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STATE GOVERNMENT Verification of Lawful Presence Within the United States: Amend Section 91 of Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, Relating to Security and Immigration Compliance, so as to Clarify Compliance Requirements of Public Employers; Provide Certain Immunity; Amend Section 14 of Article 1 of Chapter 4 of Title 42 of the Official Code of Georgia Annotatedm Relating to General Provisions Pertaining to Jails, so as to Change Certain Provisions Relating to Keepers of Jails and Queries Made to the United States Department of Homeland Security; to Amend

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Section 1 of Chapter 36 of Title 50 of the Official Code of Georgia Annotated, Relating to Verification of Lawful Presence Within the United States, so as to Change Certain Provisions Relating to Verification Requirements, Procedures, and Conditions; Provide for Definitions; Provide for Reports and Duties of the Attorney General; Provide Certain Immunity; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

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STATE GOVERNMENT

Verification of Lawful Presence Within United States: Amend Section 91 of Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, Relating to Security and Immigration Compliance, so as to Clarify Compliance Requirements of Public Employers; Provide Certain Immunity; Amend Section 14 of Article 1 of Chapter 4 of Title 42 of the Official Code of Georgia Annotated, Relating General Provisions Pertaining to Jails, so as to Change Certain Provisions Relating to Keepers of Jails and Queries Made to the United States Department of Homeland Security; to Amend Section 1 of Chapter 36 of Title 50 of the Official Code of Georgia Annotated, Relating to Verification of Lawful Presence Within the United States, so as to Change Certain Provisions Relating to Verification Requirements, Procedures, and Conditions; Provide for Definitions; Provide for Reports and Duties of the Attorney General; Provide Certain Immunity; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

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| CODE SECTIONS: | O.C.G.A. §§ 13-10-91 (amended), 42-4-14 (amended), 50-36-1 (amended) |
| BILL NUMBER: | HB 2 |
| ACT NUMBER: | 339 |
| GEORGIA LAWS: | 2009 Ga. Laws 970 |
| SUMMARY: | The Act requires public employers to participate in a federal work authorization program to verify lawful presence and employment eligibility of all newly hired employees. Contractors who bid for public work must also register with the federal work authorization program and must verify related information regarding all new employees and subcontractors. The Act also requires county and municipal jail authorities to make an effort to determine the nationality of people |

confined; regarding certain charges, the jailer must make an effort to ensure that the prisoner has been lawfully admitted to the United States. In addition, the Act requires state agencies to verify the lawful presence within the United States of any applicant for public benefits.

EFFECTIVE DATE: January 1, 2010

History

Within this nation founded by immigrants, immigration has for centuries been a matter that incites divergent views, heated debate, and expansive federal and state legislation. In 1790, the federal government waded into the realm of immigration for the first time when Congress passed an act that set the residence requirement for naturalization at two years.¹ In 1819, Congress passed additional immigration legislation² that, among other provisions, established standards for vessels bringing immigrants into the United States.³

Today, immigration law remains at the forefront of the nation's legislative agenda while a mere 2,000 federal immigration investigators struggle to address the half-million unauthorized aliens entering the country annually.⁴ Advocates of stiff immigration laws blame undocumented immigrants for absorbing unmerited benefits from the nation's education, health care, and social service systems.⁵

1. Federation for American Immigration Reform, History of U.S. Immigration Laws, http://www.fairus.org/site/PageNavigator/facts/research_us_laws/ (last visited Aug. 29, 2009).

2. *Id.*

3. Constitutional Rights Foundation Forum, Major U.S. Immigration Laws, <http://www.crfforum.org/topics/?topicid=35&catid=8&view=document&id=76> (last visited Aug. 29, 2009).

4. Greg K. Venbrux, Devolution or Evolution? The Increasing Role of the State in Immigration Law Enforcement, 11 UCLA J. INT'L L. & FOREIGN AFF. 307, 309 (2006).

5. Jason G. Idilbi, *Local Enforcement of Federal Immigration Law: Should North Carolina Communities Implement 287(G) Authority?*, 86 N.C. L. REV. 1710, 1724; *see also* Interview with Rep. Tom Rice (R-51st) (Apr. 6, 2009) [hereinafter Rice Interview] ("The amount of benefit paid to illegals is primarily in three areas: education, Medicaid (or indigent medical aid), and the criminal justice system. Gwinnett County recently . . . did a check on the inmate population and found out that out of the total population, over 900 were illegal.").

Critics of these laws note the positive contribution immigrants—including undocumented ones—can have on local economies.⁶

By 2008, the number of undocumented immigrants entering the country annually had dropped, as had the total number of undocumented immigrants living within the United States.⁷ Currently, there are about 12 million unauthorized aliens in the country,⁸ with several hundred thousand living in Georgia.⁹ Migration to Georgia by people of all races, but especially Latino immigrants, surged in the 1990s, with Georgia experiencing an overall three-hundred-percent increase in the Latino population between 1995 and 2000.¹⁰ The speed of the Latino population boom caught many Georgians off guard, particularly because the state's social norms have long revolved around black-white relations; much of the state is also rural, with little diversity in population.¹¹

Under the plenary power doctrine, enforcement of immigration law has primarily been within the domain of the federal government,¹² and states have typically played a limited role in enforcing such

6. Idilbi, *supra* note 5, at 1735–36 (“Another important economic consideration is that immigrants—even undocumented ones—contribute to local economies and can actually help to revitalize them. Through a taxpayer identification number, many undocumented immigrants pay taxes and contribute to the social security system, even though they cannot be beneficiaries of many public benefits programs. Undocumented immigrants also have purchasing power and can stimulate a local economy.”).

7. Jeffrey S. Passel & D’Vera Cohn, Pew Hispanic Center, Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow i (2008), available at <http://pewhispanic.org/files/reports/94.pdf> (noting that findings are inconclusive due to the margin of error in the estimates).

8. U.S. Gov’t Accountability Office, Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws 1 (2009), available at <http://www.gao.gov/new.items/d09109.pdf>.

9. Federation for American Immigration Reform, *Illegal Immigration in Georgia*, Feb. 3, 2005, <http://www.usimmigrationlawyers.com/resource.cfm/state/ga/article/11286/228000-Illegal-Aliens-Resided-In-Georgi.html> (“228,000 illegal aliens resided in Georgia as of 2000, according to INS figures. The number of illegal aliens has increased 613 percent since 1996 and 777 percent since 1992, giving Georgia the seventh largest illegal immigrant population in the country.”).

10. Rakesh Kochhar, Robert Suro, & Sonya Tafoya, Pew Hispanic Center, New Latino South: The Context and Consequences of Rapid Population Growth ii (2005), available at <http://pewhispanic.org/files/reports/50.pdf>.

