

The amended bill allows a state agency to waive the above requirements for a particular contract if the agency submits a written finding to the State Controller, and the State Controller does not reject the finding within 30 days that, the contract is necessary to perform a unique service that:

- is deemed to be mandatory by the state agency; and
- workers in the United States cannot adequately perform the unique service.

The agency seeking such a waiver is required to provide a copy of the written finding to the House and Senate committees that oversee business affairs and labor issues.

If during the life of the contract, services are performed outside the United States, the bill requires the state agency to terminate the contract for noncompliance with contract provisions and breach of contract. In that event, the contractor:

- is required to pay damages to the state agency equal to the amount paid by the state agency for the percentage work performed outside the United States and other damages related to the termination of the state service contract; and
- is ineligible to receive a state contract for three years after the termination date.

The bill authorizes the state agency to bring a civil action in a state or federal court to compel enforcement of these provisions.

The amended bill provides for the following exemptions to the above requirements in the following cases when the contract:

- would fall under the provisions of an international trade agreement, including but not limited to the "Agreement on Government Procurement";
- involves either a study abroad program or research at a state institution of higher education;
- is for testing foreign livestock for infectious diseases;
- involves professional pharmaceutical services related to the purchase of prescription medications;
- involves systems necessary for the Colorado National Guard;
- relates to conducting surveillance and monitoring of infectious diseases;
- relates to the use of air traffic control information by the Colorado National Guard in a war zone; and
- relates to the transport of Colorado National Guard troops in foreign-owned planes.

State Expenditures

State Service Contracts. This bill will increase expenditures for a number of state agencies that contract for services with companies that perform services from sites located outside the United States. According to the recent Performance Audit on Colorado Statewide Contract Management Practices, the State spent almost \$3.8 billion on personal service contracts in FY 2003-04. Of this

amount, 68 percent (\$2.6 billion) were Medicaid related contracts through the Department of Healthcare Policy and Financing. Contracts at several large agencies such as the Departments of Transportation (\$505.5 million), Higher Education (\$322.9 million), and Human Services (\$132.1 million) constitute the majority of the remaining amount. Table 1 summarizes the number of contracts and the total contract amount for five sample agencies in FY 2003-04.

Table 1: Personal Service Contracts for Selected Agencies		
Agency	Number of Contracts	Total Contract Amount
Personnel & Administration	251	\$20,206,000
Natural Resources	285	\$32,622,900
Corrections	288	\$51,752,700
Human Services	994	\$132,088,100
University of Colorado	561	\$183,594,500
Total	2,379	\$420,264,200

* Source: Colorado Statewide Contract Management Practices Performance Audit.

This fiscal note assumes that everything else equal, the state would award contracts to bidders within state or in-county, and the only reason a contract would be awarded to an international vendor would be a lower bid. The fiscal impact of requiring contracts to be awarded to in-county vendors would be the difference between the international vendor's bid (assumed to be lowest) and the bid of the next lowest eligible (in-country) vendor. The overall impact would need to be calculated on a contract by contract basis.

In most cases, information regarding these cost increases was not provided. The following are a *few examples* of projects when departments would have incurred higher costs because of this bill's vendor limitations. These examples are *not intended to be comprehensive* but rather to provide anecdotal evidence for the types of state expenditure increases that would be incurred.

Department of State. The department would incur higher costs because of the limit placed on vendor competition. For example, the department contracts with a company to provide an electronic rules filing and publication system. The task of inputting all of the existing rules of state agencies into electronic form was subcontracted to a firm located outside the United States. Based on competitive bids for those services, if the coding occurred in the United States, the incremental cost increase would be about \$30,000.

Department of Natural Resources. The department issued an RFP for publication services that included the production of 20,000 copies. They received two bids, one from a Colorado company and one from a Canadian company. If they had been required to accept the Colorado company's bid, publication costs would have been 23 percent (\$14,889) higher.

Judicial Department. The department may see an increase in caseload due to the provision that allows a state agency to bring a civil action in a state court to compel enforcement of the provisions of this bill. However, it is anticipated that the number of cases of this type would only be one or two annually, and thus could be absorbed within existing budgetary resources.

Information Technology Costs

Many if not all state agencies rely on operating systems and office application software from either Microsoft or Corel (a Canadian company). A portion of the technical support services that are included in these products are performed overseas, in an effort to reduce product costs. In some cases, the technical support is bundled into the product while in other cases, support services are bill separately. Because these support services would be subject to the provisions of this bill, and it is anticipated that neither Microsoft nor Corel would change business practices to accommodate the State of Colorado, state agencies would be required to switch to alternative software products produced by companies whose technical support services were performed in the United States.

