Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

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Writer's Direct Dial
404 656 3336
Fax 404 657 8733

The Honorable John Douglas
Senator, District 17
Georgia State Senate
302-A Coverdell Legislative Office Building
18 Capitol Sq. S.W.
Atlanta, Georgia 30334

The Honorable Stacey Y. Abrams
Representative, District 84
Georgia House of Representatives
Legislative Office Building, Suite 509
18 Capitol Sq. S.W.
Atlanta, Georgia 30334

Re: The "Georgia Security and Immigration Compliance Act."

Dear Senator Douglas and Representative Abrams:

The Attorney General has requested that I reply to your several questions regarding the "Georgia Security and Immigration Compliance Act" ("GSICA").[1]* In order to address your specific questions and the overall topic, it has been necessary to construe difficult statutory language, for which only "interim" federal guidance is available. A Presidential Executive Order with features similar to GSICA's Section 13-10-91 (requiring contractors to participate in E-Verify) was issued last summer, but questions and litigation as to its validity arose, and the effective date has been postponed into February. Litigation has also arisen over legislation adopted in other states similar to GSICA. The federal administrations have changed. The General Assembly is in session. Given that the topic is in flux and its issues are not easily resolved, we are providing you with an extensive, informal memorandum. The memorandum explains GSICA's relationship to federal law and addresses each of your specific questions with specific answers, albeit informally. It further provides the overview Senator Douglas requested on what GSFICA requires of state and local governments. As circumstances further develop, we will be happy to continue discussing these and other questions for you.

## OVERVIEW OF GSICA EMPLOYMENT AND BENEFIT PROVISIONS.

As stated in its caption, GSICA is intended to enact a "comprehensive regulation of persons in this state who are not lawfully present in the United States."[2] Toward that end, GSICA amends Georgia law governing "contracts, crimes and offenses, law enforcement officers and agencies,

* Endnotes begin on page 36.

penal institutions, professions and businesses, revenue and taxation, and state government."[3] GSICA further provides, in uncodified language, "All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."[4]

In his letter, Senator Douglas has asked generally "what current Georgia law requires of different levels of government with regards to ensuring full compliance with [GSICA]." He, Representative Abrams, and agency clients have also raised more specific issues concerning GSICA provisions that require using a federal database over the Internet to verify the eligibility under federal immigration law of aliens applying for public employment, employment with public contractors, or public benefits. Given the subjects of the specific questions, and the requirement to construe GSICA in accord "with federal immigration law," this discussion begins with an overview of the public employment, public contractor, and public benefit provisions of GSICA, bringing in corresponding federal law for context and guidance.

*Electronic Verification of New Employees.*

GSICA requires "every public employer [to] register and participate in the federal work authorization program to verify information of all new employees." O.C.G.A. § 13-10-91(a). For this purpose, "'[f]ederal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security...." O.C.G.A. § 13-10-90(2). "'Public employer' means every ... agency, or instrumentality of the state or a political subdivision..." *Id.* (3). Further, "[n]o public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify information of all new employees." *See* O.C.G.A. § 13-10-91(b).[5] The Commissioner of Labor is responsible for issuing forms and rules to "effectuate" the Section, *id.* (d), except in regard to "public transportation," for which the Commission of Transportation has jurisdiction. *See id.* (e).[6]

As stated in the rules of the Commissioner of Labor, the purpose in requiring public employers and contractors "to verify information of all new employees," O.C.G.A. § 13-10-91 (a), (b), is "to verify the *work eligibility* information of all new employees," Ga. Comp. R. & Regs. 300-10-1-02(1)(a), (b), (c) (italics added). This is a reference to the eligibility or non-eligibility of aliens, under federal law, to work within the United States. Federal law provides, as to "employment in the United States":

> (1) It is unlawful for a person or other entity—
> (A) to hire ... an alien knowing the alien is an unauthorized alien ... or
> (B) (i) to hire ... an individual without complying with ... requirements of [verification set out in federal law].

> (2)... It is unlawful ... to continue to employ [an] alien ... knowing the alien is (or has become) ... unauthorized....

8 U.S.C. § 1324a(a) ("Section or § 1324a"). To avoid circumvention, "a person or other entity who uses a contract ... to obtain the labor of an alien in the United States knowing that the alien is ... an unauthorized alien ... shall be considered to have hired the alien ... in violation of [the prohibition against knowing employment in § 1324a (a)(1)(A)." 8 U.S.C. § 1324a(a)(4). For these purposes, "'unauthorized alien' means ... that the alien is not ... lawfully admitted for permanent residence, or ... authorized to be so employed by [the "Immigration and Nationality Act," beginning at 8 U.S.C. § 1101] or by the Attorney General." *Id.* (h)(3).[7]

At present § 1324a requires for verification under federal law only that an employer "attest ... that it has verified that the individual is not an unauthorized alien by examining" documents or combinations of documents specified in § 1324a that establish "employment authorization and identity." § 1324a(b)(1). Permissible documents include, for example, a United States passport or a United States social security card with a state driver's license. *Id.* (A) through (B). The applicant must also attest that he or she is "a citizen or national," "an alien lawfully admitted for permanent residence," or an alien otherwise authorized "for such employment." *Id.* (b)(2). The form used for both purposes is the Department of Homeland Security ("DHS") "Form I-9, Employment Eligibility Verification."[8]

The Department of Homeland Security also operates "E-Verify ... an Internet based system ... that allows participating employers to verify the employment eligibility of their newly hired employees."[9] According to DHS, "E-Verify is free and voluntary and is the best means available for determining employment eligibility of new hires and the validity of their Social Security Numbers."[10] Under federal law, E-Verify is technically a voluntary pilot program which may be followed as an alternative to the document-based procedures in Section 1324a (b).[11] The pilot program originally was intended to sunset earlier, but the statutory authorization has recently been extended through March 6, 2009.[12]

In summary, federal law, in § 1324a, as to "employment in the United States," makes it "unlawful ... to hire ... an alien knowing the alien is an unauthorized alien," to hire any individual without performing document verification required by § 1324a, "to continue to employ the alien ... knowing the alien is (or has become) ... unauthorized," or to "contract" for labor knowing an alien is unauthorized. § 1324a (a). Federal law permits use of an electronic alternative, E-Verify, to the documentary verification spelled out in § 1324a (b), and use of E-Verify creates a presumption of compliance with § 1324a (a).[13]

The effect of Code Section 13-10-91 is to make use of "E-Verify" mandatory, at least while it is in effect. When hiring new employees, the State's public employers and their contractors and subcontractors for the physical performance of services within Georgia must check the Form I-9 information against the "electronic verification" provided by E-Verify "to verify information of all new employees." O.C.G.A. § 13-10-90(2), -91(a), (b).[14] GSICA requires that "[t]his Code

section ... be enforced without regard to race, religion, gender, ethnicity, or national origin." O.C.G.A. § 13-10-91(c).

*Electronic Verification for Public Benefits.*

A second situation in which GSICA makes electronic verification mandatory is in determining the eligibility of an alien for public benefits.

> Except as provided in subsection (c) ... [discussed below] or where exempted by federal law ... every agency[15] or a political subdivision of this state shall verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state.

O.C.G.A. § 50-36-1 (a). "It shall be unlawful ... to provide any state, local, or federal benefit ... in violation of this Code section," that is, to provide a benefit without complying with the verification requirement. *Id.* (h).

> Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall occur as follows:
>
> (1) The applicant must execute an affidavit that he or she is a United States citizen or legal permanent resident 18 years of age or older; or
>
> (2) The applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act 18 years of age or older lawfully present in the United States.

*Id.* (d).

"For any applicant who has executed an affidavit that he or she is an alien lawfully present ... [verification of] eligibility ... shall be made through the Systematic Alien Verification of Entitlement (SAVE) program.... Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this Code section." *Id.* (e).[16] SAVE is an electronic verification service related to E-Verify.[17]

Once again, as with Section 13-10-90 above, Section 50-36-1 does not itself impose eligibility requirements. GSICA requires an electronic verification procedure in Section 50-36-1 to guard against the granting of a public benefit by a Georgia state agency or political subdivision to an applicant in contravention of federal law. That is, with certain exceptions, an alien who does not meet specified conditions "is not eligible for any Federal public benefit," 8 U.S.C. § 1311(a), or "any State or local public benefit." 8 U.S.C. § 1621(a).

> "The term 'State or local public benefit' means —
>
> > (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
> > (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are [sic] provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

8 U.S.C. § 1621(c)(1). "Federal public benefit" is defined nearly verbatim but substitutes the phrase, "by an agency of the United States or by appropriated funds of the United States." 8 U.S.C. § 1611(c). If a benefit satisfies the definitions of both federal public benefit and "state and local public benefit," it is a "federal public benefit." *See* 8 U.S.C. § 1621(c)(3) (definition of state or local benefit "does not include any Federal public benefit").

