



## **HB 87 – The Illegal Immigration Reform and Enforcement Act of 2011** *What do Georgia’s Cities and Counties need to know?*

During the 2011 Legislative Session, the General Assembly passed House Bill 87, a comprehensive piece of legislation intended to address illegal immigration on a state and local level. Many provisions of this new law will directly affect cities and counties. This document is not intended to provide legal advice but should provide a review of the important changes all cities and counties in the state should be aware of with the enactment of House Bill 87. This document will also give an overview of E-Verify and SAVE requirements to cities in Georgia.

### **Contracts for Public Works**

- (1) Every city and county, except those with one or fewer employees, must register and participate in the federal work authorization program, also known as E-Verify, to verify the employment eligibility of all **newly hired employees**. This requirement is mandatory.
- (2) After receiving federal authorization, every city and county must post its federally issued identification number and date of authorization on its website. If the city or county does not have a website, the city or county must submit the information to the Carl Vinson Institute of Government to be posted on the website created for the local government audit and budget reporting. This requirement is mandatory.
- (3) A city or county cannot enter into a contract for the physical performance of services with a person or entity unless such person or entity signs an affidavit swearing they have registered and will participate in E-Verify and will only contract with parties that swear to do the same. There is an exception for individuals or businesses that do not have any employees. Also, the Attorney General has provided a list of states that verify immigration status for identification cards, and copies of those driver’s licenses or identification cards may be accepted in lieu of registering for E-Verify. (This list and more information, such as a list of public benefits and secure and verifiable documents can be found at: [http://www.georgia.gov/00/channel\\_title/0,2094,87670814\\_167693491,00.html](http://www.georgia.gov/00/channel_title/0,2094,87670814_167693491,00.html).) Physical performance of services include any performance of labor for a city or county within the state under a contract or other bidding process. The Department of Audits and Accounts has created form affidavits by August 1, 2011, which have been posted on its website and can be used to satisfy the affidavit requirements for these contracts. (This and other information can be found at: <http://www.audits.ga.gov/NALGAD/IllegalImmigrationReformandEnforcementAct.html>.) This requirement is mandatory.
- (4) The city or county must submit a compliance report to the state auditor certifying compliance with these E-Verify requirements **no later than December 31<sup>st</sup>** of each year. This requirement is mandatory.

### **Occupational Tax Certificate (Business Licenses)**

- (1) Before any city or county issues any occupational tax certificate (also known as business licenses), or other license which include alcohol licenses and taxi cab licenses to a private employer, the employer must sign an affidavit stating that the employer either is authorized to use E-verify or is not required to use E-verify. A form affidavit will be created by the Attorney General and will be available on the Attorney General website by January 1, 2012. These requirements are effective for employers with 500 or more employees on January 1, 2012, for employers with more than 100 employees on July 1, 2012, and for employers with more than 10 employees on July 1, 2013. If an employer has 10 or fewer employees, then they must sign an affidavit stating the provisions do not apply to them. This requirement is mandatory.
- (2) **Beginning on December 31, 2012**, and annually thereafter, any city or county that issues an occupational tax certificate (business license) or other license required to operate a business must submit a report to the Department of Audits and Accounts demonstrating compliance with these requirements. This requirement is mandatory.

### **SAVE – Public Benefits**

- (1) Every city and county must register and use the Systematic Alien Verification of Entitlement (SAVE) program. This requirement is mandatory.
- (2) For every public benefit a city or county issues to any person or entity, the city or county must receive a signed and sworn affidavit verifying the person's lawful presence in the United States. These form affidavits have been created by the state auditor and are available on the Department of Audits and Accounts' official website. A list of public benefits is issued annually by the Attorney General. Public benefits include occupational tax certificates (business licenses), alcohol licenses, and insurance license fees (pursuant to O.C.G.A. § 33-8-8), among other public benefits. Most cities and counties provide at least one public benefit. This requirement is mandatory.
- (3) Every applicant for a public benefit must submit at least one secure and verifiable document before such benefit is issued. The Attorney General has issued a list of what is a "secure and verifiable" document. This requirement is mandatory.
- (4) **On or before January 1<sup>st</sup>** of each year every city and county must submit a report to the Department of Community Affairs that identifies each public benefit administered by the city or county. This requirement is mandatory.

### **Penalties**

- (1) Mayors, council members, county commissioners, commission members, board members, and city and county employees, both elected and appointed who violate the requirements to comply with E-Verify, SAVE and affidavit verification

- requirements, will be subject to fines of up to \$10,000 and to restitution to the state or local government of any benefit received because of such violation.
- (2) Elected and appointed officials – including mayors, council members, county commissioners, commission members and board members – may be subject to removal of office and a fine of up to \$10,000 for intentionally and knowingly failing to register with SAVE, E-verify or for failure to follow the affidavit requirements. They may also be charged with a high and aggravated misdemeanor for failing to follow the law. The Attorney General is the only person with authority to bring action against such person. **Failing to have your city or county register and participate in SAVE may be considered an intentional and knowing failure.**
  - (3) Any person who knowingly accepts a document they know is not a secure and verifiable document as defined by the Attorney General may be charged with a misdemeanor and can be imprisoned for up to 12 months and fined up to \$1,000.
  - (4) Failure to comply with any provisions of House Bill 87 can lead to sanctions that can include revocation of qualified local government status, loss of state appropriated funds, and fines of between \$1,000 and \$5,000 for each violation. Sanctions will be imposed for knowing and willful violations and failures. **Failing to register and participate in E-Verify and SAVE might be considered a willful and knowing failure.**

