

MCA
Summary of Legislation
August 2014

House State Government Committee Reviews Success of “E-Verify” Law

The committee held a hearing on September 4 to discuss the implementation of Act 127 of 2012.

Sheri Phillips, Secretary of the Department of General Services (DGS), offered an overview of the department’s implementation of the **Public Works Employment Verification Act**. Sec. Phillips reported that over the past 18 months, DGS has provided a variety of outreach and education presentations across the commonwealth, established a page on the department website for public access to frequently asked questions and other documentation, and worked directly with local governments, school districts and contractor groups. Sec. Phillips said DGS has determined a majority of violations are due to misunderstanding of the Act’s requirements, and shared recommendations to improve clarity and thus reduce violations. Among them she said **DGS recommends requiring all public bodies to include language in their public works bidding and contract documents notifying bidders about the Act’s requirements**. Additionally, Sec. Phillips suggested the definition of “employee” is overly broad and should be focused to include only those who will be performing on-site work for a public works contract. Lastly, she said further review and clarification should be given to enforcement and sanctions language in the Act, in light of ongoing misunderstandings.

Rep. Mike O’Brien (D-Philadelphia) asked about the secretary’s use of the word “audit” in her testimony, noting that the audit is of known, approved companies. He asked about the potential of extending such an audit to all employers in the commonwealth, specifically mentioning “guest workers” that harvest apples. He asked how government would go about conducting an audit of such guest workers. Sec. Phillips said she would need time to think about how that could be done. She opined it would be difficult and take a lot of manpower. Rep. O’Brien concluded it would probably be cost-prohibitive, which the secretary agreed to on her department’s behalf.

Minority Chairman Mark Cohen (D-Philadelphia) questioned how many employees are covered by the act and how many fewer the department would like to see covered. Sec. Phillips could not give specifics, but said she brought the issue up because contracts vary greatly in size and may or may not be based in Pennsylvania. She said the law should be better defined to stipulate that the job must be in Pennsylvania, instead of include employees that are not working in Pennsylvania. Chairman Cohen asked if that would make for easier enforcement and monetary savings. Sec. Phillips agreed. She reiterated she would like only employees working on Pennsylvania projects to fall under the scope of the act.

Committee Chairman Daryl Metcalfe (R-Butler) asked a series of questions about the audits completed by the department. Sec. Phillips explained the audits were not the result of any complaints, but noted there were a few appeals. She reiterated that many of the findings of noncompliance were due to lack of education about the new law. The secretary further explained that the department began its examination with state contracts, noting that the bulk of the noncompliance companies were contracting with the state. She said the department is still working to better define who is covered by the act. Chairman Metcalfe remarked that only 53 audits is a small number given the number of state and local agencies in Pennsylvania. He said it sounds like the department has made an effort to educate school districts and municipalities of the law. Sec. Phillips agreed that has been the goal of the department, but there are still contractors who are not aware of the law or have questions about it.

Chairman Metcalfe asked about the penalties assessed on companies that were not in compliance with the law. Sec. Phillips confirmed **17 contractors were fined a combined total of, \$16,700 in civil penalties**. She discussed the department’s efforts to review one contract per contractor, instead of all of a contractor’s contracts, in order to give the contractor time to learn and address problems in other contracts. She indicated the fines are issued according to the law. Chairman Metcalfe asked if the penalties are strict enough to encourage compliance. Sec. Phillips suggested that the sanctions be examined, and explained her belief that willful misconduct should be penalized strongly, but a simple oversight should not. She indicated an example of an oversight may be a contractor missing the verification for one employee. Chairman Metcalfe argued simple clerical errors should be unlikely because employers are also required to do a check under federal law. Sec. Phillips suggested many small contractors may not be attuned to the details of the law.

Chairman Cohen asked how many employees have been screened over the 18 months that the law has been in place. Sec. Phillips could not say specifically, but indicated she could aggregate the information for the committee. Cohen then remarked on the differences in terms of employment for the typical legislative employee versus a contractor's employee, indicating that a contractor may hire an employee for just a few days to complete a job. Sec. Phillips indicated her understanding is that contractors do not typically have the longevity of a state worker. She said the anatomy of the workforce can change based on the job. Chairman Cohen concluded many people are going through the e-Verify system, but the contractors are not necessarily employing a large number of people at any given time. He said he'd like to see detailed information on the number of employees covered in order to get a better sense of the program before considering expanding it. Sec. Phillips commented the department relies on companies to provide a list of new hires, which the department tries to verify based on certified wage reports, but she lamented the department does not have a good way of knowing definitively. She indicated this is a reason why she would like the law to apply specifically to employees working on the project. Chairman Cohen said he voted for the bill under the belief that it applied to those working on the projects.

