

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1001 be amended to read as follows:

- 1 Page 231, between lines 28 and 29, begin a new paragraph and
2 insert:
3 "SECTION 223.IC 22-5-1.7 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]:
6 **Chapter 1.7. Public Contract for Services; Business Entities;
7 Unauthorized Aliens**
8 **Sec. 1. (a) As used in this chapter, "business entity" means a
9 person or group of persons that perform or engage in any activity,
10 enterprise, profession, or occupation for gain, benefit, advantage,
11 or livelihood.**
12 **(b) The term includes self-employed individuals, partnerships,
13 corporations, contractors, and subcontractors.**
14 **(c) The term does not include a self-employed person that does
15 not employ any employees.**
16 **Sec. 2. As used in this chapter, "contractor" means a person
17 that has or is attempting to enter into a public contract for services
18 with a state agency or political subdivision.**
19 **Sec. 3. As used in this chapter, "E-Verify program" means the
20 electronic verification of work authorization program of the Illegal
21 Immigration Reform and Immigration Responsibility Act of 1996
22 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated
23 by the United States Department of Homeland Security or a
24 successor work authorization program designated by the United
25 States Department of Homeland Security or other federal agency
26 authorized to verify the work authorization status of newly hired
27 employees under the Immigration Reform and Control Act of 1986
28 (P.L. 99-603).**
29 **Sec. 4. As used in this chapter, "person" means an individual, a
30 corporation, a limited liability company, a partnership, or another**

1 legal entity.

2 **Sec. 5. As used in this chapter, "political subdivision" has the**
3 **meaning set forth in IC 36-1-2-13.**

4 **Sec. 6. As used in this chapter, "public contract for services"**
5 **means any type of agreement between a state agency or a political**
6 **subdivision and a contractor for the procurement of services.**

7 **Sec. 7. As used in this chapter, "state agency" has the meaning**
8 **set forth in IC 4-6-3-1.**

9 **Sec. 8. As used in this chapter, "subcontractor" means a person**
10 **that:**

- 11 (1) is a party to a contract with a contractor; and
12 (2) provides services for work the contractor is performing
13 under a public contract for services.

14 **Sec. 9. As used in this chapter, "unauthorized alien" has the**
15 **meaning set forth in 8 U.S.C. 1324a(h)(3).**

16 **Sec. 10. (a) Except as provided in subsection (b), a state agency**
17 **or political subdivision shall use the E-Verify program to verify the**
18 **work eligibility status of all employees of the state agency or**
19 **political subdivision hired after June 30, 2011.**

20 **(b) A state agency or political subdivision is not required to use**
21 **the E-Verify program as required under subsection (a) if the**
22 **E-Verify program no longer exists.**

23 **Sec. 11. (a) A state agency or political subdivision may not enter**
24 **into or renew a public contract for services with a contractor**
25 **unless:**

- 26 (1) the public contract contains:
27 (A) a provision requiring the contractor to enroll in and
28 verify the work eligibility status of all newly hired
29 employees of the contractor through the E-Verify
30 program; and
31 (B) a provision that provides that a contractor is not
32 required to verify the work eligibility status of all newly
33 hired employees of the contractor through the E-Verify
34 program if the E-Verify program no longer exists; and
35 (2) the contractor signs an affidavit affirming that the
36 contractor does not knowingly employ an unauthorized alien.

37 **(b) A state agency or political subdivision may not award a**
38 **grant of more than one thousand dollars (\$1,000) to a business**
39 **entity unless the business entity:**

- 40 (1) signs a sworn affidavit that affirms that the business entity
41 has enrolled and is participating in the E-Verify program;
42 (2) provides documentation to the state agency or political
43 subdivision that the business entity has enrolled and is
44 participating in the E-Verify program; and
45 (3) signs an affidavit affirming that the business entity does
46 not knowingly employ an unauthorized alien.

47 **Sec. 12. (a) A contractor or a subcontractor may not:**

- 1 (1) knowingly employ or contract with an unauthorized alien;
2 or
3 (2) retain an employee or contract with a person that the
4 contractor or subcontractor subsequently learns is an
5 unauthorized alien.

6 (b) If a contractor violates this section, the state agency or
7 political subdivision shall require the contractor to remedy the
8 violation not later than thirty (30) days after the date the state
9 agency or political subdivision notifies the contractor of the
10 violation.

11 (c) There is a rebuttable presumption that a contractor did not
12 knowingly employ an unauthorized alien if the contractor verified
13 the work eligibility status of the employee through the E-Verify
14 program.

15 Sec. 13. (a) Except as provided in subsection (b), if the
16 contractor fails to remedy the violation within the thirty (30) day
17 period provided under section 12(b) of this chapter, the state
18 agency or political subdivision shall terminate the public contract
19 for services with the contractor for breach of the public contract
20 for services.

21 (b) If a contractor employs or contracts with an unauthorized
22 alien but the state agency or political subdivision (whichever the
23 contractor has a public contract for services with) determines that
24 terminating the public contract for services under subsection (a)
25 would be detrimental to the public interest or public property, the
26 state agency or political subdivision may allow the public contract
27 for services to remain in effect until the state agency or political
28 subdivision procures a new contractor.

29 (c) If a state agency or political subdivision terminates a public
30 contract for services under subsection (a), the contractor is liable
31 to the state agency or political subdivision for actual damages.

32 Sec. 14. A contractor may file an action with a circuit or
33 superior court having jurisdiction in the county to challenge:

- 34 (1) a notice of a violation to the contractor under section 12(b)
35 of this chapter not later than twenty (20) days after the
36 contractor receives the notice; or
37 (2) a termination of a public contract for services under
38 section 13(a) of this chapter not later than twenty (20) days
39 after the state agency or political subdivision terminates the
40 public contract for services with the contractor.

41 Sec. 15. If a contractor uses a subcontractor to provide services
42 for work the contractor is performing under a public contract for
43 services, the subcontractor shall certify to the contractor in a
44 manner consistent with federal law that the subcontractor, at the
45 time of certification:

- 46 (1) does not employ or contract with an unauthorized alien;
47 and

1 **(2) has enrolled and is participating in the E-Verify program.**

2 **Sec. 16. A contractor shall maintain on file a certification of a**
3 **subcontractor under section 15 of this chapter throughout the**
4 **duration of the term of a contract with the subcontractor.**

5 **Sec. 17. (a) If a contractor determines that a subcontractor is in**
6 **violation of this chapter, the contractor may terminate a contract**
7 **with the subcontractor for the violation.**

8 **(b) A contract terminated under subsection (a) for a violation of**
9 **this chapter by a subcontractor may not be considered a breach of**
10 **contract by the contractor or the subcontractor.**

11 **(c) A subcontractor may file an action with a circuit or superior**
12 **court having jurisdiction in the county to challenge a termination**
13 **of a contract under subsection (a) not later than twenty (20) days**
14 **after the contractor terminates the contract with the**
15 **subcontractor."**

16 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1001 as printed April 19, 2011.)

Senator DELPH