11. *See id.*

12. Venbrux, *supra* note 4, at 312 (“[S]ince Congress began developing immigration policies during the Reconstruction Era, the U.S. Supreme Court has consistently acknowledged that the federal government possesses an exclusive, plenary power to regulate immigration.”).

laws.¹³ Indeed, the United States Supreme Court has limited the states' capacity to do so.¹⁴ But many state and local governments have grown aggravated with large numbers of undocumented immigrants in their communities and the federal government's failure to pass effective immigration laws.¹⁵ Eventually, like other states with large communities of unauthorized aliens, Georgia began to take steps to curb its growing numbers of undocumented immigrants.¹⁶

In 2006, the Georgia General Assembly enacted Senate Bill (SB) 529, the Georgia Security and Immigration Compliance Act (GSICA) (codified in part in Code section 13-10-91 as well as in Code sections 50-36-1 and 42-4-14),¹⁷ which was "intended to enact a 'comprehensive regulation of persons in this state who are not lawfully present in the United States.'"¹⁸ Among more than a half-dozen other provisions, the GSICA requires every public employer to register and participate in the federal work authorization program in order to verify immigration information related to new employees.¹⁹ It bars public employers from entering contracts for the physical performance²⁰ of state services unless the contractor registers and

13. Idilbi, *supra* note 5, at 1714 ("[S]tates have historically participated in the enforcement of the criminal provisions of the INA [Immigration and Nationality Act] through the investigation and prosecution of violations and sharing findings with federal immigration authorities. . . . On the other hand, states traditionally have not played a role in enforcement of the civil provisions—such as apprehending and removing deportable aliens—that are construed to be within the exclusive purview of federal immigration enforcement agencies.").

14. Venbrux, *supra* note 4, at 312–13 ("In light of the plenary power doctrine's well-established history, states have not traditionally played a role in the enforcement of immigration law. Indeed, the Supreme Court has often limited the capacity of state authorities to regulate the status of immigrants under the preemption doctrine.").

15. Idilbi, *supra* note 5, at 1710.

16. See R. Neal, *Georgia Passes One of the Nation's Toughest Immigration Bills*, ONLINE MAG. OF THE INST. FOR S. STUD., Apr. 18, 2006, <http://www.southernstudies.org/2006/04/georgia-passes-one-of-nations-toughest.html>.

17. Video Recording of House Proceedings, Mar. 12, 2009 at 2 hr., 35 min., 7 sec. (remarks by Rep. Tom Rice), mms://mediam1.gpb.org/ga/leg/2009/house_031209_3.wmv [hereinafter Mar. 12 House Floor Video]; see 2006 Ga. Laws 105, §§ 1, 2, 5, 9.

18. Letter from John B. Ballard, Jr., Counsel for Fiscal Policy, Office of the Attorney General, to Sen. John Douglas (R-17th) and Rep. Stacey Abrams (D-84th) (Jan. 26, 2009) (on file with the Georgia State University Law Review) [hereinafter Ballard Letter].

19. 2006 Ga. Laws 105, § 2, at 106; Fact Sheet, Georgia Security and Immigration Compliance Act, at 2 (on file with the Georgia State University Law Review).

20. "In context, this is not a reference to having services performed which are 'physical,' i.e., GSICA is not concerned only with such activity as constructing or painting. It is a reference to having services performed by someone who is physically present 'within this state' and whether that person is lawfully so for the purpose." Ballard Letter, *supra* note 18.

participates in the federal work authorization program.²¹ Contractors and subcontractors entering contracts with a public employer are required to register and participate in the federal work authorization program in order to verify information of new employees.²² This information is to be verified using E-verify,²³ an online system operated by the Department of Homeland Security (DHS) and the Social Security Administration (SSA).²⁴ The Act also mandates that Georgia agencies and political subdivisions verify the lawful presence within the United States of anyone eighteen or older applying for public benefits, with certain exceptions.²⁵ Applicants are required to sign an affidavit regarding their citizenship, legal permanent residency, or the legality of their presence according to the federal Immigration and Nationality Act (INA).²⁶ The Systematic Alien Verification of Entitlement (SAVE) program, operated by the DHS, then determines eligibility.²⁷ In addition, the Act requires that jail officials make a “reasonable effort” to determine the nationality of confined individuals charged with felonies or with driving under the influence.²⁸ If the prisoner is a foreign national, the Act requires jail officials to attempt to verify that the person has been lawfully admitted to the United States; those not lawfully admitted are to be reported to the DHS.²⁹

Despite the potentially far-reaching impacts of the Act, local counties and municipalities have been slow to comply with certain provisions.³⁰ According to Representative Tom Rice (R-51st), lead sponsor of the bill, prior to the 2009 session only five local governments applied to the SAVE program for verification of

21. 2006 Ga. Laws 105, § 2, at 107; Fact Sheet, *supra* note 19.

22. 2006 Ga. Laws 105, § 2, at 107; Fact Sheet, *supra* note 19.

23. Mar. 12 House Floor Video, *supra* note 17, at 2 hr., 35 min., 37 sec. (Remarks by Rep. Tom Rice); Ballard Letter, *supra* note 18.

24. U.S. Department of Homeland Security, E-Verify, http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm (“Participating employers can check the work status of new hires online by comparing information from an employee’s I-9 form against SSA [Social Security Administration] and Department of Homeland Security databases. More than 87,000 employers are enrolled in the program, with over 6.5 million queries run so far in fiscal year 2008.”).

25. 2006 Ga. Laws 105, § 9, at 115.

26. *Id.* at 116; Fact Sheet, *supra* note 19.

27. Fact Sheet, *supra* note 19.

28. 2006 Ga. Laws 105, § 5, at 110.

29. *Id.*

30. Rice Interview, *supra* note 5.

eligibility of public benefits, and many were not even collecting required affidavits.³¹ In addition, 146 counties out of 159 signed up for the E-verify program, but most of those counties signed up only within the latter half of 2008.³² Michele NeSmith, Research and Policy Development Director for the Association County Commissioners of Georgia (ACCG), helped bring many of these counties into compliance and noted that many had not realized the requirements were mandatory.³³ Nevertheless, citing the possibility that the GSICA does not do enough to prevent undocumented immigrants from receiving public benefits and landing government jobs, Representative Rice introduced House Bill (HB) 2 as a means of enforcing the GSICA,³⁴ which has little in the way of compliance measures other than requesting reports from counties and municipalities.³⁵

With HB 2, an enforcement measure now comes in the form of funding—or lack thereof,³⁶ because the appropriations committee of each house of the General Assembly may adjust the budget and appropriations of agencies and political subdivisions that do not appropriately verify the eligibility of applicants for public benefits.³⁷ HB 2 also makes other modifications to related sections of its predecessor, SB 529. According to Representative Rice, HB 2 is instrumental because it prohibits undocumented immigrants from obtaining public benefits and public employment designed for legal residents of the United States.³⁸

31. Mar. 12 House Floor Video, *supra* note 17, at 2 hr., 36 min., 27 sec. (Remarks by Rep. Tom Rice).

32. *Id.*

33. Interview with Michele NeSmith, Research and Policy Development Director, Association County Commissioners of Georgia (Apr. 14, 2009) [hereinafter NeSmith Interview].