Each definition excludes certain situations from the definition, and each prohibition excludes certain situations from the prohibition. 8 U.S.C. §§ 1611(b) & (c), 1621 (b) & (c). These are largely the same for each but the parallel is not exact. Appendix Three on page 19 is a table comparing the federal prohibitions and definitions with one another and with the criteria and exceptions for electronic verification through SAVE under Section 50-36-1.[18]

A state agency or instrumentality administering a federal public benefit must have verification procedures which comply with federal regulations on verification of eligibility for federal public benefits. 8 U.S.C. § 1642(b). "A State or political subdivision of a State is authorized to require an applicant for state and local public benefits ... to provide proof of eligibility." 8 U.S.C. § 1625. Federal regulations may allow states to participate in federal verification systems for determining an alien's eligibility for state and local public benefits. 8 U.S.C. § 1642(a)(3).[19]

## DISCUSSION OF SPECIFIC QUESTIONS

Two questions by Representative Abrams provide a suitable platform for beginning a discussion of specific issues in the employment and benefit provisions of GSFICA while also commencing the general discussion requested by Senator Douglas as to "what current Georgia law requires ... with regards to ... full compliance with [GSICA]." The questions are as follows:

> 1. Would a company [engaged by a city to construct a public park] be a recipient of a public benefit subject to verification under O.C.G.A. Section 50-36-1? Does the answer vary if such contractor has already verified all ... employees under O.C.G.A. Section 13-10-91? Do the provisions of ... Section 50-36-1 only apply

> to the individual named on the contract? What if the contract is granted to an artificial person such as a corporation?
>
> 5. The term "physical performance of services" is not defined.... [H]ow significant must the physical component of a contract be to trigger the verification requirements? For example, would a contract to purchase a copy machine that includes maintenance or merely on site training for its use be a contract to which the provisions of the statute apply? If a city hired a professional planning consultant or a real estate appraiser, would those types of services qualify as physical performance?

This question and following questions raise not only the interpretation but also the correlation of these Code Sections, which govern the new hiring practices of public employers and their contractors and govern the benefit granting practices of state agencies and political subdivisions.

*"Physical Performance of Services within this state." (O.C.G.A. § 13-10-91)*

GSICA provides that its "requirements ... concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."[20] As discussed, when the service sought calls "for employment in the United States," federal immigration law makes it unlawful knowingly to employ an unauthorized alien. 8 U.S.C. § 1324a(a)(1), (2) & (4). The prohibition is concerned with lawful and unlawful presence within the national borders. In a parallel way, GSICA is concerned with lawful and unlawful presence within Georgia borders, as a subset of national borders. In regard to Section 13-10-91, the condition for which GSICA requires participation in E-Verify is that the contract be "for the physical performance of services within this state." In context, this is not a reference to having services performed which are "physical;" i.e., GSICA is not concerned only with such activity as constructing or painting. It is a reference to having services performed by someone who is physically present "within this state" and whether that person is lawfully so for the purpose. This conclusion is an application of both the "plain meaning" rule in the interpretation of statutes,[21] and the requirement that the reader "keep[] in view at all times the old law, the evil, and the remedy."[22]

Installation of a copy machine would require physical presence. Its maintenance would usually require presence, but in modern appliances, maintenance might be done by telecommunications from locations outside the state. It is conceivable that a "professional planning consultant or a real estate appraiser consultant" might perform all services without making footprints within the state boundaries, e.g., conducting local research through the Internet and client communications and providing advice through the mail or by telecommunications. In those instances, the specific conditions for requiring verification in public contracts under Section 13-10-91 are not present. This is not to say that other immigration law is waived, only that the Section is not applicable.

*When Must a Contractor Register and Process "New Employees," and which "New Employees?"*

(a) *When Must the Contractor Register and Process?* Under GSICA a "public employer" may not "enter into a contract … unless the contractor registers … to verify information of all new employees." O.C.G.A. § 13-10-91(b)(1); *see also* (b)(2). The language is conditional - "unless the contractor registers" – and the condition is limited to verifying "new employees." There are two issues to consider. The first is, "When must the contractor be registered?" By the time the parties execute the contract? Before the contractor begins performance? Promptly after signing? Promptly after commencing?[23] The statute says only "[u]nless the contractor registers…." However, the rules provide that "public employers … shall include in such contract … a provision stating the contractor's compliance … shall be attested by the execution of the contractor affidavit as shown in Rule 300-10-1-.07 … which document *shall be attached to*, and become a part of, the covered contract." Ga. Comp. R. & Regs. 300-10-1-.03(d) (italics added). "Shall" here apparently means "must" and not "will later," because of the requirement to attach, a duty typically appearing at time of original execution. This is consistent with the usual interpretation of "shall" as mandatory[24] and with the statute making registration a condition of "enter[ing] into a contract," although perhaps not literally required. O.C.G.A. § 13-10-91(b)(1). Presumably, the contractor's duty exists until the contract is performed or ended.

(b) *Which New Employees?* There is also no project-based or geographically-based restraint on the condition, as stated in Section 13-10-91(a), "to verify information of all new employees." Literally, this could mean wherever hired, wherever working and on whatever they are working in the contractor's business. Suggesting possible answers by analogy, an Executive Order by President Bush last summer provides[25]:

> Executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of: (i) *all persons hired during the contract term by the contractor to perform employment duties within the United States*; and (ii) *all persons assigned by the contractor to perform work within the United States on the Federal contract.*

Section 13-10-91 by its language does not offer this full range of possibilities. The matter is not addressed in the Rules, which use the statutory language. *E.g.*, GA. COMP. R. & REGS. *300-10-1-.02*(1)(a), (b), (c). However, we are instructed by GSICA to consider its "requirements … in conformity with federal immigration law." Once again, we are also instructed under Georgia law, when construing a statute, to "look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy."[26] The GSICA preamble or caption states the situation it intends to correct and the remedy as follows: "comprehensive regulation of persons in this state who are not lawfully present in the United States." This by itself might argue for a broad, literal reading of the duty to verify "all new

employees." However, we are also instructed to read the statute as a whole,[27] and this Section is concerned in its principal requirement with a "contract for the physical performance of services within this state." O.C.G.A. § 13-10-91(b).

It might then be reasonable to conclude that GSFICA only intends to require the electronic verification of new hires who will be performing employment services in Georgia for the project. On the other hand, intent to limit the duty to the project might be expected then to come not only with a duty of verification of new hires but also the verification of other employees working on the project, as addressed in the executive order above but not provided in Section 13-10-91. That may be viewed as a policy compromise in that prior employees still should have been vetted by documents at least under 8 U.S.C. § 1324a(b). The more narrowly the legislation is construed, the more likely it is to survive a challenge that it intrudes into an area reserved for determination by the federal government.[28] In the absence of clarifying amendment or regulation under subsections 13-10-91(d) and (e), taking all these factors into account, the more likely interpretation of legislative intent is that the new hires are those who will perform services of any sort within Georgia borders.

*Which types of Contracts?*

I understand that the issue has been raised among administrators whether Section 36-10-91 is limited in its scope to construction contracts. There are two possible bases for such an interpretation: Section 36-10-91 is concerned with "the physical performance of services," and the Section is placed in a chapter of the Code called "Contracts for Public Works." O.C.G.A. Ch. 13-10. The preceding articles of the Chapter regulate various aspects of "public works." *E.g.*, O.C.G.A. §§ 13-10-2, -20(a), -40, -80(b). On the other hand, the discussion above demonstrates that GSICA's use of the phrase "physical performance" is concerned not with the type of activity to be performed but by whom and where: citizens, nationals, or aliens with authorization to be present physically in Georgia for that type of activity. Further:

> Unless otherwise provided ..., the descriptive headings or catch lines immediately preceding ... text of the individual Code sections ..., except the Code section numbers ..., and title and chapter analyses do not constitute part of the law and shall in no manner limit or expand the construction of any Code section. All historical citations, title and chapter analyses, and notes set out in this Code are given for the purpose of convenient reference and do not constitute part of the law.

O.C.G.A. § 1-1-7.

"A better source for determining the intent of the legislature in enacting [a Code Section] would be the preamble of the act creating the Code section." *Brown v. Earp*, 261 Ga. 522, 523 (1991). In the present case, the preamble gives no hint that this Section should be limited to public works

contracts, and while it is placed in close proximity to provisions of the Code concerning "public works," it is also enacted in GSICA with other Sections which address lawful presence of aliens generally. They, too, are *in pari materia*, *i.e.*, part of the material which should be considered together with the Section in its interpretation.[29] Such a limiting construction might be possible by regulation but the authority would be doubtful. The plain language of the Section provides, without further definition in this regard, "No public employer shall enter into *a contract*...." O.C.G.A. § 13-10-91(b)(1). See also the memorandum on this topic in Appendix Four at page 35.

