

## Department of Planning and Budget 2011 Fiscal Impact Statement

**1. Bill Number:** HB 1895

<b>House of Origin</b>	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Watts

**3. Committee:** Courts of Justice

**4. Title:** Document verification for employment of illegal immigrants; penalty.

**5. Summary:** This bill would make it a Class 1 misdemeanor to falsely represent that an immigrant worker has documentation of legal eligibility for employment. The measure amends the existing prohibition on employing illegal immigrants to provide that it is unlawful to continue employing a person who cannot provide the required documentation of eligibility. Each day of continued unlawful employment of such person constitutes a separate civil offense punishable by a \$250 civil penalty. The Department of Labor and Industry is charged with investigating and enforcing these provisions. Payments to satisfy a civil penalty shall be paid into a special fund and used by the Department to carry out its duties under this section.

**6. Budget Amendment Necessary:** Yes, Item 106, HB1500

**7. Fiscal Impact Estimates:** Preliminary, See Item 8

**8. Fiscal Implications:** The passage of this bill would give the Department of Labor and Industry (DOLI) the responsibility for enforcing the bill's provisions as to civil violations and potentially referring the violations to the Commonwealth's Attorney for criminal action. To perform these obligations, the agency estimates it would need additional staff of at least two inspectors with accompanying one and half positions for legal and administrative support, to enforce any violations. According to DOLI, the fines that are to be deposited to the special fund for use in enforcing the bill would produce approximately \$37,500. This is based on the two inspectors finding valid half of the complaints to which they respond and the Department being able to collect the civil fines at a collection rate of 50 percent.

The approximate annual general fund cost to DOLI for three and a half new FTE's is \$240,000, less the fine amount placed in the special fund of approximately \$37,500 as listed above.

The bill is silent on the mechanism or process the Department would use to locate violators, how the bill's provisions would be enforced, as well as whether violations should be pursued both criminally and civilly.

The bill further makes it a Class 1 misdemeanor to falsely represent an immigrant worker has documentation of legal eligibility for employment. Although insufficient data exists to determine the fiscal impact due to this proposal, it could result in an increased jail population as

Class 1 misdemeanor outcomes result in sentences of up to 12 months in jail (and a fine up to \$2,500). Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 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 FY2009 Jail Cost Report (November 1, 2010), the estimated total state support for local and regional jails averaged \$33.01 per state inmate, per day in FY 2009.

**9. Specific Agency or Political Subdivisions Affected:** The Department of Labor and Industry, Compensation Board

**10. Technical Amendment Necessary:** No

**11. Other Comments:** There are a few other factors which could impact enforcement of the provisions of this bill. For example, there could be difficulties in getting the necessary documents (e.g., federal I-9's and supporting documentation) from employers because under federal law employers are not required to share with DOLI the documents they have used in hiring employees. In addition, because the law involves a penalty or fine to enforce an immigration law, it may be preempted by federal immigration law. (*See 8 USC 1324(h)2*)

**Date:** 1/27/2011