34. Mar. 12 House Floor Video, *supra* note 17, at 2 hr., 37 min., 22 sec. (Remarks by Rep. Tom Rice).

35. *Id.* at 2 hr., 37 min., 39 sec. (Remarks by Rep. Tom Rice).

36. O.C.G.A. § 50-36-1(n) (2009).

37. *Id.*

38. Rice Interview, *supra* note 5; *see also* NeSmith Interview, *supra* note 33 (noting that the “underlying reason” for the bill was to ensure that the state was not offering public benefits to people not legally present).

*Bill Tracking of HB 2**Consideration and Passage by the House*

Representatives Tom Rice (R-51st), Allen Peake (R-137th), Edward Lindsey (R-54th), and Tom Graves (R-12th) sponsored HB 2.³⁹ The bill was prefiled on November 17, 2008. The House of Representatives read the bill for the first time on January 14, 2009 and for the second time on January 15, 2009.⁴⁰ Speaker of the House Glenn Richardson (R-19th) assigned the bill to the House Committee on Appropriations.⁴¹

The bill, as originally introduced, required that “no grant shall be awarded except upon written application which demonstrates in specific terms how the applicant” had complied with existing Code section 13-10-91 (which requires public employers and contractors bidding for public work to verify information regarding new employees)⁴² and Code section 50-36-1 (which requires agencies and political subdivisions to verify the lawful presence within the United States of applicants for public benefits).⁴³ The bill was modified in the Special Projects Subcommittee to require compliance with existing Code sections 13-10-91 and 50-36-1, providing a lengthy definition of what constituted a public benefit.⁴⁴ This version of the bill was passed by the Special Projects Subcommittee and presented on the floor of the Appropriations Committee.⁴⁵

Several Representatives were concerned with the definition of *public benefits*—in particular, they were concerned that the term would include marriage licenses.⁴⁶ Several Representatives discussed this issue in the House Appropriations Committee debate on February

39. See HB 2, as introduced, 2009 Ga. Gen. Assem.

40. State of Georgia Final Composite Status Sheet, HB 2, Apr. 3, 2009 [hereinafter Status Sheet].

41. *Id.*

42. O.C.G.A. § 13-10-91 (Supp. 2009).

43. *Id.* § 50-36-1; see HB 2, as introduced, 2009 Ga. Gen. Assem.

44. See HB 2, as passed House Appropriations Committee, 2009 Ga. Gen. Assem.

45. Video Recording of Appropriations Committee Debate, Feb. 27, 2009 at 3 min., 25 sec. (remarks by Rep. Ben Harbin (R-118th)), [mms://mediam1.gpb.org/ga/leg/2009/rm-341_HseAprop_022709.wmv](https://mms1.gpb.org/ga/leg/2009/rm-341_HseAprop_022709.wmv) [hereinafter Feb. 27 Appropriations Committee Video].

46. See, e.g., *id.* at 17 min., 25 sec. (remarks by Rep. Carolyn Hughley (D-133rd)); *id.* at 22 min., 52 sec. (remarks by Rep. Michele Henson (D-87th)); *id.* at 26 min., 1 sec. (remarks by Rep. Len Walker (R-107th)).

27, 2009.⁴⁷ When the bill was discussed again on March 6, 2009, it had again undergone substantial revision to limit the definition of *public benefit* to only homestead exemptions and business licenses.⁴⁸ In addition, the compliance date was extended to January 1, 2010 to give local governments more time to prepare to comply with the bill.⁴⁹ The bill was modified to define *compliance* as taking all “reasonable and necessary steps.”⁵⁰ Also, a “hold harmless” clause was added, restricting the requirements to the county governing authorities and excluding officials such as the sheriff and probate judge.⁵¹ In an earlier debate, some Representatives had expressed concern that a rogue sheriff or probate judge failing to comply with the requirements of HB 2 would cost the county or municipality its grant money.⁵²

The House Committee on Appropriations favorably reported the House Committee Substitute on March 9, 2009.⁵³ HB 2 was read for the third and final time on March 12, 2009, after which the House debated the bill and passed it by a vote of 101 to 64.⁵⁴ On April 3, 2009, after the Senate passed the bill by substitute and with amendments, the House passed the bill as amended by the Senate by a vote of 121 in favor and 47 in opposition.⁵⁵

Consideration and Passage by the Senate

The Senate first read HB 2 on March 17, 2009, and Senate President Pro Tempore Tommie Williams (R-19th) assigned it to the

47. *Id.*

48. Video Recording of Appropriations Committee Debate, Mar. 6, 2009 at 36 min., 25 sec. (remarks by Rep. Tom Rice (R-51st)), mms://mediam1.gpb.org/ga/leg/2009/rm-341_HseAprop_030609.wmv [hereinafter Mar. 6 Appropriations Committee Video].

49. Mar. 6 Appropriations Committee Video, *supra* note 48, at 34 min., 25 sec. (remarks by Rep. Tom Rice); HB 2, as passed House Appropriations Committee, 2009 Ga. Gen. Assem.

50. Mar. 6 Appropriations Committee Video, *supra* note 48, at 35 min., 45 sec. (remarks by Rep. Tom Rice); HB 2, as passed House Appropriations Committee, 2009 Ga. Gen. Assem.

51. Mar. 6 Appropriations Committee Video, *supra* note 48, at 34 min., 56 sec. (remarks by Rep. Tom Rice); HB 2, as passed House Appropriations Committee, 2009 Ga. Gen. Assem.

52. Feb. 27 Appropriations Committee Video, *supra* note 45, at 32 min., 22 sec. (remarks by Rep. Larry O’Neal (R-146th)).

