

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

HOUSE BILL 36
PROPOSED COMMITTEE SUBSTITUTE H36-PCS70220-RW-43

Short Title: Government Contractors Must Use E-Verify.

(Public)

Sponsors:

Referred to:

February 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE COUNTIES, MUNICIPALITIES, ENTITIES WHO CONTRACT WITH A GOVERNMENT AGENCY IN THIS STATE, AND THEIR SUBCONTRACTORS TO USE THE FEDERAL E-VERIFY PROGRAM TO VERIFY THE WORK AUTHORIZATION OF NEWLY HIRED EMPLOYEES.

The General Assembly of North Carolina enacts:

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

"Article 1.

Various Provisions Related to Aliens."

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

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

"Article 2.

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

§ 64-10. Definitions.

The following definitions apply in this Article:

- (1) Contractor. – A person or entity that contracts with a public entity for construction or repair work, for the purchase of apparatus, supplies, materials, or equipment, or for the purchase of any other services or products.
- (2) E-Verify. – The federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
- (3) Public entity. – A State agency, department, institution, board, commission, university, community college, local education agency, county, city, or any other political subdivision of this State. The term also includes any board, commission, authority, or other body created by any of these entities.
- (4) Subcontractor. – Any person or entity other than a contractor who furnishes construction or repair work, apparatus, supplies, materials, equipment, services, or other products to a contractor or another subcontractor with a good faith and reasonable belief that the goods or services were intended for



* H 3 6 - P C S 7 0 2 2 0 - R W - 4 3 *

1 use in the contract between a contractor and a public entity. This term
2 includes any person who meets this definition regardless of the tier of the
3 subcontractor.

4 **"§ 64-11. Contractors must use E-Verify; certification required.**

5 (a) Contractors Must Use E-Verify. – Notwithstanding any other provision of law, a
6 public entity may not enter into a contract for construction or repair work, for the purchase of
7 apparatus, supplies, materials, or equipment, or for the purchase of any other services or
8 products unless the contractor registers and participates in E-Verify to verify the work
9 authorization of new employees.

10 (b) Certification Required. – At the time any contract subject to this section is entered
11 into, the contractor shall certify to the public entity in writing all of the following:

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

13 (2) That any subcontractor with which the contractor has entered into a
14 subcontract concerning the contract between the contractor and the public
15 entity has certified to the contractor in writing that it is in compliance with
16 G.S. 64-12. The contractor shall submit copies of these certifications to the
17 public entity at the time the contract is entered into.

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

20 (c) Duty to Update Subcontractor Certifications. – Until completion of a contract, a
21 contractor shall submit to the public entity certifications received pursuant to G.S. 64-12 on a
22 monthly basis.

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

29 **"§ 64-12. Subcontractors must use E-Verify; certification required.**

30 (a) Subcontractors Must Use E-Verify. – Notwithstanding any other provision of law, a
31 subcontractor shall register and participate in E-Verify to verify the work authorization of new
32 employees.

33 (b) Certification Required. – Within seven days of first furnishing construction or repair
34 work, apparatus, supplies, materials, equipment, services, or other products to a contractor or
35 another subcontractor under or pursuant to a contract between a contractor and a public entity,
36 the subcontractor shall certify to the contractor in writing all of the following:

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

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

40 (c) Knowingly Submitting False Certification Is a Felony. – Any person who
41 knowingly submits a false certification under this section shall be guilty of a Class I felony. A
42 person shall not be guilty under this subsection if the violation is the result of a clerical mistake
43 or other inadvertence.

44 (d) Effect of Failure to Make Certification. – The failure of a subcontractor to provide
45 the certification required by subsection (b) of this section shall preclude the subcontractor from
46 maintaining a civil action against any person or entity for amounts owed to the subcontractor
47 under or in connection with the subcontract."

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

49 **"§ 153A-449. Contracts with private entities; contractors must use E-Verify.**

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

4 (b) Contractors Must Use E-Verify. – No county may enter into a contract unless the
5 contractor complies with the requirements of G.S. 64-11."

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

7 "**§ 160A-20.1. Contracts with private entities; contractors must use E-Verify.**

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

11 (b) Contractors Must Use E-Verify. – No city may enter into a contract unless the
12 contractor complies with the requirements of G.S. 64-11."

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

14 "(j) No contract subject to this section may be awarded by any board or governing body
15 of the State, institution of State government, or any political subdivision of the State unless the
16 contractor complies with the requirements of G.S. 64-11."

17 **SECTION 7.** Article 3 of Chapter 143 of the General Statutes is amended by
18 adding a new section to read:

19 "**§ 143-48.5. Contractors must use E-Verify.**

20 No contract subject to the provisions of this Article may be entered into unless the
21 contractor complies with the requirements of G.S. 64-11."

22 **SECTION 8.** G.S. 147-33.95 is amended by adding a new subsection to read:

23 "(g) No contract subject to the provisions of this Part may be entered into unless the
24 contractor complies with the requirements of G.S. 64-11."

25 **SECTION 9.** Article 5 of Chapter 153A of the General Statutes is amended by
26 adding a new section to read:

27 "**§ 153A-99.1. County verification of employee work authorization.**

28 (a) Counties Must Use E-Verify. – Each county shall register and participate in
29 E-Verify to verify the work authorization of new employees.

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

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

36 **SECTION 10.** Article 7 of Chapter 160A of the General Statutes is amended by
37 adding a new section to read:

38 "**§ 160A-169.1. City verification of employee work authorization.**

39 (a) Cities Must Use E-Verify. – Each city shall register and participate in E-Verify to
40 verify the work authorization of new employees.

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

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

47 **SECTION 11.** Sections 9 and 10 of this act become effective on October 1, 2011.
48 The remainder of this act becomes effective in accordance with the following schedule and
49 applies to all bids submitted and all contracts entered into on or after that date:

50 (1) October 1, 2011, for contractors that employ 500 or more employees as of
51 that date.

- 1 (2) April 1, 2012, for contractors that employ 20 or more employees but fewer
2 than 500 employees as of that date.
3 (3) October 1, 2012, for all other contractors.