

## Department of Planning and Budget 2008 Fiscal Impact Statement

**1. Bill Number:** HB1298

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

**2. Patron:**        Frederick

**3. Committee:** Rules

**4. Title:**        **Illegal immigrants; grounds for disciplinary action for employment thereof.**

**5. Summary:** This bill provides that any person holding a license, certification, or registration issued by a regulatory board established pursuant to Title 54.1 who knowingly hires any individual who cannot provide documents indicating that he is legally eligible to be employed in the United States will have his license certification, or registration suspended for 10 business days. The second or any subsequent violation shall be cause for further disciplinary action by the regulatory board including revocation or failure to renew the license, certificate, registration, or a monetary penalty not to exceed \$2,500 for each violation. In addition, the bill provides that no regulatory board established under Title 54.1 may issue a license, certification, or registration to any person who is not citizen of or legally present in the United States. The bill also requires all private employers to obtain employment eligibility verification documentation as specified in Form I-9 indicating that a prospective employee is legally eligible for employment in the United States. In addition to criminal penalties for employing illegal immigrants, the bill provides for the civil penalty of \$10,000 for each individual employed. In addition, the bill grants local commissioners of the revenue the power to deny or revoke business licenses of persons who (i) is not a United States citizen or legally present in the United States, or (ii) employs other persons who are not United States citizens or legally present in the United States.

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

**6a. Expenditure Impact:** (The expenditure impact only reflects the estimated costs for the Department of Professional and Occupational Regulation. Other possible costs for the Department of Labor and Industry are discussed in Item 8).

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2008	0	0.00	NGF
2009	7,624,454	86.00	NGF
2000	7,276,144	86.00	NGF
2011	7,276,144	86.00	NGF
2012	7,276,144	86.00	NGF
2013	7,276,144	86.00	NGF
2014	7,276,144	86.00	NGF

**6b. Revenue Impact:** (The revenue impact only reflects the estimated revenue for the Department of Professional and Occupational Regulation. Other possible revenue sources from civil penalties and fines are discussed in Item 8).

<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	11,655,000	0.00	NGF
2012	11,655,000	0.00	NGF
2013	11,655,000	0.00	NGF
2014	11,655,000	0.00	NGF

**7. Budget Amendment Necessary:** Yes, Item number 118.

**8. Fiscal Implications:**

Costs

This bill makes it a Class 1 misdemeanor for employers to (i) employ and (ii) fail to obtain documentation of employment eligibility verification, as specified by the Department of Homeland Security Employment Eligibility Verification Form 1-9, indicating that the employee is legally eligible for employment. The penalties of a Class 1 misdemeanor include confinement in jail for not more than twelve months and a fine of not more than \$2,500. Therefore, this proposal could result in an increase in the number of persons in jail. There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth pays the localities \$8.00 a day for each misdemeanant or otherwise local responsible prisoner held in a jail. It also funds most of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2007), the estimated total state support for local jails averaged \$28.42 per inmate per day in FY 2006.

The Department of Labor and Industry (DOLI) may be required to do civil enforcement of violations as a result of this bill. However, under federal law, employers are not required to share with DOLI the documents they have used in hiring employees. Should these federal enforcement barriers be removed, DOLI anticipates that it would require at least two inspectors with accompanying legal and administrative support, to enforce any violations. The total cost to DOLI to implement the requirements of this bill, should the federal enforcement barriers be removed, would be three and a half new FTEs, with an annually-recurring cost to the general fund of \$199,425.

This bill also increases the administrative and regulatory responsibilities of the Department of Professional and Occupational Regulation (DPOR) by prohibiting regulatory boards from issuing licenses to non-US citizens or individuals not legally present, and prohibiting regulators from employing individuals who cannot provide Department of Homeland Security (DHS) Form I-9 documentation.

This bill mandates that DPOR verify the status of every applicant for licensure. DPOR receives 35,000-40,000 applications annually. This would require DPOR to obtain documentation of legal status from each applicant, or information that could be used to verify the legal status of the

applicant. DPOR 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.)

These requirements will increase administrative workload and complexity associated with application review. DPOR estimates that it will require four classified Band 3 positions to handle the additional requirement to verify legal status for approximately 35,000 – 40,000 applicants annually, and to manage pending applications and respond to customer inquiries. The total recurring cost for salary and benefits for these four positions is estimated to be \$231,808 annually.

