



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 637

PRINTERS NO. 2341

PRIME SPONSOR: Ward

COST / (SAVINGS)

FUND	FY 2011/12	FY 2012/13
General Fund	\$0	\$681,000
Political Subdivision Funds	\$0	\$0

SUMMARY: Establishes the Public Works Employment Verification Act, which requires contractors and subcontractors on public works projects to verify new employee eligibility for employment using E-Verify. This legislation would take effect on January 1, 2013.

ANALYSIS: This legislation would establish the Public Works Employment Verification Act, which requires contractors and subcontractors on public works projects to verify new employee eligibility for employment using E-Verify.

Duty of Public Works Contractors and Subcontractors: This legislation would require public works contractors and subcontractors to participate in EVP and use EVP to verify employment eligibility of each new employee. The bill requires the Department of General Services (DGS) to post on its Internet website information regarding the requirements of federal law governing the use of EVP.

In performing the required employee verification under this proposal, public works contractors and subcontractors must not discriminate on the basis of race, ethnicity, color, or national origin.

Verification: As a precondition of being awarded a contract for a public work, a public works contractor must provide the public body with a verification form acknowledging its responsibilities in relation to verification of employment eligibility through EVP. Prior to commencing work on a public works project, a subcontractor must provide the applicable public body with a verification form. Each verification form must include the following:

1. A certification that the information in the form is true and correct and that the individual signing the form understands that the submission of false information will subject the individual and/ or contractor/ subcontractor to sanctions.
2. The signature of a representative of the contractor/ subcontractor who has sufficient knowledge and authority to make the representations found in the statement.

Violations: Violations of this proposed act include:

1. Failure to verify the employment eligibility of a new employee through EVP in accordance with federal law;
2. Failure to provide the verification form to the applicable public body.

Enforcement and Sanctions: DGS is responsible for enforcing the provisions of this proposed act and must accept, review and investigate, in a timely manner, complaints that a public works contractor or subcontractor has violated the rules established above.

To ensure compliance, the Secretary will conduct complaint-based and random audits of public works contractors and subcontractors.

Penalties for violations of the requirement that public works contractors and subcontractors use EVP to verify the employment eligibility of new employees include:

1. For a first violation, a warning letter will be issued to the contractor/ subcontractor by the Secretary detailing the violation. The letter will be posted on the Department's website.
2. For a second offense, the public works contractor or subcontractor will be debarred from public work for 30 days.
3. For a third or subsequent violation, the contractor or subcontractor will be debarred from public work for a period of not less than 180 days and not more than one year.
4. In the case of an alleged willful violation, if the Commonwealth Court finds that a public works contractor or subcontractor engaged in a willful violation, the court will order the public works contractor or subcontractor to be debarred from public work for a period of three years.

A public works contractor or subcontractor that fails to submit a required verification form will be subject to a civil penalty of not less than \$250 and not more than \$1,000 for each violation.

Protection from Retaliation: The legislation establishes that it is unlawful for a public works contractor or subcontractor to discharge, threaten, retaliate, or discriminate against an employee regarding terms of employment because the employee:

1. Participates in an investigation, hearing or inquiry held by the Secretary or other governmental authority; or
2. Reports or makes a complaint regarding a violation of this proposed act to a public works contractor, subcontractor, or governmental authority.

Employees who suffer retaliation or discrimination may bring legal action within a 180-day period from the date the employee knew of such retaliation/ discrimination.

If the employee prevails in the legal action, he or she will be entitled to:

1. Reinstatement (if applicable).

2. Restitution equal to three times the amount of the employee's wages and fringe benefits from the date of the violation.
3. Reasonable attorney fees and costs of the action.
4. Any other legal and equitable relief as the court deems appropriate.

Good Faith Immunity: The legislation grants a public works contractor or subcontractor that relies in good faith on EVP to verify employment eligibility of a new employee immunity from sanctions authorized under this proposed act.

FISCAL IMPACT: According to the Department of General Services, this legislation would cost approximately \$1,362,000 in the first full year after enactment. Costs would include the addition of new personnel and some operating expenses to perform the tasks required by the legislation. Since the legislation takes effect on January 1, 2013, it is assumed that the Fiscal Year 2012-13 cost would be 50% of the projected annual cost or \$681,000.

The penalty for a violation of Section 5(2) would range from a minimum of \$250 to not more than \$1,000 for each violation. That provision would increase some revenue for the Department to offset some of the costs incurred. That revenue is indeterminable at this point.

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House Appropriations Committee (R)

DATE: June 29, 2012

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.