53. Status Sheet, *supra* note 40.

54. Georgia House of Representatives Voting Record, HB 2 (Mar. 6, 2009).

55. Georgia House of Representatives Voting Record, HB 2 (Apr. 3, 2009).

Senate Committee on Public Safety.⁵⁶ In committee, Senate Majority Leader Chip Rogers (R-21st) introduced a new section relating to jailers to amend the bill.⁵⁷ This section required that jailers verify the lawful presence of any person confined in a jail in the state of Georgia.⁵⁸ The committee favorably reported the bill on March 30, 2009.⁵⁹ The bill was read a second time on March 30, 2009.⁶⁰ On April 1, 2009, the bill was read for a third time and debated on the Senate floor.⁶¹

In the floor debate on April 1, Senator George Hooks (D-14th) expressed concern that local jailers in small communities would be required to verify the nationality of persons confined in the jails.⁶² Senator Rogers responded that Article 36 of the 1967 Vienna Convention on Consular Relations already mandates the requirements.⁶³ Senator Nan Orrock (D-36th) said that the convention could not be enforced under United States law.⁶⁴ Despite concerns about the provision, the Senate passed the bill by a vote of 30 to 17.⁶⁵

The bill then returned to the House, which deleted the enforcement mechanism that required the Department of Transportation to withhold Local Assistance Road Program (LARP) funding from counties or municipalities that did not verify the employment eligibility of new employees.⁶⁶ A lighter enforcement measure remains, which notes that each house of the General Assembly “may” consider noncompliance when setting the budget and appropriations.⁶⁷ This measure ostensibly enforces only the provision that requires the verification of people receiving public benefits, however, the Act notes that it may be used in responding to

56. Status Sheet, *supra* note 40.

57. HB 2 (SCS), 2009 Ga. Gen. Assem.

58. HB 2, as passed Public Safety Committee, 2009 Ga. Gen. Assem.

59. Status Sheet, *supra* note 40.

60. *Id.*

61. *Id.*

62. Video Recording of Senate Floor Debate, Apr. 1, 2009 at 42 min., 5 sec. (remarks by Sen. George Hooks (D-14th)), [mms://mediam1.gpb.org/ga/leg/2009/senate_040109_1P.wmv](https://mediam1.gpb.org/ga/leg/2009/senate_040109_1P.wmv) [hereinafter Senate Floor Video].

63. *Id.* at 42 min., 45 sec. (remarks by Sen. Chip Rogers (R-21st)).

64. *Id.* at 51 min., 14 sec. (remarks by Sen. Nan Orrock (D-36th)).

65. Georgia Senate Voting Record, HB 2 (Apr. 1, 2009).

66. Rice Interview, *supra* note 5.

67. O.C.G.A. § 50-36-1 (2009); Rice Interview, *supra* note 5.

“noncompliance with the provisions of this Code section”—in other words, 50-36-1.⁶⁸

The Act

The Act amends Section 91 of Article 3 of Chapter 10 of Title 13 to clarify compliance requirements and requires public employers to participate in a federal work authorization program to verify employment eligibility of all new employees.⁶⁹ The Act also amends Section 14 of Article 1 of Chapter 4 of Title 42 to require county and municipality jail authorities to attempt to determine the nationality of people confined and to ensure that certain prisoners are legally within the United States.⁷⁰ In addition, the Act amends Section 1 of Chapter 36 of Title 50 to require state agencies to verify the lawful presence of applicants for public benefits.⁷¹

Section 1 requires public employers and contractors who bid for public work to verify the lawful presence and employment eligibility of all newly hired employees.⁷² Under subsection (a), all public employers, including municipalities and counties, must register with and participate in the federal work authorization program⁷³ to verify the employment eligibility of all newly hired employees.⁷⁴ The federal work authorization program refers to the E-Verify program,⁷⁵ a free,⁷⁶ Internet-based system through which employers may confirm the employment eligibility of their employees, regardless of

68. O.C.G.A. § 50-36-1 (2009).

69. *Id.* § 13-10-91.

70. *Id.* § 42-4-14.

71. *Id.* § 50-36-1.

72. *Id.* § 13-10-91.

73. The federal work authorization program refers to “any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603.” O.C.G.A. § 13-10-90 (Supp. 2009).

74. *Id.* § 13-10-91(a).

75. Association County Commissioners of Georgia, Georgia Security and Immigration Compliance Act: E-Verify and SAVE Program Overview (on file with the Georgia State University Law Review); Ballard Letter, *supra* note 18.

76. U.S. Citizenship and Immigration Services, Frequently Asked Questions: Federal Contractors and E-Verify (on file with the Georgia State University Law Review); NeSmith Interview, *supra* note 33.

citizenship.⁷⁷ Section 1 also amends SB 529 in that it requires public employers to post their user identification number and date of authorization, as supplied by the authorization agreement, on the employer's website, or, if there is no website, in the official legal organ for that county.⁷⁸ One critic, however, has suggested that this provision exposes the employer to possible identity theft.⁷⁹

Subsection (b)(1) prohibits public employers from entering contracts to have services physically performed within Georgia unless the contractor registers and participates in the same federal work authorization program to verify information regarding newly hired employees and subcontractors.⁸⁰ A contractor's bid to a public employer must also include a signed, notarized affidavit confirming that the contractor has registered with the federal work authorization program.⁸¹ The affidavit must list the contractor's identification number and authorization date and show that the contractor is using and will continue to use the program during the contract period.⁸² Subsection (b)(2) specifically requires contractors and subcontractors to register with and participate in the federal work authorization program before entering into a contract with a public employer.⁸³ Subsection (b)(3), which listed dates of applicability for subsection (b), was deleted.⁸⁴ Subsection (c) requires that the Code be enforced without discrimination.⁸⁵

Subsection (d) requires the Commissioner of Labor to produce forms, rules, and regulations needed for the Code section to take effect;⁸⁶ such rules and regulations must also be published on the Georgia Department of Labor's website.⁸⁷ According to subsection (e), however, the Commissioner of the Georgia Department of

77. U.S. Citizenship and Immigration Services, *supra* note 76. "Based on the information provided by the employee on his or her Form I-9, E-Verify checks this information electronically against records contained in DHS and Social Security Administration (SSA) databases." *Id.*

78. O.C.G.A. § 13-10-91(a) (Supp. 2009).

79. Interview with Jonathan Blazer, Public Benefits Policy Attorney for the National Immigration Law Center (Apr. 16, 2009) [hereinafter Blazer Interview].

80. O.C.G.A. § 13-10-91(b)(1) (Supp. 2009).

81. *Id.*

82. *Id.*

83. *Id.* § 13-10-91(b)(2).

84. *See id.* § 13-10-91(b).

85. *Id.* § 13-10-91(c).

