

STRICKEN AS OF 12/7/2011

Intro. Res. No. 1477-2011

Laid on Table 6/7/2011

Introduced by Presiding Officer, on request of the County Executive

**RESOLUTION NO. -2011, ADOPTING LOCAL LAW
NO. -2011, A LOCAL LAW TO REQUIRE COMPANIES
DOING BUSINESS WITH THE COUNTY TO CERTIFY
UTILIZATION OF THE SOCIAL SECURITY NUMBER
VERIFICATION SERVICE (SSNVS) AND THE E-VERIFY
PROGRAM**

WHEREAS, there was duly presented and introduced to this County Legislature at a regular meeting held on , 2011, a proposed local law entitled, **“A LOCAL LAW TO REQUIRE COMPANIES DOING BUSINESS WITH THE COUNTY TO CERTIFY UTILIZATION OF THE SOCIAL SECURITY NUMBER VERIFICATION SERVICE (SSNVS) AND THE E-VERIFY PROGRAM;”** and said local law in final form is the same as when presented and introduced; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2011, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO REQUIRE COMPANIES DOING BUSINESS WITH
THE COUNTY TO UTILIZE THE SOCIAL SECURITY NUMBER
VERIFICATION SERVICE (SSNVS) AND THE E-VERIFY SYSTEM**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature finds and determines that the Federal Government operates the Social Security Number Verification Service (SSNVS). It is a no-cost service offered by the Social Security Administration's Business Services Online, which allows registered users to verify the names and social security numbers of employees against Social Security Administration records.

This Legislature further finds and determines that the United States Department of Homeland Security and the Social Security Administration have established E-Verify. Under this program, employers can check the I-9 information supplied by employees to insure that an employee's name, social security number, date of birth and citizenship status match government records.

E-Verify is designed to assist employers in verifying the employment eligibility of all newly hired employees. SSNVS is designed only to verify the names and social security numbers of existing employees, as well as those newly hired, against Social Security Administration records. SSNVS cannot be used to determine employment eligibility.

Employers can access E-Verify and SSNVS at no cost and they are relatively easy to use.

This Legislature further finds and determines that by requiring companies that are one-hundred percent (100%) funded by the County of Suffolk to use both E-Verify and the SSNVS, the County would, thereby,

- (i) facilitate the promotion of the Federal policy of requiring employers to verify the employment status of potential employees;
- (ii) support the eradication of unfair competitive advantages between businesses;
- (iii) aid in the elimination of unfair labor practices and exploitations;
- (iv) assist in allowing the Social Security Administration to properly credit employees' earnings records, which will be important information in determining their Social Security benefits in the future;
- (v) assure taxpayers that employers and employees are paying their fair share of taxes by complying with tax laws; and
- (vi) reduce incidents of identity theft.

Therefore, the purpose of this law is to require that companies that are one-hundred (100%) percent funded by the County must certify that they have registered with E-Verify and SSNVS and certify that the E-Verify program is used to ensure that new employees are eligible to work in the United States, and that the SSNVS is used to verify existing employees' social security numbers as compared to Social Security Administration records.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

- A.) AWARDING AGENCY – That subordinate or component entity or person of the County of Suffolk that is responsible for solicitation of proposals or bids and responsible for the award and administration of contracts, license agreements, leases and other financial compensation agreements.
- B.) COMPENSATION –
 - 1.) Any grant, loan, tax incentive funding, appropriation, payment, subsidy or other form of financial assistance which is realized by or provided to a covered employer, or the owners thereof, by or through the authority or approval of the County of Suffolk including, but not limited to, Community Development Block Grant (CDBG) loans, Industrial Development Agency (IDA) loans, and Enterprise-Zone-related incentives.
 - 2.) Any contract, subcontract, license agreement, lease or other financial compensation agreement let to a person with or by the County of Suffolk for the furnishing of services, goods, equipment, supplies, materials, public works, or other property to or for the County of Suffolk.
- C.) CONTRACTOR – A person who contracts to do work for another. This term does not include wholesalers.
- D.) COUNTY – The County of Suffolk, any agency, office, position, administration, department, division, bureau, board, commission, corporation, public authority or unit of government, the expenses of which are paid in whole or in part by the County of Suffolk,

or over which majority control is exercised by officers of the County of Suffolk or of a County-affiliated agency or their appointees.

