S T A T E O F N E W Y O R K

5246

2013-2014 Regular Sessions

I N S E N A T E

May 15, 2013

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 and the labor law, in relation to requiring 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:

Section 1. The civil service law is amended by adding a new section 153 to read as follows:

S 153. PUBLIC EMPLOYER VERIFICATION OF EMPLOYMENT ELIGIBILITY. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "E-VERIFY PROGRAM" MEANS THE ELECTRONIC VERIFICATION PROGRAM THAT IS AUTHORIZED BY THE ILLEGAL IMMIGRATION REFORM AND IMMIGRATION RESPONSIBILITY ACT OF 1996, PUBLIC LAW 104-208, DIVISION C, SECTION 403 (A); 8 U.S.C. SECTION 1324 (H) (3), AND JOINTLY ADMINISTERED BY THE FEDERAL DEPARTMENT OF HOMELAND SECURITY AND SOCIAL SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

(B) THE TERM "PUBLIC EMPLOYEE" MEANS ANY PERSON HOLDING A POSITION BY APPOINTMENT OR EMPLOYMENT IN THE SERVICE OF A PUBLIC EMPLOYER.

(C) THE TERM "PUBLIC EMPLOYER" MEANS (I) THE STATE OF NEW YORK, (II) A COUNTY, CITY, TOWN, VILLAGE OR ANY OTHER POLITICAL SUBDIVISION OR CIVIL DIVISION OF THE STATE, (III) A SCHOOL DISTRICT OR ANY GOVERNMENTAL ENTITY OPERATING A PUBLIC SCHOOL, COLLEGE OR UNIVERSITY, (IV) A PUBLIC IMPROVEMENT OR SPECIAL DISTRICT, (V) A PUBLIC AUTHORITY, COMMISSION, OR PUBLIC BENEFIT CORPORATION, (VI) ANY OTHER PUBLIC CORPORATION, AGENCY OR INSTRUMENTALITY OR UNIT OF GOVERNMENT WHICH EXERCISES GOVERNMENTAL POWERS UNDER THE LAWS OF THE STATE, OR (VII) ANY OTHER PERSON OR ENTITY 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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PARAGRAPH AND WHICH RECEIVES PUBLIC FUNDS, OR ANY PERSON OR ENTITY PERFORMING PUBLIC WORK PURSUANT TO ARTICLE EIGHT OF THE LABOR LAW.

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

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

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

S 2. The labor law is amended by adding a new section 219-b to read as follows:

S 219-B. EMPLOYER VERIFICATION OF EMPLOYMENT ELIGIBILITY; E-VERIFY PROGRAM. 1. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING WORDS SHALL BE DEFINED AS FOLLOWS:

(A) "EMPLOYER" MEANS ANY PERSON, ENTITY, BUSINESS, CORPORATION, LIMITED LIABILITY COMPANY, OR ASSOCIATION EMPLOYING ANY INDIVIDUAL IN ANY OCCUPATION, INDUSTRY, TRADE, BUSINESS OR SERVICE;

(B) "EMPLOYEE" MEANS ANY PERSON OR ENTITY EMPLOYED FOR HIRE BY AN EMPLOYER IN ANY EMPLOYMENT; AND

(C) "E-VERIFY PROGRAM" MEANS THE ELECTRONIC EMPLOYMENT VERIFICATION PROGRAM THAT IS AUTHORIZED BY THE ILLEGAL IMMIGRATION REFORM AND IMMIGRATION RESPONSIBILITY ACT OF 1996, PUBLIC LAW 104-208, DIVISION C, SECTION 403(A); 8 U.S.C. SECTION 1324(A)(H)(3), AND JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

2. EVERY EMPLOYER SHALL REGISTER FOR AND PARTICIPATE IN THE E-VERIFY PROGRAM, OR ITS SUCCESSOR PROGRAM, FOR THE PURPOSE OF VERIFYING THE EMPLOYMENT ELIGIBILITY STATUS OF SUCH EMPLOYER'S NEWLY HIRED EMPLOYEES BY THE FOLLOWING DATES:

(A) FOR AN EMPLOYER WITH ONE HUNDRED OR MORE EMPLOYEES, NO LATER THAN JULY FIRST, TWO THOUSAND FOURTEEN;

(B) FOR AN EMPLOYER WITH AT LEAST FIFTY EMPLOYEES BUT FEWER THAN ONE HUNDRED EMPLOYEES, NO LATER THAN JANUARY FIRST, TWO THOUSAND FIFTEEN;

(C) FOR AN EMPLOYER WITH AT LEAST TWENTY-FIVE EMPLOYEES BUT FEWER THAN FIFTY EMPLOYEES, NO LATER THAN JANUARY FIRST, TWO THOUSAND SIXTEEN;

(D) FOR ALL OTHER EMPLOYERS, NO LATER THAN JANUARY FIRST, TWO THOUSAND SEVENTEEN.