86. Ballard Letter, *supra* note 18; O.C.G.A. § 13-10-91(d) (Supp. 2009).

87. O.C.G.A. § 13-10-91(d) (Supp. 2009).

Transportation (DOT) must produce the forms, rules, and regulations needed for contracts and other agreements related to public transportation; these must be published on the DOT's website.⁸⁸ Finally, the addition of subsection (f) relieves employers, agencies, and political subdivisions of liability that stems from any act taken to comply with the Code section.⁸⁹

Section 2 of the Act addresses the responsibilities of correctional officers at local jails regarding immigrants.⁹⁰ Subsection (a) is amended so that when any person is detained in a county or municipality jail or any jail operated by a regional jail authority, a "reasonable effort" must be made to determine the detained person's nationality.⁹¹ Before the amendment, this subsection only applied when the detained individuals were convicted of driving without a license, driving under the influence, or were charged with a felony.⁹² According to the grammatical construction of the text of the new subsection, the provision seems to apply to jails operated "in compliance with Article 36 of the Vienna Convention on Consular Relations."⁹³ However, Senator Chip Rogers (R-21st) indicated that the reference to the Convention actually modifies the phrase "a reasonable effort shall be made to determine the nationality of the person so confined."⁹⁴

88. *Id.* § 13-10-91(e).

89. *Id.* § 13-10-91(f).

90. *Id.* § 42-4-14.

91. *Id.* § 42-4-14(a).

92. 2006 Ga. Laws 105, § 5, at 110.

93. O.C.G.A. § 42-4-14(a) (Supp. 2009).

94. Senate Floor Video, *supra* note 62, at 42 min., 52 sec. (remarks by Sen. Chip Rogers (R-21st)). When Sen. George Hooks (D-14th) asked if the Act would require jailers to "determine the nationality of every inmate in a county or city jail in the state of Georgia," Sen. Rogers responded that the 1967 Vienna Convention "already requires us to do so." *Id.* Article 36 of the treaty allows detained individuals of a foreign state to communicate with consular officers of that foreign state; it also requires authorities to inform the detained person of his or her rights regarding the consulate. Vienna Convention on Consular Relations art. 36, Mar. 19, 1967, 21 U.S.T. 77, 596 U.N.T.S. 261; Barbara H. Bean, *UPDATE: Guide to Research on Vienna Convention on Consular Relations Notification Requirements*, GLOBALLEX, June/July 2007, http://www.nyulawglobal.org/Globalex/Vienna_Convention_Consular_Relations1.htm ("Article 36 of the Vienna Convention on Consular Relations, to which 170 nations are party, requires a nation arresting or detaining a foreign national to afford the detainee access to his or her consulate and to notify the foreign national of the right of consular access.").

Despite the Vienna Convention, Code section 42-4-14 does not require jail officials within the state of Georgia to notify detained foreign nationals of any right to speak with their consulate, nor

Subsection (b) also requires jailers or other officers to make a “reasonable effort” to verify that prisoners who are foreign nationals have been lawfully admitted to the United States when those prisoners have been charged with a felony, driving under the influence, driving without being licensed, or with a misdemeanor of a high and aggravated nature.⁹⁵ If the prisoner was lawfully admitted, the official must make sure the lawful status has not expired.⁹⁶ If the prisoner is in the country illegally, the official must notify the DHS.⁹⁷

Subsection (c) notes that the Code does not deny an individual bond or prevent a person from being released from detention when the person is eligible to be released.⁹⁸ Subsection (d) says that the Georgia Sheriff’s Association must prepare and issue guidelines and procedures to be used to comply with the Code section.⁹⁹

Section 3 requires state agencies to verify the lawful presence of any applicant for public benefits.¹⁰⁰ Subsection (a) defines *agency or political subdivision* as “any department, agency, authority, commission, or government entity of this state or any subdivision of this state.”¹⁰¹ It also notes that the word *applicant* means “any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business corporation, partnership, or other private entity.”¹⁰² The subsection notes that *public benefit* refers to a federal benefit as defined in 8 U.S.C. § 1611, a local or state benefit per 8 U.S.C. § 1621, a benefit that the Attorney General has identified as a public benefit, or a benefit that includes (but is not limited to) one of twenty-four items in a list provided in the subsection.¹⁰³ This list of public benefits includes adult education; authorization to conduct a commercial enterprise or

does it require jail officials to notify consular officers of the detention of any foreign nationals. O.C.G.A. § 42-4-14 (Supp. 2009).

95. O.C.G.A. § 42-4-14(b) (Supp. 2009).

96. *Id.*

97. *Id.*

98. *Id.* § 42-4-14(c).

99. *Id.* § 42-4-14(d).

100. *Id.* § 50-36-1.

101. O.C.G.A. § 50-36-1(a)(1) (2009).

102. *Id.* § 50-36-1(a)(2).

103. *Id.* § 50-36-1(a)(3).

business; business certificates, licenses, or registration; and business loans.¹⁰⁴

Subsection (b) says that, unless certain exceptions apply, all agencies and political subdivisions must verify that any applicant for public benefits is lawfully present in the United States.¹⁰⁵ Subsection (c) notes that the section must be enforced without discrimination.¹⁰⁶ Subsection (d) lists seven exceptions that apply to Subsection (b).¹⁰⁷ These exceptions—which mean agencies and political subdivisions do not have to verify an applicant’s lawful presence—include short-term, non-cash emergency disaster relief, prenatal care, and programs and services such as soup kitchens and crisis counseling.¹⁰⁸

Subsection (e) notes that agencies or political subdivisions that provide public benefits must have applicants sign affidavits verifying their lawful presence in the United States.¹⁰⁹ These affidavits must state that the applicant is at least eighteen and is a United States citizen, a legal permanent resident, or a qualified alien or nonimmigrant under the federal Immigration and Nationality Act (INA).¹¹⁰ Subsection (f) says that eligibility for public benefits must be made through the SAVE program, which is operated by the DHS, and which is designed to help determine a non-citizen’s immigration status (thus helping to ensure that only entitled non-citizen applicants receive public benefits).¹¹¹

Subsection (g) says that anyone who knowingly makes a false statement in an affidavit will be guilty of violating Code section 16-10-20, which punishes such conduct by a fine of no more than \$1,000 or imprisonment for not less than one year and not more than five years; or both.¹¹² Subsection (h) notes that verifying citizenship

104. *Id.*

105. *Id.* § 50-36-1(b).

106. *Id.* § 50-36-1(c).

107. O.C.G.A. § 50-36-1(d) (2009).

108. *Id.*

109. *Id.* § 50-36-1(e).

110. *Id.*

111. *Id.* § 50-36-1(f); Source Watch, Systematic Alien Verification for Entitlements, http://www.sourcewatch.org/index.php?title=Systematic_Alien_Verification_for_Entitlements.

