Immigration Mandates on Municipalities

A Guide to Georgia's Immigration Laws, Affidavits, and Reports for Municipal Officials

2024 • Fifth Edition

A Georgia Municipal Association Publication

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FOREWORD

The Georgia Municipal Association is pleased to provide the fifth edition of **Immigration Mandates on Municipalities** to our members. This edition contains information on and from Senate Bill 529, which passed in the 2006 Session of the Georgia General Assembly, House Bill 2, which passed in the 2009 Session, House Bill 87, which passed in the 2011 Session, Senate Bill 160, which passed in the 2013 Session, Senate Bill 269, which passed in the 2016 Session, House Bill 553, which passed in the 2019 Session, and House Bill 1105, which passed in the 2024 Session. Additionally, this publication contains information from other legislation relevant to the legislative history and understanding of the mandates placed upon Georgia's municipalities.

The state's immigration laws affect many stakeholders and groups, including, but not limited to, state agencies and departments, local authorities, and local governments. This publication, however, is geared specifically towards the mandates placed upon municipalities. County and consolidated governments have substantially similar mandates placed upon them with a few variations relating to constitutional officers and insurance companies. **The materials in this publication reflect the law in place as of 2024, but this publication cannot and should not be used to substitute for timely advice from the city attorney.**

Municipal officials should rely on their city attorney to apply the law and judicial interpretations to the specific fact situations they face. We present this publication in the hopes that a working knowledge of the state's immigration mandates will allow city officials to recognize potential problem situations when they arise and to seek legal counsel to insure compliance with the law. The opinions expressed in this publication should not be used or taken as legal advice.

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GMA CEO and Executive Director

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Table of Contents

Immigration Mandates on Municipalities

Introduction

During the past twenty years there has been a growing movement by the State of Georgia to take state and local action on matters relating to immigration and immigration law, areas which previously had been left to the federal government. This publication is written in a manner that seeks to be readable and accessible in hopes of alleviating some of the confusion which is associated with the state's immigration laws. The publication is split into multiple parts to help distinguish the different mandates and penalties placed upon municipalities. The publication contains extensive appendices with important documents and information relevant to each of the mandates and penalties associated with those mandates. Additionally, this publication contains short checklists and frequently asked questions in certain key areas which were reviewed, edited and approved by the Georgia Attorney General's Office in December of 2011. These Georgia Attorney General reviewed frequently asked questions were generated after House Bill 87 was enacted during the 2011 Session. **While many of the answers provided in the frequently asked questions may still be accurate, some, which will be marked, are no longer accurate due to the passage subsequent legislation after the 2011 guidance was issued.**

As stated in the forward, the guidance provided by this publication is not legal advice and should not be used or regarded as such. Instead, this publication should be used by city officials and employees to help them effectively consult with the city's legal counsel when questions and problems arise.

Part I – Municipal Use of E-Verify

What is E-Verify?

E-Verify is a federal, internet-based program operated by the United States Citizenship and Immigration Services. The program is used to determine the employment eligibility of new hires. E-Verify takes information from the federal I-9 form, which has been required by the federal government to be collected for new employees since 1986, and compares the information on the I-9 form with data from the United States Department of Homeland Security and Social Security Administration records. In the State of Georgia, the term "E-Verify" is often used interchangeably in state statutes and in state documents, particularly in affidavits, with the phrase "Federal Work Authorization Program." References to the "Federal Work Authorization Program" or the "Federal Work Authorization User Identification Number" in state documents are simply references to the E-Verify program and E-Verify user number. The E-Verify program is completely unrelated to the SAVE program, which is discussed later in this publication.

Municipal Use of the E-Verify Program

Under federal law, participation in the E-Verify program is not mandatory unless a state or local government has mandated the use of the program. The State of Georgia has placed such a mandate upon every "public employer." The definition of public employer in Georgia law "means every department, agency, or instrumentality of the state or a political subdivision of this state."[1] This definition means that every municipality is mandated by state law to register and use the E-Verify program, even if the city does not have any employees. It is important to note that municipal use of the E-Verify program does not eliminate the federal requirement to obtain an I-9 form from all new hires of the municipality.[2]

Who is counted as a municipal employee?

Any person hired by the municipality and required by federal law to fill out an I-9 form should be counted as a municipal employee for purposes of determining whether the municipality is mandated to register and use the E-Verify program under the

[1] O.C.G.A. § 13-10-90(5).

[2] See Public Law 99-603 (Act of 11/6/86); 8 U.S.C. 1101 et seq..

Georgia law. For the purposes of the state law mandating municipal use of E-Verify all employees are counted including part-time employees.

Does the city utilize the E-Verify program for all municipal employees?

The municipality can only run new hires of the municipality through the E-Verify program. Any person who has left employment with the city and is then re-hired is considered a new hire and should be run through the program.[3] Seasonal and part-time workers of the city should be run through the program each and every time they are hired by the city. The municipality cannot run current employees or previous employees of the municipality through the program unless they leave employment with the city and are re-hired. The E-Verify program is an internet-based system where an employer, in this case the municipality, takes information gathered from a newly hired employee and enters such information into the E-Verify program to verify eligibility to work in the United States. The municipality must run new hires through the E-Verify program within three (3) days of hire. Utilizing the E-Verify program is very similar to the requirement under federal law to collect an I-9 form from new hires within three (3) days of hire. It is a requirement of federal law that municipalities collect the I-9 form before attempting to run new hires through the E-Verify because much of the data required to be input into the E-Verify system can be found on the I-9 form itself.

Registration into the E-Verify Program

If your municipality has not yet registered for the E-Verify program the city should register immediately. The website for the E-Verify program can be found at: https://www.e-verify.gov/. Once on the E-Verify website, municipalities wishing to register should look to the upper right-hand side of the page under the "Employers" pull down tab where new registrants should see a link entitled "Enrolling In E-Verify" which will allow the municipality to register for the E-Verify program. Your city should be

[3] Note that this is different than the requirements under federal law for use of the I-9 form. Under certain circumstances the I-9 form may be relied upon within 3 years of initial date of hire for some rehires. There is no such exception for use of the E-Verify program. For more details see Part 2 of the Handbook for Employers: Instructions for Completing Form I-9 which can be found at https://www.uscis.gov/sites/default/files/document/forms/i-9instr.pdf and Section 2.1 of the E-Verify User Manual at https://www.e-verify.gov/e-verify-user-manual.

able to register for the E-Verify program by following the prompts and entering the required information. (*The E-Verify website directions in this publication are accurate as of the date of publication. Should the federal government update the website your city may need to search the federal website more extensively to locate the proper area to register for the program*.)

Posting of E-Verify Number

Once the municipality has completed registration into the E-Verify system it must permanently post its federally issued user identification number and date of authorization on the municipality's website.[4] This number can be found in the agreement of authorization which the city has received after registration for the E-Verify program. If the municipality does not have a website then the information must be submitted to the Carl Vinson Institute of Government of the University of Georgia to be posted on the website created for local government audit and budget reporting.[5] The database at the Carl Vinson Institute of Government containing E-Verify numbers is searchable.[6] Typically, an E-Verify user number is solely numeric and four to six digits in length.

Records Retention

The E-Verify information for any employee should be kept with the I-9 form for that particular employee.[7] According to the Georgia Secretary of State's Local Government Retention Schedule, employment eligibility verification records are required to be maintained for three (3) years after the date of hire or one (1) year after separation, whichever is longer.[8] The same retention schedule should be applied to any E-Verify documents for new hires of the municipality.

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[4] O.C.G.A. §13-10-91(a).

[5] Submission of a municipality's E-Verify number to the Carl Vinson Institute of Government may be done at: https://ted.cviog.uga.edu/financial-documents/node/add/e-verify-proof-of-registration

[6] A search of the Carl Vinson Institute of Government's E-Verify database may be done at: https://ted.cviog.uga.edu/financial-documents/everify-submissions

[7] I-9 forms and E-Verify summaries should be kept in a manner that follows federal security requirements. For more information please see Part 3 of the Handbook for Employers: Instructions for Completing Form I-9 which can be found at https://www.uscis.gov/sites/default/files/document/forms/i-9instr.pdf and the E-Verify User Manual at https://www.e-verify.gov/e-verify-user-manual

[8] See LG-16-021: Employee Eligibility Verification Records at https://www.georgiaarchives.org/records/local_government/

Immigration Mandates for Municipalities

Checklist for Part I

1. Has the city registered for E-Verify?
2. If the city answered "No" to question (1) and has not registered for E-Verify, then the city must go to https://www.e-verify.gov/ and register via the "Enrolling In E-Verify" link.
3. If the city answered "Yes" to question (1) or registered for E-Verify under question (2), does the city have a municipal website? (Yes/No)
4. If the city answered "Yes" to question (3) then the city must post the city's E-Verify user number on the website of the city.
5. If the city answered "No" to question (3) then the city must post the city's E-Verify user number with the Carl Vinson Institute of Government.
6. Has the city been utilizing the E-Verify program for all new hires of the city? (Yes/No)
7. If the answer to question (6) is "No", then you are violating your agreement with E-Verify and Georgia state law and should begin utilizing E-Verify for new hires of the city immediately upon the next new hire of the city. Additionally, the city's legal counsel should be notified and consulted.
8. If the answer to question (6) is "Yes" then you are compliant with your agreement with E-Verify and with Georgia state law.
9. Please remember to retain the E-Verify summaries for a period of at least three (3) years after the date of hire or one (1) year after separation, whichever is longer, or in accordance with the city's records retention schedule.

Appendix to Part I

Municipal Use of E-Verify - FAQ

Please note that the answers provided in this FAQ were edited and approved by the Attorney General's Office in December of 2011 and, therefore, should be reviewed by the city's legal counsel to verify the current understanding of the law.

Q: Who is the local governing authority required to run through the E-Verify system?

A: The E-Verify system is meant only for new hires of the local governing authority and not for current employees. The local governing authority does not run any person who is not a new employee of the local governing authority through the E-Verify system.

Q: Are local governing authorities required to run temporary or seasonal employees through E-Verify such as poll workers or referees for recreational sports?

A: Yes. All new hires must be verified through E-Verify.

Q: Where do we post our E-Verify user identification number and date of authorization?

A: If the local governing authority has a website, the E-Verify user identification number and date of authorization must be posted on the local governing authority's website. The law does not specify where on the website this information must be posted. If the local governing authority does not have a website, then the E-Verify user identification number and date of authorization must be submitted to the Carl Vinson Institute of Government of the University of Georgia to be posted.

Q: Where should the E-Verify verification for the new hire be stored?

A: It should be kept with the I-9 form for that employee.

Municipal Use of E-Verify Statutes

§13-10-91.

(a) Every public employer, including, but not limited to, every municipality and county, shall register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees. Upon federal authorization, a public employer shall permanently post the employer's federally issued user identification number and date of authorization, as established by the agreement for authorization, on the employer's website; provided, however, that if a local public employer does not maintain a website, then the local government shall submit such information to the Carl Vinson Institute of Government of the University of Georgia to be posted by the institute on the website created for local government audit and budget reporting. The Carl Vinson Institute of Government of the University of Georgia shall maintain the information submitted and provide instructions and submission guidelines for local governments. State departments, agencies, or instrumentalities may satisfy the requirement of this Code section by posting information required by this Code section on one website maintained and operated by the state.

(b) (1) A public employer shall not enter into a contract for the physical performance of services unless the contractor registers and participates in the federal work authorization program. Before a bid for any such service is considered by a public employer, the bid shall include a signed, notarized affidavit from the contractor attesting to the following:

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

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

(C) The affiant will continue to use the federal work authorization program throughout the contract period; and

(D) The affiant will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the same information required by subparagraphs (A), (B), and (C) of this paragraph.

An affidavit required by this subsection shall be considered an open public record once a public employer has entered into a contract for

physical performance of services; provided, however, that any information protected from public disclosure by federal law or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained by the public employer for five years from the date of receipt.

(2) A contractor shall not enter into any contract with a public employer for the physical performance of services unless the contractor registers and participates in the federal work authorization program.

(3) A subcontractor shall not enter into any contract with a contractor unless such subcontractor registers and participates in the federal work authorization program. A subcontractor shall submit, at the time of such contract, an affidavit to the contractor in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any subcontractor receiving an affidavit from a sub-subcontractor to forward notice to the contractor of the receipt, within five business days of receipt, of such affidavit. It shall be the duty of a subcontractor receiving notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor.

(4) A sub-subcontractor shall not enter into any contract with a subcontractor or sub-subcontractor unless such sub-subcontractor registers and participates in the federal work authorization program. A sub-subcontractor shall submit, at the time of such contract, an affidavit to the subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract, in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any sub-subcontractor to forward notice of receipt of any affidavit from a sub-subcontractor to the subcontractor or sub-subcontractor with whom such receiving sub-subcontractor has privity of contract.

(5) In lieu of the affidavit required by this subsection, a contractor, subcontractor, or sub-subcontractor who has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of any part or all of the original contract with the public employer shall instead provide a copy of the state issued driver's license or state issued identification card of such contracting party and a copy of the state issued driver's license or identification card of each

independent contractor utilized in the satisfaction of part or all of the original contract with a public employer. A driver's license or identification card shall only be accepted in lieu of an affidavit if it is issued by a state within the United States and such state verifies lawful immigration status prior to issuing a driver's license or identification card. For purposes of satisfying the requirements of this subsection, copies of such driver's license or identification card shall be forwarded to the public employer, contractor, subcontractor, or sub-subcontractor in the same manner as an affidavit and notice of receipt of an affidavit as required by paragraphs (1), (3), and (4) of this subsection. Not later than July 1, 2011, the Attorney General shall provide a list of the states that verify immigration status prior to the issuance of a driver's license or identification card and that only issue licenses or identification cards to persons lawfully present in the United States. The list of verified state drivers' licenses and identification cards shall be posted on the website of the State Law Department and updated annually thereafter. In the event that a contractor, subcontractor, or sub-subcontractor later determines that he or she will need to hire employees to satisfy or complete the physical performance of services under an applicable contract, then he or she shall first be required to comply with the affidavit requirements of this subsection.

(6) It shall be the duty of the contractor to submit copies of all affidavits, drivers' licenses, and identification cards required pursuant to this subsection to the public employer within five business days of receipt. No later than August 1, 2011, the Departments of Audits and Accounts shall create and post on its website form affidavits for the federal work authorization program. The affidavits shall require fields for the following information: the name of the project, the name of the contractor, subcontractor, or sub-subcontractor, the name of the public employer, and the employment eligibility information required pursuant to this subsection.

(7) (A) Public employers subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Subject to available funding, the state auditor shall conduct annual compliance audits on a minimum of at least one-half of the reporting agencies and publish the results of such audits annually

on the Department of Audits and Accounts' website on or before September 30.

(B) If the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision shall be provided 30 days to demonstrate to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection. If, after 30 days, the political subdivision has failed to correct all deficiencies, such political subdivision shall be excluded from the list of qualified local governments under Chapter 8 of Title 50 until such time as the political subdivision demonstrates to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection.

(C) (i) At any time after the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision may seek administrative relief through the Office of State Administrative Hearings. If a political subdivision seeks administrative relief, the time for correcting deficiencies shall be tolled, and any action to exclude the political subdivision from the list of qualified governments under Chapter 8 of Title 50 shall be suspended until such time as a final ruling upholding the findings of the state auditor is issued.

(ii) A new compliance report submitted to the state auditor by the political subdivision shall be deemed satisfactory and shall correct the prior deficient compliance report so long as the new report fully complies with this subsection.

(iii) No political subdivision of this state shall be found to be in violation of this subsection by the state auditor as a result of any actions of a county constitutional officer.

(D) If the state auditor finds any political subdivision which is a state department or agency to be in violation of the provisions of this subsection twice in a five-year period, the funds appropriated to such state department or agency for the fiscal year following the year in which the agency was found to be in violation for the second time shall be not greater than 90 percent of the amount so appropriated in the second

year of such noncompliance. Any political subdivision found to be in violation of the provisions of this subsection shall be listed on www.open.georgia.gov or another official state website with an indication and explanation of each violation.

(8) Contingent upon appropriation or approval of necessary funding and in order to verify compliance with the provisions of this subsection, each year the Commissioner shall conduct no fewer than 100 random audits of public employers and contractors or may conduct such an audit upon reasonable grounds to suspect a violation of this subsection. The results of the audits shall be published on the www.open.georgia.gov website and on the Georgia Department of Labor's website no later than December 31 of each year. The Georgia Department of Labor shall seek funding from the United States Secretary of Labor to the extent such funding is available.

(9) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to this subsection shall be guilty of a violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided in such Code section. Contractors, subcontractors, sub-subcontractors, and any person convicted for false statements based on a violation of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction. A contractor, subcontractor, or sub-subcontractor that has been found by the Commissioner to have violated this subsection shall be listed by the Department of Labor on www.open.georgia.gov or other official website of the state with public information regarding such violation, including the identity of the violator, the nature of the contract, and the date of conviction. A public employee, contractor, subcontractor, or sub-subcontractor shall not be held civilly liable or criminally responsible for unknowingly or unintentionally accepting a bid from or contracting with a contractor, subcontractor, or sub-subcontractor acting in violation of this subsection. Any contractor, subcontractor, or sub-subcontractor found by the Commissioner to have violated this subsection shall, on a second or subsequent violation, be prohibited from bidding on or entering into any public contract for 12 months following the date of such finding.

