

The Senate Public Safety Committee offered the following substitute to HB 2:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated,  
2 relating to security and immigration compliance, so as to clarify compliance requirements  
3 of public employers; to amend Article 1 of Chapter 2 of Title 32 of the Official Code of  
4 Georgia Annotated, relating to the Department of Transportation in general, so as to provide  
5 that the department shall not fund Local Assistance Road Program projects submitted by  
6 counties and municipalities not in compliance with employee and public benefit  
7 requirements; to provide for certification and verification of compliance; to amend Article  
8 1 of Chapter 4 of Title 42 of the Official Code of Georgia Annotated, relating to general  
9 provisions pertaining to jails, so as to change certain provisions relating to keepers of jails  
10 and queries made to the United States Department of Homeland Security; to amend Chapter  
11 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of lawful  
12 presence within the United States, so as to change certain provisions relating to verification  
13 requirements, procedures, and conditions; to provide for definitions; to provide for reports  
14 and duties of the Attorney General; to provide for related matters; to provide an effective  
15 date; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

17 Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to  
18 security and immigration compliance, is amended by revising Code Section 13-10-91,  
19 relating to verification of new employee information and applicability and rules and  
20 regulations, as follows:  
21

22 "13-10-91.

23 (a) ~~On or after July 1, 2007, every~~ Every public employer, including, but not limited to,  
24 every municipality and county, shall register and participate in the federal work  
25 authorization program to verify information employment eligibility of all ~~new~~ newly hired

26 employees. Upon federal authorization, a public employer shall permanently post the  
 27 employer's federally issued user identification number and date of authorization, as  
 28 established by the agreement for authorization, on the employer's website; provided,  
 29 however, that if a local public employer does not maintain a website, then the identification  
 30 number and date of authorization shall be published annually in the official legal organ for  
 31 the county.

32 (b)(1) No public employer shall enter into a contract for the physical performance of  
 33 services within this state unless the contractor registers and participates in the federal  
 34 work authorization program to verify information of all ~~new~~ newly hired employees or  
 35 subcontractors. Before a bid for any such service is considered by a public employer, the  
 36 bid shall include a signed, notarized affidavit from the contractor, and, where applicable,  
 37 each subcontractor, attesting to the following:

38 (A) The affiant has registered with and is authorized to use the federal work  
 39 authorization program;

40 (B) The user identification number and date of authorization for the affiant; and

41 (C) The affiant is using and will continue to use the federal work authorization  
 42 program throughout the contract period.

43 An affidavit required by this subsection shall be considered an open public record once  
 44 a public employer has entered into a contract for services; provided, however, that any  
 45 information protected from public disclosure by federal law shall be redacted.

46 (2) No contractor or subcontractor who enters a contract with a public employer shall  
 47 enter into such a contract or subcontract in connection with the physical performance of  
 48 services within this state unless the contractor or subcontractor registers and participates  
 49 in the federal work authorization program to verify information of all ~~new~~ newly hired  
 50 employees.

51 ~~(3) Paragraphs (1) and (2) of this subsection shall apply as follows:~~

52 ~~(A) On or after July 1, 2007, with respect to public employers, contractors, or~~  
 53 ~~subcontractors of 500 or more employees;~~

54 ~~(B) On or after July 1, 2008, with respect to public employers, contractors, or~~  
 55 ~~subcontractors of 100 or more employees; and~~

56 ~~(C) On or after July 1, 2009, with respect to all public employers, contractors, or~~  
 57 ~~subcontractors.~~

58 (c) This Code section shall be enforced without regard to race, religion, gender, ethnicity,  
 59 or national origin.

60 (d) Except as provided in subsection (e) of this Code section, the Commissioner shall  
 61 prescribe forms and promulgate rules and regulations deemed necessary in order to

62 administer and effectuate this Code section and publish such rules and regulations on the  
63 Georgia Department of Labor's website.

64 (e) The commissioner of the Georgia Department of Transportation shall prescribe all  
65 forms and promulgate rules and regulations deemed necessary for the application of this  
66 Code section to any contract or agreement relating to public transportation and shall  
67 publish such rules and regulations on the Georgia Department of Transportation's website."

