DEPARTMENT PROGRAM" MEANS THE EMPLOYMENT VERIFICATION PROGRAM ESTABLISHED \_\_\_\_ PURSUANT TO SECTION 8-17.5-102 (5) (c).

(3.7) "E-VERIFY PROGRAM" MEANS THE ELECTRONIC EMPLOYMENT VERIFICATION PROGRAM CREATED IN PUBLIC LAW 104-208, AS AMENDED, AND EXPANDED IN PUBLIC LAW 108-156, AS AMENDED, AND JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND

1 SECURITY AND THE SOCIAL SECURITY ADMINISTRATION, OR ITS SUCCESSOR  
2 PROGRAM.

3 (4.5) "NEWLY HIRED FOR EMPLOYMENT" MEANS HIRED TO WORK  
4 IN THE UNITED STATES SINCE THE EFFECTIVE DATE OF THE PUBLIC  
5 CONTRACT FOR SERVICES.

6 (5) "Political subdivision" means any city, county, city and county,  
7 town, special district, school district, local improvement district, or any  
8 other kind of municipal, quasi-municipal, or public corporation  
9 ORGANIZED PURSUANT TO LAW.

10 (6) (a) "Public contract for services" means any type of agreement,  
11 regardless of what the agreement may be called, between a state agency  
12 or political subdivision and a contractor for the procurement of services.

13 (b) "PUBLIC CONTRACT FOR SERVICES" DOES NOT INCLUDE:

14 (I) AGREEMENTS RELATING TO THE OFFER, ISSUANCE, OR SALE OF  
15 SECURITIES, INCLUDING BUT NOT LIMITED TO AGREEMENTS PERTAINING  
16 TO:

17 (A) UNDERWRITING, MARKETING, REMARKETING, PAYING,  
18 TRANSFERRING, RATING, OR REGISTERING SECURITIES; OR

19 (B) THE PROVISION OF CREDIT ENHANCEMENT, LIQUIDITY SUPPORT,  
20 INTEREST RATE EXCHANGES, OR TRUSTEE OR FINANCIAL CONSULTING  
21 SERVICES IN CONNECTION WITH SECURITIES; OR

22 (II) AGREEMENTS FOR INVESTMENT ADVISORY SERVICES OR FUND  
23 MANAGEMENT SERVICES;

24 (III) ANY GRANT, AWARD, OR CONTRACT FUNDED BY ANY FEDERAL  
25 OR PRIVATE ENTITY FOR ANY RESEARCH OR SPONSORED PROJECT ACTIVITY  
26 OF AN INSTITUTION OF HIGHER EDUCATION OR AN AFFILIATE OF AN  
27 INSTITUTION OF HIGHER EDUCATION THAT IS FUNDED FROM MONEYS THAT

1 ARE RESTRICTED BY THE ENTITY UNDER THE GRANT, AWARD, OR  
2 CONTRACT. FOR PURPOSES OF THIS SUBPARAGRAPH (III), “SPONSORED  
3 PROJECT” MEANS AN AGREEMENT BETWEEN AN INSTITUTION OF HIGHER  
4 EDUCATION AND ANOTHER PARTY THAT PROVIDES RESTRICTED FUNDING  
5 AND REQUIRES OVERSIGHT RESPONSIBILITIES FOR RESEARCH AND  
6 DEVELOPMENT OR OTHER SPECIFIED PROGRAMMATIC ACTIVITIES THAT ARE  
7 SPONSORED BY FEDERAL OR PRIVATE AGENCIES AND ORGANIZATIONS; =  
8 (IV) INTERGOVERNMENTAL AGREEMENTS; OR  
9 (V) AGREEMENTS FOR INFORMATION TECHNOLOGY SERVICES OR  
10 PRODUCTS AND SERVICES.

11 **SECTION 2.** 8-17.5-102 (1), (2) (b) (I), and (2) (b) (II), Colorado  
12 Revised Statutes, are amended to read:

13 **8-17.5-102. Illegal aliens - prohibition - public contracts for**  
14 **services - rules.** (1) A state agency or political subdivision shall not  
15 enter into or renew a public contract for services with a contractor who  
16 knowingly employs or contracts with an illegal alien to perform work  
17 under the contract or who knowingly contracts with a subcontractor who  
18 knowingly employs or contracts with an illegal alien to perform work  
19 under the contract. Prior to executing a public contract for services, each  
20 prospective contractor shall certify that, at the time of the certification, it  
21 does not knowingly employ or contract with an illegal alien WHO WILL  
22 PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES and that the  
23 contractor ~~has participated or attempted to~~ WILL participate in the basic  
24 ~~pilot~~ E-VERIFY PROGRAM OR DEPARTMENT program in order to confirm the  
25 employment eligibility of all employees who are newly hired for  
26 employment ~~in the United States~~ TO PERFORM WORK UNDER THE PUBLIC  
27 CONTRACT FOR SERVICES.

