

DEPARTMENT OF TAXATION

2007 Fiscal Impact Statement

1. **Patron** Jackson H. Miller

3. **Committee** House Finance

4. **Title** Business, Professional, and Occupational License Tax; Denial and Suspension of Licenses

2. **Bill Number** HB 2930

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide that it would be unlawful for any unauthorized worker to perform work within the Commonwealth of Virginia, and that it would be unlawful for any business to enter into an agreement with any person or business that utilizes an unlawful worker to perform work within the state.

This bill would require every applicant or re-applicant for a Business, Professional, and Occupational License ("BPOL") to provide documentary evidence that the applicant is a citizen, permanent resident, or a conditional resident alien of the United States. The applicant would also be required to sign an affidavit that the business would not knowingly use the services or hire any unauthorized worker.

The local agency responsible for issuing the business license would be responsible for enforcing the requirements of this bill. If the business violated the provisions of this bill, the locality would be required to deny or suspend the license.

This bill would also require that all state agencies that issue a state license shall promulgate regulations to ensure that any applicant for a state license, any of his employees or anyone who he contracts with shall provide documentary evidence that they are either a citizen, a legal permanent resident, or a conditional resident alien of the United States.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

As this bill would require state and local agencies to review each license applicant's documentation of citizenship and eligibility to be employed in the United States, this bill would increase the administrative costs of issuing licenses. This bill also requires local

agencies that issue business licenses to enforce the provisions of this bill on every business that has a license issued from the agency. As enforcing the provisions of this bill would include investigations of alleged violations and due process for the alleged violators, the administrative costs to localities from this provision would be substantial.

9. Specific agency or political subdivisions affected:

All localities
Department of Alcoholic Beverage Control
Department of Professional and Occupational Regulation
Department of Health Professions
Department of Agriculture and Consumer Services
Department of Environmental Quality
State Corporation Commission
Department of Criminal Justice Services
All other state agencies that issue business licenses.

10. Technical amendment necessary: No.

11. Other comments:

BPOL Tax

The Business, Professional and Occupational License (BPOL) tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business. The BPOL tax is a tax on gross receipts, not net income. Under current BPOL law, any locality may charge a license fee in an amount not to exceed:

- \$100 for any locality with a population greater than 50,000
- \$50 for any locality with a population of 25,000 but no more than 50,000
- \$30 for any locality with a population smaller than 25,000

The locality may not assess a license tax on gross receipts upon which it charges a license fee. Additionally, the locality may not impose a license tax on a business with gross receipts:

- less than \$100,000 in any locality with a population greater than 50,000
- less than \$50,000 in any locality with a population of 25,000 but no more than 50,000.

Any business with gross receipts in excess of these thresholds may be subject to license tax at a rate not to exceed the rates set forth below:

- Contracting - sixteen cents per \$100 of gross receipts
- Retail sales - twenty cents per \$100 of gross receipts
- Financial, real estate and professional services - fifty-eight cents per \$100 of gross receipts

- Repair, personal and business services, and all other businesses - thirty-six cents per \$100 of gross receipts.

Localities that imposed a higher rate structure on January 1, 1978 are allowed to continue to impose the tax at those rates.

The 1996 General Assembly Session enacted House Bill 293 (Chapter 720, 1996 Regular Session) and Senate Bill 587 (Chapter 715, 1996 Regular Session) in an effort to reform and standardize the administration of the BPOL tax throughout the Commonwealth. This legislation requires every locality that imposes a BPOL tax or fee to adopt uniform ordinance provisions, including a March 1 license application due date.

Unauthorized Workers

The Immigration Reform and Control Act ("IRCA") of 1986 criminalized the act of knowingly hiring unauthorized aliens and established penalties for those employing unauthorized aliens. Any alien who has not been lawfully admitted for permanent residence, or authorized to be employed by provisions in the IRCA is considered an unauthorized alien. Aliens who have been lawfully admitted into the United States and then violated the terms of their admission are also considered unauthorized. Under federal law, it is a crime for unauthorized aliens to work in the United States.

It is a felony for any person or entity to knowingly hire an unauthorized alien or to hire an individual without (i) attesting that the person or entity has examined certain legal documents verifying that the individual is not an unauthorized alien, (ii) requiring the individual to attest that he is not an unauthorized alien, and (iii) keeping such records for 3 years after the individual is hired or 1 year after the individual's employment is terminated, whichever is later.

In order to show that an individual is not unauthorized to work in the United States, the individual can provide to a prospective employer:

- A United States passport; or a resident alien card, alien registration card, or other document designated by the Attorney General, if that document-
 - Contains a photograph of the individual and such other personal identifying information
 - Is evidence of authorization of employment in the United States, and
 - Contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

An individual can also provide either:

- A social security account number card or other documentation evidencing authorization of employment in the United States which the Attorney General finds by regulations to be acceptable, and

- A driver's license or similar document issued by a state if it contains a photograph of the individual and such other personal identifying information, or other documentation evidencing authorization of employment in the United States which the Attorney General finds by regulations to be acceptable.