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 regulated services, and from other government agencies, public documents, and verifications of legal status. In order for a board to fulfill its responsibility to take disciplinary action against a licensee 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.

Contractor complaints typically represent approximately two-thirds of all complaints received by DPOR. Assuming the same portion is representative of all illegal immigrant complaints, DPOR expects to receive approximately 2,100 additional complaints related to illegal immigrants for all other regulated professions. This would bring the total number of new complaints related to illegal immigrants to approximately 6,300 annually. DPOR currently receives approximately 5,000 complaints each year, so this new requirement would more than 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 6,300 new complaints, this would create an additional 157,500 work hours. DPOR would require 79 classified Band 4 investigators to respond to this workload. The total recurring cost for salary and benefits for these 79 positions is estimated to be \$5,668,724 annually, and the recurring travel costs for the additional investigators, based on current expenditures, is estimated to be \$277,681 annually.

Currently, approximately 35 to 40 percent of all complaints filed with DPOR go to the boards for final case decisions. DPOR expects complaints involving illegal immigration to have clear

criteria and resolutions, and so expects more of these cases to go to the boards. As such, DPOR estimates that approximately 2,000 contractor cases and 735 cases related to other professions would go to the boards for a final case decision, which will more than 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 two classified Band 3 positions to provide administrative and clerical support to the boards for these cases. The total recurring cost for these three positions is estimated to be \$187,660 annually. To accommodate the additional cases, the Board for Contractors, with 13 members, would add three board meetings per year. The Board for Barbers and Cosmetology with 10 members, and the Board for Asbestos, Lead and Home Inspectors with 10 members, would each add one additional meeting per year. Board member travel and per diem for five additional board meetings is estimated to be \$17,265 annually. This cost will continue into future years.

In addition to all of the aforementioned costs associated with positions and additional board costs, there are other non-personal recurring and one-time costs. First, DPOR estimates that they will need to rent additional space to accommodate the new positions. This increased rent for the new positions, based on lease payments for FY 2009, will be \$67,406 assuming that the agency will need additional space to accommodate about half of the new investigator positions. Second, operating costs for the new staff include: telephone, employee development, computer operating support, postage, printing, and supplies, estimated at a total of \$825,600 each year. Third, DPOR projects the need to purchase furniture and equipment for the new positions at an estimated cost of \$602,000 (\$7,000 per position). This is a one-time expenditure that will be made in FY 2009 and will not continue into future years.

Overall, this bill will require 86 additional FTEs for DPOR, at a total estimated cost of \$7,624,454 in FY 2009 (includes one-time cost for equipment and assumes 23 pay periods) and \$7,276,144 in future years. This bill may also require three and a half FTEs for DOLI, at an annual reoccurring cost of \$199,425. These DOLI costs are not reflected in the total expenditure impact as it is not certain that federal enforcement barriers will be lifted and the FTEs will be needed.

#### Revenue:

This bill establishes two possible sources of revenue for the State Literary Fund: (1) an additional Class 1 misdemeanor violation, for which penalties result in fine of up to \$2,500, and (2) a separate civil offense punishable by a civil penalty of \$10,000. Due to the monies generated by both the fine from the new Class 1 misdemeanor charge and the \$10,000 civil penalty, this bill may result in a positive revenue impact to the State Literary Fund, as any penalties collected are directed towards this fund. However, as the revenue impact cannot be determined due to its dependence on the number of convictions, this possible source of revenue is not reflected in the total revenue impact.

According to the provisions of Section 54.1-113 (Callahan Act) of the Code of Virginia, DPOR is to establish licensing fees at rates adequate to cover a program's operating costs and a proportionate share of agency support costs. Therefore, in order to generate sufficient revenue to cover the costs associated with this legislation, DPOR will need to increase license fees. It generally requires two to three years to implement fee increases, so the new 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. Increases for other licensees would likely be less than \$40 annually. The revenue estimate total reflects the total revenue expected to be collected by DPOR from new licensing fees.

**9. Specific Agency or Political Subdivisions Affected:** Department of Labor and Industry, Department of Professional and Occupational Regulation, local court systems, jails. A possible impact on other state regulatory agencies (i.e. Department of Health Professions and Board of Accountancy).

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This bill is similar in nature to HB 227, HB 1047, and SB 90.

**Date:** 1/21/2008 dpbaek

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cc: Secretary of Commerce and Trade  
Secretary of Finance