Typically, such software products are operated on an annual basis using licencing agreements, which annually run about one-third the original purchase price in the case of Microsoft, and one-quarter the original purchase price in the case of Corel. The fiscal impact of such replacement would be the net replacement cost (purchase of a new product less the cost of the existing licencing agreement) in the first year, and the cost of the new licencing agreement in the following years. Table 2 summarizes the total costs associated with software replacement and the retraining of agency IT personnel on new software applications.

Table 2: Estimated Costs Associated with new Operating Systems and Office Applications				
Information Technology	Computers	Net Cost Per Computer	FY 2005-06 Costs	FY 2006-07 Costs
<u>Software Replacement</u>				
Personal Computers	38,801	\$400	\$15,502,280	\$5,167,427
Servers	<u>1,671</u>	3,335	<u>5,572,785</u>	<u>1,857,595</u>
Subtotal	40,472		21,075,065	7,025,022
Software Retraining*			\$2,935,000	\$0
Total Expenses			\$24,010,065	\$7,025,022

** Retraining expenses are for IT personnel only, and do not include training costs for other personnel.*

It should be noted that while other software packages currently in use may be similarly impacted, they have not been identified. In addition, there are potentially significant costs associated with the Central Processing Unit utilized by the Department of Personnel's Division of Information Technology that have not been identified. This fiscal note assumes that sufficient in-country service alternatives exist so that all other computer hardware employed by state agencies will not be significantly impacted by this bill.

Waiver Review Costs. The amended bill requires the State Controller's Office to review waiver requests submitted by state agencies. The additional workload is dependent upon the number of waiver requests submitted, which is unknown at this time. However, it is anticipated that the State Controller's Office would require at least 1.0 FTE of additional staff resources to perform this function. Table 3 summarizes the additional expenses that would be incurred. These expenses would be funded by a combination of General Fund, indirect cost recovery and procurement card rebates.

Table 3: State Controller Waiver Review Expenses		
	FY 2005/06	FY 2006/07
<u>Personal Services</u>		
General Prof. III	\$40,068	\$40,068
PERA/Medicare	4,748	4,748
Subtotal	1.0 FTE - 44,816	1.0 FTE - 44,816
Operating Expenses	\$2,521	\$2,521
IT Expenses	\$1,267	\$1,267
Total Expenses	1.0 FTE - \$48,604	1.0 FTE - \$48,604

Reciprocity Costs. It should be noted that if the State of Colorado chooses to restrict contracts where any work is performed outside the United States, other countries may respond by restricting their investment in businesses within the state. The resulting impact would be to the state's economy and could reduce the amount of income tax revenues that the state receives from both individual employees and businesses. Any reduction in state tax revenues will reduce the state's TABOR surplus, and will reduce the funds available for some of the TABOR refund mechanisms that would otherwise be funded.

Unemployment Assistance Costs. Requiring that all work related to state agency service contracts be performed in the United States may affect Colorado unemployment levels, and thus the amount that the state is obligated to pay for unemployment assistance, including unemployment insurance, food stamps, housing assistance and health care. This impact has not been quantified at this time.

State Appropriations

This fiscal note implies that the Department of Personnel and Administration will require a General Fund appropriation in the amount of \$48,604 and 1.0 FTE in FY 2005-06 to implement this bill.

The Department of Personnel and Administration, Information Technology will require a General Fund appropriation in the amount of \$24,010,065 to be allocated among all departments based on their respective share of personal computers and servers.

Departments Contacted

All Departments

Governor's Office

Monitoring Costs. Staff is unclear whether this bill would mandate that all contracts be monitored for compliance, given that no explicit language in the bill mandates monitoring. In that sense, the requirements of this bill are similar to existing boilerplate language that is currently included in state contracts (regarding non-discrimination and inspection and acceptance provisions). According to the recent Performance Audit on Colorado Statewide Contract Management Practices, several agency's "contract administration files contain little documentation of contract monitoring activities... making it difficult for the State to defend it's position if disputes arise." Given that little monitoring is occurring in support of current contract requirements, it is reasonable to assume that agencies may take a similar approach to the provisions of this bill.

Several departments, including the Department of Personnel and Administration, feel that the provisions of this bill would require contract monitoring. Seven agencies have estimated monitoring resource requirements totaling 15.5 FTE and \$673,422 to monitor 3,276 contracts in addition to other purchase orders and service agreements. To provide perspective, the State Controller's Office has 1.25 FTE to review about 2,200 contracts per year, while the Attorney General's Office has 1.5 FTE to review 1,200 contracts per year for those agencies that do not have delegated review authority (24 percent for the State Controller and 53 percent for the Attorney General).