112. O.C.G.A. § 50-36-1(g) (2009); O.C.G.A. § 16-10-20 (2007 & Supp. 2009) (“A person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of

through means required by federal law satisfies the Code section.¹¹³ Subsection (i) makes it unlawful for agencies and political subdivisions to provide or administer public benefits in violation of the Code section.¹¹⁴ It also requires agencies and political subdivisions that provide public benefits to provide an annual report to the Department of Community Affairs on January 1 of each year.¹¹⁵ The report must identify each public benefit the agency administered and list each benefit for which SAVE authorization for verification has not been received.¹¹⁶

Subsection (j) mandates that all errors and significant delays by SAVE be reported to the DHS.¹¹⁷ Subsection (k) says that an applicant for public benefits who makes a false statement in an affidavit is not guilty of making the false statement if the affidavit was not required.¹¹⁸ Subsection (l) notes that when a legal action is filed against an agency or political subdivision that alleges improper denial of a public benefit, the Attorney General must be served with a copy of the proceeding.¹¹⁹ Subsection (m) says agencies and political subdivisions must take reasonable, necessary steps to use the SAVE program; such agencies that have done so but nonetheless do not have access to the program are not liable for failing to use it.¹²⁰

Subsection (n) addresses the penalty for noncompliance.¹²¹ It says that when agencies or political subdivisions do not comply with the Code section, the appropriations committee of each house of the General Assembly may adjust budgets and appropriations accordingly.¹²² This is a lighter penalty than existed in a previous version of the bill, which required the Department of Transportation to withhold LARP funds in the case of noncompliance.¹²³ Subsection

any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.”).

113. O.C.G.A. § 50-36-1(h) (2009).

114. *Id.* § 50-36-1(i).

115. *Id.*

116. *Id.*

117. *Id.* § 50-36-1(j).

118. *Id.* § 50-36-1(k).

119. O.C.G.A. § 50-36-1(l) (2009).

120. *Id.* § 50-36-1(m).

121. *Id.* § 50-36-1(n).

122. *Id.*

123. Rice Interview, *supra* note 5.

(o) notes that employers, agencies, and political subdivisions are not liable for any act performed to comply with the chapter's requirements.¹²⁴

Analysis

Section 1

Section 1 of the Act mandates that public employers and contractors who bid for public work must participate in a federal work authorization program, or E-Verify, to confirm the lawful presence and employment eligibility of newly hired employees.¹²⁵ The purpose of this requirement is to ensure that undocumented immigrants are not absorbing jobs that would otherwise be available to United States citizens and immigrants residing lawfully within the United States.¹²⁶ Detractors contend that the E-Verify system is an ineffective way to do so, however, because of inaccuracies within the system.¹²⁷ According to the National Immigration Law Center (NILC), the program has had problems since its inception in 1997.¹²⁸ These issues include the program's reliance on government databases with high error rates¹²⁹ and the program's inability to detect workers and employers who try to circumvent the system by using borrowed or stolen documents.¹³⁰ Though E-Verify is free,¹³¹ NILC nevertheless notes that hidden expenses exist.¹³² According to one

124. O.C.G.A. § 50-36-1(o) (2009).

125. *Id.* § 13-10-91; Association County Commissioners of Georgia, *supra* note 75; Ballard Letter, *supra* note 18.

126. Mar. 12 House Floor Video, *supra* note 17, at 2 hr., 37 min., 5 sec. (Remarks by Rep. Tom Rice (R-51st)); Rice Interview, *supra* note 5.

127. Blazer Interview, *supra* note 79; Interview with Azadeh N. Shahshahani, Director, National Security/Immigrants' Rights Project, ACLU Foundation of Georgia (Mar. 25, 2009) [hereinafter Shahshahani Interview].

128. National Immigration Law Center, Why States and Localities Should Not Require Employer Participation in Basic Pilot/E-Verify (Feb. 2009), available at http://www.nilc.org/immsemplymnt/state_local/basicpilot-stateslocalities-2009-02-12.pdf.

129. According to Blazer, the Social Security Administration, which is one source of data connected to E-verify, has recognized that almost 20 million of its records have errors in them. Blazer Interview, *supra* note 79.

130. National Immigration Law Center, *supra* note 128.

131. U.S. Citizenship and Immigration Services, *supra* note 76.

132. National Immigration Law Center, *supra* note 128.

Maryland business manager who uses the program, human resources expenses involved in E-verify could cost as much as \$27,000 annually.¹³³ Critics also contend that the system has a disproportionately negative effect on foreign-born United States citizens, because about ten percent are turned away from work because they are mistakenly not authorized for employment.¹³⁴ NILC contends that a more effective solution would be for states and localities to enforce state and local labor laws better and to hold employers accountable for violations of labor law.¹³⁵

Representative Tom Rice (R-51st), however, said that testimony in committee revealed that E-Verify has a 95.6 percent accuracy rating.¹³⁶ In addition, the Federation for American Immigration Reform (FAIR) website notes that 99.6 percent of all employees authorized to work in the United States are verified through the system without receiving a tentative non-confirmation and without having to take corrective actions.¹³⁷ According to FAIR, the non-confirmations that occur are usually due to one of three things: the employee is not authorized to work in the United States; the employee failed to bring his or her SSA records up to date (such as updating one's citizenship status or noting a name change); or the employer made an error when entering information.¹³⁸ In addition,

133. *Id.*

134. National Immigration Law Center, *How Errors in Basic Pilot/E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants* (Apr. 2008), *available at* http://www.nilc.org/immsemplymnt/ircaempverif/E-Verify_impacts_USCs_2008-04-09.pdf. The Social Security Administration (SSA) has estimated that were E-Verify mandatory nationwide, SSA errors alone could cause 3.6 million workers a year to be misidentified as unauthorized for employment. National Immigration Law Center, *Basic Pilot/E-Verify: Why Mandatory Employer Participation Will Hurt Workers, Businesses, and the Struggling U.S. Economy* (Feb. 2009), *available at* <http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-2009-01-29.pdf>; National Conference of State Legislatures Immigrant Policy Project, *E-Verify: Frequently Asked Questions* (Jan. 12, 2009), <http://www.ncsl.org/programs/immig/EVerifyFAQ.htm#how%20well>; Shahshahani Interview, *supra* note 127.

135. National Immigration Law Center, *supra* note 128.

136. Rice Interview, *supra* note 5.

137. Federation for American Immigration Reform, *E-Verify Talking Points*, http://www.fairus.org/site/News2/625227072?page=NewsArticle&id=19781&security=1601&news_iv_ctrl=1012; Phil Leggiere, *DHS Reiterates Commitment to E-Verify*, HS TODAY, Apr. 6, 2009, <http://www.hstoday.us/content/view/7943/149/> (noting that the DHS reports that 96.1 percent of all cases queried using E-Verify were automatically verified as authorized to work).