(10) There shall be a rebuttable presumption that a public employer, contractor, subcontractor, or sub-subcontractor receiving and acting upon an affidavit

conforming to the content requirements of this subsection does so in good faith, and such public employer, contractor, subcontractor, or sub-subcontractor may rely upon such affidavit as being true and correct. The affidavit shall be admissible in any court of law for the purpose of establishing such presumption.

(11) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

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

(d) Except as provided in subsection (e) of this Code section, the Commissioner shall prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section and publish such rules and regulations on the Georgia Department of Labor's website.

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

(f) No employer or agency or political subdivision, as such term is defined in Code Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with the requirements of this Code section.

Part II – E-Verify, Contractors, and Physical Performance of Services

Legislative Background

In 2006, the Georgia General Assembly enacted new requirements relating to contracts and bids for the "physical performance of services" within Georgia. The initial statute stated that public employers could not enter into a contract or subcontract for the physical performance of services unless the contractor utilized the federal work authorization program.[1] Unfortunately, this original mandate did not provide adequate definitions and, as a result, led to many questions from local governments regarding what constituted "physical performance of services." In 2009, among other changes, the law was amended to require public employers to collect affidavits from contractors providing the physical performance of services with the public employer.[2] In 2010, the law was amended to add a definition for "physical performance of services."[3] Again, in 2011, more amendments to the law and definition were enacted.[4] Finally, in 2013, the latest and current amendments of the law were enacted.[5] The 2013 changes to the law were comprehensive and this Part of the publication will explain those mandates currently in existence for municipalities, providing specific background where necessary.

Who is a Public Employer?

It is important to recall the definition of "public employer" from Part I of this publication for the requirements described in this Part. The definition that "public employer means every department, agency, or instrumentality of the state or a political subdivision of this state" still applies to this section of the law.[6] Therefore, the mandates on municipalities described in this Part, including affidavit collection and reporting relating to "physical performance of services", applies to all municipalities. Agencies and instrumentalities associated with the city, such as a downtown development

[1] SB 529, 2005-2006 Georgia General Assembly Legislative Session.
[2] HB 2, 2009-2010 Georgia General Assembly Legislative Session.
[3] SB 447, 2009-2010 Georgia General Assembly Legislative Session.
[4] HB 87, 2011-2012 Georgia General Assembly Legislative Session.
[5] SB 160, 2013-2014 Georgia General Assembly Legislative Session.
[6] O.C.G.A. § 13-10-90(5).

authority, must be counted as a separate "public employer" for the purposes of this law.

What is the Physical Performance of Services?

In the current law, physical performance of services "means any performance of labor or services for a public employer using a bidding process or by contract wherein the labor or services exceed $2,499.99; provided however, that such term shall not include an individual who is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing when such contract is for services to be rendered by such individual."[7] Understandably this definition will cause much confusion. Previously, the Georgia Attorney General's Office, in numerous attempts at clarification, issued memoranda and letters explaining the definition prior to the 2013 amendments. These memoranda and letters from the Georgia Attorney General's Office are not official or even unofficial opinions of the Attorney General but they do shed light on how the definition of "physical performance of services" has evolved over time with various interpretations from the Office of the Attorney General.[8]

Although previous memoranda from the Georgia Attorney General's Office stated that "physical performance of services" was limited to public works construction contracts, the currently understood definition is much broader, particularly given the 2013 changes to the law. The broader interpretation of "physical performance of services" first arose from letters issued by the Georgia Attorney General's Office on September 28, 2011, and on January 31, 2012, and not from any change in the language of the state law. According to these documents the meaning of "physical performance of services" was not limited to public works construction as defined in O.C.G.A. §36-91-2, but also includes the "routine operation, repair or maintenance of

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[7] O.C.G.A. §13-10-90(4).

[8] The first letter issued by the Attorney General's Office was issued after the original law was enacted and provided a very broad reading to "physical performance of services." Department of Law Memorandum, Re: O.C.G.A. §§ 13-10-90 and 13-10-91, October 17, 2007. Subsequently, memoranda issued in 2010 and 2011 narrowed the definition of "physical performance of services" to only include contracts relating to public works. Department of Law Memorandum, Re: O.C.G.A. §§ 13-10-90 and 13-10-91, November 30, 2010; Department of Law Memorandum, Re: O.C.G.A. §§ 13-10-90 and 13-10-91, March 10, 2011. After the passage of House Bill 87, the most recent comprehensive immigration reform package of the Georgia General Assembly, the Georgia Attorney General's Office was again asked for an interpretation of "physical performance of services" and reaffirmed that the definition was limited to contracts related to public works. Department of Law Memorandum, Re: House Bill 87 and its impact on the affidavit required by O.C.G.A. § 13-10-91(b)(1), June 22, 2011. However, at this time, all of these memoranda are outdated.

existing structures, buildings, or real property."[9] This broadened definition meant the term applied to work done on and in municipal parks and buildings which normally would be considered regular maintenance or operations. The definition of "physical performance of services" also includes work done on municipal vehicles. For instance, if the municipality hires an outside mechanic to maintain and repair city vehicles the definition would apply to such work.

The definition was further broadened in 2013 to include not only contracts for labor, but also contracts for services. Unfortunately, unlike the memoranda and letters from the Georgia Attorney General's Office describing the meaning of "labor" there are not letters or memoranda which would help provide insight into how to define "services" under the new amendments. Cities would be wise, however, to interpret "services" broadly until such time as further advice is provided.

The broadening of the law under the 2013 amendments to include contracts for services as well as contracts for labor does include important restrictions. First, only contracts over $2,499.99 fall under the definition of "physical performance of services." This monetary floor applies to both labor and service contracts. Second, contracts between the city and individuals licensed under "Title 26 or Title 43 or by the State Bar of Georgia" do not fall under the definition of "physical performance of services" or the requirements of this Part. Title 26 is likely not of any consequence to municipalities, but Title 43 includes persons licensed by the Georgia Secretary of State, which includes accountants, architects, contractors, librarians, and engineers, among other professions. The State Bar of Georgia regulates the practice of law and licenses attorneys.

How the exceptions which are provided for the professions under Titles 26 and 43 and the State Bar of Georgia should be applied to municipal contracts is unclear at this time. If there is confusion as to whether the definition applies to certain contracts, it is prudent that the city attorney be consulted and that the municipality err on the side of caution by interpreting the definition broadly.

[9] Department of Law Letter, Re: Applicability of affidavit requirements in O.C.G.A. § 13-10-91(b)(1) to routine operation, repair, and maintenance projects involving public property., September 28, 2011; Department of Law Letter, Re: Scope of O.C.G.A. § 13-10-91(b)(1), January 31, 2012.

Who is a Contractor? Subcontractor? Sub-subcontractor?

Until passage of House Bill 87 by the Georgia General Assembly during the 2011 legislative session this section of the law lacked clear definitions for "contractor," "subcontractor," and "sub-subcontractor." However, in House Bill 87, the definitions for "contractor," "subcontractor," and "sub-subcontractor" were clarified and, as a result, there is a clearer delineation of responsibilities between public employers and all levels of private contractors.

While these definitions may seem complicated, municipalities really only need to focus on the definition of "contractor." The municipality is only responsible for the collection of documents from the "contractor" and cannot be found to be non-compliant with the state's immigration laws for any failures of contractors, subcontractors, or sub-subcontractors. Currently under Georgia's immigration laws a "contractor" is "a person or entity that enters into a contract for the physical performance of services"[10] A "subcontractor" is "a person or entity having privity of contract with a contractor, subcontractor, or sub-subcontractor and includes a contract employee or staffing agency" and a "sub-subcontractor" is "a person or entity having privity of contract with a subcontractor or privity of contract with another person or entity contracting with a subcontractor or sub-subcontractor."[11]

Collection of Affidavits

The definitions of "physical performance of services" and "contractor" are important for municipal compliance with Georgia's immigration laws because state law requires public employers to collect affidavits from contractors "before a bid for any such service is considered."[12] The Georgia immigration law requires all public employers to collect a signed and notarized affidavit from every contractor contracting or bidding with the public employer for the "physical performance of services."

The affidavit must contain information showing that the contractor is registered with and uses the E-Verify program, that contractor's E-Verify user number, that the contractor will use E-Verify throughout the contract period, and that the contractor will only utilize subcontractors who themselves use E-Verify.[13] Municipalities are

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[10] O.C.G.A. § 13-10-90(2).

[11] O.C.G.A. §§ 13-10-90(6) and 13-10-90(7).

[12] O.C.G.A. § 13-10-91(b)(1).

[13] Id.

not responsible for verifying the accuracy of the numbers provided by contractors to the city in a properly executed and submitted affidavit. Additionally, the affidavit must contain the project name, the name of the contractor, and the name of the municipality.[14] A sample of the Contractor Affidavit can be found in the Appendix to this Part. Samples of the Subcontractor Affidavit and Sub-subcontractor Affidavit can be found on the Georgia Department of Audits and Accounts' website.[15]

Contractors, subcontractors, and sub-subcontractors also have mandates placed upon them by the Georgia law but the municipality only needs to worry about the party with whom they are in direct contract and they only need to worry about collecting the contractor affidavit from such contractor.[16] If the contractor fails to provide the municipality with any documents they have collected from subcontractors or sub-subcontractors that failure falls upon the contractor, not the municipality.

Exceptions to the Affidavit Collection Requirement

As mentioned previously, the mandated contractor affidavit requires the contractor to provide their E-Verify user number. There is, however, one other exception to the mandate to collect an affidavit and it is an important one to remember. If a contractor has no employees and does not hire or intend to hire employees in order to complete the original contract for the physical performance of services then the independent contractor may satisfy the law by providing a copy of his or her state issued driver's license or state issued identification card to the municipality.[17] Similar exceptions apply to subcontractors and sub-subcontractors, but the municipality is not the party responsible for receiving copies of such identification. The independent contractor must actually provide a copy of the required identification document to the municipality but does not have to provide a contractor affidavit.

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14 O.C.G.A. § 13-10-91(b)(6).

15 https://www.audits2.ga.gov/resources/other/immigration/

16 The contractor is responsible for collecting the subcontractor affidavit from any subcontractor they utilize to complete the municipal project. Any subcontractor or sub-subcontractor is responsible for collecting the sub-subcontractor affidavits from any sub-subcontractor they use to complete the municipal project. The subcontractors and sub-subcontractors are mandated to return all subcontractor and sub-subcontractor affidavits they collect to the contractor within five business days of receipt and the contractor has the same mandate placed upon them to return such affidavits they collect to the municipality. The municipality can only be found to be non-compliant for failures to collect contractor affidavits from a contractor, but not for any subcontractor or sub-subcontractor affidavits.

17 O.C.G.A. §13-10-91(b)(5).

The exception for independent contractors contracting with the city does not allow that independent contractor to provide a state issued driver's license or identification card from every state in the United States. The Georgia immigration law limits the driver's licenses and identification cards that can be used in this exception to states which verify lawful immigration status prior to issuing such cards. The Georgia Attorney General annually creates a list of states which do and do not verify lawful immigration status before issuing identification cards and driver's licenses and a copy of the 2020 version of this document can be found in the Appendix to this Part or on the Attorney General's website.[18] If the independent contractor cannot provide identification from a state or territory on the "compliant" list created by the Georgia Attorney General then the municipality may not contract with such individual contractor.

A common area of confusion with the list of "compliant" and "non-compliant" states and territories and their state or territory issued driver's licenses or identification cards involves another list of identification documents created by the Georgia Attorney General commonly called "secure and verifiable documents." The "secure and verifiable documents" list of identification documents is not to be used for this part of the law. That list is only to be used for SAVE and Public Benefits, which you will read about in Part IV of this publication. It is important to note that this part of the Georgia law only allows the municipality to enter into contracts with independent contractors for the physical performance of services who provide a copy of their driver's license or identification card from states on the "compliant" list created by the Georgia Attorney General. While some of the identification documents on the "compliant" list mirror identification documents in the "secure and verifiable documents" list, the majority of identification documents on the two lists are different. Municipalities should be certain they are using the correct identification document list for each part of the law.

While the Georgia statutory language does not contemplate entering into a contract with an independent contractor from Washington, D.C., Guam, Puerto Rico, or any other United States territory or district, the current list of "compliant" states does include Washington, D.C., Guam, and Puerto Rico. The language of the law and the list provided by the Georgia Attorney General may prevent municipalities from contracting with an independent contractor from a United States territory or district

[18] See the "OCGA_13-10-91_b5 List_of_States" at https://law.georgia.gov/resources/immigration-reports

not on the Attorney General created "compliant" list. Currently, those territories listed as "non-compliant, but under review" are American Somoa and N. Mariana Islands. Should a municipality be presented with a copy of a driver's license or identification card either of these territories then the municipality should require identification from a state or territory on the "compliant" list. If the independent contractor cannot provide any such driver's license or identification then the municipality may not contract with such independent contractor. Concerns have been raised that the identification provisions of this part of Georgia's immigration laws would violate the U.S. Constitution's Equal Protection, Privileges and Immunities, and Interstate Commerce Clauses, but such concerns have yet to be raised in a court of law.[19]

Remember, the municipality is only required to collect a driver's license from a contractor if they are an independent contractor with no employees doing the work described in this Part. If the contractor has employees then they do not need to have an identification document from the "compliant" list, but they do need to provide the city with an affidavit containing their E-Verify user number.

Reporting

The Georgia immigration laws contain many mandates for municipalities, perhaps the most burdensome of which is the annual reporting mandate. The 2013 amendments to the law have consolidated the separate reports previously mandated by the state's immigration laws into one report due to the Department of Audits and Accounts by December 31st of each year.[20] Municipalities will be able to find the statutory language for this new reporting requirement Code section in the Appendix to Part IV of this publication. The portion of the report covering this part of the law relates to the requirement to collect affidavits from contractors contracting with the municipality for the "physical performance of services" as detailed in this Part.

The report itself is required to contain the municipality's E-Verify user number and date of authorization, the legal name, address, and E-Verify user number of each contractor and the date each contract between a contractor and the municipality

19 See Corfield v. Coryell, 6 F. Cas. 546 (1823) (the right to pursue an occupation in another state is a fundamental right); Hicklin v. Orbeck, 435 U.S. 902 (1978) (law giving preference to Alaska oil workers struck down); Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985) (law limiting admission to state bar to in-state residents struck down); Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371 (1978) (state allowed to charge higher fee to out of state hunters because hunting is not a fundamental activity).

20 O.C.G.A. §50-36-4.

was entered into.[21] It should be noted that the report requires the address of the contractor while the affidavit does not.[22] Municipalities should be sure to have the address of the contractor to input into the mandated report.

The Department of Audits and Accounts, in an effort to clarify the requirements of the report, provides instructions on how the report must be submitted to the Department. If a municipality wishes to access submission instructions they may find them at the Department of Audits and Accounts immigration webpage.[23]. The report may only be returned to the Department of Audits and Accounts through their online collection system.

The report is an annual report, and the law specifies that the report will cover an annual reporting period of December 1st of one year to November 30th of the reporting year.[24] The report is due by December 31st of each year, but the report should cover the 12-month time period set by the law. A failure to submit this report by municipalities may lead to enforcement action and potential penalties.

Records Retention

The affidavits required to be collected from contractors in this section of the law must be maintained by the municipality for a period of at least five (5) years from the date of receipt.[25] Although the municipality is required to collect copies of state issued identification or driver's licenses from individual contractors there is no explicit retention period in the law or elsewhere for such identification documents. However, a municipality would be wise to securely retain such documents for the same five (5) year time period required for the affidavits under this part of the law. Similarly, a municipality should retain a copy of each submitted report for at least five (5) years, even though no such requirement is explicitly listed in the law. Such a retention period for the report will help the municipality compare the report with the retained affidavits if such a need should arise.

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21 Id.

22 Id.

23 Department of Audits and Accounts immigration webpage: https://www.audits2.ga.gov/resources/other/immigration/

24 O.C.G.A. §50-36-4(a)(2).

25 O.C.G.A. § 13-10-91(b)(1).

E-Verify and Contractors

Checklist for Part II

1. Has the city entered into any contracts for the "physical performance of services" during the past year that are over $2,499.99 in value (from December 1st of last year to November 30th of this year)? (Yes/No)

2. If the city answered "No" to question one (1) then proceed to question six (6).

3. If the city answered "Yes" to question one (1) has the city collected the required contractor affidavit from contractors with employees or received proper identification from individual contractors for each of those contracts? (Yes/No).

4. If the city answered "No" to question three (3) then the city is in violation of Georgia state law and should consult the city's legal counsel to determine the most appropriate method to rectify the error. The city should still file the annual report and proceed to question six (6).

5. If the city answered "Yes" to question three (3) then the city is compliant with the state law affidavit collection requirements and should proceed to question six (6).

6. Every city is required to file the annual report to the Department of Audits and Accounts by December 31st. If it is after December 31st has the city filed the annual report due for the previous year? (Yes/No).

