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PROPOSED SENATE COMMITTEE SUBSTITUTE H36-PCS70253-RU-6

Short Title: Government Contractors Must Use E-Verify.

(Public)

Sponsors:

Referred to:

February 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE COUNTIES, CITIES, AND ENTITIES WHO CONTRACT WITH A  
3 GOVERNMENT AGENCY IN THIS STATE FOR CONSTRUCTION OR REPAIR  
4 WORK AND THEIR SUBCONTRACTORS TO USE THE FEDERAL E-VERIFY  
5 PROGRAM TO VERIFY THE WORK AUTHORIZATION OF NEWLY HIRED  
6 EMPLOYEES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 64 of the General Statutes is amended by adding a new  
9 Article to read:

10 "Article 1.

11 Various Provisions Related to Aliens."

12 **SECTION 2.** G.S. 64-1 through G.S. 64-5 are recodified as Article 1 of Chapter 64  
13 of the General Statutes, as created by Section 1 of this act.

14 **SECTION 3.** Chapter 64 of the General Statutes is amended by adding a new  
15 Article to read:

16 "Article 2.

17 "Verification of Work Authorization by Entities That Contract With Government Agencies.

18 **§ 64-10. Definitions.**

19 The following definitions apply in this Article:

- 20 (1) Contractor. – A person or entity that employs at least 25 full-time employees  
21 and that contracts with a public entity for construction or repair work.  
22 (2) E-Verify. – The federal E-Verify program operated by the United States  
23 Department of Homeland Security and other federal agencies, or any  
24 successor or equivalent program used to verify the work authorization of  
25 newly hired employees pursuant to federal law.  
26 (3) Public entity. – A State agency, department, institution, board, commission,  
27 university, community college, local education agency, county, city, or any  
28 other political subdivision of this State. The term also includes any board,  
29 commission, authority, or other body created by any of these entities.



1           (4) Subcontractor. – Any person or entity that employs at least 25 full-time  
2 employees, other than a contractor, who furnishes construction or repair  
3 work to a contractor or another subcontractor with a good faith and  
4 reasonable belief that the work was furnished as part of a contract between a  
5 contractor and a public entity. This term includes any person who meets this  
6 definition regardless of the tier of the subcontractor.

7 **"§ 64-11. Contractors contracting with public entities must use E-Verify; certification**  
8 **required.**

9           (a) Contractors Must Use E-Verify. – Notwithstanding any other provision of law, a  
10 public entity may not enter into a contract for construction or repair work unless the contractor  
11 registers and participates in E-Verify to verify the work authorization of new employees hired  
12 to work in the United States.

13           (b) Certification Required. – Within 10 business days of any contract subject to this  
14 section being entered into, the contractor shall certify to the public entity in writing all of the  
15 following:

16               (1) That the contractor is in compliance with subsection (a) of this section.

17               (2) That any subcontractor with which the contractor enters into a subcontract  
18 concerning the contract between the contractor and the public entity is in  
19 compliance with, or will be in compliance with, G.S. 64-12.

20               (3) That the contractor has not been convicted pursuant to subsection (d) of this  
21 section within one year prior to making the certification.

22           (c) Duty to Provide Subcontractor Certifications to Public Entity. – Until completion of  
23 a contract, on a monthly basis, a contractor shall submit to the public entity any certifications  
24 received pursuant to G.S. 64-12.

25           (d) Knowingly Submitting False Certification. – A person who knowingly submits a  
26 false certification to a public entity under this section shall be guilty of a Class 1 misdemeanor.  
27 A contractor shall not be guilty under this subsection for submitting to the public entity a  
28 subcontractor's false certification, or for failing to investigate or verify a subcontractor's  
29 certification. A person shall not be guilty under this subsection if the violation is the result of a  
30 clerical mistake or other inadvertence.

31           (e) Effect of Failure to Make Certification. – The failure of a contractor to provide the  
32 certification required by subsection (b) of this section within the time period set forth in that  
33 subsection shall render the contract voidable at the option of the public entity.

34 **"§ 64-12. Subcontractors contracting with public entities must use E-Verify; certification**  
35 **required.**

36           (a) Subcontractors Must Use E-Verify. – Notwithstanding any other provision of law, a  
37 subcontractor shall register and participate in E-Verify to verify the work authorization of new  
38 employees hired to work in the United States.