*"Contract" Benefits under Section 50-36-1 and "Contracts" under Section 13-10-1.*

Section 50-36-1 requires its affidavit and electronic verification through SAVE when "a natural person ... 18 ... or older ... has applied for state or local public benefits ... or for federal public benefits...." O.C.G.A. § 50-36-1(a). SAVE exists to assist in determinations of whether aliens have the lawful status to be present and eligible as a matter of federal law for federal, state, or public benefits. 8 U.S.C. §§ 1611(a), 1621(a).[30] The most authoritative guidance "adopts a four-step procedure, with two preceding the use of SAVE:

> (1) Determine if your program provides a 'federal public benefit' subject to the Act's verification requirements; (2) Determine whether the applicant is otherwise eligible for benefits under general program requirements; (3) Verify the applicant's status as a U.S. citizen, U.S. non-citizen national or qualified alien; and (4) Verify the applicant's eligibility for benefits under the Act. If at any step you determine that you are not required to verify (or further verify) immigration status, you should not go on to the following step(s).[31]

While this is an Interim Guidance, it is not yet replaced by final rule and is authoritative because provided for by federal law. 8 U.S.C. § 1642(a). Also, while the guidance is specifically for agencies awarding federal benefits, the guidance advises that agencies awarding state or local benefits "use this Guidance in consultation with state and local authorities."[32]

Hence, the first step is to determine whether the individual applicant is applying for something which is within the definition of "federal public benefit" or "state or local public benefit." See discussion beginning at page 5 and Appendix Three at page 22. To make that determination, one should "first consider whether the program provides one of the benefits expressly enumerated."[33] These are as follows using the definition for state or local public benefits:

> (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which

> payments or assistance are[sic] provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

O.C.G.A. § 50-36-1(a), incorporating 8 U.S.C. § 1621(c)(1).

In the particular example of Question 1, the applicant is seeking a "contract," an enumerated benefit. If the subject of the application is within the incorporated element (A) or (B) above, it is necessary next to consider whether the subject is removed from the federal definition by the definition's own terms, for example, in the case of a "contract [sought by] a nonimmigrant whose visa for entry is related to such employment." 8 U.S.C. § 1621(c)(2)(A). See Appendix Three. Even if the subject is within the definition and not excluded from it, the applicant may nevertheless be made eligible by the terms of federal law, 8 U.S.C. §§ 1611(b), 1621(b), and not be required to go through a verification process by the nearly identical terms of subsection 50-36-1(c).[34] Again, see Appendix Three. Finally, the agency should have a procedure for fairly determining whether the applicant is less than 18. In the case of an individual at least 18, who is applying for a benefit within the definitions and not excepted from either the definitions or from the federal rule of ineligibility, Section 50-36-1 then requires the affidavit of the applicant. *Id.* If the affiant states "that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE)." O.C.G.A. § 50-36-1(d). It is also necessary then to comply with the SAVE's own program requirements, in accord with the Interim Guidance, and in accord with either a federal or state benefit's own program requirements and procedures. While eligibility may be checked "through ... SAVE," a negative response from SAVE should not itself be deemed an adjudication under either federal or state law.[35]

Turning to Questions 1 and 2, the first issue is whether "a company [engaged by a city to construct a public park is] subject to verification?" The Section 50-36-1verification requirements are applied when a "natural person 18 years of age or older ... applie[s] for state or local public benefits ... or for federal public benefits...." *Id.*(a). Specification of a natural person is consistent with the federal law in this subject area which is concerned with individuals. *See, e.g.,* 8 U.S.C. § 1101(3) (an alien is "any person not a citizen or national of the United States"). Therefore, here, if the company consists of an individual acting individually as a sole proprietorship, the Section applies. However, in the normal case of the engagement of a company that is an artificial person such as a corporation, Section 50-36-1 is not applicable. The individual signing on behalf of a corporation, if correctly documenting so, would be acting only in a representative capacity, *see* O.C.G.A. § 11-3-402(b), and would not be individually applying for the benefit. However, "a person or other entity who uses a contract ... to obtain the labor of an alien in the United States knowing that the alien is ... unauthorized alien ... shall be considered to have hired the alien ... in violation of [the prohibition against knowing employment in § 1324a (a)(1)(A)." 8 U.S.C. § 1324a(b)(4).[36]

Section 50-36-1 is concerned with the current status of an individual applying for a public benefit as defined, so whether or not a sole proprietor as an employer has already participated in verification for his or her employees in compliance with 8 U.S.C. 13241 and Section 13-10-91 is not relevant. As discussed above, what matters in regard to physical presence is that the services for the park will be physically performed within Georgia, not whether the services constitute what might be called "physical services," so the Section would apply to planning of the park as well as its construction, if physical presence is satisfied.

Whether or not there is an applicant for a public benefit under Section 50-36-1, the letting of the contract for the park will be subject to Section 13-10-91, so the vendor will be required at the time of executing the contract to attach an affidavit certifying registration in E-Verify for the purpose of hiring new employees whose services will be performed in Georgia (whether on the project or not but subject to the possibility of clarification by rule.)

> 2. Does the phrase "professional license, or commercial license provided by an agency… " include alcoholic beverage licenses granted by [local governments and the Department of Revenue]. Does the phrase … include locally termed "business licenses," which in substance are not licenses but merely certificates acknowledging payment of a local occupational tax?

Senator Douglas and Representative Abrams have raised this question.

*Alcohol License.* The federal definition of " state or local public benefit" includes a "commercial license." The Georgia Alcoholic Beverage Code declares, "The businesses of manufacturing, distributing, selling, handling, and otherwise dealing in or possessing alcoholic beverages are declared to be privileges in this state and not rights; however, such privileges shall not be exercised except in accordance with the licensing, regulatory, and revenue requirements of this title." O.C.G.A. § 3-3-1. A license under this title constitutes regulated permission for commercial activity and is within the definition. When such a license is issued to an individual, Section 50-36-1 applies.

*Professional or Commercial Licenses Generally.* The second part of the question is more difficult. As the questions recognize, there are two related concepts in this area, i.e., on one hand, regulation of a business including licensing, and, on the other hand, taxation of businesses. These concepts appear in the Code and in the appellate court cases. For the related Tax Code concepts, see O.C.G.A. §§ 48-13-5 through -9 (providing for local government occupational taxes and regulatory fees). In part, with stated exceptions, "the governing authority of each [city or] county is authorized but not required to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on … businesses and practitioners." O.C.G.A. § 48-13-6(a) & (b). "[T]he governing authority of each county [or city] is authorized but not required to provide by local ordinance or resolution for the imposition and collection of

regulatory fees on businesses and practitioners of professions and occupations doing business in [its] part of the county." O.C.G.A. § 48-13-8. "A local government is authorized to require a business or practitioner of a profession or occupation to pay a regulatory fee only if the local government customarily performs investigation or inspection of such businesses or practitioners of such profession or occupation as protection of the public health, safety, or welfare or in the course of enforcing a state or local building, health, or safety code, but no local government is authorized to use regulatory fees as a means of raising revenue for general purposes; provided that the amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government." O.C.G.A. § 45-13-9(a).

The implication from these Code Sections is that a local government may impose a business tax for revenue and may also regulate businesses, charging them a fee "approximat[ing] the reasonable cost of the actual regulatory activity." If the government imposes the payment of a tax or fee for revenue purposes and issues a "license" merely to show payment, the license is not likely to be considered a commercial license. A statement in the local ordinance indicating that the certificate is for revenue purposes only may be instructive, but is not determinative of the issue. If the occupational tax certificate "acts as a precondition or license for engaging" in a business, it may be more regulatory in nature and could be considered a commercial license. See *Sexton v. City of Jonesboro*, 267 Ga. 571, 572-73 (1997). Indicators that it could be a commercial or regulatory license include the requirement to have the license before you engage in a business, requirements to display the license at the place of business, and the existence of criminal penalties for engaging in business without a license, as compared to penalties for not paying the tax. As indicated a regulatory fee must approximate cost and entail regulatory activity. Another indicator that a certificate may be a public benefit is the ability of such a license or certificate "for creating the appearance of lawful presence." See *Lopez v. United States Immigration and Naturalization Service*, 758 F.2d 1390, 1393 (10th Cir. 1985); *John Doe No. 1 v. Georgia Dep't of Pub. Safety*, 147 F. Supp. 2d 1369, 1376 (N.D. Ga. 2001).

Applying these factors would have to be done on a case by case basis by the local governments responsible for their activities.[37]

3. Are the offices of the Secretary of State, Commissioner of Insurance, Commissioner of Agriculture, the Georgia Real Estate Commission, the Composite State Board of Medical Examiners and the Office of Bar Admissions covered by the provisions of O.C.G.A. Section 50-36-1? Are they currently verifying all applicants?

*Executive Branch Agencies.* To the extent that *any* executive branch agency grants benefits pursuant to its native authority, which benefits are within the federal definitions of 8 U.S.C. §§ 1611(c) and 1621(c), and the benefit or applicant is not subject to exceptions under those sections or Section 50-36-1, then the agency must implement Section 50-36-1. We have issued previous advice in this regard. See Appendix Four at page 35. As to the level of verification

using SAVE, GSICA requires that "[e]ach state agency or department which administers any program of state or local public benefits shall provide an annual report with respect to its compliance with this Code section." O.C.G.A. § 50-36-1(h).

*Judicial and Legislative Branch Agencies.* In this question by Representative Abrams, one of the entities inquired about is the Office of Bar Admissions, which lies within the judicial branch. In the question next discussed, one of the issues expressly raised is whether the answer applies to the legislative and judicial branches.