7. If the city answered "No" to question six (6) then the city is in violation of the annual reporting requirement in Georgia state law and should attempt to file the annual report as soon as possible. The city's legal counsel should also be notified and consulted.

8. If the city answered "Yes" to question six (6) then the city is in compliance with Georgia state law.

9. Please remember to retain the affidavits and other records under this part for a period of at least five (5) years.

Appendix to Part II

E-Verify and Contractors - FAQ

Please note that the answers provided in this FAQ were edited and approved by the Attorney General's Office in December of 2011 and, therefore, should be reviewed by the city's legal counsel to verify the current understanding of the law. Those answers or portions of answers which have changed due to Senate Bill 160 in 2013 have been placed in italics to note that the information may no longer be accurate. Explanations have also been added and are in **bold**. These explanations have not been edited or approved by the Attorney General's Office.

Q: What types of contracts require that local governing authorities collect the E-Verify Contractor affidavits?

A: The E-Verify Contractor affidavits are only required for *public works* contracts including contracts involving new construction or demolition of structures or roads, and routine operation, repair or maintenance of existing structures, buildings or real property. **The 2013 amendments to the law expand the definition of "physical performance of services" to include contracts for labor and services over $2,499.99. There are exceptions and cities should consult legal counsel to make sure the law is being applied correctly. It is no longer limited to public works contracts.**

Q: If the contract is exclusively for goods and there are no services being provided, does the local governing authority need to collect an E-Verify Contractor affidavit?

A: No. The law only pertains to public works service contracts or contracts that provide both public works services and goods. If the contract is solely for goods, there is no requirement that an E-Verify Contractor affidavit be submitted. **Remember, the 2013 amendments now make the law apply to certain contracts for labor and services. Contracts for goods still do not require an affidavit.**

E-Verify and Contractors

Q: Does every contractor for public works contracts have to fill out an E-Verify Contractor affidavit?

A: Contractors for public works contractors must fill out an E-Verify Contractor affidavit; provided, however, that if the contractor is an independent party with no employees then they are allowed in lieu of an affidavit to present an ID or driver's license from the below listed states in order to work on a local governing authority public works project: *Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.* **This list of states may no longer be accurate. Please refer to page 30 for an accurate list as of the date of this publication.**

Q: Does the local governing authority have to collect affidavits from subcontractors and sub-subcontractors working on local governing authority projects?

A: The local governing authority is only responsible for collecting contractor affidavits for the parties with whom the local governing authority has directly signed a contract. The contractor is responsible for collecting subcontractor affidavits, the subcontractors must collect from their sub-subcontractors, and so on.

Q: What do we do with the E-Verify Contractor affidavit once the contractor provides it to the local governing authority?

A: Once a local governing authority receives an executed E-Verify Contractor affidavit, it must retain it for five years from the date it was received. At the end of each year, starting on December 31, 2011, a report must be filed with the Department of Audits and Accounts that will include the information on this affidavit.

Immigration Mandates for Municipalities

Q: Must a local governing authority follow the E-Verify contract requirements if there is an emergency or a situation which calls for immediate action?

A: The law, like most laws, does not contain a waiver for abnormal situations. In the event the Governor declares a state of emergency under Title 38, and dispensing with the E-Verify requirements are somehow necessary to preserve public safety during the disaster, it may be within the Governor's emergency powers to suspend certain of these requirements during the pendency of the state of emergency.

Q: If there is only one contractor that can provide a certain service to the local governing authority and they refuse to follow the E-Verify contractor requirements, can the local governing authority contract with them?

A: Local governing authorities can only enter into public works contracts with contractors that follow the E-Verify requirements as provided in O.C.G.A. § 13-10-91. **Likewise, this will apply to contracts for services under the 2013 amendments as well.**

Q: Is the local governing authority required to verify the information provided in the E-Verify Contractor affidavit?

A: No. The contractor is responsible for the information provided. If any of the information provided is determined to be erroneous, the liability is with the contractor and not the local governing authority.

E-Verify and Contractors

E-Verify Contractor Statutes

Please refer to the Georgia state statutes in the Appendix to Part I.

Immigration Mandates for Municipalities

Contractor Affidavit under O.C.G.A. § 13-10-91(b)(l)

The undersigned contractor ("Contractor") executes this Affidavit to comply with O.C.G.A § 13-10-91 related to any contract to which Contractor is a party that is subject to O.C.G.A. § 13-10-91 and hereby verifies its compliance with O.C.G.A. § 13-10-91, attesting as follows:

a) The Contractor has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program;

b) The Contractor will continue to use the federal work authorization program throughout the contract period, including any renewal or extension thereof;

c) The Contractor will notify the public employer in the event the Contractor ceases to utilize the federal work authorization program during the contract period, including renewals or extensions thereof;

d) The Contractor understands that ceasing to utilize the federal work authorization program constitutes a material breach of Contract;

e) The Contractor will contract for the performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. § 13-10-91(a), (b), and (c);

f) The Contractor acknowledges and agrees that this Affidavit shall be incorporated into any contract(s) subject to the provisions of O.C.G.A. § 13-10- 91 for the project listed below to which Contractor is a party after the date hereof without further action or consent by Contractor; and

g) Contractor acknowledges its responsibility to submit copies of any affidavits, drivers' licenses, and identification cards required pursuant to O.C.G.A. § 13-10-91 to the public employer within five business days of receipt.

_____ _____
Federal Work Authorization User Identification Number Date of Authorization

_____ _____
Name of Contractor Name of Project

_____
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20_____ in _____ (city), _____ (state).

_____ _____
Signature of Authorized Officer or Agent Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20_____.

_____
NOTARY PUBLIC
My Commission Expires: _____

List of the states (and territories) that verify immigration status prior to the issuance of a driver's license or identification card and that only issue licenses or identification cards to persons lawfully present in the United States, as required by O.C.G.A Section 13-10-91(b)(5).

REAL ID Act License (Starred License) vs. Non-Compliant Licenses

A few states (and territories) issue both Real ID Act compliant AND non-compliant licenses. These non-compliant cards must clearly state on their face (and in the machine readable zone) that it is not acceptable for official purposes and must use a unique design or color to differentiate them from compliant cards per DHS. California is one such example. Please be sure to check the license provided for an indication that it **IS** acceptable for federal purposes, and thus Real ID Act compliant.

All 50 states are now in compliance with Real ID, however, some do issue both compliant and non-compliant licenses.

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
DC
Florida
Georgia
Guam
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
N. Carolina
N. Dakota
New Jersey
New York
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
S. Carolina
S. Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

Non-compliant, but under review

American Samoa
N. Marianas Islands

As of 09/22/2020

Immigration Mandates for Municipalities

Part III – E-Verify, Private Employers, and Municipal Mandates

Background

Georgia's immigration laws require private employers to register and utilize the E-Verify program. During the 2011 legislative session House Bill 87 was enacted creating these mandates. Although the statute was enacted in 2011 the requirements placed upon businesses and municipalities only began to be phased in during 2012. This Part of the publication will explain the phase-in period for this part of the law and the mandates placed upon municipalities.

Part I of this publication provided a description of the E-Verify program and explained the mandated municipal use of the E-Verify program for new municipal employees. Additionally, Part II explained how contractors, subcontractors, and sub-subcontractors providing the physical performance of services for the municipality are also mandated to register and utilize the E-Verify program. It is important to remember that the section of the Georgia law discussed in this Part is separate and distinct from Parts I and II. Definitions from Parts I and II of this publication are not applicable to this Part and section of the law except for the definition of "federal work authorization program." Similarly, any affidavits or IDs collected and reports submitted in relation to Parts I and II of this law have no bearing on the mandates required under this section of the law. The mandates in this Part of the publication are separate from any other Part and, therefore, must be complied with independently.

Private Employer Phase-In Period

The state law requiring private employers to register and utilize the E-Verify program became effective on January 1, 2012, and from that date until June 30, 2012, private employers with five hundred (500) or more employees were required to register and utilize the E-Verify program before any municipality could grant them a "business license, occupational tax certificate, or other document required to operate a business."[1] From July 1, 2012, until June 30, 2013, private employers with one hundred (100) or more employees are required to register and utilize the E-Verify program before any such document required to operate their business can be granted

[1] O.C.G.A. §36-60-6(a).

by the municipality. Finally, from July 1, 2013, onwards private employers with eleven (11) or more employees are required to register and utilize the E-Verify program before any such document required to operate their business can be granted by the municipality. This Part will refer to occupational tax certificates as business licenses even though the correct term is occupational tax certificate.[2]

What is an employee?

When it comes to Georgia's immigration laws, asking what the definition of employee entails is not a dumb question. This is because the definition of employee varies from section to section of the law. For this section of the law the definition of employee, how employees are counted, and when employees are counted are vital to compliance. It is important to note that the definition of "employee" in this Part only applies to private businesses applying for a business license or other similar document from the municipality.

Georgia's immigration laws define "employee" in this Part to mean any person who works at least 35 hours per week for the private employer and who also is "an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099."[3] Unlike employees of municipalities in Part I of this publication, the definition for private employer employees clearly only includes those employees which most employers would consider full-time employees.

How are employees counted?

On what date do you count the number of employees? Is the number of employees counted those in the local store, in the city, in the county, in the state, in the country, or worldwide? We will attempt to address each of these questions below.

The law specifically states that the number of employees "shall be determined by the number of employees employed by the employer on January 1 of the year during which the affidavit is submitted."[4]

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[2] O.C.G.A. §48-13-5(4).

[3] O.C.G.A. §36-60-6(b); 48-13-5(1.1)(A).

[4] O.C.G.A. §36-60-6(d).

Thus, a private employer makes his or her 'head-count' on January 1st of each and every year they are applying for a business license. For instance, if a private employer had 345 employees on March 13, 2023, when they applied with a city for a 2023 business license but only had 78 employees on January 1, 2023, then their 'head-count' for 2023 was actually just 78 employees because that is how many employees they had on the statutory 'head-count' date.

Although the law specifically states that the count is based upon the number of employees the private employer had on January 1st of the year in which they are applying for the license this count is only initiated on the date the private employer seeks to get their business license or other similar document.

As mentioned previously, beginning on July 1, 2013, all private employers of 11 or more employees must register with and use the E-Verify program. Under previous iterations of the state's immigration law businesses were required to submit the E-Verify Private employer affidavit with every license renewal. The 2013 changes to the law eliminate the requirement to submit new affidavits upon every renewal under this Part.

However, the 2013 amendments did require the business to submit their E-Verify number annually and for the city to verify that the number has not changed from year-to-year. The most effective method for a city to accomplish obtaining the E-Verify number annually without requiring a new affidavit would be for the municipality to include a line on license renewal forms requiring an E-Verify number before the renewed license can be issued. On the face this may not seem much different than the requirements of previous versions of this Part, however, the elimination of the need for an affidavit should prove beneficial to businesses and reduce the paper the city must send out with license renewals.

Most municipalities issue and renew their business licenses from the winter into the spring, meaning that when it comes time to issue or renew business licenses every business with 11 or more employees on January 1st of that year will be required to be registered for the E-Verify program and will be required to provide the municipality with an E-Verify user number on an affidavit matching the requirements of this section of the law before the city can grant them the license.

Immigration Mandates for Municipalities

The tougher question relating to this section of the law revolves around whether the private employer should conduct their 'head-count' by the number of employees in the local store, in the city, in the county, in the state, in the country, or worldwide. The question is an excellent question which is not addressed by the current language of the law. However, informal, unofficial, oral advice given by state attorneys of the Georgia Attorney General's Office may provide some guidance as to how a private employer is to conduct a 'head-count' for this section. A few senior attorneys with the Attorney General's Office had previously stated orally and informally that the 'head-count' should be conducted on the entire business.

However, there are potential logistical and legal problems with having a private employer conduct a 'head count' on their entire business, particularly for large national or international companies. For instance, a private employer which has numerous locations throughout the state may receive various documents required to operate a business from many jurisdictions because of the structure of their business.[5] This could cause the private employer to have to remit affidavits to a large number of local governments. Additionally, large companies may find it difficult to get the company E-Verify user number from their corporate headquarters.

These issues, of course, are issues for the private employer to address and not the municipality, but problems encountered by local businesses eventually become problems for municipalities. Here, the problems encountered by businesses translated into frustration at many municipalities for enforcing these mandates. If a private business wishes to share its thoughts on these mandates a municipality may want to reiterate to the private business that these mandates are not the creation of the municipality and provide them with the names and contact information of their local legislative delegation in the Georgia General Assembly.

Although the unofficial, informal, oral advice from the Attorney General's Office is for private employers to conduct a 'head-count' of the entire business it is important to remember that the statute is actually silent on this point. Situations may arise where a private employer with locations throughout the nation franchises their locations so each one has an individual franchisee. For instance, ABC Packaging might have locations in all fifty states, but Joe Smith might be the franchisee of ABC Packaging #458 in Anytown, Georgia. It may be possible and legal under this law for Joe Smith

5 See O.C.G.A. §48-13-1 et seq.

to conduct his 'head-count' on only the employees he has in store #458, not on the national total of employees for ABC Packaging. Similarly, the municipality's business license may distinguish a store from the national headquarters, and it may be legally possible to conduct the 'head-count' based on the number of employees in the local store.

In the end, it is the private employer, not the municipality, who signs the affidavit for this section of the law and it is the private employer who affirms the number of employees they do or do not have. Municipalities should refrain from advising private employers as to whether the 'head-count' should be conducted locally or nationally because such a question is a legal question for which each private employer should consult their own legal counsel.

Form Affidavits

The requirement for private employers to register and utilize the E-Verify program is regulated by a state mandate placed upon local governments, including municipalities, to collect an affidavit from each and every private employer receiving a "business license, occupational tax certificate, or other document required to operate a business."[6] The municipality is not only required to collect an affidavit from those private employers required to register and utilize the E-Verify program, it is also required to collect an affidavit from those private employers who are exempt from the requirement to register and utilize the E-Verify program.[7] The state law provides that "evidence" must be provided by all private employers claiming to be exempt from the requirement to register and utilize the E-Verify program and such "evidence" must come in the form of an affidavit.[8]

The municipality is clearly required to collect the affidavit for any private employer receiving a business license, which is legally known as an occupational tax certificate. Questions have arisen as to what the state legislature may have meant by the last part of the requirement which requires collection of an affidavit for any "other document required to operate a business."[9] There has not been any official or unofficial direction on how broad or narrow the last part of the requirement should be read. However, municipalities may decide to err on the side of caution under this mandate and require

6 O.C.G.A. §36-60-6(d)(1).

7 Id.

8 Id.

an affidavit before issuance of a document, such as an alcoholic beverage license, if a business cannot operate within the jurisdiction without a certain document.

It is important for city employees and city officials to understand that the affidavit(s) required under this Part are completely different than the affidavits collected under Parts II and IV. For this section of the law, the Georgia Attorney General's Office, as required by law, created form affidavits and a compliance schedule which is available on the Attorney General's Office website. As of the date of publication, the Attorney General's Office website has form affidavits available.[10] Additionally, the Department of Audits and Accounts has some information available related to this part as well. [11]

Collection of Affidavits

A common question relating to the collection of affidavits for this Part concerns which employers are required to have an E-Verify user number on the affidavit. All businesses in a municipality which receive a business license, with the only exception being those receiving insurance company licenses as discussed later in this Part, are required to return an affidavit complying with this section of the law before the city can issue or renew a business license.

If a private employer receives different types of documents required by your municipality in order to conduct a business they only need to provide one affidavit for all of the documents received. For instance, if a private employer received a business license and an alcoholic beverage permit from the city, the business would only need to complete one affidavit to satisfy the requirements of this section of the law.

Insurance Companies and the Private Employer Mandate

Municipalities are most likely not required to collect the affidavit under this section of law from those insurance companies from which the municipality is collecting the insurance company license fee. Georgia municipalities are permitted "to impose and collect…license fees [from] insurance companies for the privilege of engaging in the

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[9] Id.

[10] Each of these documents can be found at the following website under the multiple links referencing O.C.G.A. § 36-60-6(d): https://law.georgia.gov/resources/immigration-reports

[11] https://www.audits2.ga.gov/resources/other/immigration/

business of insurance within said municipal corporation."[12] Often, for even very small cities, this can mean a large number of insurance companies are required to remit fees for the privilege of engaging in business in the municipality.

The language of the law implies that municipalities can control where and when the insurance companies conduct their business within their jurisdiction. However, the Georgia Commissioner of Insurance is actually the only person who can authorize an insurance company to conduct business in the State of Georgia.[13] The ability of a municipality to collect license fees from insurance companies will not be infringed and your city will still be able to collect such fees. However, since it is the Insurance Commissioner and not the city that authorizes the insurance companies to do business throughout Georgia such insurance companies are most likely exempt from the requirements of this section of the law in relation to completing the affidavit for cities.

Granting the Business License

Before a municipality is allowed to grant a business license or other document required to operate a business the municipality must obtain from the business an E-Verify affidavit. If the business is a private employer "engaged in a profession or business required to be licensed by the state under Title 43" then the municipality is required to obtain proof of state licensure before granting the local business license.[14] Title 43 of the Georgia Code contains mandates for state licensure for a large number of professions, including, but not limited to, barbers, cosmetologists, electricians, plumbers, nurses, contractors, transient merchants, used car salesmen, and many more.[15] This mandate has been in the law for a number of years but it is important to reiterate these requirements because the new immigration related state laws have attached significant penalties to failure to comply with this mandate.[16]

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12 O.C.G.A. §33-8-8(b).

