

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 390 (Senator Shank, *et al.*)
Education, Health, and Environmental Affairs

State Government - E-Verify Program

This bill declares a public policy that State agencies may not allow unauthorized alien workers to perform work under specified State contracts and grants. 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.

Fiscal Summary

State Effect: General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by \$96,700 in FY 2012 for enforcement purposes. Out-year costs reflect annualization and inflation and reduced contractual costs. No material increase in general fund revenues due to the bill’s penalty provisions.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	96,700	79,700	82,500	85,400	88,500
Net Effect	(\$96,700)	(\$79,700)	(\$82,500)	(\$85,400)	(\$88,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Although the bill mandates that local governments, as recipients of State grants, use E-Verify to confirm the 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 receiving payment until they affirm that no one was hired or contracted with independently who is an unauthorized alien worker, defined in the bill as an individual who is not eligible to work lawfully in the United States under federal law, as verified by the E-Verify program.

The bill exempts the following types of contracts and grants from the requirement to use E-Verify:

- contracts, subcontracts, and grants valued at less than \$100,000;
- contracts or grants in which the work is 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.

Before receiving payment from the State, nonexempt employers must certify under the penalty of perjury that employment authorization through E-Verify has been obtained for all employees hired to work on the contract, subcontract, or grant.

Employers who violate the terms of the bill may be subject to civil penalties administered by the Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation (DLLR). The civil penalty is \$1,000 for each employee that is not lawfully eligible for employment. In addition, if the commissioner determines that a contractor, subcontractor, or grantee knowingly violated the bill's provisions, or acted with reckless disregard for its requirements, the penalty is \$5,000 for each employee that is not lawfully eligible to work for a first or second violation, and \$20,000 for each employee for a third or subsequent violation.

Contractors and grantees are not subject to civil penalties if they:

- required all subcontractors to comply with the bill's provisions and cooperated with the commissioner or contracting agency in investigating alleged violations of that requirement;
- acted in good faith in the event of a first violation; or
- complied with the bill's requirements regardless of any subsequent determination of an employee's eligibility to work.

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."

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.

A 2009 evaluation of the E-Verify program commissioned by the U.S. Department of Homeland Security raised 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 blamed identity fraud for the system's poor results.

A more recent evaluation by GAO found that the E-Verify program had reduced the number of temporary nonconfirmations, which it issues when it cannot confirm an applicant's eligibility to work, from 8% from 2004 to 2007 to 2.6% in fiscal 2009. Conversely, 97.4% of newly hired employees were immediately confirmed for employment. However, the report found continued challenges in recognizing fraud and potential capacity challenges if E-Verify participation is required of all employers.

In federal fiscal 2010, E-Verify processed more than 16 million queries, almost a 100% increase over fiscal 2009. More than 243,000 employers currently use E-Verify, and about 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 it 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 requires the commissioner to enforce the bill's provisions and administer civil penalties to individuals who violate the bill's provisions. Currently, the commissioner's office does not have the capacity to conduct the necessary enforcement activities, including investigating complaints and responding to employer requests. Therefore, general fund expenditures by DLLR increase by \$96,708 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate reflects the cost of hiring one wage and hour investigator to enforce the bill's provisions and contractual legal support. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	\$36,715
Contractual Legal Support	52,950
Ongoing Operating Costs	<u>7,043</u>
Total FY 2012 State Expenditures	\$96,708

Future year expenditures reflect a full salary with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses; it also assumes a reduced need for contractual legal support.

Given the nonmandatory penalty provisions in the bill and the expected infrequent application of civil penalties, general fund revenues from civil penalties administered by DLLR are not expected to materially affect State finances.

Small Business Effect: Small businesses that are State contractors or receive State grants and violate the bill's requirements are subject to civil penalties. State contractors and firms that receive State grants must use E-Verify to confirm the employment eligibility of employees who work on State contracts. That requirement is not expected to place an undue burden on employers, and many may already participate.

Additional Information

Prior Introductions: HB 721 of 2010, a similar bill, was heard by the House Health and Government Operations Committee, but no further action was taken. Other related bills were also introduced during the 2009 and 2010 legislative sessions. SB 844 of 2010, which is listed as a prior introduction but is substantively different, was referred to interim study by the Senate Education, Health, and Environmental Affairs Committee. SB 696 of 2009 received an unfavorable report from the same Senate committee, and its cross file, HB 502, received an unfavorable report from the House Health and Government Operations Committee.

Cross File: HB 761 (Delegate W. Miller, *et al.*) - Health and Government Operations.

Information Source(s): Baltimore City; Department of Budget and Management; Department of General Services; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Montgomery County; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510