GSICA provides that "every agency or a political subdivision of this state shall verify the lawful presence," through affidavits and SAVE, of persons applying for state or local "public benefits." O.C.G.A. § 50-36-1(a) & (d). In the normal case, the "state is not bound by the passage of a law unless it is named therein or unless the words of the law are so plain, clear, and unmistakable as to leave no doubt as to the intention of the General Assembly." O.C.G.A. § 1-3-8. Here, the General Assembly has by its express language made the statute applicable to state "agencies." As a corollary to the rule expressed in Section 1-3-8 , a statute made applicable to "state agencies" without further legislative guidance would normally apply only to executive agencies and not apply to the judicial and legislative branches unless intent is expressly stated or is implied "in clear and unmistakable terms.")[38]

The question then becomes whether GSICA has made the statute applicable to legislative and judicial branches "in clear and unmistakable terms." As noted already, GSICA intends a "comprehensive regulation of persons in this state who are not lawfully present in the United States," and provides, "All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."[39] An apparent regulatory object of O.C.G.A. § 50-36-1 – insuring that public benefits are limited to those lawfully present in the United States – appears to be susceptible of application to each of the three branches of government. That purpose even as to state and local benefits is an object of federal law, 8 U.S.C. §§ 1611, 1621, and these Code Sections are, in fact, probably applicable to all three branches of Georgia state government, under federal law.[40]

However, it is one thing to say that Congress has exercised its power to make aliens ineligible for certain benefits, and another to say that the General Assembly intends to require the judicial and legislative branches to comply with a verification process which is voluntary under federal law. With particular regard to the Office of Bar Admissions, the Georgia Supreme Court has held the subject matter of bar admissions within the inherent authority of the judiciary.[41] We are also advised that the Office of Bar Admissions intends informally to institute procedures which will comply with procedures set out in Section 50-36-1 without addressing the issue of governance. Resolving that question at the present time is beyond the scope of this letter and unnecessary.

> 4. Does the phrase, "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are [sic][42] provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government" apply to benefits received by employees of this state and its political subdivisions? Does the answer vary if such employees have already been verified under O.C.G.A. Section 13-10-91? If the answer is yes, does this provision cover members of the Georgia General Assembly and their legislative aides? If the answer is yes, which state office is responsible for insuring compliance and are members of the General Assembly and their legislative aides being verified in accordance with state law?

*Public Employee Benefits.* In this question by Representative Abrams, the quoted text is from the second prong of the federal definition of both "federal public benefit" and "state or local public benefit." We have pending a similar, more specific question regarding retirement benefits from the Employees' Retirement System.

As noted above, the first step is to determine whether the subject is expressly listed as a benefit in the definition, and, if it is not, one must ask as to this particular list whether the subject is a "similar benefit." This is not necessarily a simple process. "PRWORA does not identify the specific benefits that are 'Federal public benefits,' and the definition in section 401(c), standing alone, does not provide sufficient guidance for benefit providers to make that determination."[43]

The statutory use of the word "similar" suggests that the list has one or more common threads or themes by which to gauge "similarity," and the existence of a common theme could be used to exclude some meanings of words expressly listed.[44] That is, when words are placed together in a statute, their association may illumine their meanings beyond a generic ability to read in the full range of meanings for each standing alone.[45] It has been suggested welfare is such a theme in the federal definitions.[46] If so, then one could surmise, for example, that while retirement, health, and disability benefits can be employment benefits, they can also be welfare benefits, and if welfare is the common thread in the definitional list, only those meanings of the listed words would apply.

"However, [the approach using associations], like any other tool of statutory construction, is merely an aid in determining the intent of the drafters. It is correctly employed together with other tools, such as legislative history and underlying policy concerns. It is of little help where other evidence reveals that Congress intended to treat the disputed term differently from its neighbors."[47] Here there is contemporaneous agency interpretation contrary which implies that the list does not have a pure "welfare theme." The Interim Guidance, in a passage on "Exceptions" to the prohibition, has this example: "Any wages, pensions, annuities, or other earned payments to which an alien is entitled as a result of federal, state, or local government employment, provided that the alien is not residing or present in the United States and provided

that the employment was not prohibited under the immigration laws."[48] In other words, if an alien now not able to be lawfully present is somewhere else, and was lawfully present when earning the employment benefit, it may be paid. Stated conversely (although the Guidance does not say so expressly), this might be understood as saying that a public employee's retirement benefit and health benefit and other "earned payments" are public benefits for which an unauthorized alien is ineligible. Taking the definitions literally, then, and following the Interim Guidance, GSICA requires affidavits of public employees at such times as they apply for a health benefit at open enrollment or for retirement, and if the affidavit indicates alien status, then the SAVE process should be followed. [49]

*Legislative Branch Application.* As for its application to the General Assembly, the same considerations apply that are discussed above regarding the judicial branch.[50] However, as a practical matter, the issue is not likely to arise. Most employment benefits are administered for each of the three branches by executive branch agencies which would be responsible for processing.

## Further Questions By Senator Douglas: Whether the Homestead Exemption Is a Public Benefit

*Application of § 50-36-1 to Tax Matters.* Senator Douglas has asked whether the homestead exemption is a "public benefit" subject to the verification procedures of O.C.G.A. § 50-36-1. The initial issue is whether the benefit is included within the definition, which includes:

> (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are [six] provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

8 U.S.C. § 1621(c); *accord* 8 U.S.C. § 1611(c).

Georgia has at least one *refundable* tax credit that has certain attributes of a benefit. In the case of the low income tax credit, the Code provides:

> In the event the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of the credit over payments due shall be refunded to the resident taxpayer, provided that a tax credit properly claimed by a

> resident individual who has no income tax liability shall be paid to the resident individual.

O.C.G.A. § 48-7A-3.

There may be others with similar features. There are other tax programs that have similar but non-refundable aspects. *See, e.g.,* O.C.G.A. §§ 48-7-29 ("A person qualifying as a rural physician shall be allowed a credit ... in an amount not to exceed $5,000.00 ...."); O.C.G.A. § 48-7-29.15 ("credit ... for the adoption of a qualified foster child"); O.C.G.A. § 48-7-40.16 ("credit ... for the purchase or lease of a new low-emission vehicle"); O.C.G.A. § § 48-7-37. (release of taxes due from members of armed forces dying on active duty); O.C.G.A. § 48-7-37 ("Amnesty shall be granted for any taxpayer who meets the requirements of Code Section 48-16-5...").

Under Georgia law it is difficult to distinguish one form of exemption or credit from another for purposes of GSICA, and most exemptions and credits themselves do not in a strict sense result in payments of appropriated funds. One might say that a homestead exemption is a "payment or *assistance*" "similar" to "assisted housing" and other benefits, although its general nature is not strictly akin to the sense of employee benefits and welfare benefits like the specific items which the definition is comprises. In that sense the "disabled veteran's homestead exemption" authorized by the Constitution is an "assistance" more like the listed benefits. GA. CONST., art. VII, § V. It is also true that the Constitution uses the word, "benefit" in regard to homeowner tax relief grants to local governments. *See* GA. CONST., art. VII, § IIA, par. I ("The amount of such adjustment may provide a taxpayer with a benefit equivalent to a homestead exemption of up to $18,000.00 of the assessed value..."); O.C.G.A. § 36-89-1 through -6 (providing for homeowner tax relief grants *to cities, counties and school districts* condition on "conditioned "on the ... fiscal authority reducing each qualified homestead's ... liability").

The question, however, is whether these are similar to the benefits expressly listed. Tax law and policy are distinct, substantial subjects in their own right, and an application of a major, different substantive law to the area is more likely in conventional drafting to be stated expressly than left to implication.[51] The issue is apparently an unsettled matter. As stated in materials prepared for members of Congress:

> The language of [PRWORA, the federal act establishing the ineligibility rules] appears to be quite broad ... yet its implementation across federal public benefits is not uniform. An excellent example of this ambiguity centers on tax refunds.... The Internal Revenue Code generally does not distinguish between resident aliens who are lawfully present ... and those who are not (with the exception of the [earned income tax credit].) It appears that the Internal Revenue Service (IRS) permits unauthorized resident aliens to claim the additional child tax credit. There is no indication, moreover, that the IRS general considers refundable tax credits to be federal public benefits that unauthorized migrants are barred from receiving.

> It is possible that refundable tax credits could fall within the types of benefits described by [PWRORA]. Under this interpretation, the refundable nature of a credit makes it equivalent to a "grant" or "payment or assistance" provided by federal agency or appropriated funds ....[52]

In the absence of further guidance from Congress, one should be reluctant to interpret 8 U.S.C. §§ 1611 and 1621 to apply to the tax laws of federal or state governments. We have previously, by informal advice, indicated to the Department of Revenue that we do not believe the homestead exemption is subject to Section 50-36-1.

Tenth Amendment, State Sovereignty and Preemption.

There has been some litigation regarding the power of the states to enact provisions like GSICA. There has also been litigation over whether Congress has the power to apply requirements like employer verification in Section 1324a to the States.

Section 1324a makes it unlawful for "a person or other entity" knowingly to hire an unauthorized alien. *Id.* (a)(1). Regulations of the Department of Homeland Security define the word "entity" as used in § 1324a to include, in part, "any legal entity, including but not limited to ... governmental body, agency." 8 C.F.R. § 274a.1(b). Since § 1324a later provides that for its purposes "entity" includes "an entity in any branch of the Federal government," *id.* (a)(7), the broader DHS regulation indicates that DHS believes Congress included state and local governments as well.