68 **SECTION 2.**

69 Article 1 of Chapter 2 of Title 32 of the Official Code of Georgia Annotated, relating to the  
70 Department of Transportation in general, is amended by adding a new Code section to read  
71 as follows:

72 "32-2-9.

73 (a) On and after January 1, 2010, the department shall not fund any Local Assistance Road  
74 Program project submitted by a county or municipality unless the county or municipality  
75 is in compliance with Code Sections 13-10-91 and 50-36-1 as determined by the  
76 department.

77 (b) In the event that funding is withheld because a local government fails to meet the terms  
78 of subsection (a) of this Code section, the local government shall become eligible for the  
79 project funding once compliance is established.

80 (c) In applying this Code section to counties, withholding of grants shall apply only with  
81 respect to failure to comply by the county governing authority or agents or employees over  
82 whom the county governing authority has management control.

83 (d) No grant shall be denied to a local government due to the failure of the United States  
84 Department of Homeland Security or any successor agency to process, register, or respond  
85 to a local government request.

86 (e) Each county and municipality in the state shall annually certify and demonstrate to the  
87 department its compliance with Code Sections 13-10-91 and 50-36-1 in such manner as  
88 specified by rules and regulations adopted by the department. Compliance shall consist of  
89 taking all reasonably necessary steps to participate in the federal work authorization  
90 program and the Systematic Alien Verification of Entitlement (SAVE) program or any  
91 successor federal programs, including conformity with any federal agency requirements  
92 such as providing any required copies of statutory authorization and any required affidavits,  
93 letters, memorandums of understanding, or other documentation. Verification of the work  
94 authorization status of prison labor shall not be required for compliance. The department  
95 shall evaluate the certifications so made and may:

- 96 (1) Disapprove a certification so made if the department finds that the county or  
 97 municipality is not in compliance after giving the county or municipality notice of its  
 98 preliminary finding and an opportunity to submit further evidence of compliance; or  
 99 (2) Require any county or municipality to provide further information as needed by the  
 100 department to make its determination on compliance.

101 A disapproval of certification or a failure to seek certification shall result in ineligibility  
 102 under subsection (a) of this Code section. The department shall make an annual report of  
 103 the counties and municipalities determined to be in compliance and shall transmit copies  
 104 of the annual report to the appropriations committees of the Senate and House of  
 105 Representatives.

106 (f) This Code section shall not affect the funding of any project approved by the  
 107 department prior to January 1, 2010."

108 **SECTION 3.**

109 Article 1 of Chapter 4 of Title 42 of the Official Code of Georgia Annotated, relating to  
 110 general provisions pertaining to jails, is amended by revising Code Section 42-4-14, relating  
 111 to the determination of nationality of persons charged with a felony and confined in a jail  
 112 facility, as follows:

113 "42-4-14.

114 (a) When any person ~~charged with a felony or with driving under the influence pursuant~~  
 115 ~~to Code Section 40-6-391 or convicted of driving without being licensed in violation of~~  
 116 ~~subsection (a) of Code Section 40-5-20~~ is confined, for any period, in the jail of the a  
 117 county; or any municipality or a jail operated by a regional jail authority, a reasonable  
 118 effort shall be made to determine the nationality of the person so confined.

119 (b) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a  
 120 reasonable effort to verify that the prisoner has been lawfully admitted to the United States  
 121 and if lawfully admitted, that such lawful status has not expired. If verification of lawful  
 122 status can not be made from documents in the possession of the prisoner, verification shall  
 123 be made within 48 hours through a query to the Law Enforcement Support Center (LESC)  
 124 of the United States Department of Homeland Security or other office or agency designated  
 125 for that purpose by the United States Department of Homeland Security. If the prisoner is  
 126 determined not to be lawfully admitted to the United States, the keeper of the jail or other  
 127 officer shall notify the United States Department of Homeland Security.

128 (c) Nothing in this Code section shall be construed to deny a person bond or from being  
 129 released from confinement when such person is otherwise eligible for release.