If an administrative law judge determines that a person or entity has violated the IRCA, he may issue a cease and desist order and order the person or entity to pay a civil penalty in an amount between \$250 and \$2,000 for each unauthorized alien employed for a first violation, and between \$2,000 and \$10,000 for each unauthorized alien for subsequent violations. Any person or entity that engages in a pattern or practice of violations could be subject to a criminal penalty of not more than \$3,000 and 6 months imprisonment.

The provisions of the IRCA relating to the unlawful employment of aliens preempts any state or local law imposing civil or criminal sanctions, other than through licensing and similar laws, upon those who employ unauthorized aliens.

State Licenses

Most state agencies that issue licenses oversee several different licenses. For example, the Department of Professional and Occupational Regulation issues over one hundred and eighty types of licenses. In addition, several of state agencies, such as the Department of Environmental Quality and the Department of Agriculture and Consumer Services, are divided into subsections that are responsible for issuing and monitoring different licenses. There is no common procedure used among the state agencies to issue, renew, or revoke licenses. Also, the processes within one agency may be different for the various licenses that it issues. Some agencies utilize paper applications, while others rely on an on-line process. There are also fundamental differences in the processes used to review license applications, usually attributable to the laws governing the particular license.

Proposal

This bill would provide that it would be unlawful for any unauthorized worker to perform work within the Commonwealth of Virginia, and that it would be unlawful for any business to enter into an agreement with any person or business that utilizes an unlawful worker to perform work within the state.

This bill would also require every applicant or re-applicant for a business license to provide documentary evidence that the applicant is a citizen, permanent resident, or a conditional resident alien of the United States. The applicant would also be required to sign an affidavit that the business would not knowingly use the services or hire any unauthorized worker.

The local agency responsible for issuing the business license would be responsible for enforcing the requirements of this bill. If the business violated the provisions of this bill, the locality would be required to deny or suspend the license. If there is a written, signed complaint submitted to a local agency that issued the business license by any government official, business entity, or Virginia resident describing the alleged violator,

the actions constituting the violation, and the date and location that the actions occurred, the local agency would be required to initiate an enforcement action.

If the business fails to correct the violation within five business days from the date of the violation or the date of its discovery, whichever is later, the local agency would be required to deny or suspend the business license. The suspension would terminate one business day after a legal representative of the business submits a sworn affidavit that the violation has ended.

In the event that there is a second or subsequent violation where the business has two or more unlawful workers, the denial or suspension of the license would not end before ten days after a legal representative of the agency submits a sworn affidavit that the violation has ended and documentation that the business has enrolled in and participating in a electronic work authorization program operated by the United States Department of Homeland Security.

If a business continues to perform work after the local agency has suspended its license pursuant to these provisions, the business would be fined \$300 for each day work was performed.

This bill would also make any business whose license has been denied or suspended pursuant to these provisions ineligible for any contract, grant, or other beneficial agreement with any agency of the Commonwealth or its political subdivisions.

This bill would also require that all state agencies that issue a state license shall promulgate regulations to ensure that any applicant for a state license, any of his employees or anyone who he contracts with shall provide documentary evidence that they are either a citizen, a legal permanent resident, or a conditional resident alien of the United States.

Other Legislation

House Bill 2443 would repeal the local Business, Professional and Occupational License ("BPOL") tax and fee.

House Bill 2675 would authorize localities to require that beginning business applicants must produce evidence that all properly assessed delinquent business license, personal property, meals, transient occupancy, severance, and admissions taxes owed by the business to the county, city, or town have been paid.

House Bill 2559 would authorize the local commissioner of the revenue to accept estimated payments of BPOL tax based on the amount paid by the taxpayer in the immediately preceding taxable year.

House Bill 2806 would require that commissioners of revenue deny any new license and revoke any existing license to any person who is an alien and who cannot provide legal documents indicating that the person is legally eligible to be employed in the United States.

House Bill 2929 would authorize localities to impose a business license fee in an amount not to exceed \$1,000 and to vary the amount of the fee according to the amount of the gross receipts of the business.

House Bill 3130 and **Senate Bill 1118** would authorize local commissioners of the revenue to deny or revoke business licenses of persons who cannot provide legal documents proving they are legally eligible to be employed in the United States or if the business employs or uses unlawful workers.

Senate Bill 1291 would require that every contractor that is required to have a valid state contractor's license provide proof of the license when applying for and renewing a local business license.

cc : Secretary of Finance

Date: 1/23/2007 AM
DLAS File Name: HB2930F161.doc