There is a "longstanding interpretative presumption that 'person' does not include the sovereign" for purposes of state sovereignty as well as federal sovereignty. *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens*, 529 U.S. 765, 780 (2000) (applying presumption in favor of state under False Claims Act). However, congressional intent to include the states does not need to be stated in express terms and can arise from the context and the breadth of language. *Cf. Case v. Bowles*, 327 U.S. 92, 100 (1946) (including states in "United States or any other government, or any of its political subdivisions"); *see also Ohio v. Helvering*, 292 U.S. 360, 370 (1934).

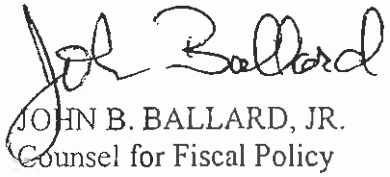
Under the Tenth Amendment,[53] Congress lacks plenary authority to regulate internal state affairs and can only do so under the limited basis of an independent power conferred by the Constitution. *See, e.g., Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 554 (1985). However, given that "Congress may entirely preempt state authority in immigration matters," *Lopez v. United States Immigration & Naturalization Service*, 758 F.2d 1390, 1392 (10th Cir. 1985), it is unlikely that courts will conclude Congress lacks authority to impose employment restrictions related to immigration status on state governments. *See Chamber of Commerce v. Brad Henry*, 2008 U.S. Dist. LEXIS 44168 (W.D. Okla. June 4, 2008 (concluding that Congress

had power to enact § 1324a). In any event GSICA is indicative of Georgia's legislative acquiescence in that regulation.

Georgia, in fact, has gone a step beyond acquiescence, requiring use of the otherwise voluntary, electronic verification program, requiring it for public employment and for public contractors. Similar statutes have led to litigation in some states. Section 1324a imposes a regime of civil and criminal discipline for failing to follow its terms. *Id.* (e) through (g). It further provides that its provisions "preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar law) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." *Id.* (h)(2). In Oklahoma the legislature passed a law with provisions essentially like those in GSICA's § 13-10-91 (employee verification for state employees and employees of state contractors).[54] Private employers prevailed in a challenge to the provisions relating to state contractors and to tax law, convincing the courts that the state legislation provided civil sanctions upon employers preempted by Section 1324a. *See Chamber of Commerce v. Henry*, 2008 U.S. Dist. LEXIS 44168, 2008 WL 2329164 (W.D. Ok. June 4, 2008) (preliminary injunction issued against state law). *But compare Candelaria v. Arizona Contractors Association, Inc.*, 544 F.3d 976 (9th Cir. 2008) (revocation of business licenses for knowingly employing unauthorized alien expressly exempted from preemption under clause excusing state law regarding "licensing or similar law"). Given the preliminary nature of this preemption litigation in other states and federal circuits, it is premature to suggest any conclusion adverse to enforcement of GSICA in Georgia.

Please let us know if we may be of further assistance.

Sincerely,



JOHN B. BALLARD, JR.
Counsel for Fiscal Policy

APPENDIX ONE
GSICA

requirements and procedures; to provide for exceptions; to provide for verification of lawful presence requirements, procedures, and conditions regarding applications for certain benefits; to provide for exceptions; to provide for the promulgation of regulations; to provide for criminal and other penalties; to provide for related matters; to provide for effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

This Act shall be known and may be cited as the "Georgia Security and Immigration Compliance Act." All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law.

**SECTION 2.**

Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by adding two new articles at the end of Chapter 10, to be designated Articles 3 and 4, to read as follows:

"ARTICLE 3

13-10-90.

As used in this article, the term:

(1) 'Commissioner' means the Commissioner of the Georgia Department of Labor.

(2) 'Federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603.

(3) 'Public employer' means every department, agency, or instrumentality of the state or a political subdivision of the state.

(4) 'Subcontractor' includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

13-10-91.

(a) On or after July 1, 2007, every public employer shall register and participate in the federal work authorization program to verify information of all new employees.

(b)(1) No public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify information of all new employees.

(2) No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.

(3) Paragraphs (1) and (2) of this subsection shall apply as follows:

(A) On or after July 1, 2007, with respect to public employers, contractors, or subcontractors of 500 or more employees;

(B) On or after July 1, 2008, with respect to public employers, contractors, or subcontractors of 100 or more employees; and

(C) On or after July 1, 2009, with respect to all public employers, contractors, or subcontractors.

(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."

**SECTION 3.**

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by adding a new Code section immediately following Code Section 16-5-45, to be designated Code Section 16-5-46, to read as follows:

"16-5-46.

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

(1) 'Coercion' means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as such term is defined by Code Section 16-13-21, to such person.

(2) 'Deception' means:

(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a

conviction under this Code section.

(3) 'Labor servitude' means work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception.

(4) 'Sexual servitude' means:

(A) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or

(B) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

(b) A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects or maintains another in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(c) A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(d) Any person who commits the offense of trafficking a person for labor or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years. Any person who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of 18 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years.

(e) Prosecuting attorneys and the Attorney General shall have concurrent authority to

prosecute any criminal cases arising under the provisions of this Code section and to perform any duty that necessarily appertains thereto.

(f) Each violation of this Code section shall constitute a separate offense and shall not merge with any other offense.

(g) A corporation may be prosecuted under this Code section for an act or omission constituting a crime under this Code section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring."

**SECTION 4.**

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by adding a new Code section immediately following Code Section 35-2-13, to be designated Code Section 35-2-14, to read as follows:

"35-2-14.

(a) As used in this Code section, the term 'peace officer' means peace officer as defined in subparagraph (A) of paragraph (8) of Code Section 35-8-2, as amended.

(b) The commissioner is authorized and directed to negotiate the terms of a memorandum of understanding between the State of Georgia and the United States Department of Justice or Department of Homeland Security concerning the enforcement of federal immigration and custom laws, detention and removals, and investigations in the State of Georgia.

(c) The memorandum of understanding negotiated pursuant to subsection (b) of this Code section shall be signed on behalf of the state by the commissioner and the Governor or as otherwise required by the appropriate federal agency.

(d) The commissioner shall designate appropriate peace officers to be trained pursuant to the memorandum of understanding provided for in subsections (b) and (c) of this Code section. Such training shall be funded pursuant to the federal Homeland Security Appropriation Act

of 2006, Public Law 109-90, or any subsequent source of federal funding. The provisions of this subsection shall become effective upon such funding.

(e) A peace officer certified as trained in accordance with the memorandum of understanding as provided in this Code section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties."

**SECTION 5.**

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by adding a new Code section immediately following Code Section 42-4-13, to be designated Code Section 42-4-14, to read as follows:

"42-4-14.

(a) When any person charged with a felony or with driving under the influence pursuant to Code Section 40-6-391 is confined, for any period, in the jail of the county, any municipality or a jail operated by a regional jail authority, a reasonable effort shall be made to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired. If verification of lawful status can not be made from documents in the possession of the prisoner, verification shall be made within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined not to be lawfully admitted to the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(c) Nothing in this Code section shall be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release.

(d) The Georgia Sheriffs Association shall prepare and issue guidelines and procedures used to comply with the provisions of this Code section."

**SECTION 6.**

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by adding a new chapter immediately following Chapter 20 to read as follows:

"CHAPTER 20A

Superseded HB 1055 see below

43-20A-1.

This chapter shall be known and may be cited as the 'Registration of Immigration Assistance Act.'

43-20A-2.

The purpose and intent of this chapter is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys.

43-20A-3.

As used in this chapter, the term:

(1) 'Compensation' means money, property, services, promise of payment, or anything else of value.

(2) 'Employed by' means that a person is on the payroll of the employer and the employer deducts from the employees paycheck social security and withholding taxes or that a person receives compensation from the employer on a commission basis or as an independent contractor.

(3) 'Immigration assistance service' means any information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action or providing any other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(4) 'Immigration matter' means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

(A) Immigration and naturalization law, executive order, or presidential proclamation of

the United States or any foreign country; or

(B) Action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

43-20A-4.

(a) Any person who provides or offers to provide immigration assistance service may perform only the following services:

(1) Completing a government agency form, requested by the customer and appropriate to the customers needs only if the completion of that form does not involve a legal judgment for that particular matter;

(2) Transcribing responses to a government agency form which is related to an immigration matter but not advising a customer as to his or her answers on those forms;

(3) Translating information on forms to a customer and translating the customers answers to questions posed on those forms;

(4) Securing for the customer supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms;

(5) Translating documents from a foreign language into English;

(6) Notarizing signatures on government agency forms, if the person performing the service is a notary public commissioned in the State of Georgia and is lawfully present in the United States;

(7) Making referrals, without fee, to attorneys who could undertake legal representation for a person in an immigration matter;

(8) Preparing or arranging for the preparation of photographs and fingerprints;

(9) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results;

(10) Conducting English language and civics courses; and

(11) Performing such other services that the office of the Secretary of State determines by

rule may be appropriately performed by such persons in light of the purposes of this chapter.