IF AN EMPLOYER FAILS TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION, SUCH EMPLOYER SHALL BE SUBJECT TO THE CIVIL PENALTIES SET FORTH IN SUBDIVISION FOUR OF THIS SECTION.

3. THE COMMISSIONER SHALL PROMULGATE AND ADMINISTER RULES AND REGULATIONS AS HE OR SHE MAY DEEM APPROPRIATE AND NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS SECTION. THE COMMISSIONER SHALL BE AUTHORIZED TO INSPECT ANY EMPLOYER'S BUSINESS RECORDS CONCERNING SUCH EMPLOYER'S

REGISTRATION AND PARTICIPATION IN THE E-VERIFY PROGRAM. IF SUCH EMPLOYER FAILS TO REGISTER OR PARTICIPATE IN SUCH PROGRAM PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE COMMISSIONER SHALL BE AUTHORIZED TO IMPOSE THE CIVIL PENALTIES SET FORTH IN SUBDIVISION FOUR OF THIS SECTION.

4. IF AFTER INVESTIGATION THE COMMISSIONER MAKES A FINDING THAT AN EMPLOYER HAS WILLFULLY OR INTENTIONALLY FAILED TO REGISTER FOR OR PARTICIPATE IN THE E-VERIFY PROGRAM, AS REQUIRED BY SUBDIVISION TWO OF THIS SECTION, THE COMMISSIONER SHALL BY AN ORDER WHICH SHALL DESCRIBE PARTICULARLY THE NATURE OF THE VIOLATION, ASSESS THE EMPLOYER A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR THE FIRST SUCH VIOLATION AND NOT MORE THAN TWO THOUSAND DOLLARS FOR A SECOND SUCH VIOLATION. SUCH PENALTY SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT IN THE TREASURY OF THE STATE. UPON A THIRD VIOLATION, AN EMPLOYER SHALL BE SUBJECT TO THE CANCELLATION OF ANY STATE OR PUBLIC CONTRACT, RESULTING IN INELIGIBILITY FOR ANY STATE OR PUBLIC CONTRACT FOR UP TO FIVE YEARS; THE LOSS OF ANY LICENSE, PERMIT, CERTIFICATE OR OTHER DOCUMENT GRANTED TO THE EMPLOYER BY ANY AGENCY, DEPARTMENT OR GOVERNMENT ENTITY IN THE STATE OF NEW YORK FOR THE RIGHT TO DO BUSINESS IN NEW YORK FOR UP TO ONE YEAR, OR BOTH. THE EMPLOYER SHALL BE LIABLE FOR ANY ADDITIONAL COSTS INCURRED BY THE AGENCIES AND INSTITUTIONS OF THE STATE OF NEW YORK, OR ANY OF ITS POLITICAL SUBDIVISIONS, BECAUSE OF THE CANCELLATION OF THE CONTRACT OR LOSS OF ANY LICENSE OR PERMIT TO DO BUSINESS IN THE STATE.

S 3. The state finance law is amended by adding a new section 135-b to read as follows:

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

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

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

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

S 4. The general municipal law is amended by adding a new section 103-h to read as follows:

S 103-H. MUNICIPAL CONTRACTOR VERIFICATION FOR EMPLOYMENT ELIGIBILITY. 1. FOR THE PURPOSES OF THIS SECTION, "E-VERIFY PROGRAM" MEANS THE ELECTRONIC VERIFICATION PROGRAM THAT IS AUTHORIZED BY THE ILLEGAL IMMIGRATION REFORM AND IMMIGRATION RESPONSIBILITY ACT OF 1996, PUBLIC LAW

104-208, DIVISION C, SECTION 403(A); 8 U.S.C. SECTION 1324(A)(H)(3), AND JOINTLY ADMINISTERED BY THE FEDERAL DEPARTMENT OF HOMELAND SECURITY AND SOCIAL SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

2. A CLAUSE SHALL BE INSERTED IN ALL SPECIFICATIONS OR CONTRACTS MADE OR AWARDED BY A POLITICAL SUBDIVISION, FIRE COMPANY OR VOLUNTARY AMBULANCE SERVICE, OR ANY PUBLIC DEPARTMENT, AGENCY OR OFFICIAL THEREOF FOR WORK OR SERVICES PERFORMED OR TO BE PERFORMED, OR FOR GOODS SOLD OR TO BE SOLD PURSUANT TO WHICH ANY CONTRACTOR, TO WHOM ANY CONTRACT SHALL BE LET, GRANTED OR AWARDED, AGREES, AS A MATERIAL CONDITION OF THE CONTRACT, THAT SUCH CONTRACTOR AND EVERY SUBSTANTIALLY OWNED OR AFFILIATED PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION, AND EVERY SUBCONTRACTOR OF SUCH CONTRACTOR HAS REGISTERED FOR AND PARTICIPATES IN THE E-VERIFY PROGRAM.

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

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

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, provided that, effective immediately, any actions necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.