130 (d) The Georgia Sheriffs Association shall prepare and issue guidelines and procedures  
 131 used to comply with the provisions of this Code section.

132 (e) Where a keeper of a jail has verified unlawful immigration status through LESC  
 133 pursuant to this Code section, a report of unlawful immigration status shall be made by the  
 134 jailer to the Georgia Crime Information Center in a manner prescribed by the center. The  
 135 Georgia Crime Information Center shall maintain and disclose a report of unlawful  
 136 immigration status information in the same manner as information pertaining to wanted  
 137 persons. A record of unlawful immigration status shall be updated by the center to reflect  
 138 lawful immigration status where the center receives a valid federal record or report  
 139 verifying current lawful status."

140 **SECTION 4.**

141 Chapter 36 of Title 50 of the Official Code of Georgia Annotated, relating to verification of  
 142 lawful presence within the United States, is amended by revising Code Section 50-36-1,  
 143 relating to the verification requirements, procedures, and conditions and exceptions,  
 144 regulations, and criminal and other penalties for violations, as follows:

145 "50-36-1.

146 (a) As used in this Code section, the term:

147 (1) 'Agency or political subdivision' means any department, agency, authority,  
 148 commission, or government entity of this state or any subdivision of this state.

149 (2) 'Applicant' means any natural person, 18 years of age or older, who has made any  
 150 application or request for, or access to, public benefits whether made on his or her own  
 151 behalf or on behalf of an individual, business, corporation, partnership, or other private  
 152 entity.

153 (3)(A) 'Public benefit' means a state or local public benefit or state administered federal  
 154 public benefit as defined in 8 U.S.C. Sections 1611 and 1621; a benefit identified by the  
 155 federal government under the federal Systematic Alien Verification for Entitlements  
 156 (SAVE) program; and any authorization, renewal, recognition, or registration of such  
 157 benefit. The benefits listed on the Attorney General's report required by subparagraph  
 158 (B) of this paragraph shall also be considered public benefits for purposes of this Code  
 159 Section.

160 (B) Each year before August 1, the Attorney General shall prepare a detailed report  
 161 indicating any 'state public benefit' and 'local public benefit' that may be offered in this  
 162 state that is covered by the definitions in 8 U.S.C. Sections 1611 and 1621 and whether  
 163 such benefit is subject to SAVE verification pursuant to this Code section. Such report  
 164 shall provide the name of the benefit and name the agency or political subdivision  
 165 providing the benefit. Such report shall be updated annually and distributed annually  
 166 to the General Assembly and posted to the Attorney General's website.

167 ~~(b)~~ Except as provided in subsection ~~(c)~~ (d) of this Code section or where exempted by  
 168 federal law, ~~on or after July 1, 2007~~, every agency or a political subdivision of this state  
 169 shall verify the lawful presence in the United States of any ~~natural person 18 years of age~~  
 170 ~~or older who has applied for state or local~~ applicant for public benefits, as defined in 8  
 171 ~~U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611,~~  
 172 ~~that is administered by an agency or a political subdivision of this state.~~

173 ~~(b)~~(c) This Code section shall be enforced without regard to race, religion, gender,  
 174 ethnicity, or national origin.

175 ~~(c)~~(d) Verification of lawful presence under this Code section shall not be required:

176 (1) For any purpose for which lawful presence in the United States is not required by  
 177 law, ordinance, or regulation;

178 (2) For assistance for health care items and services that are necessary for the treatment  
 179 of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the  
 180 alien involved and are not related to an organ transplant procedure;

181 (3) For short-term, noncash, in-kind emergency disaster relief;

182 (4) For public health assistance for immunizations with respect to immunizable diseases  
 183 and for testing and treatment of symptoms of communicable diseases whether or not such  
 184 symptoms are caused by a communicable disease;

185 (5) For programs, services, or assistance such as soup kitchens, crisis counseling and  
 186 intervention, and short-term shelter specified by the United States Attorney General, in  
 187 the United States Attorney General's sole and unreviewable discretion after consultation  
 188 with appropriate federal agencies and departments, which:

189 (A) Deliver in-kind services at the community level, including through public or  
 190 private nonprofit agencies;

191 (B) Do not condition the provision of assistance, the amount of assistance provided,  
 192 or the cost of assistance provided on the individual recipient's income or resources; and

193 (C) Are necessary for the protection of life or safety;

194 (6) For prenatal care; or

195 (7) For postsecondary education, whereby the Board of Regents of the University System  
 196 of Georgia or the State Board of Technical and Adult Education shall set forth, or cause  
 197 to be set forth, policies regarding postsecondary benefits that comply with all federal law  
 198 including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621,  
 199 or 1623.