(b) The following persons are exempt from this chapter:

(1) An attorney licensed to practice law in Georgia or an attorney licensed to practice law in any other state or territory of the United States or in any foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

(2) A legal intern, clerk, paralegal, or person in a similar position employed by and under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of this subsection and rendering immigration assistance service in the course of employment;

(3) A not for profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees, of those organizations accredited under 8 C.F.R. 292.2(d); and

(4) Any organization employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees, or its agents provide advice or assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such advice or assistance is provided.

(c) Nothing in this chapter shall regulate any business to the extent that such regulation is prohibited or preempted by federal law.

(d) Any person performing such services shall obtain business licenses from the office of the Secretary of State and as may be required by a local governing authority.

(e) Any person who provides or offers immigration assistance service and is not exempted under this chapter shall post signs at his or her place of business setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least 12 inches by 17 inches and shall contain the following statement:

'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.'

(f) Every person engaged in immigration assistance service who is not an attorney who

advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, shall include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous size, if in writing, and shall state: 'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.' If such advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(g) Any person who provides or offers immigration assistance service and is not exempted under this chapter shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.

(h) Violations of this chapter may result in a fine of up to $1,000.00 per violation. A fine charged pursuant to this chapter shall not preempt or preclude additional appropriate civil or criminal penalties.

(i) No person engaged in providing immigration services who is not exempted under this chapter shall do any of the following:

(1) Accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;

(2) Refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;

(3) Represent or advertise, in connection with the provision assistance in immigration matters, other titles or credentials, including but not limited to 'notary public' or 'immigration consultant,' that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter, provided that a certified notary public may use the term 'notary public' if the use is

accompanied by the statement that the person is not an attorney; the term 'notary public' may not be translated to another language;

(4) Provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law; or

(5) Make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.

(j) Any person who violates any provision of this chapter shall be guilty of a misdemeanor for a first offense and a high and aggravated misdemeanor for a second or subsequent offense committed within five years of a previous conviction for the same offense.

(k) The Secretary of State shall issue rules not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter."

**SECTION 7.**

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by adding a new Code section immediately following Code Section 48-7-21, to be designated Code Section 48-7-21.1, to read as follows:

"48-7-21.1.

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

(1) 'Authorized employee' means any individual authorized for employment in the United States as defined in paragraph (2) of subsection (a) of 8 U.S.C. Section 1324a.

(2) 'Labor services' means the physical performance of services in this state.

(b) On or after January 1, 2008, no wages or remuneration for labor services to an individual of $600.00 or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(c) This Code section shall not apply to any business domiciled in this state which is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(d) This Code section shall not apply to any individual hired by the taxpayer prior to January 1, 2008.

(e) This Code section shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(f) This Code section shall not apply to wages or remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.

(g) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section."

**SECTION 8.**

Said title is further amended in Code Section 48-7-101, relating to income tax withholding, by adding a new subsection at the end thereof, to be designated subsection (i), to read as follows:

"(i) *Form 1099 withholding and reporting.*

(1) A withholding agent shall be required to withhold state income tax at the rate of 6 percent of the amount of compensation paid to an individual which compensation is reported on Form 1099 and with respect to which the individual has:

(A) Failed to provide a taxpayer identification number;

(B) Failed to provide a correct taxpayer identification number; or

(C) Provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

(2) Any withholding agent who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such withholding agent is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of such form to the commissioner."

**SECTION 9.**

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended

by adding a new chapter at the end thereof, to be designated Chapter 36, to read as follows:

"CHAPTER 36

50-36-1.

(a) Except as provided in subsection (c) of this Code section or where exempted by federal law, on or after July 1, 2007, every agency or a political subdivision of this state shall verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state.

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

(c) Verification of lawful presence under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States 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; or

(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 Generaĺs 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 or the State Board of Technical and Adult Education shall set forth, or cause to be set forth, policies 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.

(d) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall occur as follows:

(1) The applicant must execute an affidavit that he or she is a United States citizen or legal permanent resident 18 years of age or older; or

(2) The applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act 18 years of age or older lawfully present in the United States.

(e) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this Code section.

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

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of this Code section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances where the verification procedures in this Code section would impose unusual hardship on a legal resident of

Georgia.

(h) It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section 1611, in violation of this Code section. Each state agency or department which administers any program of state or local public benefits shall provide an annual report with respect to its compliance with this Code section.

(i) Any and all errors and significant delays by SAVE shall be reported to the United States Department of Security and to the Secretary of State which will monitor SAVE and its verification application errors and significant delays and report yearly on such errors and significant delays to ensure that the application of SAVE is not wrongfully denying benefits to legal residents of Georgia.

(j) Notwithstanding subsection (f) of this Code section any applicant for federal benefits as defined in 8 U.S.C. Section 1611 or state or local benefits as defined in 8 U.S.C. Section 1621 shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if said affidavit is not required by this Code section."

**SECTION 10.**

(a) Except as otherwise provided in this section, this Act shall become effective on July 1, 2007.

(b) Section 3 of this Act shall become effective on July 1, 2007, and shall not apply to any offense committed prior to July 1, 2007.

**SECTION 11.**

All laws and parts of laws in conflict with this Act are repealed.

08 HB 1055/AP

House Bill 1055 (AS PASSED HOUSE AND SENATE)

By: Representatives Williams of the 4th, Dickson of the 6th, Tumlin of the 38th, and Forster of the 3rd

A BILL TO BE ENTITLED

AN ACT

To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to provide for revisions relating to various professional and business licenses; to provide that a designee of the division director of the professional licensing boards may sign and attest orders and processes; to increase regulatory protections for consumers of accounting services; to provide definitions; to change a requirement for certification as a certified public accountant; to change the registration requirements of firms of certified public accountants; to provide for substantial equivalency when there is reciprocity; to provide for certain permissions to use certain titles relating to certified public accountants; to amend certain requirements relating to applications for certification as a registered interior designer; to revise a definition relevant to athletic trainers without expanding the scope of practice beyond the determination of an advising and consenting physician; to revise provisions relating to the inspector at auctions; to provide for service of documents and applications relating to geologists upon the division director at his or her office; to revise provisions relating to regulation of private immigration assistance services; to provide for definitions; to provide for certain powers for licensed immigration assistance providers; to provide for penalties for violating provisions regarding licensure of immigration assistance providers; to provide for certain application procedures; to provide for the authority to investigate potential violations and for investigators to conduct such investigations; to provide for the authority to perform

licensure of elementary or secondary school teachers, coaches, or authorized volunteers who do not hold themselves out to the public as athletic trainers.

(3) 'Board' means the Georgia Board of Athletic Trainers."

**SECTION 13.**

Said title is further amended by revising Code Section 43-6-18.1, relating to inspector at auctions, as follows:

"43-6-18.1.

The commission shall have ~~a full-time~~ an inspector with full inspection rights and privileges for all auctions conducted in this state. This inspector shall have the right to inspect any activity or lack thereof which may be a violation of this chapter or any documents or records pertaining to auction activities and to report any and all such violations or any improper or unlicensed practice, including but not limited to trust account violations."

**SECTION 14.**

Said title is further amended by revising Code Section 43-19-7, relating to service of appeals, documents, and legal process on division director relative to geologists, as follows:

"43-19-7.

All appeals from a decision of the board, all documents or applications required by law to be filed with the board, and any notice or legal process to be served upon the board shall be filed with or served upon the division director at his or her office ~~in Atlanta~~."

**SECTION 15.**

Said title is further amended by revising Chapter 20A, relating to regulation of private immigration assistance services, in its entirety as follows:

"CHAPTER 20A

43-20A-1.

This chapter shall be known and may be cited as the 'Registration of Immigration Assistance Act.'

43-20A-2.

As used in this chapter, the term:

(1) 'Advertise' or 'advertising' means any communication, written or otherwise, produced or caused to be produced by a person licensed pursuant to this chapter promoting the goods or services regulated by this chapter.

(2) 'Alien' means any person not a citizen of the United States.

(3) 'Application' means any forms, documents, and information required pursuant to this chapter that applicants are required to file with the Secretary of State.

(4) 'Client' shall mean any person seeking immigration assistance.

(5) 'Compensation' means money, property, services, promise of payment, or any other consideration or anything of value.

(6) 'Immigrant' means every alien with the exception of an alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(7) 'Immigration assistance' means any service provided to clients for compensation related to immigration matters, but shall not include legal advice, recommending a specific course of legal action, or providing any other assistance that requires legal analysis, legal judgment, or the interpretation of the law.

(8) 'Immigration assistance provider' means any person who is licensed to provide immigration assistance pursuant to this chapter.

(9) 'Immigration matter' means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

(A) Immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(B) Action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

(10) 'Nonimmigrant' means any alien within a class of nonimmigrant aliens as defined in 8 U.S.C.A. Section 1101(a)(15).

(11) 'Order' means, but is not limited to, an administrative order issued under the provisions of this chapter or a similar order issued by a court of competent jurisdiction, any federal, foreign, or state agency, or a self-regulatory organization that makes a finding that the provisions of this chapter have been violated and sanctions administered.

(12) 'Person' means any individual, partnership, corporation, association, or private organization of any character, but not a governmental entity of any kind.

43-20A-3.