- E.) COVERED EMPLOYEE – An individual employed on either a full-time, part-time, temporary or seasonal basis, by a covered employer to perform work on or for the project or matter for which the recipient has received compensation.
- F.) COVERED EMPLOYER – A recipient of, or an applicant for, compensation that is not exempt from this law, and who has at least one (1) covered employee working within the County of Suffolk or the County of Nassau, or who has at least one 50% or more owner living within the County of Suffolk.
- G.) E-VERIFY - An Internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired employees.
- H.) ELECTRONIC FILE - A specifically formatted file submitted electronically to the Social Security Administration for processing social security number verification.
- I.) PERSON – One or more of the following or their agents, employees, representatives and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, all trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other entities recognized at law by this County.
- J.) RECIPIENT – Any person that receives compensation, as defined in this law, and any contractor or subcontractor of such a person.
- K.) SEASONAL – A period of time not to exceed ninety (90) consecutive days at any given time within a six-month period.
- L.) SSA - Social Security Administration.
- M.) SSN - Social Security Number.
- N.) SSNVS - Social Security Number Verification Service; an online service provided by SSA that allows registered users to verify employee names and SSNs against SSA's records.
- O.) SUBCONTRACTOR – A person who takes portions of a contract from a covered employer, a contractor or another subcontractor. This term does not include wholesalers.
- P.) WHOLESALER – A person who buys in comparatively large quantities, and then resells, usually in small quantities, to a middleman or retailer, but never to the ultimate consumer.

Section 3. Requirements.

A.) Every covered employer, and the owner thereof, as the case may be, that is a recipient of compensation from the County or an awarding agency, where such compensation is one-hundred-percent funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which shall be established by the County Department of Labor certifying the following:

- 1.) that it is registered to use E-Verify and SSNVS;
- 2.) that it utilizes E-Verify to electronically verify the employment eligibility of newly hired employees, and that the SSNVS is used to verify the accuracy of existing covered employees' SSN; and
- 3.) that it is in compliance with E-Verify and SSNVS program requirements, including but not limited to, following the SSNVS directives regarding steps to be taken in case of a failed SSN verification.

The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be, and shall be part of any compensation agreement with the County. Such affidavit shall be made available to the public upon request.

B.) Every contractor and subcontractor of a covered employer, and every owner thereof, as the case may be, that is assigned to perform work in connection with a County compensation agreement issued by the County or awarding agency, where such compensation is one-hundred-percent funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which shall be established by the Department of Labor, certifying the following:

- 1.) that it is registered to use E-Verify and SSNVS;
- 2.) that it utilizes E-Verify to electronically verify the employment eligibility of newly hired employees, and that the SSNVS is used to verify the accuracy of existing covered employees' SSN;
- 3.) that it is in compliance with E-Verify and SSNVS program requirements, including but not limited to, following the SSNVS directives regarding steps to be taken in case of a failed SSN verification.

The affidavit shall be executed by an authorized representative of any contractor and subcontractor of a covered employer, or owners, as the case may be, and shall be part of any executed compensation agreement with the County. Such affidavit shall be made available to the public upon request.

C.) Covered employer and owner sworn affidavits shall be submitted to the awarding agency at the following times:

- 1.) upon application made to the County for any grant, loan, subsidy, tax incentive funding, appropriation, payment, or other form of financial assistance;

- 2.) upon submission to the County of any response to a County bid, Request For Proposals (RFP), Request For Qualifications (RFQ), Request For Expressions of Interest (RFEI), or similar contract letting process, including but not limited to, letting for compensation agreements;
 - 3.) on January 1st of each year for the duration of the compensation agreement; and
 - 4.) upon renewal and amendment of any County compensation agreement.
- D.) Contractor and subcontractor sworn affidavits shall be submitted by the covered employer to the awarding agency at the following times:
- 1.) within one (1) week after the contractor or subcontractor is hired by the covered employer to perform the work in connection with the County compensation agreement;
 - 2.) in the event of a County compensation agreement that is being renewed or amended, where a contractor or subcontractor was previously hired by a covered employer to perform work in connection with such compensation agreement, upon such renewal or amendment; and
 - 3.) on January 1st of each year for the duration of the County compensation agreement, provided that the contractor or subcontractor was previously hired by the covered employer to perform work in connection with such compensation agreement and is continuing to perform such work.

