

5497

2011-2012 Regular Sessions

I N S E N A T E

May 25, 2011

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, in relation to requiring public employers to register for and participate in the E-verify program for verification of employment eligibility; and to amend the state finance law and the general municipal law, in relation to requiring persons and entities contracting with the state or a municipality to participate in such program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The civil service law is amended by adding a new section
2 153 to read as follows:
3 S 153. PUBLIC EMPLOYER VERIFICATION OF EMPLOYMENT ELIGIBILITY. 1. FOR
4 THE PURPOSES OF THIS SECTION:
5 (A) "E-VERIFY PROGRAM" MEANS THE ELECTRONIC VERIFICATION PROGRAM THAT
6 IS AUTHORIZED BY THE ILLEGAL IMMIGRATION REFORM AND IMMIGRATION RESPON-
7 SIBILITY ACT OF 1996, PUBLIC LAW 104-208, DIVISION C, SECTION 403 (A); 8
8 U.S.C. SECTION 1324 (H) (3), AND JOINTLY ADMINISTERED BY THE FEDERAL
9 DEPARTMENT OF HOMELAND SECURITY AND SOCIAL SECURITY ADMINISTRATION, OR
10 ITS SUCCESSOR PROGRAM.
11 (B) THE TERM "PUBLIC EMPLOYEE" MEANS ANY PERSON HOLDING A POSITION BY
12 APPOINTMENT OR EMPLOYMENT IN THE SERVICE OF A PUBLIC EMPLOYER.
13 (C) THE TERM "PUBLIC EMPLOYER" MEANS (I) THE STATE OF NEW YORK, (II) A
14 COUNTY, CITY, TOWN, VILLAGE OR ANY OTHER POLITICAL SUBDIVISION OR CIVIL
15 DIVISION OF THE STATE, (III) A SCHOOL DISTRICT OR ANY GOVERNMENTAL ENTI-
16 TY OPERATING A PUBLIC SCHOOL, COLLEGE OR UNIVERSITY, (IV) A PUBLIC
17 IMPROVEMENT OR SPECIAL DISTRICT, (V) A PUBLIC AUTHORITY, COMMISSION, OR
18 PUBLIC BENEFIT CORPORATION, (VI) ANY OTHER PUBLIC CORPORATION, AGENCY OR
19 INSTRUMENTALITY OR UNIT OF GOVERNMENT WHICH EXERCISES GOVERNMENTAL
20 POWERS UNDER THE LAWS OF THE STATE, OR (VII) ANY OTHER PERSON OR ENTITY
21 ACTING ON BEHALF OF AN ENTITY LISTED IN ANY OTHER SUBPARAGRAPH OF THIS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 PARAGRAPH AND WHICH RECEIVES PUBLIC FUNDS, OR ANY PERSON OR ENTITY
2 PERFORMING PUBLIC WORK PURSUANT TO ARTICLE EIGHT OF THE LABOR LAW.

3 2. EVERY PUBLIC EMPLOYER SHALL REGISTER FOR AND PARTICIPATE IN THE
4 E-VERIFY PROGRAM FOR THE PURPOSE OF VERIFYING THE EMPLOYMENT ELIGIBILITY
5 STATUS OF EVERY PROSPECTIVE PUBLIC EMPLOYEE. NO PUBLIC EMPLOYEE SHALL BE
6 APPOINTED OR EMPLOYED UNTIL THE PUBLIC EMPLOYER SHALL HAVE VERIFIED HIS
7 OR HER ELIGIBILITY FOR EMPLOYMENT PURSUANT TO THE E-VERIFY PROGRAM.

8 3. THE COMMISSION, IN CONSULTATION WITH THE ATTORNEY GENERAL, SHALL
9 PROMULGATE AND ADMINISTER SUCH RULES AND REGULATIONS AS IT MAY DEEM
10 APPROPRIATE AND NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.
11 THE DEPARTMENT SHALL BE AUTHORIZED TO INSPECT ANY PUBLIC EMPLOYER'S
12 RECORDS CONCERNING SUCH EMPLOYER'S REGISTRATION AND PARTICIPATION IN THE
13 E-VERIFY PROGRAM.

14 4. IF AFTER INVESTIGATION THE COMMISSION MAKES A FINDING THAT A PUBLIC
15 EMPLOYER HAS WILLFULLY OR INTENTIONALLY FAILED TO REGISTER FOR OR
16 PARTICIPATE IN THE E-VERIFY PROGRAM, THE COMMISSION SHALL ISSUE AN
17 ORDER, TO THE CHIEF EXECUTIVE OFFICER OF THE PUBLIC EMPLOYER, DESCRIBING
18 THE NATURE OF THE VIOLATION AND ORDERING COMPLIANCE WITHIN THIRTY DAYS.
19 ANY FAILURE TO COMPLY WITH SUCH PERIOD SHALL BE REFERRED TO THE ATTORNEY
20 GENERAL WHO SHALL COMMENCE AN ACTION IN SUPREME COURT TO ENFORCE THE
21 PROVISIONS OF THIS SECTION.

