

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 637

**PRINTER'S NO.** 992

**AMOUNT**

\$633,000

**FUND**

General

**DATE INTRODUCED**

February 24, 2011

**PRIME SPONSOR**

Senator Ward

**HISTORY OF BILL**

Referred to STATE GOVERNMENT, Feb. 24, 2011

Reported as amended, April 6, 2011

First consideration, April 6, 2011

Re-referred to APPROPRIATIONS, May 4, 2011

Re-reported as committed, May 9, 2011

**DESCRIPTION AND PURPOSE OF BILL**

Senate Bill 637 amends the Procurement Code by adding a subchapter to address employment eligibility verification of employees by public works contractors as a precondition of being awarded a contract for public work. The bill defines "EVP" as the E-Verify Program operated by the Department of Homeland Security that electronically verifies employment eligibility for employees. The bill defines "NVS" as the Social Security Number Verification Service operated by the Social Security Administration.

The public works contractor, as a precondition of being awarded a contract for public work, must provide a verification statement in which it shall represent the following:

1. The public works contractor has verified the employment eligibility of all its existing employees for wage reporting purposes through NVS.
2. The public works contractor has verified the employment eligibility of a new employee for employment purposes prior to commencement of work by the new employee through EVP.
3. The public works contractor will provide the Commonwealth agency with subcontractor verification statements.
4. The public works contractor will provide a certification from the Department of Labor and Industry (L & I) verifying that the contractor has not previously violated this subchapter.

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The public works contractor must require a subcontractor to provide a verification statement containing the same information as enumerated above. The subcontractor's verification statement must be provided to the public works contractor prior to the commencement of any work by the subcontractor on the public works project.

The Secretary of Labor and Industry must prescribe the form of the verification statement. The verification statement must include a certification by the person signing the statement that the information is true and accurate and that the person has sufficient knowledge and authority to make these representations and certification.

The legislation prohibits discrimination against any employee by a public works contractor or subcontractor based on race, ethnicity, color or national origin.

The following constitutes violations of this subchapter:

1. Employment of an employee whose employment has not been verified by NVS and EVP.
2. Use of a subcontractor prior to the submission of a verification statement.
3. Commencement of work by the subcontractor prior to submitting a verification statement.
4. Making a false statement or misrepresentation in a verification statement.

The Secretary of Labor and Industry is required to enforce the provisions of this subchapter. The Secretary must accept, review, and investigate in a timely manner any credible complaint that a public works contractor or subcontractor violated a provision in this subchapter. The Secretary must ensure compliance with the requirements of this subchapter by conducting both complaint-based and random audits of public works contractors and subcontractors in the Commonwealth, utilizing NVS and EVP to verify employment eligibility. Sanctions and penalties are specified for violations of this subchapter.

The legislation prohibits retaliation by a public works contractor or subcontractor against an employee based on compensation for the employee's participation in an investigation, hearing, report, or complaint. An employee who suffers retaliation or discrimination may bring action in a court of common pleas.

Good faith immunity is provided to a public works contractor or subcontractor who relies on NVS or EVP procedures to verify employment eligibility for employees, and has incorrect information provided to them through those procedures.

The Act takes effect in 60 days.

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### **FISCAL IMPACT:**

The Department of Labor and Industry is required to enforce the provisions of this subchapter. The Department must review and investigate complaints and ensure compliance through complaint-based and random audits of public works contractors and subcontractors, using NVS and EVP.

The Department has stated that they will require additional staff to set up an enforcement office. The costs for attorneys, investigators and other expenses are estimated to total about \$633,000.