Section 4. Reporting.

In the event that a SSN fails verification:

- 1.) Upon learning of a failed SSN verification, contractors and subcontractors of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County compensation agreement, shall notify the covered employer of the failed verification number.
- 2.) Covered employers and the owners thereof, as the case may be, shall notify the County of any failed verification SSN about which it receives notice within fourteen (14) days of receipt of such notice.

Section 5. Maintenance of Records.

- A.) All covered employers and the owners thereof, as the case may be, shall maintain the following:
- 1.) As evidence of compliance with Section 3(A) of this law, all electronic files submitted and returned results in connection with the E-Verify program and SSNVS; and

- 2.) As evidence of compliance with Section 3(B) of this law, all sworn affidavits submitted by all contractors and subcontractors, and the owners thereof, as the case may be.
- B.) Unless a shorter time is prescribed by law or regulation, such records shall be maintained for six (6) years after the County compensation agreement either expires or is terminated.
- C.) Authorized County employees shall be entitled to review such records, on a periodic basis, as may be reasonably requested by the County or awarding agency.

Section 6. County contracts; subcontractor contracts.

- A.) No grant, loan, subsidy, tax incentive, funding, appropriation, payment, lease or other compensation agreement shall be awarded to a covered employer, or the owners thereof, as the case may be, that does not certify that it has complied with Section 3 of this law. All compensation agreements awarded shall set forth the obligations of the covered employer and owners as enumerated in this article.
- B.) All covered employers, or the owners thereof, as the case may be, shall inform their contractors and subcontractors to comply with the provisions of this law for as long as the covered employer or owner, as the case may be, is a recipient. Language indicating the contractor's and subcontractor's requirement to comply shall be included in any contract or agreement between a covered employer and its contractors and subcontractors. A copy of such subcontracts or other agreements shall be submitted to the County and made available to the public upon request.

Section 7. Enforcement; penalties for offenses.

- A.) Notwithstanding any provision of law to the contrary, any covered employer, or owner thereof, as the case may be, who submits a false, fictitious or fraudulent affidavit to the County or awarding agency in connection with Sections 3 or 6 of this law shall, upon conviction, be guilty of a Class A misdemeanor, punishable by a fine of not less than \$250.00 nor more than \$2,000.00, or up to six (6) months imprisonment, or both. Each such violation shall constitute a separate and distinct offense.
- B.) Notwithstanding any provision of law to the contrary, any covered employer, or the owner thereof, as the case may be, who violates the provisions of Section 5 of this law, shall be subject to a civil penalty, in an amount not less than \$250.00, nor more than \$2,000.00.
- C.) Any covered employer, or the owners thereof, as the case may be, who violates the provisions of Sections 3, 4, or 6 of this law, more than two (2) times, shall have its compensation agreement terminated immediately; and, in the case of a County loan, subsidy or other form of financial assistance, same shall be declared in default for purposes of the County collecting on the full amount of the loan, subsidy or other form of financial assistance. In addition, such covered employers shall be barred from bidding on future County contracts and shall be ineligible to receive any future loans, subsidies or other financial assistance from the County.

D.) Any determination made under subdivisions (B) or (C) of this section by the County of Suffolk shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

Section 8. Promulgation of Rules and Regulations.

The Suffolk County Department of Labor shall promulgate such rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provisions of this chapter. Such rules shall further provide for due process procedural mechanisms.

Section 9. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 10. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 11. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 12. Effective Date.

This law shall take effect no sooner than one hundred twenty (120) days after filing in the Office of the Secretary of State

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: