

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 345 (Delegate McDonough)  
Health and Government Operations

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State Finance and Procurement - Transportation Projects - Use of Federal E-Verify Program

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This bill declares a public policy that State and local contractors may not allow unauthorized aliens to perform work under State or local contracts funded in whole or in part by money from the Transportation Trust Fund (TTF). It also requires all State and local contractors and subcontractors on projects funded with money from TTF to register and use the federal E-Verify program.

The bill applies to contracts executed on or after October 1, 2012.

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Fiscal Summary

**State Effect:** None. Assuming State contractors on TTF-funded projects comply with the bill's provisions, the Maryland Department of Transportation (MDOT) can obtain the required contractor affirmations with existing budgeted resources. MDOT contracts with a large number of contractors for road maintenance and other services. Any contract terminations due to contractors' noncompliance may disrupt the provision of such services and the completion of TTF-funded projects. The Board of Public Works (BPW) and Maryland State Board of Contract Appeals (MSBCA) can handle any increase in debarment appeals, which are expected to be minimal, with existing resources. No effect on TTF expenditures or revenues.

**Local Effect:** Local procurement agencies can obtain the required contractor affirmations with existing budgeted resources.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** A contractor or subcontractor subject to the bill may not employ or continue to employ an individual whose eligibility for work has not been confirmed by E-Verify. State and local contractors and subcontractors subject to the bill may not receive payment until they affirm that (1) employment verification has been obtained for every individual hired during the performance period for the contract; and (2) the Social Security number of any current employee who will perform work under the contract has been verified using the Social Security Number Verification Service operated by the federal Social Security Administration, or a successor program.

A prime contractor on an affected contract must include in every subcontract a provision that requires the subcontractor, including independent contractors, to comply with the bill's requirements. State and local agencies must deny prequalification to any contractor that fails to register and participate in E-Verify.

When a contractor violates any of the bill's provisions, the contract is immediately terminated and the contractor is automatically debarred from contracting with any public agency in the State for one year. However, a prime contractor that complies with the provisions affecting subcontractors, and who cooperates with an administrative or criminal investigation of an alleged violation by a subcontractor or independent contractor, is not subject to disciplinary sanctions.

Unless administrative appeal has been delegated expressly by law to another adjudicative body, a debarred contractor may appeal the debarment to MSBCA.

### **Current Law:**

#### *Employment of Unauthorized Aliens*

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.”

### *Debarment*

A person is subject to automatic debarment from procurement with any public body in the State 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, generally involving criminal convictions, failing to perform according to contract provisions, or having been debarred by the federal government, debarment from entering into procurement contracts with the State is subject to the determination of 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 prior to being debarred. A person who is automatically debarred also has an opportunity for a hearing on whether the basis for debarment exists, but only after being notified that automatic debarment has been instituted.

A debarment imposed due to a criminal conviction terminates if the conviction that is the basis for the debarment is reversed or overturned on appeal. A debarred person may petition to BPW for termination of the debarment after five years have passed or, if the debarment is for a specified period of time, after half of the debarment period has passed.

### **Background:**

#### *Transportation Trust Fund*

TTF is a nonlapsing special fund that provides funding for transportation. It consists of tax and fee revenues, operating revenues, bond proceeds, and fund transfers. MDOT issues bonds backed by TTF revenues and invests the TTF fund balance to generate investment income. The Maryland Transit Administration, Motor Vehicle Administration, Maryland Port Administration, and Maryland Aviation Administration generate operating revenues that cover a portion of their operating expenditures.

The tax and fee revenues include motor fuel taxes, titling taxes, vehicle registration fees, a portion of the rental car sales and corporate income taxes, and other miscellaneous motor vehicle fees. A portion of these TTF revenues is credited to the Gasoline and Motor Vehicle Revenue Account and is distributed to local jurisdictions, the general fund, and MDOT as highway user revenues. The funds retained by TTF support

MDOT's capital program, debt service, and operating costs. Local governments use highway user revenues to help develop and maintain local transportation projects.

### *E-Verify*

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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; National Conference of State Legislatures; U.S. Citizenship and Immigration Services; Public Policy Institute of California; State Board of Contract Appeals; Department of Budget and Management; Department of General Services; Maryland Department of Transportation; Department of Legislative Services

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