



FEES & BURGESS, P.C.
SUPPLY CHAIN MANAGEMENT
MEMO



Volume 8, Issue 3

August 2011

NEW IMMIGRATION LAW IMPACTS CONTRACTS PERFORMED IN ALABAMA

On June 9, 2011, Governor Bentley signed into law the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (Beason-Hammon Act). The new law is perhaps the broadest state immigration bill that has been passed in any state amidst a recent flurry of state legislative activity on the issue of immigration. As part of the Alabama legislature's efforts to curb illegal immigration, the Beason-Hammon Act includes a number of provisions that affect contracts involving goods or services to be provided or performed in Alabama. The majority of the new law's provisions will go into effect on September 1, 2011, but some will not become effective until 2012.

As of April 12, 2012, all Alabama employers and all employers applying for state, county, or city contracts, grants, or incentives within Alabama (whether they are an Alabama company or not), must enroll in the federal E-Verify program used to check the eligibility of employees to work in the United States. With respect to companies entering into contracts with state, county, or city agencies in Alabama, they must flow down this requirement to any of their subcontractors working on the project. Starting next April, general contractors will need to make sure they remember to flow this requirement down to their subcontractors when working on public contracts, and subcontractors, whether or not they are Alabama companies, need to be prepared to comply.

As part of the restrictions placed on all Alabama employers and all employers applying for state, county, or city contracts, grants, or incentives within Alabama, those companies can be subject to a range of stiff penalties for knowingly employing, hiring, or continuing to employ an unlawful alien. While federal immigration law already prohibits employing unlawful aliens, the Alabama law includes a new assortment of penalties that, depending on the circumstances and the number of violations, can involve things like permanently revoking a company's business license, suspending the company's license to do business at a particular location, and requiring quarterly reporting to the local district attorney regarding the company's hiring practices for a three-year probationary period. For companies involved in contracts with state, county, or local government agencies in Alabama, the potential penalties for violating this restriction on employing unlawful aliens include possible, and in some cases mandatory, contract termination. Those companies working on public contracts also face harsher penalties with respect to their business licenses than other companies who violate this law. Specifically, if they violate the restriction on knowingly employing unlawful aliens, they can have their business license pulled for a longer period on the first offense and permanently revoked on a second offense, rather than on the third-offense, which is the rule for other employers. The restrictions applicable to all Alabama employers go into effect in September, but the portions relating to public contracts are not effective until January 1, 2012.

One provision going into effect in September states that Alabama courts cannot enforce a contract a person enters into with an unlawful alien, if that person knew at the time of contracting that the other party was an unlawful alien, and the contract requires the alien to remain within the United States for 24 hours or more from the time of contracting.

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There are exceptions to this rule for contracts involving one night of lodging, food to be consumed by the alien, medical services, transportation to return the alien to his or her country of origin, and contracts authorized by federal law.

The Beason-Hammon Act is 70 pages long with 34 sections that each touch on different topics, including things like public contracts, certain types of private contracts, a new form of discrimination claim, voting restrictions, new requirements placed on employers and public schools, changes in police procedures, enhanced obligations for public officials, new criminal law provisions, and restrictions on providing public benefits to unlawful aliens. Given the breadth of the Beason-Hammon Act, not all of its provisions can be addressed here. If you are interested in finding out more about this new legislation, Fees & Burgess, P.C., will be giving two presentations on this topic in the month of August. For details, see the Calendar of Events below.

**PROPOSED FEDERAL LEGISLATION
WOULD BROADEN SCOPE OF BUY AMERICAN REQUIREMENTS**

Federal law requires the use of American iron, steel, and manufactured goods on several different kinds of federally-funded projects. In May, two bills were proposed in the U.S. House of Representatives that would collectively expand those requirements. One of those bills (H.R. 1684) would apply the Buy American requirements to the construction, alteration, maintenance, or repair of any public water system or treatment system funded, at least in part, with money made available from a state loan fund or a state water pollution control revolving fund. The other bill (H.R. 1703) would apply those requirements to the construction, alteration, maintenance, or repair of any public building or public work, including airports, bridges, canals, dams, dikes, pipelines, railroads, multi-line mass transit systems, roads, tunnels, harbors, and piers, where the project is funded, at least in part, by the Department of Homeland Security, the Department of Defense, or the Department of Transportation.

These new requirements are subject to some exceptions. The requirements would not apply to projects where their application would be inconsistent with the public interest, where American iron and steel are not reasonably available in sufficient quantities, or when doing so would increase the cost of the overall project by more than 25 percent, assuming a waiver is obtained in advance.



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SMALL BUSINESS ADMINISTRATION LOOKING TO INCREASE SMALL BUSINESS SIZE STANDARDS

As part of its continuing efforts to reevaluate the size standards for qualifying as a small business, the U.S. Small Business Administration (SBA) issued a proposed rule on March 16, 2011, that would increase the size standards for the professional, scientific, and technical services industries (Sector 54). The increase would affect 35 industries and one sub-industry, including, but not limited to, providers of engineering, architectural, accounting, legal, marketing, computer-related, and scientific and technical consulting services. The period for receiving comments on the proposed rule has already closed, and a final decision from the SBA on the rule should be issued in the near future.

Fees & Burgess, P.C. Calendar of Events

ABC: Immigration Law Update

August 3, 2011; 10:00 AM to 11:30 AM — Huntsville, Alabama

On June 9, 2011, Alabama Governor Robert Bentley signed into law the Beason-Hamman Alabama Taxpayer and Citizen Protection Act (HB 56). The Act contains a myriad of requirements and prohibitions aimed at unauthorized aliens and those who might facilitate contracts, employment, and transportation for such people.

This 90-minute seminar will focus on the new law and its possible affect on the construction industry. For more information, or to register, please visit ABC's website [here](#).

This program has been approved for 1 (General) recertification credit hours toward PHR, SPHR and GPHR recertification through the HR Certification Institute, for more information about certification or recertification, please visit the HR Certification Institute website at www.hrci.org.

Immigration Law Update

August 10, 2011; 11:30 AM to 1:00 PM — Muscle Shoals, Alabama

The Shoals Chamber of Commerce, through its member Fees & Burgess, P.C., is offering a 90 minute presentation summarizing the most controversial law passed in the state in years, the Beason - Hammon Alabama Taxpayer and Citizen Protection Act (HB 56). It has been hailed as a necessity to prevent "economic hardship" and "lawlessness" in the state, and condemned as inviting "rampant exploitation of immigrants." Find out the facts, and how it affects state government and municipalities, individuals, and businesses who must begin to comply with the law September 1st. This informative program will discuss new prohibitions, requirements, obligations, as well as new and enhanced penalties for failure to comply. In addition, attendees will receive informed guidance regarding potential challenges to the new law, as well as practical responses to the many changes and requirements of the law.

For more information, or to register, please visit the Shoals Chamber of Commerce website [here](#).

This program has been approved for 1 (General) recertification credit hours toward PHR, SPHR and GPHR recertification through the HR Certification Institute, for more information about certification or recertification, please visit the HR Certification Institute website at www.hrci.org.



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SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact seminars@feesburgess.com.

NEWSLETTERS

FEES & BURGESS, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these newsletters, please e-mail newsletters@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail newsletters@feesburgess.com.

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“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”

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