13 Please refer to the Appendix to Part IV of this publication, particularly the SAVE and Public Benefits - FAQ, reviewed, edited, and approved by the Georgia Attorney Generals' Office.

14 O.C.G.A. §33-60-6(c).

15 O.C.G.A. §43-1-1 et seq.

16 Ga. L. 1992, p. 1553 §1; O.C.G.A. §36-60-6.

Reporting

The second part of the three parts to the annual required report is perhaps the most burdensome mandate placed on municipalities by Georgia's immigration laws. The report discussed in Part II of this publication this report is due to the Department of Audits and Accounts annually not later than December 31st and is part of the same report discussed in Part II of this publication.

The report must include "each license or certificate issued by a county or municipal corporation to private employers that are required to utilize the federal work authorization program under the provisions of Code Section 36-60-6 during the annual reporting period, including the name of the person and business issued a license and his or her federally assigned employment eligibility verification system user number as provided in the private employer affidavit submitted at the time of application." [17] The annual reporting period runs from December 1st of one year to November 30th of the year in which the report is due.[18] The report is due by December 31st of each year, but the report should cover the 12-month time period set by the law.

The Department of Audits and Accounts, in an effort to clarify the requirements of the report, has created a report template and provided instructions on how the report must be submitted to the Department. If a municipality wishes to access the report template and the submission instructions they may find them at the Department of Audits and Accounts immigration webpage.[19] The report may only be returned to the Department of Audits and Accounts through their online collection system.

The information required by this part of the report has a strong possibility of becoming very time consuming to input. In some cases the number of businesses listed by a municipality could reach into the hundreds or even thousands. The annual reporting requirement under this section of the law requires municipalities to list the E-Verify user number of every private employer granted a business license which was required to have registered for the E-Verify program. Under previous versions of this law the municipality was required to list all businesses in this part of the report, regardless of whether the business was mandated to register for E-Verify. After the enactment

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[17] O.C.G.A. § 50-36-4(d)(4).

[18] O.C.G.A. § 50-36-4(a)(2).

[19] Department of Audits and Accounts immigration webpage: https://www.audits2.ga.gov/resources/other/immigration/

of Senate Bill 160 in 2013, however, this part of the report will only require those businesses which were required to be registered for E-Verify to be listed.

Records Retention

Unlike other parts of Georgia's immigration laws this section of the law does not have any mandated records retention requirements. However, this does not mean the records should not be retained. In fact, the affidavits collected under this section of the law and any copies of reports filed should be retained in accordance with the municipality's records retention schedule. If a municipality does not have a specific records retention policy for these types of materials it is strongly suggested that the records be retained for a period of at least five (5) years. Although there is not a records retention mandate in the law for this section, there is a retention requirement of five (5) years placed upon the records discussed in Part II. Retaining the materials collected and created under this Part for the same time period may help your municipality maintain consistency with similar types of records.

Immigration Mandates for Municipalities

Checklist for Part III

1. Does your city issue any business licenses, occupational tax certificates, or any other document required to operate a business in the city (not including insurance license fees)? (Yes/No).

2. If the city answered "No" to question one (1) then the city is exempt from the requirements of this section of the law. The city should notify the Department of Audits and Accounts of such exemption when filing the annual report in order to prevent enforcement.

3. If the city answered "Yes" to question one (1) then has the city been collecting the required Private Employer affidavits from all businesses receiving a business license, occupational tax certificate, or other document required to operate a business in the city? (Yes/No)

4. If the city answered "No" to question three (3) then the city is in violation of the Georgia state law and should consult the city's legal counsel to determine the most appropriate method to rectify the error. The city should still file the annual report and proceed to question six (6).

5. If the city answered "Yes" to question three (3) then the city is compliant with the affidavit collection requirements in the Georgia state law but still needs to file the annual report due under this section of the law. Proceed to question six (6).

6. Every city that issues a business license, occupational tax certificate, or other document required to operate a business is required to file an annual report to the Department of Audits and Accounts by December 31st. If it is after December 31st has the city filed the annual report due for the previous year? (Yes/No).

7. If the city answered "No" to question six (6) then the city is in violation of the annual reporting requirement in Georgia state law and should attempt to file the annual report as soon as possible. The city's legal counsel should also be notified and consulted.

8. If the city answered "Yes" to question six (6) then the city is in compliance with Georgia state law.

9. If the city is in compliance with Georgia state law please remember to retain the affidavits and other records under this section of law as required by the city's retention schedule.

Appendix to Part III

E-Verify Private Employer - FAQ

The requirements of this section went into effect on January 1, 2012 for public employers with 500 or more employees, on July 1, 2012 for public employers with 100 or more employees, and go into effect on July 1, 2013 for employers with more than 10 employees. Please note that the answers provided in this FAQ were edited and approved by the Attorney General's Office in December of 2011 and, therefore, should be reviewed by the city's legal counsel to verify the current understanding of the law.

Q: What documents require an E-Verify Private Employer affidavit?

A: The E-Verify Private Employer affidavit must be collected from people applying for occupational tax certificates and business licenses. It is also required for any document required by the local governing authority to operate a business (e.g. certificates of occupancy or alcohol licenses if they are required to operate that business in your local governing authority). Please consult your local governing authority attorney to determine which documents fall under this requirement.

Q: What do we do with the E-Verify Private Employer affidavit when it is collected from an applicant?

A: Once you receive an executed E-Verify Private Employer affidavit you retain it per your local governing authority's records retention schedule. At the end of each year, starting on December 31, 2012, you will be required to file a report with the Department of Audits and Accounts that will include the information on this affidavit.

Q: Are we required to collect multiple E-Verify Private Employer affidavits if a private employer comes in for multiple licenses?

A: No, one affidavit per calendar year will meet the requirements of the law.

E-Verify Private Employer Statute

§36-60-6.

(a) Every private employer with more than ten employees shall register with and utilize the federal work authorization program, as defined by Code Section 13-10-90. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(b) For purposes of this Code section, the term "employee" shall have the same meaning as set forth in subparagraph (A) of paragraph (1.1) of Code Section 48-13-5, provided that such person is also employed to work not less than 35 hours per week.

(c) Before any county or municipal corporation issues a business license, occupational tax certificate, or other document required to operate a business to any person engaged in a profession or business required to be licensed by the state under Title 43, the person shall provide evidence of such licensure to the appropriate agency of the county or municipal corporation that issues business licenses. No business license, occupational tax certificate, or other document required to operate a business shall be issued to any person subject to licensure under Title 43 without evidence of such licensure being presented.

(d) (1) Before any county or municipal corporation issues or renews a business license, occupational tax certificate, or other document required to operate a business to any person, the person shall provide evidence that he or she is authorized to use the federal work authorization program or evidence that the provisions of this Code section do not apply. Evidence of such use shall be in the form of an affidavit as provided by the Attorney General in subsection (f) of this Code section attesting that he or she utilizes the federal work authorization program in accordance with federal regulations or that he or she employs fewer than 11 employees or otherwise does not fall within the requirements of this Code section. Whether an employer is exempt from using the federal work authorization program as required by this Code section shall be determined by the number of employees employed by such employer on January 1 of

the year during which the affidavit is submitted. The affidavit shall include the employer's federally assigned employment eligibility verification system user number and the date of authority for use. The requirements of this subsection shall be effective on January 1, 2012, as to employers with 500 or more employees, on July 1, 2012, as to employers with 100 or more employees but fewer than 500 employees, and on July 1, 2013, as to employers with more than ten employees but fewer than 100 employees.

(2) Upon satisfying the requirements of paragraph (1) of this subsection, for all subsequent renewals of a business license, occupation tax certificate, or other document, the person shall submit to the county or municipality his or her federal work authorization use number or assert that he or she is exempt from this requirement, provided that the federal work authorization user number provided for the renewal is the same federal work authorization user number as provided in the affidavit under paragraph (1) of this subsection. If the federal work authorization user number is different than the federal work authorization user number provided in the affidavit under paragraph (1) of this subsection, then the person shall be subject to the requirements of subsection (g) of this Code section.

(e) Counties and municipal corporations subject to the requirements of this Code section shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this Code section. Subject to funding, the Department of Audits and Accounts shall annually conduct an audit of no fewer than 20 percent of such reporting agencies.

(f) In order to assist private businesses and counties and municipal corporations in complying with the provisions of this Code section, the Attorney General shall provide a standardized form affidavit which shall be used as acceptable evidence demonstrating use of the federal employment eligibility verification system or that the provisions of subsection (b) of this Code section do not apply to the applicant. The form affidavit shall be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012.

(g) Once an applicant for a business license, occupational tax certificate, or other document required to operate a business has submitted an affidavit with a federally assigned employment eligibility verification system user number, he

or she shall not be authorized to submit a renewal application using a new or different federally assigned employment eligibility verification system user number, unless accompanied by a sworn document explaining the reason such applicant obtained a new or different federally assigned employment eligibility verification system user number.

(h) Any person presenting false or misleading evidence of state licensure shall be guilty of a misdemeanor. Any government official or employee knowingly acting in violation of this Code section shall be guilty of a misdemeanor; provided, however, that any person who knowingly submits a false or misleading affidavit pursuant to this Code section shall be guilty of submitting a false document in violation of Code Section 16-10-20. It shall be a defense to a violation of this Code section that such person acted in good faith and made a reasonable attempt to comply with the requirements of this Code section.

(i) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(j) The Attorney General shall be authorized to conduct an investigation and bring any criminal or civil action he or she deems necessary to ensure compliance with the provisions of this Code section. The Attorney General shall provide an employer who is found to have committed a good faith violation of this Code section 30 days to demonstrate to the Attorney General that such employer has come into compliance with this Code section. During the course of any investigation of violations of this Code section, the Attorney General shall also investigate potential violations of Code Section 16-9-121.1 by employees that may have led to violations of this Code section.

Private Employer Affidavit Pursuant To O.C.G.A. § 36-60-6(d)

By executing this affidavit under oath, the undersigned private employer verifies one of the following with respect to its application for a business license, occupational tax certificate, or other document required to operate a business as referenced in O.C.G.A. § 36-60-6(d):

Section 1. Please check only one:

(A) _____ On January 1st of the below-signed year, the individual, firm, or corporation employed more than ten (10) employees[1].

*** If you select Section 1(A), please fill out Section 2 and then execute below.

(B) _____ On January 1st of the below-signed year, the individual, firm, or corporation employed ten (10) or fewer employees.

*** If you select Section 1(B), please skip Section 2 and execute below.

Section 2.

The employer has registered with and utilizes the federal work authorization program in accordance with the applicable provisions and deadlines established in O.C.G.A. § 36-60-6. The undersigned private employer also attests that its federal work authorization user identification number and date of authorization are as follows:

_____
Name of Private Employer

_____
Federal Work Authorization User Identification Number

_____
Date of Authorization

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed on __, _____, 201____in _____(city), _____(state).

_____
Signature of Authorized Officer or Agent

_____
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____DAY OF _____, 201__.

_____
NOTARY PUBLIC
My Commission Expires: _____

1 To determine the number of employees for purposes of this affidavit, a business must count its total number of employees company-wide, regardless of city, state, or country in which they are based, working at least 35 hours.

Part IV – SAVE, Public Benefits, and Municipal Mandates

What is SAVE?

SAVE, short for the Systematic Alien Verification for Entitlements,[1] is a federal, internet-based program which is operated by the United States Citizenship and Immigration Services and used by state and local agencies, among other public bodies, to help those agencies determine the immigration status of benefit applicants. The SAVE program is a completely different federal program from the E-Verify program. While the SAVE program can help a municipality determine the immigration status of benefit applicants, it cannot tell the municipality whether the benefit applicant is eligible for the benefit.

Municipal use of the SAVE Program

Under federal law, participation in the SAVE program is not mandatory. However, the State of Georgia has made participation mandatory for any agency or political subdivision providing or administering a public benefit.[2] An "agency or political subdivision" is defined as any "department, agency, authority, commission, or government entity of this state or any subdivision of this state."[3] This definition includes municipalities and authorities. All of Georgia's municipalities should be registered for the SAVE program under state law.

Registration into the SAVE program

Any municipality that has not yet registered for the SAVE program should register immediately. The website for the SAVE program is: https://www.uscis.gov/save. Once on the SAVE website, municipalities wishing to register should look to the right-hand side of the page. Under the "Tools" subheading in the right-hand column there is a link entitled "SAVE Registration." The city should be able to complete the initial registration process for the SAVE program by following the prompts and entering the required information. *(The SAVE website directions in this publication are accurate as of the date of publication. Should the federal government update the website your city may need to search the federal website more extensively to*

[1] O.C.G.A. §50-36-1(a)(5).

[2] O.C.G.A. § §50-36-1(f) and 50-36-1(m)

[3] O.C.G.A. §50-36-1(a)(2).

locate the proper area to register for the program.)

Registration for the SAVE program is not as simple as registering for the E-Verify program. Unlike the E-Verify program, registering for SAVE is a multi-step process that can take many days, if not weeks.[4] Municipalities need to know which public benefits they provide in order to register for the program. The first step in the registration process asks the municipality for various point of contact information related to the municipality. This initial process will generate a temporary user identification and password. It is vital that municipalities realize that they have not completed the registration process at this point.

After receiving the temporary user identification and password the city will be able to log into the SAVE system to complete the registration process. The city will again be asked to provide information related to the point of contact for the municipality. The city will then be asked to select from a list of public benefits those benefits provided by your municipality. It is important that the city does not select from the pull down list but instead write into the "Other Benefits" field "GMA Checklist." In the Appendix for this Part cities will find a copy of the GMA checklist which you will need to fill out and return to the SAVE program.[5] The next screen will ask the city for the law authorizing your use of the SAVE program. Municipalities should only input information into the field for state laws, and the information should include the words "O.C.G.A. 50-36-1." After the municipality completes all of these steps it is still not complete with the SAVE registration process.

The next step in the SAVE registration process involves a legal review of the information provided by the city by the SAVE legal staff. This may take a few days or weeks. In extreme cases, it has been known to take months and even years. Once the SAVE legal team determines the municipality's eligibility to register for the SAVE program they will send the municipality a Memorandum of Agreement (MOA) and an Anticipated Collections Addendum (ACA). These documents must be reviewed by the municipality, particularly by the city attorney, and be approved as required by the city's charter for contracts. After approval by the city, copies should be retained by the city and the originals sent back to the SAVE program. Only at this point will SAVE

[4] GMA resources can be found at https://www.gacities.com/Resources/GMA-Handbooks-Publications/City-Clerk-Handbook/E-Verify-Save.aspx

5 Id.

provide the municipality with a permanent user identification and password and will the municipality be complete with the SAVE registration process.

What does the SAVE Program cost?

The SAVE program, unlike the E-Verify program, is not free to utilize. The ACA document approved by the municipality upon registration will need to be updated annually with the SAVE program. The ACA document requests the municipality provide a monetary amount dedicated for use of the SAVE program by the municipality for each fiscal year. Electronic verification of a public benefits applicant through the SAVE program costs fifty (50) cents per query while a paper query costs two (2) dollars per query. The minimum monthly charge for the SAVE program where an applicant has been run through the program is twenty-five (25) dollars per month. This means that a municipality will only be charged in those months where the municipality attempts to run an applicant through the SAVE system, which for some cities will not happen every month.

A municipality does not have to run applicants for public benefits through the SAVE program immediately upon receiving an affidavit under this section of the law, but can instead presume the affidavit is proof of lawful presence.[6] Therefore, the municipality could run applicants for public benefits through the SAVE program during only one month in a year in order to cut down on costs. The municipality must utilize the SAVE program at least once a year if the municipality has any applicants which should be run through the program. Applicants are defined by state law and described in greater detail later in this Part.

Since the minimum monthly cost is twenty-five (25) dollars for any month the SAVE program has suggested, at minimum, municipalities dedicate three hundred (300) dollars annually in the ACA and in their budgets for use of the SAVE program. Again, since municipalities will likely not utilize the SAVE program every month of the year it is equally as unlikely that your municipality will actually spend three hundred (300) dollars in any given year. However, such amount should be entered into the ACA and, if possible, budgeted to cover any possible scenario.

[6] O.C.G.A. §50-36-1(h).

What is a Public Benefit?

The definition of a public benefit is very important for municipalities because an affidavit, as will be described further in this Part, is required to be collected from every applicant for public benefits each and every time a municipality gives a public benefit. Every municipality which issues a public benefit is required to sign up for the SAVE program. The definition of "public benefit" in the state law is very broad and many municipalities most likely provides at least one kind of public benefit listed in the state law. This broad definition makes it mandatory that almost every municipality register for the SAVE program.