22 S 2. The state finance law is amended by adding a new section 135-b to
23 read as follows:

24 S 135-B. STATE CONTRACTOR VERIFICATION OF EMPLOYMENT ELIGIBILITY. 1.
25 FOR THE PURPOSES OF THIS SECTION, "E-VERIFY PROGRAM" MEANS THE ELECTRON-
26 IC VERIFICATION PROGRAM THAT IS AUTHORIZED BY THE ILLEGAL IMMIGRATION
27 REFORM AND IMMIGRATION RESPONSIBILITY ACT OF 1996, PUBLIC LAW 104-208,
28 DIVISION C, SECTION 403(A); 8 U.S.C. SECTION 1324 (A)(H)(3), AND JOINTLY
29 ADMINISTERED BY THE FEDERAL DEPARTMENT OF HOMELAND SECURITY AND SOCIAL
30 SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

31 2. A CLAUSE SHALL BE INSERTED IN ALL SPECIFICATIONS OR CONTRACTS MADE
32 OR AWARDED BY THE STATE OR ANY PUBLIC DEPARTMENT, AGENCY OR OFFICIAL
33 THEREOF, OR BY A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION FOR WORK
34 OR SERVICES PERFORMED OR TO BE PERFORMED, OR FOR GOODS SOLD OR TO BE
35 SOLD PURSUANT TO WHICH ANY CONTRACTOR, TO WHOM ANY CONTRACT SHALL BE
36 LET, GRANTED OR AWARDED, AGREES AS A MATERIAL CONDITION OF THE CONTRACT,
37 THAT SUCH CONTRACTOR AND EVERY SUBSTANTIALLY OWNED OR AFFILIATED PERSON,
38 FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION, AND EVERY
39 SUBCONTRACTOR OF SUCH CONTRACTOR HAS REGISTERED FOR AND PARTICIPATES IN
40 THE E-VERIFY PROGRAM.

41 3. ANY SUCH CONTRACT SHALL BE RENDERED FORFEIT AND VOID BY THE STATE
42 COMPTROLLER, IF THE DEPARTMENT OF LABOR OR THE DEPARTMENT OF LAW SHALL
43 FIND THAT SUCH PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR
44 CORPORATION HAS FAILED TO REGISTER FOR OR PARTICIPATE IN THE E-VERIFY
45 PROGRAM.

46 4. NOTHING CONTAINED IN THIS SECTION SHALL OPERATE TO IMPAIR ANY
47 EXISTING CONTRACT, EXCEPT THAT ANY RENEWAL, AMENDMENT OR MODIFICATION OF
48 SUCH CONTRACT OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION
49 SHALL BE SUBJECT TO THE CONDITIONS SPECIFIED IN THIS SECTION.

50 S 3. The general municipal law is amended by adding a new section
51 103-g to read as follows:

52 S 103-G. MUNICIPAL CONTRACTOR VERIFICATION FOR EMPLOYMENT ELIGIBILITY.
53 1. FOR THE PURPOSES OF THIS SECTION, "E-VERIFY PROGRAM" MEANS THE ELEC-
54 TRONIC VERIFICATION PROGRAM THAT IS AUTHORIZED BY THE ILLEGAL IMMI-
55 GRATION REFORM AND IMMIGRATION RESPONSIBILITY ACT OF 1996, PUBLIC LAW
56 104-208, DIVISION C, SECTION 403(A); 8 U.S.C. SECTION 1324(A)(H)(3), AND

1 JOINTLY ADMINISTERED BY THE FEDERAL DEPARTMENT OF HOMELAND SECURITY AND
2 SOCIAL SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

3 2. A CLAUSE SHALL BE INSERTED IN ALL SPECIFICATIONS OR CONTRACTS MADE
4 OR AWARDED BY A POLITICAL SUBDIVISION, FIRE COMPANY OR VOLUNTARY AMBU-
5 LANCE SERVICE, OR ANY PUBLIC DEPARTMENT, AGENCY OR OFFICIAL THEREOF FOR
6 WORK OR SERVICES PERFORMED OR TO BE PERFORMED, OR FOR GOODS SOLD OR TO
7 BE SOLD PURSUANT TO WHICH ANY CONTRACTOR, TO WHOM ANY CONTRACT SHALL BE
8 LET, GRANTED OR AWARDED, AGREES, AS A MATERIAL CONDITION OF THE
9 CONTRACT, THAT SUCH CONTRACTOR AND EVERY SUBSTANTIALLY OWNED OR AFFIL-
10 IATED PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPO-
11 RATION, AND EVERY SUBCONTRACTOR OF SUCH CONTRACTOR HAS REGISTERED FOR
12 AND PARTICIPATES IN THE E-VERIFY PROGRAM.

13 3. ANY SUCH CONTRACT SHALL BE RENDERED FORFEIT AND VOID BY THE STATE
14 COMPTROLLER, IF THE DEPARTMENT OF LABOR OR THE DEPARTMENT OF LAW SHALL
15 FIND THAT SUCH PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR
16 CORPORATION HAS FAILED TO REGISTER FOR OR PARTICIPATE IN THE E-VERIFY
17 PROGRAM.

18 4. NOTHING CONTAINED IN THIS SECTION SHALL OPERATE TO IMPAIR ANY
19 EXISTING CONTRACT, EXCEPT THAT ANY RENEWAL, AMENDMENT OR MODIFICATION OF
20 SUCH CONTRACT OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION
21 SHALL BE SUBJECT TO THE CONDITIONS SPECIFIED IN THIS SECTION.

22 S 4. This act shall take effect on the first of January next succeed-
23 ing the date on which it shall have become a law, provided that, effec-
24 tive immediately, any actions necessary to implement the provisions of
25 this act on its effective date are authorized and directed to be
26 completed on or before such date.