Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 344   (Delegate McDonough)

Health and Government Operations

State Government - E-Verify Program

This bill declares a public policy that State and local agencies and contractors may not allow unauthorized aliens to perform work under specified State or local contracts or grants. It also requires all State and local contractors and subcontractors and any person receiving a State or local governmental 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 $120,300 in FY 2013 for enforcement purposes. Out-year costs reflect full salaries, inflation, and employee turnover. No material increase in general fund revenues due to the bill's penalty provisions.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	$0	$0	$0	$0	$0
GF Expenditure	120,300	150,100	160,100	167,400	175,000
Net Effect	($120,300)	($150,100)	($160,100)	($167,400)	($175,000)

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

Local Effect: 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: Minimal.

<center>**Analysis**</center>

Bill Summary: The bill bars State or local contractors, subcontractors, and grantees from employing or contracting with independently, an individual 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 and agricultural products shipped as bulk cargo.

Before receiving payment from the State or a local government, 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 DLLR. The maximum 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 maximum 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:

- require all subcontractors to comply with the bill's provisions and cooperate with the commissioner or contracting agency in investigating alleged violations of that requirement;
- act in good faith in the event of a first violation; or
- comply 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 it 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.

An analysis of E-Verify cases from federal fiscal 2010 found that 98.3% of queries were confirmed as work authorized. Of the nearly 225,000 cases that were initially found not to be authorized, almost 47,000 (21%) were later confirmed as work eligible on appeal; the vast majority of the remaining cases were not contested. Other reports, particularly a 2010 report by GAO have found continued challenges in recognizing fraud and potential capacity challenges if E-Verify participation is required of all employers.

In federal fiscal 2011, E-Verify processed more than 17 million queries, an increase of 4 million cases over fiscal 2010. More than 300,000 employers currently use E-Verify, and about 5,000 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 September 8, 2009. Seventeen states require at least some employers to use E-Verify, either through statute or executive order, but requirements vary. In six states (Alabama, Arizona, Georgia, Mississippi, South Carolina, and Tennessee), the requirement extends to all public and private employers; the remaining 11 states require different combinations of state agencies or state contractors and subcontractors to use E-Verify.

Arizona has received heightened attention for its E-Verify legislation because the Legal Arizona Workers Act (LAWA) was the first to require that all employers use E-Verify. The Arizona legislation took effect in January 2008, and it has been credited with reducing the state's working-age Hispanic noncitizen population by 17%, or 92,000 individuals, most of whom are presumed to be unauthorized. These effects are in addition to any reduction in the same population due to the economic recession that was concurrent with LAWA's implementation. The evaluation of LAWA by the Public Policy Institute of California (PPIC) also found that the law likely pushed many Hispanic noncitizens into the informal or underground economy as self-employed independent contractors so they would not be subject to E-Verify searches. PPIC also concluded that LAWA had neither positive nor negative effects on employment rates for either American- or foreign-born citizens.

In March 2011, the U.S. Citizenship and Immigration Services unveiled the Self Check program, a web-based portal that allows individuals to confirm their own work eligibility status. Self Check was initially available in just five states but was later expanded to an additional 16 states, including Maryland.

State Fiscal Effect: The bill requires the commissioner to enforce the bill's provisions and assess civil penalties against violators. 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 $120,264 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring one wage and hour investigator and one assistant Attorney General to enforce the bill's provisions. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salary and Fringe Benefits	$106,269
Ongoing Operating Costs	<u>13,995</u>
Total FY 2013 State Expenditures	**$120,264**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

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: Assuming that the vast majority of small businesses comply with the bill's requirements and are not subject to civil penalties, the effects on them are minimal. State contractors and firms that receive State or local grants must use E-Verify to confirm the employment eligibility of employees who work on State or local contracts. E-Verify is a free service, and the requirement to use it is not expected to place an undue burden on employers; many may already participate.

Additional Information

Prior Introductions: HB 761 of 2011 received an unfavorable report from the House Health and Government Operations Committee. Its cross file, SB 390, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. 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 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: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; National Conference of State Legislatures; U.S. Citizenship and Immigration Services; Public Policy Institute of California; Board of Public Works; Department of Budget and Management; Department of General Services; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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