While the list of public benefits in the law is very extensive municipalities tend to issue a limited number of the public benefits listed in the law. Some of these common benefits issued by municipalities include employee retirement benefits, employee health benefits, employee disability benefits, alcoholic beverage licenses, occupational tax certificates (business licenses), taxicab licenses, pawn broker licenses, billiard hall licenses, peddler and itinerant trader licenses, and transient business licenses.[7]

Previously, contracts were listed as public benefits but the 2013 amendments to the law eliminate the inclusion of contracts as public benefits. These changes mean that municipalities no longer are required to collect SAVE affidavits under this Part for contracts. Remember, however, that certain contracts involving labor or services may require an E-Verify Contractor affidavit described in Part II. Additionally, the Georgia Attorney General is no longer mandated under state law to prepare an annual report indicating what constitutes a public benefit. The Attorney General's Office previously provided such reports each year it was required and the report for 2012 can be found on the Department of Law's [8]

Insurance Companies and the Public Benefits Mandate

Municipalities <u>are not</u> required to collect the affidavit under this section of law from those insurance companies from which the municipality is collecting the insurance company license fee, similar to the exception discussed in Part III. Georgia's municipalities are permitted "to impose and collect…license fees [from] insurance companies for the privilege of engaging in the business of insurance within said

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7 See the list of public benefits in O.C.G.A. §50-36-1(4)(A).

8 See the "Report of the Attorney General on Public Benefits" (https://law.georgia.gov/document/publication/187427381report-ag-public-benefits-2012pdf/download)

municipal corporation."[9] Often, for even very small cities, this can mean a large number of insurance companies are required to remit fees for the privilege of engaging in their business in the municipality.

The language of the law implies that municipalities can control where and when the insurance companies conduct their business within their jurisdiction. However, the Georgia Commissioner of Insurance is actually the only person who can authorize an insurance company to conduct business in the State of Georgia.[10] The ability of a municipality to collect license fees from insurance companies will not be infringed and your city will still be able to collect such fees. However, since it is the Insurance Commissioner and not the city that authorizes the insurance companies to do business throughout Georgia such insurance companies are exempt from the requirements of this section of the law in relation to completing the affidavit for cities.

Who is an Applicant?

The state law defines an applicant for a public benefit as "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."[11] The first important point to take from this definition is that it only refers to private entities. Therefore, government-to-government "public benefits" most likely do not fall under the mandates of this law. The second important point to take from the definition of "applicant" is that anyone over the age of 18 can be considered the "applicant" on the behalf of a business. A municipality should require the applicant to be the same person receiving the public benefit, but that person does not necessarily have to be the owner or manager of a business.

Secure and Verifiable Documents

Each municipality issuing a public benefit under this section of the law must require every applicant for a public benefit to provide one secure and verifiable document and execute a signed and sworn affidavit.[12] This publication will discuss the affidavit requirement in the next subsection. The secure and verifiable document requirement

9 O.C.G.A. §33-8-8(b).

10 Please refer to the Appendix to Part IV of this publication, particularly the SAVE and Public Benefits - FAQ, reviewed, edited, and approved by the Georgia Attorney Generals' Office.

11 O.C.G.A. §50-36-1(3).

12 O.C.G.A. §50-36-1(f).

has caused much confusion. In particular it has been mixed-up with the identification requirements discussed in Part II of this publication. Unlike the list of state and territory driver's licenses and identification cards allowed to be used in the section of the law relating to E-Verify and contractors, secure and verifiable documents include a very broad list of identification documents, including all state, district, and territorial identification cards and driver's licenses, certain birth certificates[13], passports for any foreign country which have proper documentation showing lawful presence in the United States[14], and many other types of identification documents.

The state law provides that secure and verifiable documents are "document[s] issued by a state or federal jurisdiction or recognized by the United States government and that [are] verifiable by federal or state law enforcement, intelligence, or homeland security agencies."[15] The state law goes on to limit such secure and verifiable documents by declaring that they "shall not mean a Matricula Consular de Alta Seguridad, matricula consular card, consular matriculation card, consular identification card, or similar identification card issued by a foreign government regardless of the holder's immigration status."[16] The Attorney General has been mandated by state law to provide on August 1st of each year "a list of acceptable secure and verifiable documents."[17] The latest version of this list can be found in the Appendix to this Part and can also be found on the Attorney General's website.[18]

The list of documents is very broad and GMA has examples of images of some of the documents upon request.[19] However, if confronted with an identification document unfamiliar to municipal staff, reasonable due diligence should be utilized to determine whether the document is legitimate. Most municipal employees are not fraudulent identification document experts and no one should or can reasonably expect any municipal employee to become trained as such experts. However, municipal employees should use due diligence and common sense in analyzing any required secure and verifiable document.

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13 O.C.G.A. §50-36-2(b)(3)(A).

14 O.C.G.A. §50-36-2(b)(3)(B).

15 O.C.G.A. §50-36-2(b)(3).

16 O.C.G.A. §50-36-2(b)(3)(B)..

17 O.C.G.A. §50-36-2(g).

18 https://law.georgia.gov/resources/immigration-reports

19 If you require such images, please use this contact form: https://www.gacities.com/Contact/Staff/82923

If an applicant for a public benefit does not provide a secure and verifiable document or provides a secure and verifiable document that is clearly fraudulent (i.e. a purple Georgia driver's license) the municipality cannot grant the public benefit to the applicant. Importantly, municipalities must only rely on such secure and verifiable documents for any official purpose that requires presentation of identification under the state's immigration laws, unless federal law permits the use of an identification document not on the secure and verifiable document list.[20] Again, the list of secure and verifiable documents is very broad, so more likely than not an identification document will be on the list, but the municipality is still required to only accept such documents for any official purpose.

Affidavits

The state auditor is required to create affidavits for use under this section of the law and make such form affidavits available on the Department of Audits and Accounts website.[21] The form affidavit created by the state auditor is required to be collected from every applicant for a public benefit. The document verifies each applicant's lawful presence in the United States by allowing the applicant to affirm either that they are a "United States citizen or legal permanent resident 18 years of age or older" or that they are "a qualified alien or nonimmigrant…lawfully present in the United States and providing the applicant's alien number."[22] Again, this affidavit must be collected from each and every applicant for a public benefit from the city before the public benefit is given to the applicant by the city. A copy of the form affidavit can be found in the Appendix to this Part and on the website of the Department of Audits and Accounts.[23]

Collection of the Affidavits and Secure and Verifiable Documents

According to advice received from the Attorney General's Office the affidavit under this Part may be provided in person, electronically, or by regular mail to the municipality. Additionally, the 2013 amendments also allow secure and verifiable documents to be presented in person, electronically, or by mail. Electronic transmissions of either the affidavit or the secure and verifiable document are governed by the provisions of the Uniform Electronic Transactions Act, found in Chapter 12 of Title 10 of the Georgia

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20 O.C.G.A. §50-36-2(c).

21 O.C.G.A. §50-36-1(f)(2).

22 O.C.G.A. §50-36-1(f)(1)(B).

23 https://www.audits2.ga.gov/resources/other/immigration/

Code.[24] The affidavit and secure and verifiable documents may also "be submitted by or on behalf of the applicant at any time within nine months prior to the date of application so long as the document remains valid through the licensing or approval period or such other period for which the applicant is applying to receive a public benefit."[25] This nine month period was new to the law with the 2013 amendments and was intended to help alleviate some back-log in heavy application periods.

Senate Bill 160, enacted in 2013, also made an important change regarding renewal applications for public benefits. If an "applicant applying for or renewing an application for a public benefit within the same agency or political subdivision...has previously complied with the requirements of this [Part] by submission of a secure and verifiable document...and a signed and sworn affidavit affirming that such applicant is a United States citizen" then that person does not have to submit another affidavit or secure and verifiable document for any public benefit with that same municipality.[26] Basically, this change means that if a United States citizen has provided an affidavit and secure and verifiable document to the municipality in the past they are not required to submit a new affidavit or secure and verifiable document for any subsequent public benefits.

Finally, the 2013 amendments contain another new requirement which logistically contradicts itself. Under Senate Bill 160, "if the applicant [for a public benefit] is younger than 18 years of age at the time of application, he or she shall execute the affidavit required by this [Part] within 30 days after his or her eighteenth birthday."[27] On its face, this new requirement seems like it could become burdensome, but at this time there has not been any guidance on how to interpret this new requirement. Additionally, the new requirement relies on the term "applicant" which is defined in the same Code section as a person 18 years of age or older. Logistically then, an "applicant" cannot be younger than 18 years of age, and it is probable this new requirement contains a contradiction which makes it unworkable. Municipal employees and officials would be wise to seek the advice of the city attorney in interpreting this requirement.

Who does the municipality run through the SAVE program?

A common question raised under this section of the law revolves around who the municipality runs through the federal SAVE program. Many municipalities will have

[24] O.C.G.A. §50-36-1(f)(3).

[25] O.C.G.A. §50-36-1(f)(1)(A).

[26] O.C.G.A. §50-36-1(f)(4).

[27] O.C.G.A. §50-36-1(f)(1)(B).

collected a large number of affidavits under this requirement. However, the municipality does not run every applicant for a public benefit through the federal SAVE program. In fact, the majority of applicants for public benefits will not be run through the SAVE program. Only those applicants who "executed an affidavit that he or she is an alien lawfully present in the United States" should be run through the SAVE program.[28] Most applicants for public benefits will have executed an affidavit stating they are a United States citizen. The municipality cannot run such applicants through the SAVE program.[29] If the applicant executes an affidavit stating they are a legal permanent resident or that they are a qualified alien, then the municipality must eventually run the person through the SAVE program. Remember, however, the municipality may rely on the affidavit until such time as the applicant is run through the program.

Reporting

The third part of the reporting requirement placed upon Georgia's cities is certainly one of the quickest to submit. This part of the report is due to the Department of Audits and Accounts annually on December 31st of each year. This part of the report has been due annually since January 1, 2011.

The actual information required under this part of the report only involves two questions.[30] The first question will ask the city to pick from a list of public benefits those benefits provided by the city. For example, if the city issues occupational licenses, has the ability to enter into contracts, and provides city employees with health benefits, it should select the three corresponding benefits. The list does include multiple listings for occupational licenses because it tracks the state law which, unfortunately, is very redundant.[31] After your city has finished the first question it will be required to answer the second question.

The second question in this part of the report has caused a little more confusion than the first even though it only requires a yes or no response. This question follows state law and asks the city for each public benefit it selected in the first question whether

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28 O.C.G.A. §50-36-1(h).

29 Id.

30 O.C.G.A.§50-36-4(d)(5)(A)..

31 See O.C.G.A. §50-36-1(4)(C), (P), and (X); The state law lists "business certificate, license, or registration," "occupational license," and "tax certificate required to conduct a commercial business" as individual public benefits. These three definitions are redundant as they all refer to the same document the vast majority of the time.

"SAVE program authorization for verification has ... been received." [32] The answer to this question depends on whether the city has registered for the federal SAVE program. If the city has registered for the federal SAVE program, then the city must identify for which specific public benefits the city has been authorized to use the SAVE program. For example, if the city has registered for the SAVE program but only received authorization to use the program for occupational licenses, the city would answer "yes" for occupational licenses and "no" for retirement and health benefits.

If the city has not registered for the federal SAVE program and provides or can provide any public benefits it should do so immediately. Failure to register for the SAVE program may be a violation of the Georgia immigration laws and lead to a compliance action being brought against your city. If the city has registered for the SAVE program but now realizes that the city provides more benefits than initially registered and authorized, then the city should contact SAVE and attempt to have the Memorandum of Agreement with SAVE amended to include all benefits provided by the city.

The city will be able to submit the report regardless of whether it answered "yes" or "no" to the second question, but an answer does need to be provided. GMA recommends the city file the report on time regardless of the registration status of the city with SAVE. But again, if the city has not registered for SAVE, it should do so immediately. Once the city has answered the second question and completed the other parts of the report the city should be able to submit the report to the Department of Audits and Accounts.

Records Retention

The affidavits required to be collected under this section of the law must be maintained by the municipality for a period of at least three (3) years.[33] Because the report related to the collection of these affidavits is a web-based report there will not be a copy of the actual report available to the city. However, for its own benefit, the city should print out and store a copy of the confirmation that the report has been filed in case any compliance actions are brought against the city. [34]

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[32] O.C.G.A. §50-36-1(i).

[33] See LG-16-038: SAVE and E-Verify Affidavits at https://www.georgiaarchives.org/records/local_government/

[34] See LG-16-039: SAVE and E-Verify Reports at Id.

Checklist for Part IV

1. Does the city provide any public benefits as defined in O.C.G.A. §50-36-1 (If the city is answering "No" please check with the city legal counsel to be certain) ? (Yes/No)

2. If the city answered "No" to question one (1) please complete the remainder of sections in the report required to be submitted to the Department of Audits and Accounts and indicate that the city does not administer any public benefits. Please proceed to question fourteen (14).

3. If the city answered "Yes" to question one (1) has the city been collecting the appropriate Public Benefits Affidavit from each applicant for each public benefit received? (Yes/No)

4. Additionally, if the city answered "Yes" to question one (1) has the city registered for the federal SAVE program? (Yes/No)

5. If the city answered "No" to question three (3) or four (4) then the city is in violation of the Georgia state law and should consult the city's legal counsel to determine the most appropriate method to rectify the error. The city should still file the annual report under question fourteen (14).

6. If the city answered "Yes" to questions three (3) and four (4) then has the city been requiring secure and verifiable identification documents as defined in O.C.G.A. §50-36-2 for each public benefit granted by the city? (Yes/No)

7. If the city answered "No" to question six (6) then the city is in violation of the Georgia state law and should consult the city's legal counsel to determine the most appropriate method to rectify the error. The city should still be able to proceed to question nine (9) if it has collected the affidavit but did not receive a secure and verifiable document. Additionally, the city should still file the annual report under question fourteen (14).

8. If the city answered "Yes" to question six (6) then the city is compliant with the affidavit collection requirements in the Georgia state law. Please proceed to question nine (9).

9. If the city answered "Yes" to question eight (8) did any applicants for public benefits attest that they are legal permanent residents or qualified aliens present in the country legally? (Yes/No)

Immigration Mandates for Municipalities

10. If the city answered "No" to question nine (9) proceed to question fourteen (14).

11. If the city answered "Yes" to question nine (9) has the city utilized the federal SAVE program to determine if such applicants are legally present in the country? (Yes/No)

12. If the city answered "No" to question eleven (11) then the city should utilize the federal SAVE program to determine if any such applicants are not legally present in the country within the same year as such applicants receive the public benefit from the city.

13. If the city answered "Yes" to question eleven (11) then remember that the city cannot provide any public benefits to persons not legally present in the country. Please proceed to question fourteen (14).

14. Every city is required to submit an annual report to the Department of Audits and Accounts by December 31st. If it is after December 31st has the city filed the annual report due for the previous year? (Yes/No).

15. If the city answered "No" to question fourteen (14) then the city is in violation of the annual reporting requirement in Georgia state law and should attempt to file the annual report as soon as possible. The city's legal counsel should also be notified and consulted.

16. If the city answered "Yes" to question fourteen (14) then the city is in compliance w for reporting on this section of the Georgia law.

17. If the city is in compliance with Georgia state law please remember to retain the affidavits and other records under this section of law for a period of three (3) years.

Appendix to Part IV

SAVE and Public Benefits - FAQ

Please note that the answers provided in this FAQ were edited and approved by the Attorney General's Office in December of 2011 and, therefore, should be reviewed by the city's legal counsel to verify the current understanding of the law. Those answers or portions of answers which have changed due to Senate Bill 160 in 2013 have been placed in italics to note that the information may no longer be accurate. Explanations have also been added and are in **bold**. These explanations have not been edited or approved by the Attorney General's Office.

Q: What are the "public benefits" that require a local governing authority to collect a SAVE affidavit?

A: The list of public benefits in Georgia law is broad. Local governing authorities, generally, issue some of the following public benefits: Employee Retirement Benefits, Employee Health Benefits, Employee Disability Benefits, Alcoholic Beverage Licenses, Occupational Tax Certificates (Business Licenses), Taxicab Licenses, Auctioneer Licenses, Pawn Broker Licenses, Massage Therapist Licenses, Billiard Hall Licenses, Precious Metals and Gems Dealer Licenses, Flea Market Licenses, Peddler and Itinerant Trader Licenses, Transient Business Licenses, Fortune Teller Licenses. *Additionally, the local governing authority is required to collect a SAVE affidavit from any party with whom the local governing authority enters into a contract.* If you have a question about whether a benefit that your local governing authority provides is a "public benefit" please consult your local governing authority's attorney. **Contracts are no longer considered "public benefits" after passage of Senate Bill 160 during the 2013 Session.**

Q: Are Insurance Company Licenses for municipalities considered a public benefit?

A: No. Although there is a section of law authorizing municipalities to impose and collect a license fee from insurance companies for the privilege of engaging in the business of insurance within the municipality, Georgia law states that only the Commissioner of Insurance can issue a certificate of authority to conduct business in Georgia to an insurance provider. The license fee that municipalities

are allowed to impose, therefore, are only issued to show payment, and are not considered a commercial license which requires a SAVE affidavit for a public benefit.

Q: How often should health benefits for local governing authority employees under SAVE be verified?

A: The law recognizes health benefits as a public benefit. The Attorney General's list of public benefits suggests that verification through E-Verify may be sufficient verification for new hires.

Q: *How are "contracts" defined as it applies to public benefits under SAVE and why are contracts considered to be a public benefit?*

A: *Georgia law requires verification for any public benefit provided through the local governing authority. The state law defining public benefits in O.C.G.A. § 50-36-1 is tied to the federal definition of state and local public benefits in 8 U.S.C. 1621 which includes "any contract." There is no definition of "any contract" in this context in state or federal law. Therefore, "any contract" requires a SAVE affidavit.* **Contracts are no longer considered "public benefits" after passage of Senate Bill 160 during the 2013 Session.**

Q: Are building permits considered to be a public benefit?

A: No.

Q: May a person provide the SAVE affidavit or the required identification to the local governing authority electronically?

A: The SAVE affidavit can be provided in person, electronically, or by mail. *The required secure and verifiable document can either be presented in person or electronically but cannot be submitted via mail.* Electronic transmissions of either the SAVE affidavit or the secure and verifiable document are governed by the provisions of the Uniform Electronic Transactions Act, found in Chapter 12 of Title 10 of the Georgia Code. **Affidavits and secure and verifiable**

documents may be submitted in person, electronically, and by mail after passage of Senate Bill 160 during the 2013 Session.

Q: What type of identification must the local governing authority require to accept a SAVE affidavit, starting on January 1, 2012?

A: The following is a list of acceptable identification: United States Passport, United States Passport Card, United States Military ID, a Driver's License or ID from one of the 50 states, Puerto Rico, Washington D.C., Guam, U.S. Virgin Islands, Northern Marianas Islands, American Samoa, and the Swain Islands, a tribal identification ID from a federally recognized Native American tribe, a United States Permanent Resident Card, an Alien Registration Receipt Card, an Employment Authorization Document, a passport of a foreign government, a Merchant Mariner Document, a Merchant Mariner Credential, a Free and Secure Trade (FAST) Card, a NEXUS Card, a Secure Electronic Network for Travelers Rapid Inspection (SENTRI) Card, a Canadian driver's license, a United States Certificate of Citizenship, a United States Certificate of Naturalization, or any other document required to be accepted by a particular federal law. You cannot accept a Matricula Consular de Alta Seguridad card, matricula consular card, consular matriculation card, consular identification card, or any other similar card for identification purposes. This list of acceptable identification documents will be updated annually by the Attorney General and will be posted on the Department of Law website. **Passports of foreign governments must contain proper entry documentation and certain birth certificates are acceptable after passage of Senate Bill 160 during the 2013 Session.**

Q: Do business owners need to sign the SAVE affidavit every time a benefit is renewed?

A: *Yes. A new affidavit must be signed every time a public benefit is renewed, even if the renewal is for a U.S. citizen. This is because it is possible that a person's legal status may have changed since the last application for the benefit.* **United States citizens do not have to resubmit the documentation if they have already done so in the past after passage of Senate Bill 160 during the 2013 Session.**

Immigration Mandates for Municipalities

Q: Is a local governing authority required to collect multiple SAVE affidavits if an applicant comes in for multiple public benefits?

A: No, one affidavit will meet the requirements of the law if the person has come in for multiple public benefits at one time. If a person comes in for multiple benefits over a period of time (one benefit in November, a second benefit in December, etc) then that person will need to submit a SAVE affidavit for each time a benefit is requested.

Q: Who can sign and present the SAVE affidavit on behalf of an applicant for a public benefit?

A: Any person who is 18 years of age or older and who is authorized to execute binding legal documents on behalf of an individual, business, corporation, partnership, or other private entity requesting a public benefit may sign the SAVE affidavit and present identification on behalf of said entity.

Q: Should naturalized citizens be verified through the SAVE program?

A: No. Naturalized citizens are U.S. citizens and should be treated as such. However, legal permanent residents should be run through the SAVE program.

Q: What if someone who has applied for a public benefit refuses to sign the SAVE affidavit?

A: If someone refuses to sign the SAVE affidavit then the local governing authority should not provide the benefit. The local governing authority has signed a contract with the Department of Homeland Security that requires the local governing authority to verify eligibility prior to granting a public benefit. This includes business, alcohol and insurance licenses.

Q: When does the local governing authority have to start requiring the presentation of identification in order to provide a public benefit?

A: January 1, 2012. Any public benefit including license renewals issued before January 1, 2012 will not require an identification document. Please see the list above for a list of public benefits for SAVE or consult your local governing authority attorney and the list above of allowed identification documents for SAVE.

Q: What does the local governing authority do with the SAVE affidavit once it has been collected?

A: When the local governing authority collects a SAVE affidavit, it should be retained for three years in accordance with the Georgia Retention Schedule for Local Governments. If the applicant has checked the field for "legal permanent resident" or checked the field for "qualified alien" the local governing authority is required to run the applicant through the SAVE program.

Q: What reporting requirements are mandated by SAVE?

A: *Effective on January 1, 2010, local governments that provide or administer public benefits were to have begun filing annual reports with DCA. The first annual reports were due no later than January 1, 2011. DCA's online Public Benefits Reporting System (PBRS) is the sole method by which public entities can meet this annual reporting requirement. These reports must identify public benefits provided and/or administered by the local governing authority as authorized through the Department of Homeland Security and a listing of each public benefit for which SAVE authorization for verification through the Department of Homeland Security has not been received. The latter requirement does not apply to the applicants through the local governing authority that were denied, but to the actual local governing authority that was denied the authority to verify a particular public benefit by the Department of Homeland Security. Go to www.dca.state.ga.us to file the required DCA report.* **Beginning with the 2013 report, there was only one report which is due to the Department of Audits and Accounts annually. This report and the portal can be found at:** https://www.audits2.ga.gov/resources/other/immigration/?rpage=submissions **and** https://www.audits.ga.gov/auth/login**.**

SAVE Public Benefits Statutes and Reporting Statute

§50-36-1.

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

(1) "Agency head" means a director, commissioner, chairperson, mayor, councilmember, board member, sheriff, or other executive official, whether appointed or elected, responsible for establishing policy for a public employer.

(2) "Agency or political subdivision" means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(3) "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.

(4) "Public benefit" means a federal, a state, or local benefit which shall include the following:

(A) Adult education;

(A.1) Apprenticeships;

(B) Authorization to conduct a commercial enterprise or business;

(C) Business certificate, license, or registration;

(D) Business loan;

(E) Cash allowance;

(F) Disability assistance or insurance;

(G) Down payment assistance;

(H) Energy assistance;

(I) Food stamps;

(J) Gaming license;

(K) Grants

(L) Health benefits;

(M) Housing allowance, grant, guarantee, or loan;

(N) Loan guarantee;

(O) Medicaid;

(P) Occupational license;

(Q) Professional license;

(R) Public and assisted housing;

(S) Registration of a regulated business;

(T) Rent assistance or subsidy;

(U) Retirement benefits;

(V) State grant or loan;

(W) State issued driver's license and identification card;

(X) Tax certificate required to conduct a commercial business;

(Y) Temporary assistance for needy families (TANF);

(Z) Unemployment insurance; and

(AA) Welfare to work.

(5) 'SAVE program' means the federal Systematic Alien Verification for Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security for the same purpose.

(b) Except as provided in subsection (d) of this Code section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States under federal immigration law of any applicant for public benefits.

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

(d) Verification of lawful presence in the United States under federal immigration law under this Code section shall not be required:

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

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

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

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

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

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

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

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

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia, the State Board of the Technical College System of Georgia, the board of commissioners of the Georgia Student Finance Commission, and the board of directors of the Georgia Student Finance Authority shall set forth, or cause to be set forth, policies or regulations, or both, regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(e) All policies of agencies or political subdivisions regarding public benefits for postsecondary education shall comply with federal law as provided in 8 U.S.C. Section 1623.

(f) (1) Except as provided in subsection (g) of this Code section, an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

(A) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2 or a copy or facsimile of such document. Any document required by this subparagraph may be submitted by or on behalf of the applicant at any time within nine months prior to the date of application so long as the document remains valid through the licensing or approval period or such other period for which the applicant is applying to receive a public benefit; and

(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law; provided, however, that if the applicant is younger than 18 years of age at the time of application, he or she shall execute the affidavit required by this subparagraph within 30 days after his or her eighteenth birthday. Such affidavit shall affirm that:

(i) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

(ii) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

(2) The state auditor shall create affidavits for use under this subsection and shall keep a current version of such affidavits on the Department of Audits and Accounts' official website.

(3) Documents and copies of documents required by this subsection may be submitted in person, by mail, or electronically, provided the submission complies with Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or electronically shall satisfy the requirements of this

Code section. For purposes of this paragraph, electronic submission shall include a submission via facsimile, Internet, electronic texting, or any other electronically assisted transmitted method approved by the agency or political subdivision.

(4) The requirements of this subsection shall not apply to any applicant applying for or renewing an application for a public benefit within the same agency or political subdivision of the applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(g) (1) The Department of Driver Services shall require every applicant for a state issued driver's license or state identification card to submit, in person, and original secure and verifiable document, as defined in Code Section 50-36-2, and execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law.

(2) The requirements of this subsection shall not apply to any applicant renewing a state issued driver's license or state identification card when such applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(h) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public benefits shall be made through the SAVE program. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence in the United States under federal immigration law for the purposes of this Code section.

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

(j) Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.

(k) It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of this Code section. Agencies and political subdivisions subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Any agency or political subdivision failing to provide a report as required by this subsection shall not be entitled to any financial assistance, funds, or grants from the Department of Community Affairs.

(l) Any and all errors and significant delays by the SAVE program shall be reported to the United States Department of Homeland Security.

(m) Notwithstanding subsection (i) of this Code section, any applicant for public benefits shall not be guilty of any crime for executing an affidavit attesting to his or her lawful presence in the United States under federal immigration law that contains a false statement if such affidavit is not required by this Code section.

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

(o) Compliance with this Code section by an agency or political subdivision shall include taking all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designated by the United States Department of Homeland Security or other federal agency, including providing copies of statutory authorization for the agency or political subdivision to provide public benefits and other affidavits, letters of memorandum of understanding, or other required documents or information needed to receive authority to utilize the SAVE program or any successor program for each public benefit provided by such agency or political subdivision. An agency or political subdivision that takes all reasonable, necessary steps and submits all requested documents and information as required in this subsection but either has not been given access to use such programs by such federal agencies or has not completed the process of obtaining access to use such programs shall not be liable for failing to use the SAVE program or any such successor program to verify eligibility for public benefits.

(p) In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee of each house of the General Assembly may consider such noncompliance in setting the budget and appropriations.

(q) No employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter; provided, however, that the intentional and knowing failure of any agency head to abide by the provisions of this chapter shall:

(1) Be a violation of the code of ethics for government service established in Code Section 45-10-1 and subject such agency head to the penalties provided for in Code Section 45-10-28, including removal from office and a fine not to exceed $10,000.00; and

(2) Be a high and aggravated misdemeanor offense where such agency head acts to willfully violate the provisions of this Code section or acts so as to intentionally and deliberately interfere with the implementation of the requirements of this Code section.

The Attorney General shall have the authority to conduct a criminal and civil investigation of an alleged violation of this chapter by an agency or agency head and to bring a prosecution or civil action against an agency or agency head for all cases of violations under this chapter. In the event that an order is entered against an employer, the state shall be awarded attorney's fees and expenses of litigation incurred in bringing such an action and investigating such violation.

§50-36-2.

(a) This Code section shall be known and may be cited as the "Secure and Verifiable Identity Document Act."

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

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

(2) "Public official" means an elected or appointed official or an employee or an agent of an agency or political subdivision.

(3) (A) "Secure and verifiable document" means a document issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies and shall include:

(i) An original or certified birth certificate issued by a state, county, municipal authority, or territory of the United States bearing an official seal;

(ii) A certification of report of live birth issued by the United States Department of State;

(iii) A certification of birth abroad issued by the United States Department of State; or

(iv) A consular report of birth abroad issued by the United States Department of State.

(B) The term 'secure and verifiable document' shall not include any foreign passport unless the passport is submitted with a valid United States Homeland Security Form I-94, I-94A, or I-94W, or other federal document specifying an alien's lawful immigration status, or other proof of lawful presence in the United States under federal immigration law, or a Matricula Consular de Alta Seguridad, matricula consular card, consular matriculation card, consular identification card, or similar identification card issued by a foreign government regardless of the holder's immigration status. Only those documents approved and posted by the Attorney General pursuant to subsection (g) of this Code section shall be considered secure and verifiable documents.

(c) Unless required by federal law, on or after January 1, 2012, no agency or political subdivision shall accept, rely upon, or utilize an identification document for any official purpose that requires the presentation of identification by such agency or political subdivision or by federal or state law unless it is a secure and verifiable document.

(d) Copies of secure and verifiable documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code section. For purposes of this subsection, electronic submission shall include, but shall not be limited to, submission via facsimile, Internet, or any other electronically assisted transmitted method approved by the agency or political subdivision.

(e) Any person acting in willful violation of this Code section by knowingly accepting identification documents that are not secure and verifiable documents shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed 12 months, a fine not to exceed $1,000.00, or both.

(f) This Code section shall not apply to:

(1) A person reporting a crime;

(2) An agency official accepting a crime report, conducting a criminal investigation, or assisting a foreign national to obtain a temporary protective order;

(3) A person providing services to infants, children, or victims of a crime;

(4) A person providing emergency medical service;

(5) A peace officer in the performance of the officer's official duties and within the scope of his or her employment;

(6) Instances when a federal law mandates acceptance of a document;

(7) A court, court official, or traffic violation bureau for the purpose of enforcing a citation, accusation, or indictment;

(8) Paragraph (2) of subsection (a) of Code Section 40-5-21 or paragraph (2) of subsection (a) of Code Section 40-5-21.1; or

(9) An attorney or his or her employees for the purpose of representing a criminal defendant.

(10) The provision of utility services related to basic human necessities, including water, sewer, electrical power, communications, and gas.

(g) Not later than August 1, 2011, the Attorney General shall provide and make public on the Department of Law's website a list of acceptable secure and

verifiable documents. The list shall be reviewed and updated annually by the Attorney General.

§50-36-4.

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

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

(2) 'Annual reporting period' means from December 1 of the preceding year through November 30 of the year in which the report is due.

(3) 'Contractor' shall have the same meaning as set forth in Code Section 13-10-90.

(4) "Department' means the Department of Audits and Accounts.

(5) 'Physical performance of services' shall have the same meaning as set forth in Code Section 13-10-90.

(6) 'Public employer' shall have the same meaning as set forth in Code Section 13-10-90.

(b) Each agency, sheriff's office, law enforcement agency, or political subdivision subject to any of the requirements provided in Code Sections 13-10-91, 35-1-17, 36-60-6, 36-80-23, 42-1-11.4, 42-1-11.5, 42-4-14, 42-4-16, and 50-36-1 shall submit an annual immigration compliance report to the department by December 31 that includes the information required under subsection (d) of this Code section for the annual reporting period. If an agency or political subdivision is exempt from any, but not all, of the provisions of subsection (d) of this Code section, it shall still be required to submit the annual report but shall indicate in the report which requirements from which it is exempt.

(c) The department shall create an immigration compliance reporting system and shall provide technical support for the submission of such reports. The department shall further provide annual notification of such reports with submission instructions to all agencies and political subdivisions subject to such requirements. The department shall be authorized to implement policy as is needed to carry out the requirements of this subsection.

(d) The immigration compliance report provided for in subsection (b) of this Code section shall contain the following:

(1) The agency or political subdivision's federal work authorization program verification user number and date of authorization;

(2) The legal name, address, and federal work authorization program user number of every contractor that has entered into a contract for the physical performance of services with a public employer as required under Code Section 13-10-91 during the annual reporting period;

(3) The date of the contract for the physical performance of services between the contractor and the public employer as required under Code Section 13-10-91;

(4) A listing of each license or certificate issued by a county or municipal corporation to private employers that are required to utilize the federal work authorization program under the provisions of Code Section 36-60-6 during the annual reporting period, including the name of the person and business issued a license and his or her federally assigned employment eligibility verification system user number as provided in the private employer affidavit submitted at the time of application; and

(5) (A) A listing of each public benefit administered by the agency or political subdivision and a listing of each public benefit for which SAVE program authorization for verification has not been received.

(B) As used in this paragraph, the terms 'public benefit' and 'SAVE program' shall have the same meaning as set forth in Code Section 50-36-1.

(6) The agency or political subdivision's certificate of compliance with Code Section 36-80-23.

(7) Where applicable, the agency, sheriff's office, law enforcement agency, or political subdivision's certificate of compliance with Code Sections 35-1-17, 42-4-11.4, 42-4-11.5, 42-4-14, and 42-4-16.

(e) The department shall annually conduct random reviews of no less than 5 percent of the immigration compliance reports submitted pursuant to this Code section and shall make the determination of compliance pursuant to this Code section. In the event that the immigration compliance report submitted by an agency or political subdivision is found to be deficient by the department, so long as a new immigration

compliance report is submitted with the prior deficiencies corrected and fully complies with this Code section, such agency or political subdivision shall be deemed to have satisfied the requirements of this Code section.