138. Federation for American Immigration Reform, *supra* note 137.

FAIR reports that E-Verify works quickly, returning initial verification information within five seconds.¹³⁹

Section 1 of the Act also requires public employers to post their federally-issued identification numbers on their websites (or in the county's official organ if the employer has no such site).¹⁴⁰ The ACCG's NeSmith suggested that such a requirement might invite identity theft.¹⁴¹ Jonathan Blazer, public benefits policy attorney for the NILC, echoed her concerns, referring to the requirement as "potentially an identity thief's dream situation."¹⁴² Though he conceded that a would-be bandit could not gain access to someone's account with only the identification number because one would also need the password, he said that making public any identity information will unnecessarily give thieves a running start.¹⁴³

Section 2

Section 2 of the Act requires local officials to make a reasonable effort to determine the nationality of any individual confined within the jail operated by a county, municipality or regional jail authority.¹⁴⁴ The NILC's Blazer noted that this provision is a substantial expansion of SB 529; SB 529 only required such determination for people charged with felonies, charged with driving

139. *Id.* However, statistics cited by the DHS and organizations such as FAIR regarding E-Verify have been questioned by other organizations such as the Immigration Policy Center. See Immigration Policy Center, *Deciphering the Numbers on E-Verify's Accuracy*, Feb. 11, 2009, available at <http://www.immigrationpolicy.org/just-facts/deciphering-numbers-e-verifys-accuracy>. FAIR has also been criticized as a hate group. Southern Poverty Law Center, *New SPLC Report: Nation's Most Prominent Anti-Immigration Group has History of Hate, Extremism*, Dec. 11, 2007, <http://www.splcenter.org/news/item.jsp?aid=295>.

140. O.C.G.A. § 13-10-91(a) (Supp. 2009).

141. NeSmith Interview, *supra* note 33.

142. Blazer Interview, *supra* note 79. Blazer noted that identity theft would be an unintended consequence of this provision: "It's not as if identity thieves have found their champion in the Georgia State Legislature," he said. *Id.* According to MALDEF, E-Verify accounts contain significant quantities of sensitive and personal information such as social security numbers, alien numbers, and first and last names. Memorandum from Peter Isbister, Legislative Staff Attorney, Mexican American Legal Defense and Educational Fund (Apr. 23, 2009) (on file with the Georgia State University Law Review). Revealing the employer account identification number may also violate the employers' contract with the DHS, which requires that employers safeguard such information to protect confidentiality. *Id.*

143. Blazer Interview, *supra* note 79.

144. O.C.G.A. § 42-4-14 (Supp. 2009).

under the influence, or convicted of driving without a license.¹⁴⁵ Thus, Blazer said, the amendment creates a new time-consuming and finance-draining burden on a prison system already stretched thin with responsibilities.¹⁴⁶ During floor debate on April 1, 2009, however, Senator Chip Rogers (R-21st) said that such a requirement is already mandated by the Vienna Convention on Consular Relations,¹⁴⁷ to which 170 nations, including the United States, are party.¹⁴⁸ Thus, Senator Rogers said, the Act merely codifies what a United States treaty already requires.¹⁴⁹ Senator Nan Orrock (D-36th), however, noted that the Vienna Convention is not enforceable under United States law.¹⁵⁰ Indeed, the United States Supreme Court has held that non-self-executing treaties are not binding on U.S. states. In *Sanchez-Llamas v. Oregon*, the Court held, contrary to an International Court of Justice holding, that the Vienna Convention on Consular Relations was not binding on a U.S. state and did not preclude the application of state default rules.¹⁵¹ And in *Medellin v. Texas*, the Court said that though a treaty may equate to an international commitment, it is not binding domestic law unless either the treaty is self-executing or Congress has passed laws implementing the treaty.¹⁵²

Even if the treaty is binding on U.S. states, however, Blazer noted that HB 2 goes beyond the requirements of the Vienna Convention—and also falls short.¹⁵³ The Vienna Convention on Consular Relations does not specifically mandate that local jailers determine the nationality of every person confined.¹⁵⁴ Article 36 of the Convention does, however, require that a detained individual from another country be informed of the right to notify consular officials about the

145. Blazer Interview, *supra* note 79; see 2006 Ga. Laws 105, § 5, at 110.

146. Blazer Interview, *supra* note 79.

147. Senate Floor Video, *supra* note 62, at 42 min., 44 sec. (remarks by Sen. Chip Rogers (R-21st)).

148. Bean, *supra* note 94.

149. Senate Floor Video, *supra* note 62, at 47 min., 27 sec. (remarks by Sen. Chip Rogers).

150. Senate Floor Video, *supra* note 62, at 51 min., 14 sec. (remarks by Sen. Nan Orrock (D-36th)).

151. *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 353, 355, 357, 360 (2006); see *Medellin v. Texas*, 128 S. Ct. 1346, 1353 (2008) (citing *Sanchez-Llamas*, 549 U.S. at 353).

152. *Medellin*, 128 S. Ct. at 1356; see Bean, *supra* note 94 (“The U.S. Supreme Court rules in *Medellin v. Texas* that neither the President nor the [International Court of Justice] has the authority to order a Texas court to reopen a death penalty case in which the consular notification required by the Vienna Convention on Consular Relations was not made.”).

153. Blazer Interview, *supra* note 79.

154. *Id.*; Vienna Convention on Consular Relations, *supra* note 94, art. 36.

detention.¹⁵⁵ At the detainee's request, consular officials must be notified of the detention and must also be afforded access to the detained individuals.¹⁵⁶ Even so, HB 2 does not require jail officials within Georgia to notify foreign detainees of their right to notify their consulate, nor does it require jail officials to notify consular officials when individuals from their country have been detained.¹⁵⁷

In addition to determining the nationality of any person confined, the Act also requires jail officials in Georgia to verify that prisoners are lawfully within the United States if they are charged with a felony, driving under the influence, driving without a license, or are charged with a misdemeanor of a high and aggravated nature.¹⁵⁸ Prisoners who are not in the United States legally are to be reported to the DHS.¹⁵⁹ Although Blazer said such requirements are burdensome to the prison system,¹⁶⁰ he also acknowledged that there are legitimate questions as to what should happen when someone is convicted of a dangerous or violent crime and that person is also an unauthorized alien.¹⁶¹

Section 3

Section 3 requires state agencies and political subdivisions to verify the lawful presence within the United States of anyone applying for public benefits, with certain exceptions.¹⁶² Applicants must sign an affidavit that confirms their citizenship or lawful presence in the country.¹⁶³ Representatives of the agency or political

155. Vienna Convention on Consular Relations, *supra* note 94, art. 36; U.S. Department of State, Consular Notification and Access, Part 5: Legal Material, http://travel.state.gov/law/consular/consular_744.html#ba.

