

Municipal Issue Report

Immigration Bill Impacts on Local Government, Report Nos. 2008-1 & 2008-2

The following is a **Municipal Issue Report** from Cunningham, Vogel & Rost, P.C. relating to recent legislation affecting municipalities.

Missouri's Immigration Law Impact on Municipalities

The Missouri General Assembly enacted HB 1549 and it was signed by the Governor on July 7, 2008. Among other things, this bill prohibits employers from employing illegal aliens. The provisions of HB 1549 also have direct and indirect effects on Missouri local governments. These provisions took effect on January 1, 2009, unless otherwise noted below.

Specifically, HB 1549 imposes certain affirmative requirements on local governments, including:

- ❖ **Prohibits any “municipality” (including counties) from adopting a “sanctuary policy”** which restricts officers from cooperating with federal agencies or officials to verify or report the immigration status of any alien within the municipality or grants the right of lawful presence or status to illegal aliens within the municipality.
- ❖ Requires the “governing body, sheriff, or chief of police of each municipality [to] **provide each law enforcement officer with written notice of their duty to cooperate** with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration.”
- ❖ **Requires public employers to enroll and actively participate in a federal work authorization program to verify information of newly hired employees.** These programs, commonly called “E-Verify/Basic Pilot,” are administered by the U.S. Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA).
- ❖ **Requires municipal governing bodies, upon direction by a Court, to suspend or revoke the business licenses** and “any applicable licenses and exemptions” of business entities who are found to have illegally employed an unauthorized worker. A municipality that fails to do so can be deemed to have adopted a “sanctuary policy.”
- ❖ For awards of any contract or grant in excess of \$5,000 by the state or a political subdivision, the awardee business entity **must provide an affidavit and documentation** affirming that the business entity is enrolled and participates in the “E-Verify/Basic Pilot and an affidavit affirming that the business entity does not knowingly employ illegal aliens. It may be advisable for municipalities to include

these conditions within their standard contracts, ordinances governing the awarding of contracts, or both. These affidavits and documentation are also required from any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state.

- ❖ Effective August 28, 2008, requires local governments to have proof of a person's lawful presence within the United States before distributing "public benefits" to that person. The statute defines public benefits very broadly as "any grant, **contract**, or loan provided by an agency of state or local government; or any retirement, welfare, health, postsecondary education, state grants or scholarships, disability, housing, or food assistance benefit..." (but not unemployment benefits). **In other words, this requirement may apply almost any time money or things of value are transferred by the local government.** Benefits that do not require proof of lawful presence include emergency care and relief and other assistance related to health and safety. See 8 U.S.C. § 1621(b) for exempt benefits.

The required documentary proof of lawful presence can be obtained in many ways, including a Missouri driver's license, documents recognized by the Missouri Department of Revenue when processing driver's license applications, or federal documents that confirm an alien's lawful presence (passports, federal "green cards," etc.). Public benefits can also be distributed for up to ninety (90) days without such documentary proof if the applicant signs an affidavit attesting to U.S. citizenship or status as an "alien lawfully admitted for permanent residence." **If the person obtaining the public benefits is a lawfully present *alien*, such lawful presence must be verified with the federal government.** The statute sets forth a federal program available for such verifications administered by the Department of Homeland Security.

The statute also requires that an "agency" administering the public benefits must "**provide assistance in obtaining appropriate documentation** to persons applying for public benefits who sign the affidavit" attesting to U.S. citizenship or status as an "alien lawfully admitted for permanent residence." However, the statute does not specify the scope of assistance that an agency is required to provide.

- ❖ Starting August 28, 2009, requires persons who are awarded a public works contract from a public body to provide a ten (10) hour OSHA construction safety program to all employees working on the public works project. **Public bodies are required to "specify the requirements of this section in the resolution or ordinance and in the call for bids for the contract,"** and include the requirements in the contract. The contract should also set forth the penalties for failing to provide the training; monetary penalties to be withheld from the contract price by the public body. The Missouri Department of Labor and Industrial Relations is responsible for investigating violations of these requirements.

- ❖ Requires all employers doing business in the state who employ five (5) or more employees to submit a copy of their Federal Tax Form 1099-MISC with the Missouri Department of Revenue. Form 1099-MISC is used to report miscellaneous income, such as income earned as a non-employee (that is, a self-employed worker, also referred to as an independent contractor), as well as fees, commissions, rents, or royalties paid during the last tax year. Under existing federal tax law, an employer that pays a non-employee \$600 or more in one year must report it to the Internal Revenue Service (IRS) using a 1099-MISC form. It is not clear that this section was aimed at cities but it does not exempt them as employers. This provision took effect August 28, 2008.

This summary is not exhaustive and is intended only as an outline of the significant provisions. **Bolded items have been provided to highlight specific areas where municipal action may be required.** Each municipality should contact their legal counsel to ensure the requirements are met for their individual circumstances.

Further questions may be directed to:

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