The purpose and intent of this chapter is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not exempted by this chapter. This chapter shall be administered and enforced by the Secretary of State. The Secretary of State may delegate such of his or her powers or duties under this chapter as he or she desires to a division director in his or her office. With respect to the enforcement of this chapter, the Secretary of State shall retain all powers and duties and may perform all functions of the licensing boards as provided in Chapter 1 of this title.

43-20A-4.

(a) A person shall not provide immigration assistance in this state without holding a license issued pursuant to this chapter as an immigration assistance provider.

(b) Any person desiring to be licensed as an immigration assistance provider shall file an application for such license with the Secretary of State. All original and subsequent applications filed with the Secretary of State shall be upon such form and in such detail as the Secretary of State shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business and, if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted and, if the applicant is

a corporation, the name and address of each of its principal officers;

(2) The place or places, including the city with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the Secretary of State shall require.

(c) Notwithstanding any provision of Article 4 of Chapter 18 of Title 50 to the contrary, all applications, including supporting documents and other personal information submitted by applicants and licensees as part of an application filed with the Secretary of State, shall be confidential. The Secretary of State shall deem as public records the following information and shall make such information reasonably available for inspection by the general public: a licensee's name, license number and status, business name, business address, business telephone number, type of license held, and term of license; the fact that a licensee has or has not received a disciplinary sanction; and such other information pertaining to the license of a licensee as the Secretary of State may determine by rule.

(d) No person shall be granted a license as an immigration assistance provider unless such person:

(1) Is 18 years of age or older;

(2) Is a United States citizen or holds a valid legal immigration status pursuant to federal law;

(3) Provides a criminal background report and, within the five-year period preceding the date of the application, has no criminal convictions, other than traffic violations;

(4) Completes and submits an application;

(5) Provides proof of a $5,000.00 performance bond issued in a form acceptable to the Secretary of State by a bonding company licensed to conduct bonding business in the State of Georgia; and

(6) If an applicant intends to provide services which shall require him or her to control the legal funds of a client seeking immigration assistance, provides a financial statement for the current fiscal year.

(e) The Secretary of State shall establish an appropriate procedure for the acceptance and review of applications submitted pursuant to subsection (b) of this Code section.

(f) All immigration assistance providers holding licenses in good standing shall be eligible for the renewal of such license pursuant to procedures established by the Secretary of State. In the event a licensee fails to renew his or her license, such license shall be automatically revoked.

43-20A-5.

(a) An immigration assistance provider licensee may perform the following services as immigration assistance:

(1) Completing a government agency form on behalf of the client and appropriate to the client's needs;

(2) Transcribing responses to a government agency form which is related to an immigration matter; provided, however, that advice shall not be offered to a client as to his or her answers on such forms;

(3) Translating information on forms to a client and translating the client's answers to questions posed on such forms;

(4) Securing for the client supporting documents currently in existence, such as birth and marriage certificates, which may be needed to be submitted with government agency forms;

(5) Notarizing signatures on government agency forms, provided that the person performing the service is a notary public commissioned in the State of Georgia and is lawfully present in the United States;

(6) Preparing or arranging for the preparation of photographs and fingerprints;

(7) Arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results; and

(8) Performing such other services that the Secretary of State determines by rule may be appropriately performed by such licensees in light of the purposes of this chapter.

(b) A contract to provide any service in conjunction with immigration assistance shall clearly state the obligations of the immigration assistance provider and the client who is to receive such service.

43-20A-6.

(a) The following persons are exempt from this chapter:

(1) An attorney licensed to practice law in Georgia or an attorney licensed to practice law in any other state or territory of the United States or in any foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

(2) A legal intern, clerk, paralegal, or person in a similar position employed or independently contracted by and under the direct supervision of a licensed attorney meeting the requirements in paragraph (1) of this subsection and rendering immigration assistance in the course of employment;

(3) A not for profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a) and employees of such organizations accredited under 8 C.F.R. 292.2(d); and

(4) Any person employing or desiring to employ an alien or nonimmigrant alien, where the organization, its employees, or its agents provide nonlegal advice in conjunction with immigration assistance in immigration matters to alien or nonimmigrant alien employees or potential employees without compensation from the individuals to whom such nonlegal advice in conjunction with immigration assistance is provided.

(b) Any person who provides or offers immigration assistance and is not exempted pursuant to this Code section shall post signs at his or her place of business setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to clients. Each sign shall be at least 12 inches by 17 inches and shall contain the following statement:

'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.'

(c) Every person engaged in immigration assistance that is not an attorney and that advertises immigration assistance in a language other than English shall include conspicuously in such advertisement the following notice in English and the language in which the advertisement appears: 'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT

GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.' If such advertisement is by radio or television, the statement may be modified but shall include substantially the same message.

(d) Any person who provides or offers immigration assistance that is not exempted pursuant to this Code section shall not, in any document identifying such person as an immigration assistance provider, translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies the person is an attorney.

(e) A person engaged in providing immigration assistance that is not exempted pursuant this Code section as a licensed attorney shall not:

(1) Refuse to return documents supplied by, prepared on behalf of, or paid for by the client upon the request of the client. Such documents shall be returned upon request even if there is a fee dispute between such person and the client;

(2) Represent or advertise, in conjunction with immigration assistance, other titles or credentials, including but not limited to 'notary public' or 'immigration consultant,' that could cause a client to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter; provided, however, that a certified notary public may use the term 'notary public' if the use is accompanied by the statement that the person is not an attorney and the term 'notary public' is not translated to another language; or

(3) Provide materially false or misleading information in an application for licensure or renewal of a license.

43-20A-7.

(a) The Secretary of State may assess civil penalties against any individual or entity that he or she finds to have violated this chapter in an amount of up to $1,000.00 per violation not to exceed $50,000.00. A civil penalty assessed pursuant to this Code section shall be in addition to any other appropriate civil or criminal penalties.

(b) Any person that suffers injuries or damages as a result of the unlawful practice of

immigration assistance shall have a cause of action against the person or entity that provided the unlawful immigration assistance.

(c) The Secretary of State shall issue rules and regulations not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter.

43-20A-8.

(a) The Secretary of State shall maintain all documents filed with the Secretary of State pursuant to this chapter in their original form or by copy.

(b) All documents filed with the Secretary of State pursuant to a subpoena, an order, or a notice to produce issued by the Secretary of State or any records or documents produced relating to an investigation pursuant to Code Section 43-20A-15 may be destroyed by order of the Secretary of State once the investigative file is closed, if a demand for return is not made by the person producing such records at the time he, she, or it produces the records.

(c) Any reproduction of any original writing or record filed with, or maintained by, the Secretary of State, or other filing depository designated by the Secretary of State, shall be deemed to have been made in the regular course of business. Such reproduction shall be subject to certification.

(d) All immigration assistance providers who are licensed or required to be licensed with the Secretary of State shall preserve records documenting compliance pursuant to this chapter for at least three years from the date such records were produced. Immigration assistance providers shall preserve client records that contain certain necessary information in a manner to be determined by the Secretary of State. Such records shall be subject to reasonable periodic or special inspections by the Secretary of State. An inspection may be made at any time and without prior notice. The Secretary of State may copy and remove any record the Secretary of State reasonably considers necessary or appropriate to conduct the inspection.

43-20A-9.

(a) Any immigration assistance provider shall report in writing immediately to the Secretary of State if:

(1) He or she has been made or is the subject of any disciplinary, administrative, civil, or criminal action; and

(2) He or she has been served in any civil complaint or arbitration filed alleging fraud or any violation of any local, state, or federal law.

(b) The immigration assistance provider shall provide to the Secretary of State a copy of any notice, order, pleading, indictment, accusation, or similar legal document relating to an action subject to subsection (a) of this Code section that he or she has in his or her possession.

43-20A-10.

The Secretary of State shall be authorized to charge a license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged. Each fee shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the Secretary of State shall approximate the total of the direct and indirect costs to the state of the operations involved in the issuance of a license. Fees may be refunded for good cause, as determined by the Secretary of State.

43-20A-11.

Should material events or developments occur after a person has been granted a license pursuant to this chapter, such person shall amend the license application submitted pursuant to Code Section 43-20A-4 by adding statements of fact that developed, or became known, after the effective date of such application and by deleting statements of fact that, because of such developments, may be misleading. Such additions and deletions shall be filed with the Secretary of State not more than 30 days after their occurrence.

43-20A-12.

(a) As used in this Code section, the term 'service member' means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license issued pursuant to this chapter expires while such service member is serving on active duty outside the state shall be permitted to practice as an immigration assistance provider in accordance with such expired license and shall not be charged with a violation of this chapter related to practicing as an immigration assistance provider with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within the state. Such service member shall present to the Secretary of State either a copy of the official military orders or a written verification signed by the service member's commanding officer in order for the Secretary of State to waive any charges.

43-20A-13.

For the purposes of investigating violations of this chapter, the Secretary of State shall be authorized to employ investigators pursuant to Code Section 43-1-5.

43-20A-14.

Notwithstanding the provisions of Code Section 43-1-19, the Secretary of State shall be authorized to provide to any lawful licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure. Nothing in this chapter shall be construed to prohibit or limit the authority of the Secretary of State to disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure.

43-20A-15.