(f) Any action taken by an agency or political subdivision for the purpose of complying with the requirements of this Code section shall not subject such agency or political subdivision to any civil liability arising from such action.

Verification of Lawful Presence with the United States

By executing this affidavit under oath, as an applicant for a(n) _____ [type of public benefit], as reference in O.C.G.A §50-36-1, from _____ [name of government entity], the undersigned applicant verifies one of the following with respect to my application for a public benefit:

1) _____ I am a United States citizen
2) _____ I am a legal permanent resident of the United States
3) _____ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other Federal immigration agency.

   My alien number issued by the Department of Homeland Security or other Federal immigration agency is: _____.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A §50-36-1 (f) (1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:

_____

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A §16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed in _____ (city), _____ (state)

_____

Signature of Applicant

_____

Printed Name of Applicant

SUBSCRIBED AND SWORN

BEFORE ME ONTHIS THE

_____ DAY OF _____, 20 ____

_____

NOTARY PUBLIC

My Commission Expires: _____

Updated July 21, 2017

Secure and Verifiable Documents Under O.C.G.A. § 50-36-2
Issued February 20, 2018, by the Office of the Attorney General, Georgia

The Illegal Immigration Reform and Enforcement Act of 2011 ("IIREA"), as amended by Senate Bill 160, signed into law as Act No. 27, (2013), provides that "[n]ot later than August 1, 2011, the Attorney General shall provide and make public on the Department of Law's website a list of acceptable secure and verifiable documents. The list shall be reviewed and updated annually by the Attorney General." O.C.G.A. § 50-36-2(g). The Attorney General may modify this list on a more frequent basis, if necessary.

The following list of secure and verifiable documents, published under the authority of O.C.G.A. § 50-36-2, contains documents that are verifiable for identification purposes, and documents on this list may not necessarily be indicative of residency or immigration status.

- An unexpired United States passport or passport card [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- An unexpired United States military identification card [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- An unexpired driver's license issued by one of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Marianas Islands, the United States Virgin Island, American Samoa, or the Swain Islands, provided that it contains a photograph of the bearer or lists sufficient identifying information regarding the bearer, such as name, date of birth, gender, height, eye color, and address to enable the identification of the bearer [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2][1]

- An unexpired identification card issued by one of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Marianas Islands, the United States Virgin Island, American Samoa, or the Swain Islands, provided that it contains a photograph of the bearer or lists sufficient identifying information regarding the bearer, such as name, date of birth, gender, height, eye color, and address to enable the identification of the bearer [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

[1] For identification presented to poll workers when voting, a registered Georgia voter may present an expired Georgia driver's license as proof of identification when voting pursuant to O.C.G.A. § 21-2-417.

- An unexpired tribal identification card of a federally recognized Native American tribe, provided that it contains a photograph of the bearer or lists sufficient identifying information regarding the bearer, such as name, date of birth, gender, height, eye color, and address to enable the identification of the bearer. A listing of federally recognized Native American tribes may be accessed at: https://www.bia.gov/tribal-leaders-directory [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- An unexpired United States Permanent Resident Card or Alien Registration Receipt Card [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- An unexpired Employment Authorization Document that contains a photograph of the bearer [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- An unexpired passport issued by a foreign government, provided that such passport is accompanied by a United States Department of Homeland Security ("DHS") Form I-94, DHS Form I-94A, DHS Form I-94W, or other federal form specifying an individual's lawful immigration status or other proof of lawful presence under federal immigration law[2] [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- An unexpired Merchant Mariner Document or Merchant Mariner Credential issued by the United States Coast Guard [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- An unexpired Free and Secure Trade (FAST) card [O.C.G.A. § 50-36-2(b)(3); 22 CFR § 41.2]

- An unexpired NEXUS card [O.C.G.A. § 50-36-2(b)(3); 22 CFR § 41.2]

- An unexpired Secure Electronic Network for Travelers Rapid Inspection (SENTRI) card [O.C.G.A. § 50-36-2(b)(3); 22 CFR § 41.2]

- An unexpired driver's license issued by a Canadian government authority [O.C.G.A. § 50-36-2(b)(3); 8 CFR § 274a.2]

- A Certificate of Citizenship issued by the United States Department of Citizenship and Immigration Services (USCIS) (Form N-560 or Form N-561) [O.C.G.A. § 50-36-2(b)(3); 6 CFR § 37.11]

[2] Senate Bill 160 (Act No. 27), effective July 1, 2013, limited the use of passports issued by foreign nations to satisfy the requirements for submission of secure and verifiable documents to only those passports submitted in conjunction with a United States Department of Homeland Security ("DHS") Form I-94, DHS Form I-94A, DHS Form I-94W, or other federal form specifying an individual's lawful immigration status or other proof of lawful presence under federal immigration law.

- A Certificate of Naturalization issued by the United States Department of Citizenship and Immigration Services (USCIS) (Form N-550 or Form N-570) [O.C.G.A. § 50-36-2(b)(3); 6 CFR § 37.11]

- Certification of Report of Birth issued by the United States Department of State (Form DS-1350) [O.C.G.A. § 50-36-2(b)(3); 6 CFR § 37.11]

- Certification of Birth Abroad issued by the United States Department of State (Form FS-545) [O.C.G.A. § 50-36-2(b)(3); 6 CFR § 37.11]

- Consular Report of Birth Abroad issued by the United States Department of State (Form FS-240) [O.C.G.A. § 50-36-2(b)(3); 6 CFR § 37.11]

- An original or certified copy of a birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal [O.C.G.A. § 50-36-2(b)(3); 6 CFR § 37.11]

- When applying for any public benefit with the Department of Driver Services, an applicant may submit either an expired or unexpired document that is listed above as a secure and verifiable document. [O.C.G.A. §§ 50-36-1(g) & 50-36-2(b)(3)]

- When applying for a voter identification card pursuant to O.C.G.A. § 21-2-417.1, an individual may submit the aggregate forms of identification authorized by O.C.G.A. § 21-2-417.1(e).

- In addition to the documents listed herein, if, in administering a public benefit or program, an agency is required by federal law to accept a document or other form of identification for proof of or documentation of identity, that document or other form of identification will be deemed a secure and verifiable document solely for that particular program or administration of that particular public benefit. [O.C.G.A. § 50-36-2(c)]

Immigration Mandates for Municipalities

Part V – Sanctuary Policies Under Georgia Law

What is a Sanctuary Policy?

As it pertains to Georgia law, a sanctuary policy is any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restrict local officials or employees from complying with an immigration detainer notice or communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration statutes information while such local official or employee is acting within the scope of his or her official duties.[1]

What requirements apply to cities in regard to sanctuary policies?

Recent changes to Georgia legislation, including Senate Bill 269 from the 2016 and House Bill 1105 from the 2024 legislative session, have updated the law as it pertains to sanctuary policies and the existence of sanctuary cities in the state. Code Section 36-80-23 of the Official Code of Georgia Annotated prohibits any local governing body, whether acting through its governing body or by initiative, from enacted, adopted, implementing or enforcing any form of a sanctuary policy.[2] Additionally, the code section requires certification for any state agency that provides funding to local governing bodies in order to prove that the body is complying with the guidelines for sanctuary cities.

Attorney General

Under HB 1105, the Georgia Attorney General has been given the authority to investigate and prosecute violations of Georgia's sanctuary policies laws. [3]

[1] O.C.G.A. §36-80-23(6)
[2] O.C.G.A. §36-80-23(c)
[3] O.C.G.A. §45-15-10.

Immigration Mandates for Municipalities

Reporting

The fourth and final part of the reporting requirement placed upon Georgia's cities should, much like the third part of the report, be simple to accomplish. This part of the report is due to the Department of Audits and Accounts annually on December 31st of each year and was a new reporting requirement as of December 31, 2016.

Quite simply, this part of the report calls for the municipality to certify its compliance with Code Section 36-80-23. In order to accomplish such certification the municipality, when completing the report, must simply answer a yes or no question as to whether the city has enacted any sanctuary policy.

Appendix to Part V

Sanctuary Policy Statute

§ 36-80-23.

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

(1) “Federal officials or law enforcement officers” means any person employed by the United States government for the purpose of enforcing or regulating federal immigration laws and any peace officer certified by the Georgia Peace Officer Standards and Training Council where such federal official or peace officer is acting within the scope of his or her employment for the purpose of enforcing federal immigration laws or preserving homeland security.

(2) “Immigration status” means the legality or illegality of an individual's presence in the United States as determined by the federal Immigration and Nationality Act.

(3) “Immigration status information” means any information, not including any information required by law to be kept confidential but otherwise including but not limited to any statement, document, computer generated data, recording, or photograph, which is relevant to immigration status or the identity or location of an individual who is reasonably believed to be illegally residing within the United States or who is reasonably believed to be involved in domestic terrorism as that term is defined in Code Section 16-11-220 or a terroristic act as that term is defined by Code Section 35-3-62.

(4) “Local governing body” means any political subdivision of this state, including any county, consolidated government, municipality, authority, school district, commission, board, or any other local public body corporate, governmental unit, sheriff's office, law enforcement agency, or political subdivision.

(5) “Local official or employee” means any elected or appointed official, supervisor or managerial employee, contractor, agent, or certified peace officer acting on behalf of or in conjunction with a local governing body.

(6) “Sanctuary policy” means any regulation, rule, policy, or practice adopted by a local governing body which prohibits or restricts local officials

or employees from complying with an immigration detainer notice or communicating or cooperating with federal officials or law enforcement officers with regard to reporting immigration status information while such local official or employee is acting within the scope of his or her official duties.

(b) No local governing body, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact, adopt, implement, or enforce any sanctuary policy.

(c) Any local governing body that acts in violation of this Code section shall be subject to the withholding of state funding or state administered federal funding other than funds to provide services specified in subsection (d) of Code Section 50-36-1.

(d) As a condition of funding, the Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies shall require certification pursuant to Code Section 50-36-4 as proof of compliance with this Code section.

(e)(1) It shall be unlawful for any local official or employee to knowingly and willfully violate any provision of this Code section.

(2) A person convicted of a violation of this Code section shall be punished as for a misdemeanor. A person convicted of a second or subsequent violation of this Code section shall be punished as for a misdemeanor of a high and aggravated nature.

Part VI – Law Enforcement

Background

During the 2024 legislative session, numerous bills were introduced to effectuate changes to state law concerning the responsibilities of law enforcement officials and departments in the realm of immigration. Until 2024, much of the relationship between local law enforcement and federal immigration laws were voluntary under state law. However, for many years at the legislature there has been a growing push to have law enforcement officials and departments have a heavier responsibility in enforcing the nation's ongoing illegal immigration challenges.

Verifying Immigration Status

Under House Bill 1105, passed during the 2024 legislative session and effective on May 1, 2024, any law enforcement officer choosing to arrest an adult accused of a misdemeanor violation of criminal trespass, shoplifting, theft by refund fraud, or possession, manufacturing, etc., of certain controlled substances, including marijuana will be required to seek to verify the immigration status of the accused.[1] The inclusion of these misdemeanor offenses to such requirement likely had some root in the heinous murder of a 22-year old nursing student, Laken Riley, in Athens, Georgia, in February 2022. The suspect in the murder was a Venezuelan who had entered the country illegally and had been earlier released by local police following a shoplifting charge.[2] While anecdotal, it is important for local officials and law enforcement to be reminded that actions and crimes, however small they may seem at the time, can sometimes grow into much larger issues.

Previously, state law authorized law enforcement officers to seek to verify the immigration status of a suspect they had probable cause to believe had committed a criminal violation. HB 1105 changes this authorization to a mandate.[3] Suspects in such situations could verify their status by showing a secure and verifiable document, as described in Part IV of this publication, a valid Georgia driver's license, a valid Georgia identification card issued by the Department of Driver Services, a valid driver's license from a state or territory in the list created by the

[1] O.C.G.A. § 17-4-23(a)(2).
[2] https://en.wikipedia.org/wiki/Killing_of_Laken_Riley
[3] O.C.G.A. § 17-5-100(b).

State Law Department, as described in Part II of this publication, a nonresident exempted from having a valid driver's license pursuant to paragraph (2) of subsection (a) of Code Section 40-5-21, a document provided for in the list in subsection (d) of Code Section 42-4-14 (which includes arrival/departure records from the Department of Homeland Security, a permanent resident alien card Form 551, a valid Nexus card, a valid global entry identification card issued by the Department of Homeland Security, and certain valid passports), or other information to the suspect's identify which would be sufficient to allow the law enforcement officer to independently identify the suspect.[4] This list is obviously complicated and it may be difficult for many law enforcement officers to know what the valid versions of some of these forms of identification are supposed to look like, so law enforcement may need to consult with their local government attorney in some situations relating to this list of identification methods.

Agreements With Federal Agencies

In order to effectuate the mandates placed upon law enforcement to verify the immigration status of certain arrestees, the legislature also has mandated, through HB 1105, that state and local law enforcement agencies promote "compliance with state law related to deterring the presence of criminal illegal aliens" by authorizing those agencies to enter into memorandums of understanding and agreement with "the United States Department of Justice, the Department of Homeland Security, or any other federal agency for the purpose of enforcing federal immigration laws, including 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 or a similar federal program."[5]

The state could not mandate that local governments enter into such memorandums of understanding or agreement because neither the state nor local governments in Georgia has any control over federal agencies and such federal agencies willingness to enter into any such agreement. As a result, the state law cannot mandate entering into such agreement but instead mandates that local law enforcement agencies "seek such memorandums of understanding annually when no current memorandum of agreement is in effect."[6] The obvious question many law enforcement agencies will have with this new mandate is related to how they might comply and not run afoul of this new law.

[4] Id.
[5] O.C.G.A. § 35-1-17.
[6] Id.

Local law enforcement agencies would be wise to annually seek such memorandums of understanding from the United States Department of Justice and from the Department of Homeland Security. Local law enforcement agencies should also document all such efforts and maintain such records. The length of time such records should be maintained is not identified in the Local Government Retention Schedule so local law enforcement agencies should consult with their attorneys as to the length of time such records should be maintained. It would be wise, however, to maintain such records, for at least three (3) years, if not longer.

Penal Institutions

In addition to additional requirements placed upon law enforcement agencies and officers related to verifying immigration status of arrestees, HB 1105 also requires anyone who has custodial authority over a person in custody which is subject to an immigration detainer to "comply with, honor, and fulfill any request made in the immigration detainer notice" and to "inform the person identified in the immigration detainer notice that the person is being held pursuant to such notice."[7]

If a person is being held in county or municipal detention facility or jail the custodial authority will also be required, within 48 hours of the arrested person's arrival in the facility or jail to determine the nationality of the person and determine whether the person is not an illegal alien, such term being defined as "a person who is verified by the federal government to be present in the United States in violation of the federal Immigration and Nationality Act."[8]

This law, however, gets a little more complicated when it comes to an arrestee who claims to be a consular officer or diplomat. In those situations, the jailer will be required to "attempt to obtain such person's identification and, upon verification of such person's status as a consular officer or diplomat, provide for his or her immediate release."[9] If the arrestee cannot provide documentation allowing for such verification, "a person in a supervisory role at such jail or detention facility [will be required to] contact the United States Department of State during normal business hours or the Command Center of the Office of Security of the United States Department of State outside of normal business hours to request verification of such person's status as a consular officer or of other diplomatic status."[10]

[7] O.C.G.A. § 42-1-11.5.
[8] O.C.G.A. § 42-4-14(a) and (b).
[9] Id at (c).
[10] Id.

Specifically, the person in the supervisory role will be required "to contact the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or the Atlanta office of the United States Immigration and Customs Enforcement Division of the Department of Homeland Security for a determination of the person's lawful presence."[11] Understandably, this may be very challenging for many local law enforcement agencies and jailers as getting in touch with the correct person at these federal agencies can prove to be difficult.

If the LESC responds to the jailer and requests that the person be detained then the jailer is required by the new law to detain such person for 48 hours of receipt of such request.[12] If the jailer, however, has already released such person then they will be required to notify LESC.[13] Additionally, all responses indicated the person is an illegal alien will require the jailer to notify the local United States Immigration and Customs Enforcement Division of the Department of Homeland Security.[14] The jailer cannot detain a person solely due to the inability to contact LESC and no person identified as an illegal alien can be detained unless a request to detain has been received.[15]

Local jailers will also be required to provide an interpreter for any person confined who is unable to effectively communicate or understand the law.[16] Jailers should he wary of utilizing just any person who happens to speak the language of the confined person, however. Even though the law does not place any standards upon such interpreters for this part, jailers would be wise to utilize already created resources for the court system in obtained certified interpreters.[17]

Jail and detention facilities are also mandated by the new law to "maintain a record of all communications made [pursuant to state law] for any person taken into custody of such jail or detention facility."[18] Unfortunately, this new provision is extremely broad and does not contain any sort of retention schedule as to when such records may be destroyed or otherwise disposed of by the facility. Given the

[11] Id at (d)(2).
[12] Id.
[13] Id.
[14] Id.
[15] Id at (d)(3) and (d)(4).
[16] Id at (e).
[17] The Georgia Administrative Office of the Courts has many valuable resources relating to interpreters, which can mostly be found on this page relating to the Committee on Interpreters (https://ocp.georgiacourts.gov/commission-on-interpreters/)
[18] O.C.G.A. § 42-2-14(f).

timelines to raise federal claims, it would be wise for such facilities to maintain such records for a minimum of three (3) years from the date of release of such person. However, employees of such facilities should coordinate with legal counsel to set a policy on such record-keeping.

