ASSEMBLY, No. 3674



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED APRIL 14, 2016

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

Co-Sponsored by:

Assemblyman DiMaio

SYNOPSIS

Prohibits employment of illegal aliens and requires use of E-Verify program in public contracts.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning State contracts and illegal aliens and supplementing Title 34 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

“Contractor” means a person having a public contract for services with a State agency or political subdivision.

“Department” means the Department of Labor and Workforce Development.

"E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub.L.104-208 (8 U.S.C. s.1324a), jointly operated by the United States Department of Homeland Security and the Social Security Administration or its successor program.

"Knowingly employ an illegal alien" means those actions described in 8 U.S.C. s.1324a. This term shall be interpreted consistently with 8 U.S.C. s.1324a and any applicable federal rules and regulations.

"Illegal alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 U.S.C. s.1324a(h)(3).

“Public contract for services” means any type of agreement, regardless of what the agreement may be called, between a State agency or political subdivision and a contractor for the procurement of services.

“Services” means the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are incidental to the required performance.

2. No State agency or political subdivision shall enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with an illegal alien to perform work under the contract.

3. a. Each public contract for services shall include a provision that the contractor shall not:

(1) knowingly employ or contract with an illegal alien to perform work under the public contract for services; or

(2) enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

b. Each public contract for services shall contain provisions stating that:

(1) the contractor will verify through the E-Verify program that the contractor will not employ any illegal aliens;

(2) if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

(a) notify the subcontractor and the contracting State agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (a) of this paragraph the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien; and

(3) the contractor is required to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to the authority established pursuant to section 5 of this act.

4. A State agency or political subdivision shall notify the department if a contractor violates a provision of a public contract for services required pursuant to this act and the State agency or political subdivision terminates the contract for the breach. Based on the notification, the department shall maintain a list that includes the name of the contractor, the State agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to this act. A State agency or political subdivision shall notify the department if a court has made that determination. The list shall be available for public inspection at the department and shall be published on an internet website maintained by the department.

5. a. The department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to this act. The department may conduct on-site inspections where a public contract for services is being performed, request and review documentation that proves the legal status of any person performing work on a public contract for services, or take other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to this act. The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to this act and shall have discretion as to determine which complaints are to be investigated. The results of any investigation shall not constitute final agency action.

b. The department shall notify a State agency or political subdivision if it suspects that there has been a breach of a provision in a public contract for services required pursuant to this act.

6. This act shall take effect on the first day of the third month following enactment.

STATEMENT

This bill provides that no State agency or political subdivision may enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with an illegal alien to perform work under the contract.

The bill requires each public contract for services to include a provision that the contractor shall not:

(1) knowingly employ or contract with an illegal alien to perform work under the public contract for services; or

(2) enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

The bill requires each public contract for services to include provisions stating that:

(1) the contractor will verify through the E-Verify program that the contractor will not employ any illegal aliens;

(2) if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

(a) notify the subcontractor and the contracting State agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien; and

(3) the contractor is required to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to the authority established pursuant to the bill.

The bill provides that a State agency or political subdivision must notify the Department of Labor and Workforce Development if a contractor violates a provision of a public contract for services required pursuant to the bill and the State agency or political subdivision terminates the contract for the breach. Based on the notification, the department shall maintain a list that includes the name of the contractor, the State agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services. A State agency or political subdivision shall notify the department if a court has made that determination. The list shall be available for public inspection at the department and shall be published on an internet website maintained by the department.

The bill provides that the department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to the bill. The department may conduct on-site inspections where a public contract for services is being performed, request and review documentation that proves the legal status of any person performing work on a public contract for services, or take other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to the bill. The bill requires the department to receive complaints of suspected violations of a provision of a public contract for services and gives the department discretion as to determine which complaints are to be investigated. The results of any investigation do not constitute final agency action.

The bill requires the department to notify a State agency or political subdivision if it suspects that there has been a breach of a provision in a public contract for services pursuant to the bill.