



STATE OF ALABAMA  
Department of Finance  
Office of the State Comptroller

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Robert Bentley  
Governor

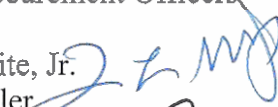
Thomas L. White, Jr.  
State Comptroller

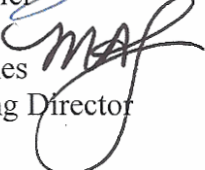
Marquita F. Davis, Ph.D.  
Director of Finance

Janice A. Hamm  
Deputy State Comptroller

**MEMORANDUM**

**TO:** All Chief Fiscal Officers  
All Agency Procurement Officers

**FROM:** Thomas L. White, Jr.   
State Comptroller

Michael A. Jones   
State Purchasing Director

**DATE:** July 5, 2012

**RE:** Act 2012-491 – Amendments to the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (“Beason-Hammon”)

On May 18, 2012, Governor Bentley signed HB658 into law as Act 2012-491 (“the Act”), which was effective upon his signature. The Act makes a number of changes to the existing law, which is found at §§ 31-13-1 et seq., of the Code of Alabama. In the amended sections and subsections, set out below, the underlined portions are the new language added to Beason-Hammon.

**Sec. 31-13-3(2)** was amended to define BUSINESS ENTITY as “[a]ny person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession,” etc. Sole proprietors with no employees are not considered a business entity.

**Sec. 31-13-3(15)** was amended to change the definition of SUBCONTRACTOR to mean “[a] person, business entity, or employer who is awarded a portion of an existing contract by a contractor, regardless of its tier.”

**Sec. 31-13-9(a)** was amended to say:

“As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or a state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien ~~and shall attest to such, by sworn affidavit signed before a notary within the State of Alabama.~~”

The requirement for an affidavit swearing to the required condition was deleted and the limitation to within the State of Alabama was added. § 31-13-9(k) was added to replace the affidavit requirement. A new certification is now required by § 31-13-9(k), set out below.

§ 31-13-15(a) prohibits business entities and employers and “public employers” (defined in § 31-13-3(13) as “[e]very department, agency, or instrumentality of the state”), from “knowingly employ[ing], hir[ing] for employment, or continu[ing] to employ an unauthorized alien to perform work within the State of Alabama.” In order to comply with both § 31-13-9(a) and § 31-13-15(a), contractors need to submit the Certificate of Compliance included with this memo. This procedure will document for state agencies that the contractor is compliant at time of award. § 31-13-9(k), set out below, will cover document compliance at the time of contract execution.

**Sec. 31-13-9(k)** added subsection (k), which requires, in place of the affidavit, the following language be included in “[a]ll contracts or agreements to which the state, a political subdivision, or a state –funded entity are a party”:

*“By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”*

**Sec. 31-13-9(b)** was amended to conform to the language of § 31-13-9(a):

“As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or a state-funded entity to a business entity or employer that employs one or more employees within the State of Alabama, the business entity or employer shall provide documentation establishing that the business entity or employer is enrolled in the E-Verify program.”

**Sec. 31-13-9(c)** was amended to say:

“[a]ny subcontractor on a project paid for by contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity shall **not** knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama and shall also enroll in the E-Verify program prior to performing any work on the project.”

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**Sec. 31-13-9(i)** now states that the provisions of § 31-13-9 does not apply to “agreements by the state, any political subdivision thereof, or any state-funded entity relating to debt obligations of such entities.”

**Sec. 31-13-9(l)** defines, for the purposes of § 31-13-9, a contract as a contract awarded by competitive bid or required to be submitted to the Contract Review Permanent Legislative Oversight Committee. In other words, if a transaction entered into by a state agency does not require either competitive bidding (such as those Purchase Orders less than the bid limit) or submission to Contract Review (such as those less than \$1,500), it is not a contract under § 31-

13-9 and not subject to the requirements under subsections (a) and (b). Emergencies are not awarded by competitive bid or through Contract Review and do not meet the requirements § 31-13-9(a) and (b). Grants and/or incentives are not included in this definition and should continue providing the MOU and new certification statement that replaces the affidavit.

**Sec. 31-13-9(k)** (as mentioned under **Sec. 31-13-9(a)**) added subsection (k), which requires, in place of the affidavit, the following language be included in “[a]ll contracts or agreements to which the state, a political subdivision, or a state –funded entity are a party”:

*“By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”*

These changes allow for the discontinuance of the certificate statement on most vouchers. Agencies are no longer required to affix certification statements to payment vouchers with the exception of grants and incentives. Grant and incentives, generally paid under object 1100, will still require a certification statement as discussed in the February 7, 2012 Immigration Clarification memo.

The amendment to the law defines contracts for the purpose of this code section as those that are competitively bid or in which a request for proposal is issued. State Purchasing and Legislative Contract review will still require that the E-Verify MOU and certification statement be obtained prior to the awarding of the bid or contract.

If you have questions related to payment voucher processing contact Jeanne Kennedy at (334) 242-7061 or [jeanne.kennedy@comptroller.alabama.gov](mailto:jeanne.kennedy@comptroller.alabama.gov), or Kathleen D. Baxter at (334) 242-4857 or [kathleen.baxter@comptroller.alabama.gov](mailto:kathleen.baxter@comptroller.alabama.gov). For questions related to contracts, contact Pam Harris at (334) 242-4225 or [pam.harris@comptroller.alabama.gov](mailto:pam.harris@comptroller.alabama.gov). For questions related to State Purchasing requirements please contact Jaeri Ellis at (334) 242-7250 or [jaeri.ellis@purchasing.alabama.gov](mailto:jaeri.ellis@purchasing.alabama.gov).

TLWjr/dt

CC: Richard H. Cater, Chief Legal Counsel, Department of Finance  
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Peytie P. Bowen, Accounting Manager  
Jeanne Kennedy, Accounting Manager  
Jamie D. Jackson, Staff Accountant  
Jaeri Ellis, Senior Buyer  
File

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

**CERTIFICATE OF COMPLIANCE WITH THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535, as amended by Act 2012-491)**

**DATE:** \_\_\_\_\_

**RE Contract/Grant/Incentive (describe by number or subject):**

\_\_\_\_\_ by and between  
\_\_\_\_\_ (Contractor/Grantee) and  
\_\_\_\_\_ (State Agency, Department or Public Entity)

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of \_\_\_\_\_ with the Contractor/Grantee named above, and is authorized to provide representations set out in this Certificate as the official and binding act of that entity, and has knowledge of the provisions of THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535 of the Alabama Legislature, as amended by Act 2012-491) which is described herein as "the Act".
2. Using the following definitions from Section 3 of the Act, select and initial either (a) or (b), below, to describe the Contractor/Grantee's business structure.

**BUSINESS ENTITY.** Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit. "Business entity" shall include, but not be limited to the following:

- a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.
- b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

**EMPLOYER.** Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

\_\_\_\_ (a) The Contractor/Grantee is a business entity (a) or employer as those terms are defined in Section 3 of the Act.

\_\_\_\_ (b) The Contractor/Grantee is not a business entity or employer as those terms are defined in Section 3 of the Act.

3. As of the date of this Certificate, Contractor/Grantee does not knowingly employ an unauthorized alien within the State of Alabama and hereafter it will not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama;
4. Contractor/Grantee is enrolled in E-Verify unless it is not eligible to enroll because of the rules of that program or other factors beyond its control.

Certified this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Name of Contractor/Grantee/Recipient

By: \_\_\_\_\_

Its \_\_\_\_\_

The above Certification was signed in my presence by the person whose name appears above, on

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WITNESS: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Witness