

WELCOME

This edition of AHC's Client Alert focuses on a very recent controversial law that affects Georgia public owners that hire contractors to perform physical services, such as public works construction contracts. The law specifically imposes burdens on public owners and specifies harsh penalties for non-compliance. If you have any questions or comments, please feel free to contact the attorneys in our construction law group at law@ahclaw.com.

IMPACT OF THE 2011 ILLEGAL IMMIGRATION LAW ON PUBLIC OWNERS

In the 2011 Regular Session, the Georgia General Assembly enacted the Illegal Immigration Reform and Enforcement Act of 2011. The purpose of the Act was to increase compliance -- and punish non-compliance -- with the federal E-Verify program. The Act specifically imposes obligations on state and local governmental units ("Public Owners") that contract for the "physical performance of services." The effective date for most of the provisions relevant to public owners is July 1, 2011.

A [prior AHC Construction Law Alert](#) discussed the 2010 and 2006 revisions to Georgia law governing employment verification. The Act imposes additional requirements on public owners and provides additional clarity to existing provisions.

Impact on Public Owners

The Act made no substantive changes to the pre-existing rule that prohibited Public Owners from entering into certain contracts with contractors that failed to register and participate in the E-Verify program. And it continues to prohibit Public Owners from considering contractors' bids unless they contain a signed, notarized affidavit confirming the contractor's participation and continued compliance with the E-Verify program.

However, the Act now requires that the affidavit state that the contractor will only subcontract with subcontractors that present a similar affidavit to the contractor. The Act did not change the requirement that Public Owners keep the affidavits for five years from their receipt.

The Act further addresses contractors and subcontractors that hire independent contractors as opposed to employees. Many argued that the pre-existing law contained a loophole for contractors and subcontractors that hired independent contractors, as opposed to employees. The Act attempted to close this "1099 loophole" by requiring contracting parties to provide state-issued driver's licenses or other state-issued identification cards for themselves and their independent contractors. The Act only permits copies of state-issued driver's licenses and identification cards from states that verify legal immigration status before issuing them.

Contractors are required to submit all affidavits, driver's licenses, and identification cards to Public Owners within five days of receipt.

Impact of Non-Compliance

The Act imposes stiff penalties on Public Owners for failure to comply with the Act. If the state auditor finds that a local Public Owner has not complied with the Act, it will have 30 days to correct the deficiency. If it does not correct the deficiency, the political subdivision will be excluded from the list of eligible recipients for funds from the Georgia Department of Community Affairs. However, it may seek relief from the Office of State Administrative Hearings, including a temporary stay of the 30-day period.

If the state auditor finds that a state Public Owner has violated the Act two times in a five-year period, then funds

appropriated to such Public Owner for the following fiscal year shall not be greater than 90 percent of the amount appropriated in the second year. The Act further provides for public shaming of violators. Any Public Owner found in violation of the Act will be listed on a state website with an explanation of its violation.

Reporting Requirements

All Public Owners are required to permanently post their federally issued user identification number and date of authorization on their websites. Local governments that do not maintain a website can submit their number to the Carl Vinson Institute of Government of the University of Georgia to be posted on the Institute's website.

Public Owners must submit an annual compliance report to the state auditor certifying compliance with the E-Verify requirements of the Act. They must also identify and include information about their contractors. The state auditor will audit at least one-half of the reporting agencies and publish the audit results annually.

Conclusion

Public Owners regularly contract for public works and other physical services. The Act squarely places additional obligations and burdens on such Public Owners. Public Owners should, therefore, review their current compliance and ensure compliance with the new provisions by the effective date.

Review other resources for Public Owners and Public Works Contracts in previous AHC Alerts.

- [Public Owner Construction Management Contracts](#);
- [The Georgia Guaranteed Energy Savings Performance Contracting Act](#);
- [New Changes for Public Works Contracts](#);
- [SB 447 For Public Owners](#); and
- [Local Government Requests for Proposals](#).

ANNOUNCEMENTS

David R. Cook Elected to AHC Partnership

AHC is pleased to announce that [David R. Cook](#) has become a partner in the firm effective July 1, 2011. David is an outstanding lawyer who shares AHC's commitment to providing the highest quality legal services at affordable rates.

David will continue to provide exceptional service in AHC's construction, energy, and tax law groups. Read [David's bio](#) on our website at www.ahclaw.com.

AHC Debuts Construction Law Blog

AHC announces the development of the AHC Construction Law Blog at www.ahclaw.com/construction. AHC attorneys [David R. Cook](#) and [Mark V. Hanrahan](#) will regularly post pertinent and current information on the latest laws, rulings, and developments affecting the construction industry.

We hope the [AHC Construction Law Blog](#) will be your source for the latest construction law and industry news. AHC's construction lawyers have represented every player in the construction industry, including owners, developers, contractors, subcontractors, and architects/engineers. We hope you enjoy the [blog](#) and will return there often for new insights on managing construction risks.