

Department of Planning and Budget 2008 Fiscal Impact Statement

1. Bill Number: HB227

House of Origin X Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Cosgrove

3. Committee: Rules

4. Title: Board for Contractors; licensure requirements

5. Summary: This bill provides that all applications for licensure as a contractor shall include a statement certifying that the applicant (i) will not knowingly employ an undocumented worker or otherwise violate the Federal Immigration and Reform Act or § 40.1-11.1 of the Code of Virginia and (ii) will continue to verify the lawful employment status of all employees by means of a work-authorization program issued by the U.S. Bureau of Citizenship and Immigration Services or any equivalent federal work authorization program approved or operated by the U.S. Department of Homeland Security. The bill also places a mandate on the Department of Professional and Occupational Regulation to investigate and enforce these new requirements.

6. Fiscal Impact Estimates: Preliminary. See Item 8.

6a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2008	0	0.00	NGF
2009	5,033,776	56.00	NGF
2010	4,808,066	56.00	NGF
2011	4,808,066	56.00	NGF
2012	4,808,066	56.00	NGF
2013	4,808,066	56.00	NGF
2014	4,808,066	56.00	NGF

6b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2008	0	0.00	NGF
2009	0	0.00	NGF
2010	0	0.00	NGF
2011	7,700,000	0.00	NGF
2012	7,700,000	0.00	NGF
2013	7,700,000	0.00	NGF
2014	7,700,000	0.00	NGF

7. Budget Amendment Necessary: Yes; item number 118.

8. Fiscal Implications:

Costs: This bill increases the administrative and regulatory responsibilities of the Department of Professional and Occupational Regulation (DPOR) by requiring the Board for Contractors to obtain a statement from every new applicant for a contractor license that (1) they will not hire undocumented workers and (2) they will verify on a continual basis the employment status of all employees.

This bill would add the requirements of verifying the statement and documentation submitted with each application to determine whether the applicant has complied with federal and state laws governing employment, and to grant/deny licensure based on that determination. Staff would be required to obtain access to the various databases (state and federal) that maintain such information. (Note: there are questions about DPOR's practical and/or legal ability to access all the necessary databases.). Currently the Board receives about 8,400 contractor applications annually. Taking into consideration these new requirements that will increase both the magnitude and complexity of the application review process, DPOR estimates that it will require one classified Band 3 position to handle the additional application and renewal requirements, verify documentation submitted against some type of legal presence/employment verification database, manage pending applications, and respond to customer inquiries. The total recurring cost for this one position is estimated to be \$69,966 annually.

This workload assumption is based on a conservative interpretation of the bill that would require DPOR to obtain statements only from new applicants for contractor licenses. Were DPOR required to obtain statements from all contractors, including those who already have licenses, this would further increase DPOR's licensing workload, as there are currently approximately 70,000 licensed contractors in Virginia. Such an interpretation would mandate additional FTEs for DPOR to accommodate this requirement.

DPOR would also be responsible for investigating complaints against contractors that allege improper employment of undocumented workers. The bill creates a responsibility for determining violations of legal working status that did not previously lie with DPOR. In doing so, it significantly increases the enforcement workload of this agency. Specifically, DPOR expects the number of complaints received to increase substantially as a result of this new requirement. These complaints are expected to come from citizens and advocacy groups who are concerned with the issue of undocumented workers (one advocacy group in northern Virginia currently has 300 complaints waiting to be filed), from consumers using contractor services, and from other government agencies, public documents, and employment verifications. In order for the Board to fulfill its responsibility to take disciplinary action against a contractor in violation, each complaint will require an investigation, administrative proceedings in accordance with the Administrative Process Act, and a final case decision made by the Board.

Based on a study by the Pew Hispanic Center in April 2006, about 12 percent of workers in the construction industry are undocumented. Assuming that about 12 percent of 70,000 licensed contractors are employing those undocumented workers, DPOR estimates there would be potentially 8,400 licensed contractors violating immigration/employment law under this bill. Assuming that complaints are received on half of those licensed contractors (a conservative estimate based on DPOR's projections), DPOR estimates that an additional 4,200 complaints would be received per year. DPOR currently receives approximately 5,000 complaints each

year, so this new requirement would almost double the current compliance and investigation workload.

