

HOUSE BILL 345

R2, P2

2lr0724

By: **Delegate McDonough**

Introduced and read first time: January 30, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Finance and Procurement – Transportation Projects – Use of Federal**
3 **E–Verify Program**

4 FOR the purpose of declaring that it is the public policy of the State to restrict and
5 deter the use of unauthorized alien workers by any contractor under any public
6 contract for the performance of certain transportation projects; specifying
7 criteria for mandatory registration in a certain federal E–Verify program for
8 certain contractors; prohibiting noncompliant persons from performing certain
9 contracts; imposing certain requirements on certain subcontractors; restricting
10 eligibility for prequalification to contractors in compliance with certain
11 provisions of law; creating a safe harbor against debarment for contractors
12 registered under the E–Verify program; providing for an administrative appeal
13 to the Board of Contract Appeals; providing for the application of this Act; and
14 generally relating to the employment of unauthorized alien workers under
15 certain contracts for State transportation projects and the federal E–Verify
16 program.

17 BY adding to

18 Article – State Finance and Procurement

19 Section 20–101 through 20–106 to be under the new title “Title 20. Use of the
20 Federal E–Verify Program for Transportation Projects”

21 Annotated Code of Maryland

22 (2009 Replacement Volume and 2011 Supplement)

23 BY repealing and reenacting, without amendments,

24 Article – Transportation

25 Section 3–216(a) and (b)

26 Annotated Code of Maryland

27 (2008 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – State Finance and Procurement**

4 **TITLE 20. USE OF THE FEDERAL E-VERIFY PROGRAM FOR TRANSPORTATION**
5 **PROJECTS.**

6 **20-101.**

7 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (B) “AGENCY” MEANS ANY AGENCY, DEPARTMENT, BOARD,
10 COMMISSION, OR OTHER ENTITY OF THE STATE OR A POLITICAL SUBDIVISION
11 OF THE STATE THAT CONTRACTS WITH CONTRACTORS FOR THE PERFORMANCE
12 OF A PUBLIC CONTRACT IN THE STATE THAT IS FUNDED IN WHOLE OR IN PART
13 BY MONEY FROM THE TRANSPORTATION TRUST FUND.

14 (C) “E-VERIFY PROGRAM” MEANS:

15 (1) THE FEDERAL E-VERIFY PROGRAM THAT PROVIDES
16 ELECTRONIC VERIFICATION OF WORK AUTHORIZATION THAT IS OPERATED
17 JOINTLY BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND
18 THE SOCIAL SECURITY ADMINISTRATION; OR

19 (2) A SUCCESSOR PROGRAM THAT IS AUTHORIZED BY THE
20 UNITED STATES DEPARTMENT OF HOMELAND SECURITY TO VERIFY
21 ELECTRONICALLY THE WORK AUTHORIZATION STATUS OF NEWLY HIRED
22 EMPLOYEES IN ACCORDANCE WITH FEDERAL IMMIGRATION LAW OR
23 REGULATION.

24 (D) “TRANSPORTATION TRUST FUND” MEANS THE TRANSPORTATION
25 TRUST FUND FOR THE STATE DEPARTMENT OF TRANSPORTATION
26 ESTABLISHED UNDER § 3-216 OF THE TRANSPORTATION ARTICLE.

27 (E) “UNAUTHORIZED ALIEN” MEANS AN ALIEN WHO DOES NOT HAVE
28 THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE
29 UNITED STATES AS DESCRIBED IN 8 U.S.C. § 1324A(H)(3).

30 **20-102.**

31 IT IS THE PUBLIC POLICY OF THE STATE THAT A CONTRACTOR MAY NOT
32 PERFORM OR ALLOW THE PERFORMANCE OF A PUBLIC CONTRACT IN THE

1 STATE THAT IS FUNDED IN WHOLE OR IN PART BY MONEY FROM THE
2 TRANSPORTATION TRUST FUND IF UNAUTHORIZED ALIENS ARE TO BE
3 UTILIZED IN ANY MANNER IN THE PERFORMANCE OF THE CONTRACT.

4 **20-103.**

5 (A) THIS SECTION APPLIES TO:

6 (1) A CONTRACTOR THAT ENTERS INTO A CONTRACT WITH AN
7 AGENCY IN WHICH THE CONTRACT IS FUNDED IN WHOLE OR IN PART BY MONEY
8 FROM THE TRANSPORTATION TRUST FUND; AND

9 (2) A SUBCONTRACTOR OF A CONTRACTOR DESCRIBED UNDER
10 ITEM (1) OF THIS SUBSECTION.

11 (B) A PERSON SUBJECT TO THIS SECTION SHALL REGISTER AND
12 PARTICIPATE IN THE E-VERIFY PROGRAM.

