

Sen. King K. Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE:

CONCERNING THE REQUIREMENT THAT ALL EMPLOYERS IN THE STATE VERIFY THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES THROUGH THE FEDERAL ELECTRONIC VERIFICATION PROGRAM.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
General Fund	(\$78,305)	(\$156,610)
Cash Funds		
Employment Support Cash Fund	78,305	156,610
Department of Labor Statewide Indirect Cost	(78,305)	(156,610)
Recoveries*		
Department of Personnel and Administration	78,305	156,610
Indirect Cost Recoveries*		
FTE Position Change		

**Effective Date:** The bill was deemed lost in the House of Representatives on May 9, 2012, when the General Assembly adjourned sine die without taking final action.

**Appropriation Summary for FY 2012-2013:** See State Appropriations section.

**Local Government Impact:** See Local Government Impact section.

## **Summary of Legislation**

This bill repeals the current requirements for employers to verify the legal work status of new employees and creates the Colorado Mandatory E-Verify Act. It requires all employers in Colorado to participate in the federal E-Verify program to verify the work eligibility status of newly hired employees on or after January 1, 2013. Employers are required to retain a copy of the employment eligibility information received from the program. Each employer will enter into an agreement as required by the United States Department of Homeland Security to participate in the E-Verify program and comply with the program requirements.

<sup>\*</sup> The net change to indirect cost recoveries is \$0, resulting from a reduction of indirect cost recoveries used by the Department of Labor and Employment and an increase of a like amount in the Department of Personnel and Administration. A corresponding reduction to the General Fund is also made.

Employers who do not participate in the E-Verify program are subject to a fine of not more than \$5,000 for the first offense, and not more than \$25,000 for the second offense. Subsequent offenses are subject to a fine of not more than \$25,000 and up to a six-month suspension of all the employer's business licenses. The bill includes a safe harbor provision for employers that comply in good faith with the act but unintentionally or unknowingly employ an authorized alien or wrongfully terminate an employee after receiving a final notice of nonconfirmation of work eligibility through the E-Verify program.

The Department of Labor and Employment (DOLE) must include notification of the bill requirements in its quarterly electronic publication to employers and on its website. The Secretary of State is also required to post the bill requirements on its website.

## **State Expenditures**

This bill has no overall increase in expenditures. Under current law, the Division of Labor in the DOLE requires employers to maintain specific documentation including an affirmation that the employer has examined specific documents to confirm the legal work status of each newly hired employee. The director of the division can conduct random audits of this documentation or, if he suspects that an employer has not complied with the employment verification requirements, require the employer to submit the documentation. Under House Bill 12-1309, the E-Verify employment eligibility information the employer receives through the program will replace the documents required under current law. Part of the current verification process focuses on state contracting and is funded by the Executive Director's Office statewide indirect cost recoveries. HB12-1309 combines all the employment verification process functions under the Division of Labor funded by the Employment Support Fund. For FY 2012-13 this is a \$78,503 and 1.0 FTE reduction from the Executive Director's Office and corresponding increase to the Employment Support Fund. For FY 2013-14, these amounts are \$156,610 and 1.9 FTE. Because the reduction is made to statewide indirect costs recoveries, these moneys are appropriated to the DPA to supplant General Fund.

The bill requires that all state agencies participate in E-Verify. The fiscal note assumes that each agency will enroll as an individual employer with the United States Department of Homeland Security and perform its own employment verification through the program. This is expected to result in a small increase in workload for startup but should not affect the time required to verify legal work status. The Division of Human Resources in the Department of Personnel and Administration (DPA) will develop expertise and technical assistance on the E-Verify program and provide assistance to all agencies in implementing the E-Verify program. This will require 166 hours of staff time that can be addressed within existing appropriations.

## **Local Government Impact**

As employers, local governments will be required to participate in E-Verify. For those not already using the program, this will require entering into agreements with the United States Department of Homeland Security and implementing the use of E-Verify. This is expected to be done within existing resources.

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# **State Appropriations**

For FY 2012-13, the following adjustments are required:

- Reduction of \$78,305 and 1.0 FTE from the DOLE Executive Directors Office, reappropriated funds;
- Increase of \$78,305 to the DPA Office of the State Controller, reappropriated funds;
- Reduction of \$78,305 from the General Fund; and
- Increase of \$78,305 and 1.0 FTE to the Employment Support Fund.

# **Departments Contacted**

All agencies