39           (b) Certification Required. – Within 10 business days of commencing performance  
40 under a subcontract with a contractor or another subcontractor under or pursuant to a contract  
41 between a contractor and a public entity, the subcontractor shall certify to the contractor in  
42 writing all of the following:

43               (1) That the subcontractor is in compliance with subsection (a) of this section.

44               (2) That the subcontractor has not been convicted pursuant to subsection (c) of  
45 this section within one year prior to making the certification.

46           (c) Knowingly Submitting False Certification. – Any person who knowingly submits a  
47 false certification under this section shall be guilty of a Class 1 misdemeanor. A person shall  
48 not be guilty under this subsection if the violation is the result of a clerical mistake or other  
49 inadvertence.

50           (d) Effect of Failure to Make Certification. – The failure of a subcontractor to provide  
51 the certification required by subsection (b) of this section within the time period set forth in that

1 subsection shall preclude the subcontractor from maintaining a civil action against any person  
2 or entity for amounts owed to the subcontractor under or in connection with the subcontract.

3 **"§ 64-13. Department of Administration shall develop standard certification form.**

4 The Department of Administration shall develop a standard form on which the certifications  
5 required by this Article shall be made. Contractors and subcontractors shall use this form when  
6 making certifications pursuant to this Article."

7 **SECTION 4.** G.S. 153A-449 reads as rewritten:

8 **"§ 153A-449. Contracts with private ~~entities~~; contractors must use E-Verify.**

9 (a) Authority. – A county may contract with and appropriate money to any person,  
10 association, or corporation, in order to carry out any public purpose that the county is  
11 authorized by law to engage in.

12 (b) Contractors Must Use E-Verify. – No county may enter into a contract unless the  
13 contractor complies with the requirements of Article 2 of Chapter 64 of the General Statutes, if  
14 applicable."

15 **SECTION 5.** G.S. 160A-20.1 reads as rewritten:

16 **"§ 160A-20.1. Contracts with private ~~entities~~; contractors must use E-Verify.**

17 (a) Authority. – A city may contract with and appropriate money to any person,  
18 association, or corporation, in order to carry out any public purpose that the city is authorized  
19 by law to engage in.

20 (b) Contractors Must Use E-Verify. – No city may enter into a contract unless the  
21 contractor complies with the requirements of Article 2 of Chapter 64 of the General Statutes, if  
22 applicable."

23 **SECTION 6.** G.S. 143-129 is amended by adding a new subsection to read:

24 "(j) No contract subject to this section may be awarded by any board or governing body  
25 of the State, institution of State government, or any political subdivision of the State unless the  
26 contractor complies with the requirements of Article 2 of Chapter 64 of the General Statutes, if  
27 applicable."

28 **SECTION 7.** Article 5 of Chapter 153A of the General Statutes is amended by  
29 adding a new section to read:

30 **"§ 153A-99.1. County verification of employee work authorization.**

31 (a) Counties Must Use E-Verify. – Each county shall register and participate in  
32 E-Verify to verify the work authorization of new employees hired to work in the United States.

33 (b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal  
34 E-Verify program operated by the United States Department of Homeland Security and other  
35 federal agencies, or any successor or equivalent program used to verify the work authorization  
36 of newly hired employees pursuant to federal law.

37 (c) Nondiscrimination. – This section shall be enforced without regard to race, religion,  
38 gender, ethnicity, or national origin."

39 **SECTION 8.** Article 7 of Chapter 160A of the General Statutes is amended by  
40 adding a new section to read:

41 **"§ 160A-169.1. Municipality verification of employee work authorization.**

42 (a) Municipalities Must Use E-Verify. – Each municipality shall register and participate  
43 in E-Verify to verify the work authorization of new employees hired to work in the United  
44 States.

45 (b) E-Verify Defined. – As used in this section, the term 'E-Verify' means the federal  
46 E-Verify program operated by the United States Department of Homeland Security and other  
47 federal agencies, or any successor or equivalent program used to verify the work authorization  
48 of newly hired employees pursuant to federal law.

49 (c) Nondiscrimination. – This section shall be enforced without regard to race, religion,  
50 gender, ethnicity, or national origin."

1                   **SECTION 9.** This act becomes effective January 1, 2012, and applies to bids  
2 submitted and contracts entered into on or after that date.