Reporting

The new law also places upon jailers and law enforcement various reporting requirements. First, at least quarterly, an individual in a supervisory role at each jail or detention facility will be required to post on the public website of the local jurisdiction where the facility is located a report for the facility which contains specific information required by law.[19] The information which must be posted will include the total number of inmates booked in the facility, the total number of inquires made to LESC or any other federal agency inquiring relating to the immigration status or prior arrests of foreign-born inmates, the total number of responses to such requests, the total number of responses which indicated the person was an illegal alien, the number of immigration detainers issued for persons held in the facility, and a sworn affidavit signed by that individual verifying compliance with the law.[20] Unlike the rest of HB 1105, which was effective upon signature of the Governor, these reporting requirements for posting on the website are not effective until December 31, 2024.[21]

Perhaps most complicated of all for law enforcement agencies are the new requirements, under HB 1105, mandating that each sheriff's office and law enforcement agency subject to any of the new requirements detailed in this Part to submit an annual report to the Department of Audits and Accounts by December 31.[22] This is the same annual report which local governments themselves have been required to complete for years. This report has been detailed throughout this publication but requires the agency's federal work authorization program verification user number and date of authorization under the first part.[23] While a sheriff's office would likely have a different such number than the county, it is highly unlikely and probably improper for a police department to have a different such number than its governing municipality or county. Therefore, such law enforcement agencies may just end up having to use the municipality's or county's number to complete that section of the report because they are not a separate legal entity.

The second part of the report related to contracts entered into and the result will be similar to the first part of the report.[24] A sheriff's office likely will have its own contracts but police departments are not separate legal entities and so the contracts

[19] O.C.G.A. § 42-4-16(a).
[20] Id.
[21] Laws 2024, Act 505, § 14(b), eff. December 31, 2024.
[22] O.C.G.A. § 50-36-4(b).
[23] O.C.G.A. § 50-36-1(d)(1)
[24] O.C.G.A. § 50-36-1(d)(2)

would all be entered into by the governing authority. Likewise, the third part of the report relating to the date of the contract would follow suit.[25] The fourth part of the report relates to licensing and it is highly improbable that any law enforcement agency engages in licensing, so that part of the report will likely have no entries.[26]

The fifth part of the report is a little more complicated. Sheriff's offices will likely have to enroll in the federal SAVE program if they have not already done so and determine whether they provide any benefit in the list of benefits found in Code Section 50-36-1.[27] Police departments, however, will once again run into a road block for this part of the report because they would not be a separate legal entity. Likewise, the sixth part of the report, relating to sanctuary policies possibly might apply to sheriff's departments but will not apply to police departments as they do not have local governing bodies.[28]

Finally, HB 1105 added a new requirement which appears to apply to sheriff's offices and policy departments, along with political subdivisions, and that is a requirement to have a certificate of compliance with Code Section 35-1-17, 42-4-11.5, 42-4-14, and 42-4-16, all of which are detailed in this Part.[29]

In addition to the new reporting requirements, the Department of Audits and Accounts, under HB 1105, will annually be required to conduct random reviews of no less than 5 percent of the reports and be required to make a determination of compliance on such reports.[30]

[25] O.C.G.A. § 50-36-1(d)(3)
[26] O.C.G.A. § 50-36-1(d)(4)
[27] O.C.G.A. § 50-36-1(d)(5)
[28] O.C.G.A. § 50-36-1(d)(6)
[29] O.C.G.A. § 50-36-1(d)(7)
[30] O.C.G.A. § 50-36-1(e)

Part VII – Penalties

General Penalties

All of the various mandates placed upon cities by Georgia's immigration laws carry harsh penalties for cities, city employees, and city elected officials. Most of these penalties are specific to each individual mandate and will be discussed further in this Part, but a few more general penalties cover multiple areas of the immigration laws. Some of those general penalties will be detailed below. However, other often overlooked general penalties are also important to remember.

The Georgia Attorney General, under the state immigration laws, has been granted the power to bring actions against "any public official, agency head, or employee who violates" the mandates described in Parts I, II, and IV of this publication.[31] The penalties which can be imposed against cities by the Attorney General include a "civil fine of up to $10,000" and "restitution to the state or local government, whichever is applicable, of any pecuniary benefit received as a result of such violation."[32] The Attorney General may also remove a city official from office or a city employee from employment if the person commits a knowing and intentional violation of the state's immigration laws.[33]

Compliance is very important, but these penalties are only a few of the many potential penalties a city, city official, or city employee may face.

Penalties Specific to Part I and Part II

Part I of this publication described municipal use of the federal E-Verify program and Part II described the municipal mandates around contractors and the physical performance of services. The penalties associated with those two Parts are identical and potentially severe. If the state auditor finds that a city is in violation of any of the requirements described in those two Parts he or she will notify the city of the violation and give the city thirty (30) days to correct the violation.[34] It is important the city never get to this stage because some violations cannot be corrected. For example, if the

[31] O.C.G.A. §45-10-28(c).
[32] Id.
[33] Id.
[34] O.C.G.A. §13-10-91(b)(7)(B).

city failed to register and utilize the E-Verify program for a new hire it will be unable to go back with the federal program to correct the mistake on that particular employee. If the city does not correct the mistake after the thirty (30) day time period then the state auditor will exclude the city from the list of qualified local governments until the city does correct the violation.[5] Removal from the list of qualified local governments potentially can harm the city's ability to obtain grants and state appropriations. If the state auditor does find a violation the city can "seek administrative relief through the Office of State Administrative Hearings" and stop the thirty (30) day clock until a "final ruling upholding the findings of the state auditor is issued."[6]

Penalties Specific to Part III

Part III of this publication described the mandates on private employers based upon their number of employees and the associated municipal reporting requirement. Unlike the specific penalties for the sections of law described in Parts I and II, the penalties in this part can attach to individual city officials and employees. Such officials and employees knowingly violating the mandates of this section of the law could face misdemeanor criminal charges.[7] Additionally, the Attorney General has the power to bring criminal or civil actions to ensure compliance with the mandates of this section of the law.[8] The addition of potential criminal penalties under this section of the law are important to understand and avoid.

Penalties Specific to Part IV

Part IV of this publication described the mandates for municipalities to register for the federal SAVE program, collect public benefits affidavits from applicants, and report to the Department of Community Affairs. The penalties associated with noncompliance with this part of the law have the potential to be very severe. Any city found to be in noncompliance could have funds directed to it by the state placed under adverse consideration in future years.[9] Such an action can harm the city's ability to obtain grants and state appropriations. Additionally, the "intentional and knowing failure of any agency head to abide by the provisions" of this part of the law potentially

5 Id.

6 O.C.G.A. .§13-10-91(b)(7)(C)(i).

7 O.C.G.A. §36-60-6(h).

8 O.C.G.A. §36-60-6(j).

9 O.C.G.A. §50-36-1(n).

will "be a violation of the code of ethics for government service."[10] Such intentional and knowing failures can lead to large fines, removal from office, and even criminal charges of a high and aggravated misdemeanor against the agency head.[11]

The term agency head, like many other definitions, is very broad and includes not only a mayor, but can also include a councilmember, a manager, a department head, and potentially many other positions with a city.[12] Furthermore, the Attorney General has the power to conduct criminal and civil investigations of alleged violations and the state can be awarded attorney's fees and expenses for bringing any such action against a city.[13] Finally, any city official or employee who knowingly accepts an identification document that is not a "secure and verifiable document" can be charged with a misdemeanor and face up to twelve (12) months in prison and fines of up to one thousand dollars.[14]

Penalties Specific to Part V

The penalty for a local governing body that acts in violation of the sanctuary restrictions is the withholding of state funding as well as state administered federal funding.[15] Beginning in 2024, the legislature began imposing penalties for failing to abide by the sanctuary policies law. Under the new law, a person convicted of a violation of the sanctuary policies law would be punished for a misdemeanor and a second or subsequent violation would be punished as a misdemeanor of a high and aggravated nature. [16] All violations would be of a knowing and willing standard.

Penalties Specific to Part VI

The penalty for a local governing body of a law enforcement agency which does not seek to enter into memorandums of understanding or agreement with the Department of Justice or Department of Homeland Security annually is a loss of state funding or state administered federal funding. Additionally, the Department of

10 O.C.G.A. §50-36-1(q).

11 Id.

12 O.C.G.A. §50-36-1(a)(1).

13 O.C.G.A. §50-36-1(q).

14 O.C.G.A. §50-36-2(d).

15 O.C.G.A. §36-80-23(d).

16 O.C.G.A. §36-80-23(e).

Community Affairs, the Department of Transportation, and other state agencies which provide funding to local governments will require certification through an annual report to show compliance.[17] Counties would not be subject to withholding of state or federal funding when the sheriff or a sheriff's employee violates the provisions of Part VI.[18] [19] A knowing and willing standard is a high standard in criminal law, but jailers should be aware of such penalty, regardless.

Finally, any person required to make quarterly reports related to specific data required by the law relating to being in jails or detention facilities who knowingly and willfully make false, fictitious, or fraudulent statement of representations will be guilty of a violation of Code Section 16-10-20, making false statements.[20]

Immigration Enforcement Review Board and Attorney General

The Georgia General Assembly, in 2011 with House Bill 87, established a new state board to oversee compliance with the state's immigration laws. The Immigration Enforcement Review Board was attached to the Department of Audits and Accounts. However, the Immigration Enforcement Review Board was repealed through an act of the Legislature during the 2019 legislative session.[21]

However, under HB 1105, the Georgia Attorney General has been granted powers to investigate and prosecute violations of the sanctuary policies laws and verification of lawful status laws as well as investigate failures to comply with laws relating to attempting to enter into agreements with the Department of Justice or Department of Homeland Security and mandatory reporting requirements.[22]

17 O.C.G.A. §35-1-17(f).

18 Id.

19 O.C.G.A. § 42-2-14(h).

20 O.C.G.A. § 42-2-16(b).

21 Repealed by Laws 2019, Act 296, § 17-1, eff. July 1, 2019.

22 O.C.G.A. § 45-15-10.

Appendix to Part VII

Penalties Statute

For penalties specific to each section of the law please look to the statutes in the appendices in Parts I, III, IV and V. Below are statutes related to general penalties.

§45-10-28.

(a) (1) Any appointed public official or employee who violates Code Section 45-10-22, 45-10-23, 45-10-24, 45-10-26, or 45-10-29 shall be subject to:

(A) Removal from office or employment;

(B) A civil fine not to exceed $10,000.00; and

(C) Restitution to the state of any pecuniary benefit received as a result of such violation.

(2) Any elected public official who violates Code Section 45-10-22, 45-10-23, 45-10-24, 45-10-26, or 45-10-29 shall be subject to:

(A) A civil fine not to exceed $10,000.00; and

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

(3) Any business which violates Code Section 45-10-22, 45-10-23, 45-10-24, 45-10-26, or 45-10-29 shall be subject to:

(A) A civil fine not to exceed $10,000.00; and

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

(b) The penalties provided for in subsection (a) of this Code section may be imposed in any civil action brought for that purpose, and such actions shall be brought by the Attorney General.

(c) As used in this subsection, the term “agency head” shall have the same meaning as set forth in Code Section 50-36-1. Any public official, agency

head, or employee who violates Code Section 13-10-91 or 50-36-1 shall be subject to:

(1) A civil fine not to exceed $10,000.00;

(2) Restitution to the state or local government, whichever is applicable, of any pecuniary benefit received as a result of such violation; and

(3) Where such violation is committed knowingly and intentionally, removal from office or employment.

§45-15-10.

The Attorney General, as the head of the Department of Law and the chief legal officer of the state, is authorized to :

(1) Prosecute in the criminal courts of this state any official, person, firm, or corporation which violates any criminal statute while dealing with or for the state or any official, employee, department, agency, board, bureau, commission, institution, or appointee thereof;

(2) Call upon the district attorney or the prosecuting officer of any state court to assist in or to conduct such prosecution; and, when so requested by the Attorney General, it shall be the duty of any such district attorney or prosecuting officer of this state to assist in or to conduct such prosecution for and on behalf of the Attorney General and the state;

(3) Commence civil forfeiture proceedings, as such term is defined in Code Section 9-16-2, pursuant to Code Section 16-14-7 whenever he or she is authorized to prosecute a case pursuant to this Code section;

(4) Investigate and prosecute violations of Code Sections 36-80-23, 42-4-14, and 42-4-16; and

(5) Investigate failure to comply with Code Sections 35-1-17, 42-1-11.4, 42-1-11.5, and 50-36-4.

Part VIII – Additional Resources

In June of 2024, the Georgia Department of Transportation issued a memo which stated that effective July 1, 2024, any GDOT agreement or supplemental agreement with a political subdivision through which funding was provided had to have a written certification from the local government meeting certain standards. A copy of that memo and the Certification of Compliance follows:

Georgia Department of Transportation

Russell R. McMurry, P.E., Commissioner
One Georgia Center
600 West Peachtree Street
Atlanta, Georgia 30308
(404) 631-1000 Main Office

DATE: June 14, 2024

FROM: Matthew E. Cline

TO: Office Heads, Division Directors, Assistant Office Heads, and District Engineers

SUBJECT: Certificate of Immigration Reporting Compliance/No Sanctuary Policy/ Federal Law Enforcement Cooperation

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Effective July 1, 2024, any GDOT **agreement or supplemental agreement with a political subdivision of the State of Georgia through which funding is provided must include a written certification from the local governing body** that it:

1) has filed a compliant Annual Immigration Compliance Report with the Georgia Department of Audits & Accounts ("GDA&A") for the preceding calendar year required by O.C.G.A. § 50-36-4(b), or has been issued a written exemption from doing so; and,

2) has not enacted a "Sanctuary Policy" in violation of O.C.G.A. § 36-80-23(b); and,

3) has complied with O.C.G.A. §§ 35-1-17 *et seq.* regarding its obligation to cooperate with federal immigration authorities to deter the presence of criminal illegal aliens.

The attached template form entitled "Certificate of Compliance with Annual Immigration Reporting Requirements/No Sanctuary Policy/Federal Law Enforcement Cooperation" ("Certificate") has been created in furtherance of this obligation. If you encounter a situation in which a local government cannot execute the Certificate because it has not made the required filing with GDA&A, has enacted a sanctuary policy, and/or cannot represent that is cooperating with federal immigration authorities as mandated, no funding can be provided until that local governing body can demonstrate to the satisfaction of GDOT that it has come into full compliance with state law.

A list of political subdivisions of Georgia that either have not filed their 2023 Report with GDA&A or are not compliant with the "No Sanctuary Policy" law also is attached.[1] This list was provided by GDA&A as of May 6, 2024, and is subject to change. Before any agreement is signed, please check for the latest information on the Georgia Department of Community Affairs' website at https://apps.dca.ga.gov/LocalGovStatus/planning.asp to verify whether a political subdivisions with which GDOT seeks to enter into an agreement is eligible to receive funding.

Please ensure that everyone on your staff is aware of this change ANY CONTRACT OR SUPPLEMENTAL AGREEMENT WITH A POLITICAL SUBDIVISION THAT IS EXECUTED AFTER JULY 1 THAT DOES NOT HAVE THE WRITTEN CERTIFICATION WILL BE RETURNED TO ENSURE THAT THE CERTIFICATION IS ADDED. If you have any questions about the Certificate, please do not hesitate to contact me at 404 631-1496 or at mcline@dot.ga.gov.

Attachments

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[1] Since the requirement of certifying federal immigration authority cooperation is new this year, no compliance reporting exists regarding this obligation for 2023.

CERTIFICATION OF COMPLIANCE WITH ANNUAL IMMIGRATION REPORTING REQUIREMENTS/ NO SANCTUARY POLICY/FEDERAL LAW ENFORCEMENT COOPERATION

By executing this document, the undersigned duly authorized representative of the Local Governing Body, certifies that the Local Governing Authority:

1) has filed a compliant Annual Immigration Compliance Report with the Georgia Department of Audits & Accounts ("GDA&A") for the preceding calendar year required by O.C.G.A. § 50-36-4(b), or has been issued a written exemption from GDA&A from doing so;

2) has not enacted a "Sanctuary Policy" in violation of O.C.G.A. § 36-80-23(b); and,

3) is in compliance with O.C.G.A. §§ 35-1-17 *et seq.* regarding its obligation to cooperate with federal immigration enforcement authorities to deter the presence of criminal illegal aliens.

As an ongoing condition to receiving funding from the Georgia Department of Transportation, the Local Governing Body shall continue to remain fully compliant with O.C.G.A. §§ 50-36-4, 36-80-23 and 35-1-17 *et seq.* for the duration of time the subject agreement is in effect.

_____
Signature of Authorized Officer or Agent

_____
Printed Name of Authorized Officer or Agent

_____
Title of Authorized Officer or Agent

_____
Date

Form Date - May 10, 2024