156. Vienna Convention on Consular Relations, *supra* note 94, art. 36; U.S. Department of State, *supra* note 155.

157. O.C.G.A. § 42-4-14 (2009).

158. *Id.* § 42-4-14(b).

159. *Id.*

160. "The prison system is supposed to deal with [prisoners] for crimes they commit. To make [jail officials] immigration officers and expand their responsibility at a time when everyone is already struggling with resources just seems like mission confusion." Blazer Interview, *supra* note 79.

161. Blazer Interview, *supra* note 79.

162. O.C.G.A. § 50-36-1(b) (2009). Exceptions include situations where lawful presence is not required; services such as applications for emergency disaster relief, immunizations, emergency health care, soup kitchens, crisis counseling, and prenatal care; and postsecondary education. *Id.* § 50-36-1(d).

163. *Id.* § 50-36-1(e).

subdivision then confirm a non-citizen's eligibility for public benefits by using the SAVE system,¹⁶⁴ which costs about fifty cents per inquiry.¹⁶⁵ Though a single inquiry is relatively inexpensive, Blazer said that costs can rapidly accumulate.¹⁶⁶ He said that in Colorado, where similar legislation was passed, the implementation of new verification requirements cost \$2 million during the first year.¹⁶⁷

Section 3 also amends Code section 50-36-1 to include definitions of *agency*, *political subdivision*, and *applicant*.¹⁶⁸ It also defines *public benefit*, a fact that the ACCG's NeSmith said will help local counties determine when they need to verify the lawful presence of applicants.¹⁶⁹ However, Blazer noted that the section's definition of *applicant* is potentially problematic because it includes anyone who applies for public benefits on behalf of an individual; because the applicant is not necessarily the same person as the beneficiary, an immigration status check on an applicant may block access by a beneficiary applying through that applicant.¹⁷⁰ For example, the state could deny benefits to an eligible citizen child if the child's parent, applying on behalf of the child, was unable to establish citizenship or lawful presence.¹⁷¹ In addition to issues regarding the definition of *applicant*, Clint Mueller, legislative director for the ACCG, noted

164. *Id.* § 50-36-1(f).

165. NeSmith Interview, *supra* note 33.

166. Blazer estimated the cost at about sixty cents per inquiry but noted that personnel are needed to enter the data, track the report, take action based on the report, and process and file affidavits, among other things. Blazer Interview, *supra* note 79.

167. Despite the cost, the verification process did not identify a single unauthorized immigrant who was denied benefits. Blazer Interview, *supra* note 79.

168. O.C.G.A. § 50-36-1(a)(2) (2009). The definition of *applicant* was broadened to include businesses, corporations, and private entities, such as charities; previously, it only referred to individuals. NeSmith Interview, *supra* note 33.

169. NeSmith Interview, *supra* note 33 ("That has been a major problem: what is a public benefit?"); Rice Interview, *supra* note 5 ("The listing of public benefits is going to make it easier for counties and municipalities . . . to get through this process."); see Mar. 12 House Floor Video, *supra* note 17, at 2 hr., 45 min., 15 sec. (Remarks by Rep. Stacey Abrams (D-84th)) ("[With SB 529,] it is unclear what constitutes a local public benefit. . . . Over the summer I received a number of queries from a number of local counties and cities asking me to request from the attorney general's office the answer to that question, because after three years they didn't know the answer.").

170. O.C.G.A. § 50-36-1(a)(2) (2009); E-mail from Jonathan Blazer, Public Benefits Policy Attorney for the National Immigration Law Center, to the author (Oct. 28, 2009, 10:59 EST) (on file with the Georgia State University Law Review) [hereinafter Blazer E-mail].

171. Blazer E-mail, *supra* note 170. Blazer noted that applying the definition in such a manner would conflict with federal rules governing public benefit programs and would also raise equal protection issues. *Id.*

that the section requires individuals to verify their legal status before paying a business occupation tax, a requirement that may actually lose money for the county because undocumented immigrants could simply choose not to pay the tax—though he also conceded that undocumented immigrants were likely not paying the tax, anyway.¹⁷²

Blazer also criticized the fact that the Act amends Code section 50-36-1 so that, apparently, no exceptions are allowed regarding the verification process.¹⁷³ Previously, the Code section allowed agencies and subdivisions to vary the requirements where the verification process would “impose unusual hardship” on a legal resident.¹⁷⁴ Blazer said most other states with similar Acts include such a provision.¹⁷⁵

Both Blazer and Mueller acknowledged, however, that the enforcement mechanism allows for flexibility.¹⁷⁶ Though previous versions of the bill required that the DOT withhold LARP funds from counties and municipalities that did not comply with Code sections 13-10-91 (requiring the legal status of public employees be verified) and 50-36-1 (requiring the legal status of applicants for public benefits be verified),¹⁷⁷ the Act, as passed, includes no new enforcement mechanism for Code section 13-10-91, and the enforcement of Code section 50-36-1 is optional.¹⁷⁸ Such leeway provides for discretion if an inadvertent error or other problem occurs.¹⁷⁹ Mueller also approvingly noted that the Act provides employers, agencies, and political subdivisions with immunity from liability that arises from any action taken to comply with the Act.¹⁸⁰

Though Representative Rice said he would have preferred that the Act include a stricter means of enforcement, he said it is an improvement over SB 529 because agencies and political subdivisions are now at risk of losing funding if they do not comply

172. O.C.G.A. § 50-36-1 (2009); Interview with Clint Mueller, Legislative Director, ACCG (Apr. 14, 2009) [hereinafter Mueller Interview].

173. Blazer Interview, *supra* note 79.

174. 2006 Ga. Laws 105, § 9, at 116.

175. Blazer Interview, *supra* note 79.

176. *Id.*; Mueller Interview, *supra* note 172.

177. *See, e.g.*, HB 2, as passed Senate Public Safety Committee, 2009 Ga. Gen. Assem.

178. O.C.G.A. §§ 13-10-91, 50-36-1(n) (2009).

179. Blazer Interview, *supra* note 79.

180. O.C.G.A. § 50-36-1(o) (2009); Mueller Interview, *supra* note 172.

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with certain provisions.¹⁸¹ Compliance is crucial, he said, because public benefits—and thus the public’s tax dollars—are at stake.¹⁸²

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181. Rice Interview, *supra* note 5; Feb. 27 Appropriations Committee Video, *supra* note 45, at 38 min., 7 sec. (remarks by Rep. Tom Rice (R-51st)).

182. Rice Interview, *supra* note 5 (“If applying for a public benefit—again the public’s money—it should go to people who are here legally and unable for one reason or another to take care of themselves or need a particular benefit, as opposed to the illegal population.”).