Chairman Metcalfe remarked on his long involvement in the issue and said the goal was to capture as many employees possible, noting his preference to include every employer in the state. He pointed out the federal government requires contractors to use e-Verify and called it common sense that anyone benefitting from tax dollars going to a company should be verified.

Rep. O'Brien noted he vote against the bill, then asked about the audit process. Sec. Phillips explained the department first sends a letter to a company, which outlines the documents needed, including an employee list, forms that demonstrate that the required checks were completed, registration with e-Verify, and a certified payroll list. The department then reviews that information to verify that the company is following the intent of the law. She said a company that is found to be deficient will be notified of the deficiency and penalty, which can be \$250 to \$1,000. The company can pay the penalty or appeal. Rep. O'Brien asked how many man hours are spent enforcing the law. Sec. Phillips did not have specifics, but reiterated one salaried fulltime employee is dedicated to duties under the law, and various other salaried employees may be called upon in circumstances, such as legal consultation or for a hearing. She said she would provide information to the committee on the compensation of the dedicated employee. Rep. O'Brien concluded that enforcement of the act is costing the commonwealth. Sec. Phillips agreed. Rep. O'Brien asked how the department enforces penalties against a company that may perform a job in Pennsylvania but is based out of state. Sec. Phillips said any company completing work in Pennsylvania is subject to the act. She said the department has not encountered enforcement issues with out of state companies, but stated the department would be able to collect fines from such companies. Rep. O'Brien opined it borders on "folly" given the possibility and propensity of certain businesses to engage in fraud. Sec. Phillips noted the similar federal requirements.

Chairman Cohen asked how much time workers lose while going through the e-Verify system. Sec. Phillips did not have that information.

Chairman Metcalfe referred to the 53 audits performed by the department and asked how many public works contracts have been agreed to over the last 18 months. Sec. Phillips did not have that number, reiterating that the department only has access to the Dodge report to learn about school and local government projects. She indicated 53 represents a small percentage of the total number of state contracts.

Legislative Activity

The General Assembly acted on the following bills of interest to the construction industry in the past month.

BIDDING / CONTRACTING

NONE

BUDGET RELATED BILLS

NONE

ENVIRONMENTAL BUILDING STANDARDS

NONE

LOCAL/STATE GOVERNMENT/REGULATIONS

[HB 2430](#) RE: Fair Employment Act (by Rep. Daryl Metcalfe, et al)

Prohibits employment of illegal aliens, establishes conditions for registration of a business, requires participation in E-verify program, prohibits business tax deductions for certain compensation, and includes penalties for noncompliance.

Introduced and referred to House State Government Committee, 8/5/2014

LIABILITY

NONE

MANDATE WAIVERS

NONE

MECHANIC'S LIEN

NONE

MINIMUM WAGE

NONE

Licensure Bills

NONE

PREVAILING WAGE

NONE

LOCAL/PROPERTY TAX REFORM

NONE

TRANSPORTATION

NONE

Upcoming meetings of Interest

THURSDAY - 9/4/14

House State Government Committee

3:00 p.m., Room G-50, Irvis Office Building

Informational meeting on Implementation of Act 127 of 2012- the Public Works Employment Verification Act ("E-Verify")

TUESDAY - 9/16/14

House Labor and Industry Committee

9:00 a.m., Room G-50, Irvis Office Building

To consider: [SB 1023](#) (McIlhinney) - Amends the Pennsylvania Construction Code further providing for the duties of the council, for revised or successor codes and for education and training programs.

2014 FALL SENATE SESSION SCHEDULE

September 15, 16, 22, 23, 24

October 6, 7, 8, 14, 15

November 12

2014 FALL HOUSE SESSION SCHEDULE

September 15, 16, 17, 22, 23, 24
October 6, 7, 8, 14, 15
November 12

Copies of all bills of interest can be accessed via the Internet at:

<http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>