Keep Jobs in Colorado Act "KJICA"

§ 8-17-101. Colorado labor shall be employed on public works

(1) Whenever any public works project financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado are undertaken in this state, Colorado labor shall be employed to perform at least eighty percent of the work. The governmental body financing a public works project shall waive the eighty percent requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance with this article would create an undue burden that would substantially prevent a project from proceeding to completion. A governmental body that allows a waiver pursuant to this subsection (1) shall post notice of the waiver and a justification for the waiver on its web site. A governmental body shall not impose contractual damages on a contractor for a delay in work due to the waiver process.

(2) As used in this article:

(a) "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

(b) "Public works project" shall have the same meaning as "public project" as defined in section 8-19-102 (1).

§ 8-17-102. Contracts to provide for preference of Colorado labor

All contracts let for public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado shall contain provisions for the preference in employment of Colorado labor.

§ 8-17-103. *[Repealed]*

§ 8-17-104. Enforcement - violation - penalties - Colorado labor enforcement cash fund - creation

(1) The department of labor and employment shall enforce the requirements of this article in the event of a complaint alleging a potential violation of the requirements of this article. In connection with the department's duty to enforce the requirements of this article, the department shall receive complaints about potential violations of such requirements, initiate investigations based on such complaints, and impose penalties for the violation of the requirements of this article pursuant to subsection (2) of this section. The department shall not investigate or take any other action regarding a complaint filed more than ninety days after the project has been finalized.

(2)(a) After conducting an investigation of a complaint alleging a violation of the provisions of this article, if the department of labor and employment determines that a contractor has knowingly violated the requirements of this article by importing labor in excess of that permitted pursuant to section 8-17-101 (1), the executive director of the department of labor and employment or the executive director's designee shall impose a fine on such contractor as follows:

(I) For the first violation, five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less;

(II) For the second violation, ten thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less; or

(III) For the third violation and any violation thereafter, twenty-five thousand dollars or an amount equal to one percent of the cost of the contract, whichever is less.

(b) When the department of labor and employment receives a complaint, it shall notify the contractor of the complaint, but shall commence the investigation only at the completion of the project. The department shall complete any investigation in response to a complaint within ninety days of the date that the department began the investigation. Compliance shall be measured over the entirety of the completed project.

(c) If the department of labor and employment has imposed three fines on a contractor pursuant to paragraph (a) of this subsection (2) within five years and finds the violations to be egregious, the executive director of the department of labor and employment or the executive director's designee may initiate the process to debar the contractor pursuant to section 24-109-105, C.R.S.

(d) The executive director of the department of labor and employment may dismiss a complaint in his or her discretion if, after conducting an investigation pursuant to this section, the department determines that the circumstances that led to the complaint were the result of a minor paperwork violation.

(3) A contractor who is found to be in violation of the provisions of this article may appeal such finding to the executive director of the department of labor and employment. The executive director or the executive director's designee shall hold a hearing to review such notice or order and take final action in accordance with article 4 of title 24, C.R.S., and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel. Final agency action is subject to judicial review pursuant to article 4 of title 24, C.R.S.

(4) The revenue collected from the fines imposed pursuant to subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the Colorado labor enforcement cash fund, which is hereby created. The general assembly shall make appropriations from the fund as necessary to cover the direct and indirect costs of the department of labor and employment in connection with the requirements of this article. All moneys not expended or encumbered and all interest earned on the investment or deposit of moneys in the fund remains in the fund and does not revert to the general fund or any other fund at the end of any fiscal year.

(5) The requirements of this article may not be enforced through a private right of action.

§ 8-17-105. Compliance standard

Compliance with the requirements of this article shall be calculated on the total taxable wages and fringe benefits, minus any per diem payments, paid to workers employed directly on the site of the project and who satisfy the definition of Colorado labor.

§ 8-17-106. Rules

(1) The executive director of the department of labor and employment shall promulgate rules for the implementation of this article. Such rules shall be promulgated in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., and must include, but need not be limited to:

(a) A procedure for filing a complaint alleging that a contractor is in violation of the provisions of this article;

(b) A procedure for the uniform investigation of any complaint alleging a violation of the provisions of this article; and

(c) A procedure for filing an appeal pursuant to section 8-17-104 (3).

§ 8-17-107. Federal and state law

Nothing in this article applies to any project that receives federal moneys. In addition, nothing in this article contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this article to the extent of that accordance. The requirements of this article are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.