200 ~~(d)~~(e) An agency or political subdivision providing or administering a public benefit shall  
 201 require every applicant for such benefit to execute a signed and sworn affidavit verifying  
 202 the applicant's lawful presence in the United States, which affidavit shall state ~~Verification~~

203 of lawful presence in the United States by the agency or political subdivision required to  
 204 make such verification shall occur as follows:

205 (1) The applicant ~~must execute an affidavit that he or she~~ is a United States citizen or  
 206 legal permanent resident 18 years of age or older; or

207 (2) The applicant ~~must execute an affidavit that he or she~~ is a qualified alien or  
 208 nonimmigrant under the federal Immigration and Nationality Act 18 years of age or older  
 209 lawfully present in the United States and provide the applicant's alien number issued by  
 210 the Department of Homeland Security or other federal immigration agency.

211 ~~(e)~~(f) For any applicant who has executed an affidavit that he or she is an alien lawfully  
 212 present in the United States, eligibility for public benefits shall be made through the  
 213 Systematic Alien Verification of Entitlement (SAVE) program operated by the United  
 214 States Department of Homeland Security or a successor program designated by the United  
 215 States Department of Homeland Security. Until such eligibility verification is made, the  
 216 affidavit may be presumed to be proof of lawful presence for the purposes of this Code  
 217 section.

218 ~~(f)~~(g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent  
 219 statement of representation in an affidavit executed pursuant to ~~subsection (d)~~ of this Code  
 220 section shall be guilty of a violation of Code Section 16-10-20.

221 ~~(g)~~ Agencies or political subdivisions of this state may adopt variations to the requirements  
 222 of this Code section to improve efficiency or reduce delay in the verification process or to  
 223 provide for adjudication of unique individual circumstances where the verification  
 224 procedures in this Code section would impose unusual hardship on a legal resident of  
 225 Georgia.

226 (h) It shall be unlawful for any agency or a political subdivision ~~of this state~~ to provide or  
 227 administer any state, local, or federal public benefit, as defined in 8 U.S.C. Section 1621  
 228 ~~or 8 U.S.C. Section 1611~~, in violation of this Code section. Each state agency or  
 229 department which administers any program of ~~state or local~~ public benefits shall provide  
 230 an annual report to the inspector general with respect to its compliance with this Code  
 231 section.

232 (i) Any and all errors and significant delays by SAVE shall be reported to the United  
 233 States Department of Homeland Security and to the Secretary of State which will monitor  
 234 SAVE and its verification application errors and significant delays and report yearly on  
 235 such errors and significant delays to ensure that the application of SAVE is not wrongfully  
 236 denying benefits to ~~legal residents of Georgia~~ eligible applicants.

237 (j) Notwithstanding subsection ~~(f)~~(g) of this Code section any applicant for public benefits  
 238 ~~federal benefits as defined in 8 U.S.C. Section 1611 or state or local benefits as defined in~~  
 239 ~~8 U.S.C. Section 1621~~ shall not be guilty of any crime for executing an affidavit attesting

240 to lawful presence in the United States that contains a false statement if said affidavit is not  
241 required by this Code section.

242 (k) In the event a legal action is filed against any agency or political subdivision alleging  
243 any improper denial of a public benefit arising out of an effort to comply with this Code  
244 section, the Attorney General shall be served with a copy of the proceeding and shall be  
245 entitled to be heard."

246 **SECTION 5.**

247 This Act shall become effective upon its approval by the Governor or upon its becoming law  
248 without such approval.

249 **SECTION 6.**

250 All laws and parts of laws in conflict with this Act are repealed.