

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 721 (Delegate Miller, *et al.*)
Health and Government Operations

State Procurement - Use of Federal E-Verify Program to Prevent Employment of Unauthorized Alien Workers

This bill prohibits State agencies from issuing State contracts or providing grants if unauthorized alien workers are to be used in any manner in the performance of the contract or grant. It also requires all State contractors and subcontractors and any person receiving a State grant, subject to specified exemptions, to register and use the federal E-Verify program.

The bill applies only to State contracts executed, or grants paid by the State, after October 1, 2010.

Fiscal Summary

State Effect: None. The State Board of Contract Appeals (BCA) and State procurement units can handle the bill's requirements with existing budgeted resources.

Local Effect: All local governments receive State grants, and are therefore required to use E-Verify to confirm the employment eligibility of candidates for employment on grant-funded projects. Employer use of E-Verify is free and linked to existing employment verification requirements, so local governments can implement that provision with existing resources. Several local governments have advised in the past that they already use E-Verify.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill bars State contractors, subcontractors, and grantees from hiring or contracting independently with an individual who is not eligible to work lawfully in the United States.

Exemptions from the requirement to use E-Verify are made for:

- contracts, subcontracts, and grants valued at less than \$10,000 that will not pay an employee more than \$600;
- contracts performed entirely by individuals not subject to employment verification under federal law;
- contracts for the supply of commercially available off-the-shelf items or items sold in substantial quantities in the commercial marketplace and offered to the State in the same form as they are commercially available; or
- contracts for food or agricultural products shipped as bulk cargo.

Agencies may not prequalify a nonexempt contractor who fails to register and participate in E-Verify. Before receiving payment from the State, nonexempt employers must certify under the penalty of perjury that employment authorization and Social Security number verification has been obtained for all employees hired to work on the contract or grant.

Employers who violate the terms of the bill are subject to automatic cancellation of their contract or grant and are automatically debarred from State or local procurement for one year. Sanctioned employers may appeal to BCA, unless administrative appeal has been delegated by law to another body.

Current Law: Federal immigration law preempts any state law with respect to civil and criminal penalties for knowingly hiring unauthorized aliens, but reserves for states the right to impose other penalties.

Federal law defines an unauthorized alien with respect to employment as an alien who is either not lawfully admitted to the country for permanent residence, or not authorized to be so employed. It is illegal to hire an individual without first making a good faith effort to verify that the individual is not an unauthorized alien. Verification means ensuring that the individual has either:

- a U.S. passport, resident alien card, or other document that verifies the individual's eligibility to work; or

- both a Social Security card or equivalent document and a driver's license or other photo identification approved by the Attorney General.

Under federal law, employers who hire unauthorized aliens are subject to civil and criminal penalties, including fines and/or imprisonment. The severity of the penalties escalates for repeat offenders. The maximum fine is \$10,000 for each unauthorized alien hired and the maximum prison term is six months "for the entire pattern or practice."

A person is subject to automatic debarment from procurement with any public body in the State only if the person has been convicted under the laws of the State for bribery, attempted bribery, or conspiracy to bribe, committed in the furtherance of obtaining a contract with a public body. In all other cases, debarment is subject to the determination of the Board of Public Works (BPW), based on evidence provided by the Office of the Attorney General following an investigation. Except for automatic debarments described above, a person has a right to a hearing before BPW before being debarred.

Background: Employers certify on federal Form I-9 that they have reviewed employees' documentation and that the documents appear genuine. Employers are not responsible if those documents are later found to be false. According to the U.S. Government Accountability Office (GAO), numerous studies have found that document and identity fraud are prevalent and often sophisticated, and that employers have few tools available to them to combat it.

The federal Basic Pilot Program began in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act. The program is an attempt to combat the prevalence of document and identity fraud in the employment verification process by providing a voluntary means for employers to verify employee status electronically against federal Social Security and immigration databases. In 2007, the program was expanded and renamed the E-Verify program. Authorization for E-Verify has been renewed multiple times, most recently in 2009. It is scheduled to terminate in September 2012.

The most recent evaluation of the E-Verify program commissioned by the U.S. Department of Homeland Security raises concerns about its effectiveness. The evaluation found that 96% of E-Verify results for cases submitted between April and June 2008 were consistent with a worker's true employment status. However, of workers who are *not* eligible for employment, the system authorized more than half (54%) as eligible to work. The evaluation blames identify fraud for the system's poor results.

In federal fiscal year 2009, E-Verify processed more than 8.7 million records, a 28% increase over fiscal 2008. More than 184,000 employers currently use E-Verify, and more than 1,000 new employers enroll every week.

An executive order signed in June 2008 requires all federal contractors with contracts worth more than \$100,000 or subcontracts worth more than \$3,000 to verify employment eligibility using E-Verify effective January 15, 2009. Implementation of the executive order was delayed, but took effect September 8, 2009. Thirteen states require at least some employers to use E-Verify, but requirements vary. In three states (Arizona, Mississippi, and South Carolina), the requirement extends to all public and private employers; the remaining 10 states require different combinations of state agencies, all public employers, and state contractors or subcontractors to use E-Verify.

State Fiscal Effect: The bill has no direct fiscal effect on the State because, in accordance with federal immigration law, there are no civil or criminal fines or prison terms associated with violations of the bill's provisions. Procurement units can handle the additional level of certifications that contractors must make regarding employment verification with existing budgeted resources.

The bill may result in an increase in the number of debarment appeals before BCA. The Department of Legislative Services (DLS) notes that, under current law, debarment hearings are typically the domain of BPW, not BCA. In the absence of active monitoring and enforcement of the bill's requirements, which are not provided for in the bill, DLS anticipates only a minimal increase in BCA's caseload because of the bill. Therefore, BCA can handle the bill's requirements with existing resources.

Small Business Effect: Small businesses that are State contractors or receive State grants and violate the bill's requirements are subject to the cancellation of their contract or grant and debarment. State contractors and firms that receive State grants must use E-Verify to confirm the employment eligibility of employees who work on State contracts.

Additional Information

Prior Introductions: HB 502 of 2009, a similar bill, received an unfavorable report from the House Health and Government Operations Committee. Its cross file, SB 696, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: Although designated as a cross file, SB 844 is not identical.

Information Source(s): Baltimore, Charles, Frederick, and Somerset counties; Town of Bladensburg; State Department of Assessments and Taxation; Department of Business and Economic Development; Board of Public Works; Department of Budget and Management; Department of Human Resources; Maryland Department of the

Environment; Department of Housing and Community Development; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Office of the Public Defender; University System of Maryland; Department of Legislative Services

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