

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1475
Economic Matters

(Delegate McMillan, *et al.*)

**State Finance and Procurement - Employment Authorization Verification -
Maryland Job Protection Act**

This bill requires all State contractors, subcontractors, and grantees to participate in the federal Basic Pilot Program electronic verification of work authorization program as a condition of receiving their contract or grant. The bill exempts emergency contracts or grants for goods or services from this requirement. It further allows the Board of Public Works (BPW) to audit any contractor, subcontractor, or grantee to ensure compliance with the provisions of the bill, and, in the case of noncompliance, to recommend termination of the contract or grant.

The bill takes effect January 1, 2007, and has prospective application.

Fiscal Summary

State Effect: To the extent that the bill results in a large number of contract terminations due to employer noncompliance with the bill's provisions or limits bids from sole-source suppliers, State services and operations could be disrupted.

Local Effect: None.

Small Business Effect: Minimal. Small businesses that receive contracts or grants from the State would have to join the federal Basic Pilot Program, an added layer of administrative responsibility for them. After completing federal forms certifying that they have reviewed employees' documentation, employers would then have to enter that data into the Basic Pilot Program database for confirmation.

Analysis

Current Law: Under federal law, all employers must verify the employment eligibility status of all employees to the best of their ability. Employers need only show that they made a good faith effort to verify employment eligibility for new hires by reviewing their documentation.

States have no role in enforcing employment eligibility requirements. There is no requirement that State contractors or grantees participate in specific federal employment eligibility verification programs.

Background: Congress passed the Basic Pilot Program 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. The program was scheduled to terminate in 2001, but has been extended twice since then and is now scheduled to terminate in 2008, subject to further extension by Congress. Nationwide, about 2,300 employers participate in the Basic Pilot Program, out of approximately 5.6 million firms.

Currently, 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.

An August 2005 GAO report on the Basic Pilot Program found that it has been effective in reducing document fraud in the employment verification process, but also found several critical weaknesses in the program. Twenty of the 22 participating employers interviewed by GAO indicated that the program helps them reliably verify the employment eligibility of new hires. However, GAO also found that the program is unable to detect identity fraud and suffers from data entry delays that hamper its reliability. Of perhaps greater significance, officials from the U.S. Citizenship and Immigration Services told GAO that the current program could not continue to complete timely and accurate verifications if the number of participating employers significantly increased. This is due to the lack of funding to accommodate program growth and the expansion of other identification verification programs related to homeland security that draw resources away from the Basic Pilot Program.

State Fiscal Effect: Contractors that fail to join the Basic Pilot Program could have their contracts with the State terminated, which could disrupt State services and operations. The Maryland Department of Transportation (MDOT), for instance, notes that many of its purchases of replacement parts are from original equipment manufacturers, for which reliable alternatives are not necessarily available. If any of those suppliers refuses to join the Basic Pilot Program, MDOT operations could be adversely affected.

The Department of General Services (DGS) notes that, even though the bill authorizes BPW to conduct audits of employers with State contracts to ensure that they comply with the bill's provisions, it expects BPW, to the extent that it chooses to conduct audits, to shift that responsibility to DGS. DGS indicates that it would require one additional position to track whether State contractors comply with the provisions of the bill, but did not specify a cost for that position.

The Department of Legislative Services notes that the bill does not require BPW to conduct audits, but rather only allows the board to do so. It also does not explicitly give DGS a role in monitoring whether State contractors comply with its provisions. However, it is not unreasonable to expect that DGS, given its central role in State procurement, could be called upon to monitor contractor compliance with the provisions of this bill. If that occurs, DGS could require an additional position, which could be requested through the State budget process.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, U.S. General Accounting Office, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts, August 2005*; Department of Legislative Services

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