### **Police Arrest Powers**

*(These provisions of HB 87 are currently being litigated and have been subject to an injunction preventing their enforcement. Please consult your city or county attorney regarding these provisions.)*

- (1) If, during any investigation of a criminal suspect, a police officer has probable cause to suspect the person has committed a crime, the police officer is allowed to verify the immigration status of the suspect if the suspect does not have a Georgia driver's license, identification card, an identification from another state or district that verifies lawful presence, a secure and verifiable document from a list created by the Attorney General, or any other sufficient information that the police officer is able to use to identify the suspect. This provision is permissive.
- (2) A police officer cannot use race, color, or national origin except to the extent allowed by the state and federal Constitutions. This requirement is mandatory.
- (3) If the police officer finds that the person is an illegal immigrant the police officer may detain the suspected illegal immigrant and take the suspect to any authorized state or federal detention facility. This section is permissive.
- (4) If a person is a witness to a crime, reporting a crime, or seeking assistance as a victim of a crime, then that person cannot have his or her immigration status investigated when they contact a police officer as a result of any of those instances. This requirement is mandatory.

## **Checklist**

- (1) Has your city or county registered and is your city or county using E-Verify? Have you put your E-Verify number and registration date on your website or with the Carl Vinson Institute of Government?
- (2) Has your city or county registered and is your city or county using SAVE?
- (3) Has your city or county submitted the annual report to DCA regarding public benefits?
- (4) Beginning on December 31, 2011 has your city or county submitted the annual compliance report to the state auditor regarding E-Verify?
- (5) Beginning on December 31, 2012 has your city or county submitted the annual compliance report to the Department of Audits and Accounts regarding occupational tax certificates (business licenses)?
- (6) Has your city or county been collecting affidavits from public works contractors and from any person or business that performs labor through a contract for the physical performance of services?
- (7) Beginning on January 1, 2012 is your city or county collecting affidavits from private employers verifying registration and participation in E-Verify?

## **Resources**

- (1) Attorney General Office
  - List of states that verify immigration status for identification cards
  - Form affidavit for Business License E-Verify
  - List of benefits for which SAVE is required
  - List of “secure and verifiable” documents
- (2) Department of Audits and Accounts
  - Form affidavits for Public Works E-Verify
  - Form affidavits for Public Benefits E-Verify

## **Reporting Requirements**

- **E-Verify authorization number:** City or county website or Carl Vinson Institute of Government if the city or county does not have a website.
- **Public Works E-Verify Compliance Report:** State Auditor
- **Occupational Tax Certificate Report:** Department of Audits and Accounts
- **List of each Public Benefit a city or county has provided:** Department of Community Affairs

If you have any questions about the requirements of House Bill 87 on Georgia’s cities, please contact Rusi Patel, [rpatel@gmanet.com](mailto:rpatel@gmanet.com).

If you have any questions about the requirements on House Bill 87 on Georgia's counties, please contact Michele NeSmith, [mnesmith@accg.org](mailto:mnesmith@accg.org).

**Important Dates – Georgia Immigration Laws**

Date	Requirement
July 1, 2011	Effective Date of House Bill 87.
July 1, 2011	The Attorney General of Georgia must create a list of states that verify immigration status for identification cards and post the list on the Law Department's website. The list must be updated annually.
August 1, 2011	The Department of Audits and Accounts is required to create a form affidavit for public works contractors to execute in regards to E-Verify. Such form affidavit will be posted on the Department of Audits and Accounts website.
August 1, 2011	The Attorney General of Georgia must update his annual list detailing any "public benefits" which may be administered in this state. This will be posted on the Department of Law's website.
August 1, 2011	The Attorney General of Georgia must create a list of acceptable "secure and verifiable" documents. This will be posted on the Department of Law's website and updated annually.
December 31, 2011 (annual reporting requirement)	Cities and counties with more than one employee must submit a compliance report to the Department of Audits and Accounts certifying compliance with the public works contracting E-Verify requirements.
January 1, 2012 (annual reporting requirement)	Every city and county must submit a report to the Georgia Department of Community Affairs showing compliance with the SAVE requirements of Georgia law.
January 1, 2012	The Attorney General of Georgia must create a form affidavit and post it on the Department of Law's website for private employers to execute to show compliance with the E-Verify.
January 1, 2012	Private employers with 500 or more employees are required to be registered for E-Verify.
January 1, 2012	Cities and counties are precluded from accepting any identification document for any official purpose that requires presentation of identification unless such document is deemed "secure and verifiable."
January 1, 2012	Effective Date for provision requiring state auditors to create affidavits and post on the Department of Audits and Account's website for the SAVE program.
July 1, 2012	Private employers with more than 100 employees are required to be registered for E-Verify.
December 31, 2012 (annual reporting requirement)	Cities and counties which issue or renew licenses required to operate a business must submit a compliance report to the Department of Audits and Accounts.
July 1, 2013	Private employers with more than 10 employees are required to be registered for E-Verify.