1           (2) (b) Each public contract for services shall also include the  
2 following provisions:

3           (I) A provision stating that the contractor has confirmed ~~or~~  
4 ~~attempted to confirm~~ the employment eligibility of all employees who are  
5 newly hired for employment ~~in the United States~~ TO PERFORM WORK  
6 UNDER THE PUBLIC CONTRACT FOR SERVICES through participation in  
7 EITHER the ~~basic pilot~~ E-VERIFY PROGRAM OR THE DEPARTMENT program.  
8 ~~and, if the contractor is not accepted into the basic pilot program prior to~~  
9 ~~entering into a public contract for services, that the contractor shall apply~~  
10 ~~to participate in the basic pilot program every three months until the~~  
11 ~~contractor is accepted or the public contract for services has been~~  
12 ~~completed, whichever is earlier. The provision specified in this~~  
13 ~~subparagraph (I) shall not be required or effective in a public contract for~~  
14 ~~services if the basic pilot program is discontinued.~~

15           (II) A provision that prohibits the contractor from using ~~basic pilot~~  
16 ~~program~~ EITHER THE E-VERIFY PROGRAM OR THE DEPARTMENT PROGRAM  
17 procedures to undertake preemployment screening of job applicants while  
18 the public contract for services is being performed;

19           **SECTION 3.** 8-17.5-102 (5) (a), Colorado Revised Statutes, is  
20 amended, and the said 8-17.5-102 (5) is further amended BY THE  
21 ADDITION OF A NEW PARAGRAPH, to read:

22           **8-17.5-102. Illegal aliens - prohibition - public contracts for**  
23 **services - rules.** (5) (a) The department may investigate whether a  
24 contractor is complying with the provisions of a public contract for  
25 services required pursuant to subsection (2) of this section. The  
26 department may conduct on-site inspections where a public contract for  
27 services is being performed WITHIN THE STATE OF COLORADO, request and

1 review documentation that proves the citizenship of any person  
2 performing work on a public contract for services, or take any other  
3 reasonable steps that are necessary to determine whether a contractor is  
4 complying with the provisions of a public contract for services required  
5 pursuant to subsection (2) of this section. The department shall receive  
6 complaints of suspected violations of a provision of a public contract for  
7 services required pursuant to subsection (2) of this section and shall have  
8 discretion to determine which complaints, if any, are to be investigated.  
9 The results of any investigation shall not constitute final agency action.  
10 The department is authorized to promulgate rules in accordance with  
11 article 4 of title 24, C.R.S., to implement the provisions of this subsection  
12 (5).

13       (c) (I) THERE IS HEREBY CREATED THE DEPARTMENT  
14 PROGRAM. ANY CONTRACTOR WHO PARTICIPATES IN THE DEPARTMENT  
15 PROGRAM SHALL NOTIFY THE DEPARTMENT AND THE CONTRACTING STATE  
16 AGENCY OR POLITICAL SUBDIVISION OF SUCH PARTICIPATION. A  
17 PARTICIPATING CONTRACTOR SHALL COMPLY WITH THE PROVISIONS OF  
18 SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) AND SHALL CONSENT TO  
19 DEPARTMENT AUDITS CONDUCTED IN ACCORDANCE WITH SUBPARAGRAPH  
20 (III) OF THIS PARAGRAPH (c). FAILURE TO MEET EITHER OF THESE  
21 OBLIGATIONS SHALL CONSTITUTE A VIOLATION OF THE DEPARTMENT  
22 PROGRAM. THE EXECUTIVE DIRECTOR SHALL NOTIFY A CONTRACTING  
23 STATE AGENCY OR POLITICAL SUBDIVISION OF SUCH VIOLATION.

24       (II) A PARTICIPATING CONTRACTOR SHALL, WITHIN TWENTY DAYS  
25 AFTER HIRING AN EMPLOYEE WHO IS NEWLY HIRED FOR EMPLOYMENT TO  
26 PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES, AFFIRM  
27 THAT THE CONTRACTOR HAS EXAMINED THE LEGAL WORK STATUS OF SUCH

1 EMPLOYEE, RETAINED FILE COPIES OF THE DOCUMENTS REQUIRED BY 8  
2 U.S.C. SEC. 1324a, AND NOT ALTERED OR FALSIFIED THE IDENTIFICATION  
3 DOCUMENTS FOR SUCH EMPLOYEES. THE CONTRACTOR SHALL PROVIDE A  
4 WRITTEN, NOTARIZED COPY OF THE AFFIRMATION TO THE CONTRACTING  
5 STATE AGENCY OR POLITICAL SUBDIVISION.

6 (III) THE DEPARTMENT MAY CONDUCT RANDOM AUDITS OF STATE  
7 AGENCIES OR POLITICAL SUBDIVISIONS TO REVIEW THE AFFIDAVITS AND OF  
8 CONTRACTORS TO REVIEW COPIES OF THE DOCUMENTS REQUIRED BY  
9 SUBPARAGRAPH (II) OF THIS PARAGRAPH (c). AUDITS SHALL NOT VIOLATE  
10 FEDERAL LAW.

11 **SECTION 4.** 8-17.5-102, Colorado Revised Statutes, is amended  
12 BY THE ADDITION OF A NEW SUBSECTION to read:

13 **8-17.5-102. Illegal aliens - prohibition - public contracts for**  
14 **services - rules.** (6) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS  
15 REQUIRING A CONTRACTOR TO VIOLATE ANY TERMS OF PARTICIPATION IN  
16 THE E-VERIFY PROGRAM.

17 **SECTION 5. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.