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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.
30 (4) Subcontractor. – Any person or entity that employs at least 25 full-time
31 employees, other than a contractor, who furnishes construction or repair
32 work to a contractor or another subcontractor with a good faith and
33 reasonable belief that the work was furnished as part of a contract between a



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

3 **"§ 64-11. Contractors contracting with public entities must use E-Verify; certification**
4 **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 unless the contractor
7 registers and participates in E-Verify to verify the work authorization of new employees hired
8 to work in the United States.

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

- 12 (1) That the contractor is in compliance with subsection (a) of this section.
- 13 (2) That any subcontractor with which the contractor enters into a subcontract
14 concerning the contract between the contractor and the public entity is in
15 compliance with, or will be in compliance with, G.S. 64-12.
- 16 (3) That the contractor has not been convicted pursuant to subsection (d) of this
17 section within one year prior to making the certification.

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

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

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

30 **"§ 64-12. Subcontractors contracting with public entities must use E-Verify; certification**
31 **required.**

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

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

- 39 (1) That the subcontractor is in compliance with subsection (a) of this section.
- 40 (2) That the subcontractor has not been convicted pursuant to subsection (c) of
41 this section within one year prior to making the certification.

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

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

50 **"§ 64-13. Department of Administration shall develop standard certification form.**

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

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

5 "**§ 153A-449. Contracts with private ~~entities~~entities; contractors must use E-Verify.**

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

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

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

13 "**§ 160A-20.1. Contracts with private ~~entities~~entities; contractors must use E-Verify.**

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

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

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

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

25 **SECTION 7.** 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 hired to work in the United States.

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

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

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

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

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

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