DPOR estimates that one complaint about undocumented workers would take approximately 25 hours on average to review, investigate and adjudicate. Assuming 4,200 new complaints, this would create an additional 105,000 work hours. DPOR would require 53 classified Band 4 investigators to respond to this workload. The total recurring cost for these 53 positions is estimated to be \$4,571,216 annually (this number takes into account travel costs for the additional investigators, based on current expenditures, that DPOR expects to be \$131,403 annually).

Normally, approximately 35 to 40 percent of all complaints filed with DPOR result in a valid finding of a violation. DPOR estimates that the percentage of complaints that result in a violation will be slightly higher in the case of undocumented workers as the validity of these type of complaints is more easily-determined. As such, DPOR estimates that approximately 2,000 of the complaints received regarding undocumented workers will result in a valid violation, and would then go to the Board for a final case decision, which will double the Board's current disciplinary workload. This additional workload will require one classified Band 4 position to serve as a legal analyst to manage this workload, and one classified Band 3 position to provide administrative and clerical support to the Board for these cases. The total recurring cost for these two positions is estimated to be \$153,736 annually. In addition, to accommodate the additional cases, the Board would have to add three board meetings per year. Board member travel and per diem for three additional board meetings is estimated to be \$13,172 annually.

The costs for all aforementioned positions include several assumptions about non-personal costs. First, DPOR estimates that they will need to rent additional space to accommodate about half of the new investigator positions. This increased rent for the new positions based on lease payments for FY 2009, will be \$42,763. Second, DPOR projects the need to purchase furniture and equipment for the new positions at an estimated cost of \$392,000 (\$7,000 per position). This is a one-time expenditure that will be made in FY 2009 and will not continue into future years; these costs were not included in the ongoing estimates for the positions, but are included in the FY 2009 cost. Third, these FTE costs also take into consideration other operating costs for the new staff including: telephone, employee development, computer operating support, postage, printing, and supplies, estimated at a total of \$630,000 each year.

Overall, this bill will require 56 additional FTEs, at a total estimated cost of \$5,033,776 in FY 2009 (includes one-time cost for equipment and assumes 23 pay periods) and \$4,808,066 in future years.

Revenue: In accordance with the provisions of Section 54.1-113 (Callahan Act) of the Code of Virginia, licensing fees are established at rates adequate to cover a program's operating costs and a proportionate share of agency support costs. Accordingly, to generate sufficient revenue to cover the costs associated with this legislation, DPOR will need to increase contractor license fees. It generally requires two to three years to implement fee increases, so the increased fees will need to be adequate to recover the additional costs for FY09 and FY10. DPOR estimates that, to cover estimated costs from FY09 through FY14, contractor license fees will need to increase by approximately \$110 annually (\$220 over the two-year period of the renewal

license). Fees cover a two year licensing period, and will increase from \$165 to approximately \$385 for Contractor A's, \$150 to \$370 for Contractor B's, and \$110 to \$330 for Contractor C's.

9. Specific Agency or Political Subdivisions Affected: The Department of Professional and Occupational Regulation.

9. Technical Amendment Necessary: The summary on the LIS system for this bill describes it as containing technical amendments” when in fact, all statutory amendments are substantive. In addition, the summary fails to mention the increased investigative mandate placed on DPOR (as referred to in lines 155-156).

10. Other Comments: This bill adds requirements that would hold contractors responsible for hiring and/or employing workers who are undocumented. As such, it increases the workload for the Department of Professional and Occupational Regulation, which is responsible for overseeing the licensing of, and enforcement of violations by, all contractors in Virginia. As this bill does not deal with the enforcement of the legal status of workers directly, it is not expected to significantly impact the workload of the Department of Labor and Industry, which is the state agency tasked with the responsibility for verifying the employment status of all state workers. However, as this bill may heighten awareness of the presence of illegal workers in the construction industry, there may be an impact on law enforcement officials at all levels of government.

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cc: Secretary of Commerce and Trade
Secretary of Finance