13 **20-104.**

14 (A) BEFORE THE APPROVAL OF ANY PAYMENT BY A CONTRACTING
15 AGENCY TO A PERSON REQUIRED TO REGISTER FOR AND PARTICIPATE IN THE
16 E-VERIFY PROGRAM UNDER THIS TITLE, THAT PERSON SHALL AFFIRM TO THE
17 CONTRACTING AGENCY UNDER PENALTY OF PERJURY THAT:

18 (1) EMPLOYMENT AUTHORIZATION HAS BEEN MADE FOR ALL
19 EMPLOYEES HIRED DURING THE PERFORMANCE PERIOD OF THE CONTRACT OR,
20 IF THE PERIOD OF VALIDITY IS LESS THAN 1 YEAR, DURING THE FISCAL YEAR IN
21 WHICH THE GREATER PART OF THE CONTRACT WILL BE PERFORMED; AND

22 (2) THE SOCIAL SECURITY NUMBER OF ANY CURRENT EMPLOYEE
23 WHO WILL PERFORM WORK OR PROVIDE SERVICES UNDER THE CONTRACT HAS
24 BEEN VERIFIED USING THE SOCIAL SECURITY NUMBER VERIFICATION
25 SERVICE OPERATED BY THE SOCIAL SECURITY ADMINISTRATION OR AN
26 AUTHORIZED SUCCESSOR PROGRAM.

27 (B) A PERSON SUBJECT TO THIS TITLE MAY NOT EMPLOY OR CONTINUE
28 TO EMPLOY AN INDIVIDUAL, OR CONTRACT INDEPENDENTLY WITH AN
29 INDIVIDUAL, TO PERFORM WORK OR PROVIDE SERVICES UNDER THAT
30 CONTRACT IF THE INDIVIDUAL IS NOT LAWFULLY ELIGIBLE FOR EMPLOYMENT
31 IN THE UNITED STATES, AS DETERMINED BY VERIFICATION OF THE
32 INDIVIDUAL'S STATUS THROUGH THE E-VERIFY PROGRAM.

1 **(C) AS A CONDITION OF A CONTRACT, A PERSON SUBJECT TO THIS**
2 **TITLE SHALL REQUIRE THAT THE PRIME CONTRACTOR INCLUDE IN EVERY**
3 **SUBCONTRACT EXECUTED UNDER THE CONTRACT A PROVISION REQUIRING THE**
4 **SUBCONTRACTOR, INCLUDING AN INDIVIDUAL INDEPENDENT CONTRACTOR, TO**
5 **COMPLY WITH THE REQUIREMENTS IMPOSED BY THIS TITLE ON THE PRIME**
6 **CONTRACTOR.**

7 **20-105.**

8 **AN AGENCY SUBJECT TO THIS TITLE SHALL DENY PREQUALIFICATION TO**
9 **ANY CONTRACTOR THAT FAILS TO REGISTER AND PARTICIPATE IN THE**
10 **E-VERIFY PROGRAM.**

11 **20-106.**

12 **(A) A CONTRACTOR OR SUBCONTRACTOR THAT VIOLATES ANY**
13 **PROVISION OF THIS TITLE:**

14 **(1) SHALL BE DEBARRED FROM CONTRACTING WITH ANY AGENCY**
15 **OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FOR A PERIOD OF 1**
16 **YEAR; AND**

17 **(2) SHALL HAVE THE CONTRACT OR SUBCONTRACT RECEIVED BY**
18 **THAT PERSON THAT GAVE RISE TO THE VIOLATION TERMINATED IMMEDIATELY.**

19 **(B) A CONTRACTOR IN COMPLIANCE WITH THE REQUIREMENTS OF §**
20 **20-104(C) OF THIS TITLE THAT COOPERATES WITH AN ADMINISTRATIVE OR A**
21 **CRIMINAL INVESTIGATION BY A CONTRACTING AGENCY INVESTIGATING AN**
22 **ALLEGED VIOLATION BY A SUBCONTRACTOR OR AN INDIVIDUAL INDEPENDENT**
23 **CONTRACTOR IS NOT SUBJECT TO ANY OF THE SANCTIONS REQUIRED UNDER**
24 **SUBSECTION (A) OF THIS SECTION.**

25 **(C) UNLESS ADMINISTRATIVE APPEAL HAS BEEN DELEGATED**
26 **EXPRESSLY BY LAW TO ANOTHER ADJUDICATIVE BODY, A CONTRACTOR OR**
27 **SUBCONTRACTOR THAT IS AGGRIEVED BY A FINAL DECISION BY AN AGENCY TO**
28 **DEBAR THE PERSON FROM CONTRACTING WITH AN AGENCY OR TO TERMINATE A**
29 **CONTRACT MAY APPEAL THE DECISION BY FILING A PETITION WITH THE**
30 **MARYLAND STATE BOARD OF CONTRACT APPEALS UNDER TITLE 15 OF THIS**
31 **ARTICLE.**

32 **Article – Transportation**

33 **3-216.**

1 (a) There is a Transportation Trust Fund for the Department.

2 (b) Except as otherwise expressly provided by statute, there shall be credited
3 to the Transportation Trust Fund for the account of the Department all taxes, fees,
4 charges, and revenues collected or received by or paid, appropriated, or credited to the
5 account of the Department or any of its units in the exercise of their rights, powers,
6 duties, or obligations, including the cash proceeds of the sale of consolidated
7 transportation bonds, notes, or other evidences of obligation issued by the
8 Department, any General Fund appropriations, and the proceeds of any State loan or
9 federal grant made for transportation purposes.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only
11 to contracts executed on or after October 1, 2012.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2012.