

## SENATE BILL No. 260

By Committee on Commerce

2-2

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9 AN ACT concerning public contracts for services; prohibitions on know-  
10 ingly employing or contracting with illegal aliens; provisions in public  
11 contracts for services; penalties for violations.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. As used in this act, unless the context otherwise requires:

15 (a) “Basic pilot program” means the basic pilot employment verifi-  
16 cation program created in public law 208, 104th Congress, as amended,  
17 and expanded in public law 156, 108th Congress, as amended, that is  
18 administered by the United States department of homeland security.

19 (b) “Contractor” means a person having a public contract for services  
20 with a state agency or political subdivision of the state.

21 (c) “Department” means the department of labor.

22 (d) “Secretary” means the secretary of labor.

23 (e) “Political subdivision” means any city, county, city and county,  
24 town, special district, school district, local improvement district or any  
25 other kind of municipal, quasi-municipal or public corporation.

26 (f) “Public contract for services” means any type of agreement, re-  
27 gardless of what the agreement may be called, between a state agency or  
28 political subdivision and a contractor for the procurement of services.

29 (g) “Services” means the furnishing of labor, time or effort by a con-  
30 tractor or a subcontractor not involving the delivery of a specific end  
31 product other than reports that are merely incidental to the required  
32 performance.

33 (h) “State agency” means any department, commission, council,  
34 board, bureau, committee, institution of higher education, agency or  
35 other governmental unit of the executive, legislative or judicial branch of  
36 state government.

37 Sec. 2. (a) A state agency or political subdivision shall not enter into  
38 or renew a public contract for services with a contractor who knowingly  
39 employs or contracts with an illegal alien to perform work under the  
40 contract or who knowingly contracts with a subcontractor who knowingly  
41 employs or contracts with an illegal alien to perform work under the  
42 contract. Prior to executing a public contract for services, each prospec-  
43 tive contractor shall certify that, at the time of the certification, it does

1 not knowingly employ or contract with an illegal alien and that the con-  
2 tractor has participated or attempted to participate in the basic pilot pro-  
3 gram in order to verify that it does not employ any illegal aliens.

4 (b) (1) Each public contract for services shall include a provision that  
5 the contractor shall not:

6 (A) Knowingly employ or contract with an illegal alien to perform  
7 work under the public contract for services; or

8 (B) enter into a contract with a subcontractor that fails to certify to  
9 the contractor that the subcontractor shall not knowingly employ or con-  
10 tract with an illegal alien to perform work under the public contract for  
11 services.

12 (2) Each public contract for services shall also include the following  
13 provisions:

14 (A) A provision stating that the contractor has verified or attempted  
15 to verify through participation in the basic pilot program that the con-  
16 tractor does not employ any illegal aliens and, if the contractor is not  
17 accepted into the basic pilot program prior to entering into a public con-  
18 tract for services, that the contractor shall apply to participate in the basic  
19 pilot program every three months until the contractor is accepted or the  
20 public contract for services has been completed, whichever is earlier. The  
21 provision specified in this subparagraph (A) shall not be required or ef-  
22 fective in a public contract for services if the basic pilot program is  
23 discontinued.

24 (B) A provision that prohibits the contractor from using basic pilot  
25 program procedures to undertake preemployment screening of job ap-  
26 plicants while the public contract for services is being performed.

27 (C) A provision that, if the contractor obtains actual knowledge that  
28 a subcontractor performing work under the public contract for services  
29 knowingly employs or contracts with an illegal alien, the contractor shall  
30 be required to:

31 (i) Notify the subcontractor and the contracting state agency or po-  
32 litical subdivision within three days that the contractor has actual knowl-  
33 edge that the subcontractor is employing or contracting with an illegal  
34 alien; and

35 (ii) terminate the subcontract with the subcontractor if within three  
36 days of receiving the notice required pursuant to (i) of this subparagraph  
37 (C) the subcontractor does not stop employing or contracting with the  
38 illegal alien; except that the contractor shall not terminate the contract  
39 with the subcontractor if during such three days the subcontractor pro-  
40 vides information to establish that the subcontractor has not knowingly  
41 employed or contracted with an illegal alien.

42 (D) A provision that requires the contractor to comply with any rea-  
43 sonable request by the department made in the course of an investigation

1 that the department is undertaking pursuant to the authority established  
2 in subsection (e) of this section.

3 (c) If a contractor violates a provision of the public contract for serv-  
4 ices required pursuant to subsection (b) of this section, the state agency  
5 or political subdivision may terminate the contract for a breach of the  
6 contract. If the contract is so terminated, the contractor shall be liable  
7 for actual and consequential damages to the state agency or political  
8 subdivision.

9 (d) A state agency or political subdivision shall notify the office of the  
10 secretary of state if a contractor violates a provision of a public contract  
11 for services required pursuant to subsection (b) of this section and the  
12 state agency or political subdivision terminates the contract for such  
13 breach. Based on this notification, the secretary of state shall maintain a  
14 list that includes the name of the contractor, the state agency or political  
15 subdivision that terminated the public contract for services and the date  
16 of the termination. A contractor shall be removed from the list if two  
17 years have passed since the date the contract was terminated, or if a court  
18 of competent jurisdiction determines that there has not been a violation  
19 of the provision of the public contract for services required pursuant to  
20 subsection (b) of this section. A state agency or political subdivision shall  
21 notify the office of the secretary of state if a court has made such a de-  
22 termination. The list shall be available for public inspection at the office  
23 of the secretary of state and shall be published on the internet on the  
24 website maintained by the office of the secretary of state.

25 (e) (1) The department may investigate whether a contractor is com-  
26 plying with the provisions of a public contract for services required pur-  
27 suant to subsection (b) of this section. The department may conduct on-  
28 site inspections where a public contract for services is being performed,  
29 request and review documentation that proves the citizenship of any per-  
30 son performing work on a public contract for services, or take any other  
31 reasonable steps that are necessary to determine whether a contractor is  
32 complying with the provisions of a public contract for services required  
33 pursuant to subsection (b) of this section. The department shall receive  
34 complaints of suspected violations of a provision of a public contract for  
35 services required pursuant to subsection (b) of this section and shall have  
36 discretion to determine which complaints, if any, are to be investigated.  
37 The results of any investigation shall not constitute final agency action.  
38 The secretary of labor is authorized to adopt rules and regulations to  
39 implement the provisions of this subsection (e).

40 (2) The secretary of labor shall notify a state agency or political sub-  
41 division if the secretary suspects that there has been a breach of a pro-  
42 vision in a public contract for services required pursuant to subsection  
43 (b) of this section.

1     Sec. 3. This act shall take effect and be in force from and after its  
2     publication in the statute book.