(a) The Secretary of State shall be authorized to issue a formal order of investigation. Such order shall commence an investigation to determine whether any person is in violation of this chapter or to aid in the enforcement of this chapter.

(b) The Secretary of State shall be authorized to take any administrative action authorized by law to enforce the provisions of this chapter. The Secretary of State shall be authorized to transmit a civil or criminal referral investigative report and evidence of violations of this chapter to any prosecuting attorney or to the Attorney General, who may, at his or her individual discretion, institute any necessary civil or criminal proceedings.

(c) Notwithstanding any other provision of this chapter, an emergency order pursuant to this Code section shall be effective on the date of issuance, provided that:

(1) The Secretary of State deems that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the emergency order, in which case the order may be effective immediately pending proceedings, which shall be promptly instituted; or

(2) The order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.

(d) Upon issuance of the notice and proposed order, pursuant to this Code section, the Secretary of State shall promptly serve each person subject to the order with a copy of the notice and proposed order. The order shall include a statement of any administrative sanctions that the Secretary of State will seek, a statement of the reasons for the order, and notice that, upon the request by any respondent named in the emergency order, a hearing will be promptly scheduled pursuant to the provisions of Code Sections 50-13-18 and 50-13-41. Hearings shall be conducted by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50. If a person subject to the order does not request from the Office of State Administrative Hearings a hearing within 30 days after the date of service of the notice and proposed order, the order shall become final as to that person by operation of law. If any person subject to the emergency order requests a hearing, or is ordered by the Secretary of State, after notice and opportunity for hearing has been served upon each person subject to the emergency order, the Secretary of State may modify, vacate, or extend the emergency order any time prior to a final determination.

43-20A-16.

(a) The Secretary of State shall order the discipline, denial, suspension, or revocation of license issued pursuant to this chapter, if the Secretary of State finds that the order is in the public interest and that such person:

(1) Has filed an application for licensure with the Secretary of State which, as of its effective date or any date after filing in the case of an order denying effectiveness, contained a statement that was, in light of the circumstances under which it was made, false with respect to a material fact in the application;

(2) Has violated or failed to comply with any provisions of this chapter;

(3) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the last five years by any government agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the law of another state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts occurred in this state;

(4) Has been convicted of any felony in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (5) of this subsection, the term 'felony' shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction' shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(5) Within the last ten years has been convicted of a felony or misdemeanor involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States, the record of conviction being conclusive evidence of conviction, which the Secretary of State finds:

(A) Involves the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any of the foregoing offenses;

(B) Arises out of the conduct of immigration assistance; or

(C) Involves the theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(6) Is the subject of an order of the Secretary of State that denies, suspends, or revokes a

license from such person other than a license issued pursuant to this chapter;

(7) Is the subject of any of the following orders which are effective at the time of the Secretary of State's order and were issued within five years before the Secretary of State's order:

(A) An order by an agency or administrator of another state, a foreign country, or the federal government, entered after notice and opportunity for hearing, that denies, suspends, or revokes a license from such person other than a license issued pursuant to this chapter;

(B) A United States Postal Service fraud order; or

(C) A cease and desist order entered after notice and opportunity for hearing by the Secretary of State or other state or federal authority;

(8) Is determined by the Secretary of State not to be qualified pursuant to this chapter;

(9) Violated or conspired to violate this chapter;

(10) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity;

(11) Has failed to cure any application deficiency within 30 days after being notified by the Secretary of State of a deficiency, but the Secretary of State shall vacate an order pursuant to this paragraph when the deficiency is corrected, unless the applicant has abandoned the application;

(12) Has failed to comply with an order for child support as defined by Code Section 19-11-9.3. Notwithstanding the provisions of Chapter 13 of Title 50, the hearings and appeals procedures provided in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required under this subsection; or

(13) Has been found by the Secretary of State pursuant to notice by the Georgia Higher Education Assistance Corporation that the applicant for or holder of such license is a borrower in default who is not in satisfactory repayment status as defined in Code Section 20-3-295. Notwithstanding the provisions of Chapter 13 of Title 50, the hearings and appeals procedures provided in Code Section 20-3-295, where applicable, shall be the only such procedures required under this subsection.

(b) Prior to issuing an order pursuant to subsection (a) of this Code section, the Secretary of State shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred;

(3) The degree of harm imposed upon others; and

(4) Any other relevant conduct of the applicant.

(c) If the Secretary of State determines that a licensee is no longer in existence or acting as an immigration assistance provider, the subject of an adjudication of incapacity, subject to the control of a trustee, conservator, or guardian, or cannot reasonably be located, the Secretary of State may issue an order that cancels or terminates the license. The Secretary of State may reinstate a canceled or terminated license, with or without hearing, and may make the license retroactive.

(d) An order issued pursuant to subsection (a) of this Code section shall constitute a final order, shall be deemed to be in the public interest, and shall not be deemed to constitute findings of fact or conclusions of law related to other persons. The entry of such an order shall not be deemed to be a waiver or estoppel on the part of the Secretary of State from proceeding in individual actions against any persons who may have violated this chapter, nor shall such an order prevent the Secretary of State from bringing individual actions against any persons who have violated this chapter, if such violation was not known to the Secretary of State at the time the order was issued.

(e) An order is not a proceeding or enforcement action pursuant to Chapter 13 of Title 50.

43-20A-17.

The Secretary of State shall suspend a license issued pursuant to this chapter if reported to the Secretary of State for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program. Prior to a suspension, the licensee shall be entitled to notice of the Secretary of State's intended action and opportunity to appear before the Secretary of State according to procedures set forth by the Secretary of State. A suspension of a license

pursuant to this Code section shall not be a contested case under Chapter 13 of Title 50. A license suspended pursuant to this Code section shall not be reinstated or reissued until the person arranges for a written release to be issued by the reporting agency directly to the Secretary of State stating that the person is making payments on the loan or satisfying the service requirements in accordance with an agreement approved by the reporting agency. If such person has continued to meet all other requirements for licensure during the period of suspension, reinstatement of the license shall be automatic upon receipt of the notice and payment of any reinstatement fee which the Secretary of State may impose.

43-20A-18.

(a) The Secretary of State may issue a cease and desist order prohibiting a person from violating the provisions of this chapter by engaging in the practice of immigration assistance without a license issued pursuant to this chapter. Such cease and desist order shall become effective immediately upon signature of the Secretary of State and proper notice pursuant to this chapter.

(b) The violation of any order issued pursuant to subsection (a) of this Code section shall subject such person violating the order to further proceedings before the Secretary of State, and the Secretary of State shall be authorized to impose a civil penalty not to exceed $500.00 for each transaction constituting a violation thereof. Such civil penalty shall be in addition to any other fines and penalties subject to committing a violation pursuant to this subsection. Each day that a person practices in violation of this subsection shall constitute a separate violation.

(c) Nothing in this Code section shall be construed to prohibit the Secretary of State from bringing remedies otherwise available by statute without first seeking a cease and desist order in accordance with the provisions of this Code section.

43-20A-19.

(a) Where the Secretary of State has issued any order to discipline, deny, suspend, or revoke a license of an applicant or person licensed pursuant to this chapter, he or she shall promptly

send to the respondent to such order a notice of opportunity for hearing. Before entering an order refusing to issue a license pursuant to this chapter to any person and after the entering of any order for revocation or suspension, the Secretary of State shall promptly send to such person a notice of opportunity for hearing.

(b) Notices of opportunity for hearing shall be served personally by investigators appointed by the Secretary of State, sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or residential address as shown on the licensee's application, or directed for service to the sheriff of the county where such person resides or is found; and such notice shall state:

(1) The order which has issued or which is proposed to be issued;

(2) The ground for issuing such order or proposed order;

(3) A statement of the right of any party to subpoena witnesses and documentary evidence through the Secretary of State;

(4) That the person to whom such notice is sent will be afforded a hearing in accordance with the Code Sections 50-13-18 and 50-13-41; and

(5) Contested cases shall be heard by the Office of State Administrative Hearings pursuant to Chapter 13 of Title 50.

(c) If the Secretary of State does not receive a request for a hearing within the prescribed time, he or she may permit an order previously entered to remain in effect or may enter a proposed order. If a hearing is requested and conducted as provided in this Code section, the Secretary of State shall issue a written order which shall set forth his or her findings and conclusions of laws with respect to the matters involved.

43-20A-20.

Any individual licensed pursuant to this chapter who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony shall be required to notify the appropriate licensing authority of the conviction within ten days of the conviction.

43-20A-21.

APPENDIX TWO
Summary of Other Provisions of GSICA

Offense of Trafficking. GSICA establishes the new, criminal "offense of trafficking a person for labor or servitude" and the new, criminal "offense of trafficking a person for sexual servitude." O.C.G.A. § 16-5-46(b), (c).

State Enforcement of Immigration and Custom Laws. GSICA also directs the Commissioner of Public Safety to enter into agreement with the federal Department of Homeland Security in order to train and certify Georgia peace officers in immigration law. *See* O.C.G.A. § 35-2-14 (b) through (e). "A peace officer certified as trained ... is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties." *Id.* (e).

Nationality Checks for Jail Inmates. GSICA requires that when any person is "charged with a felony or with driving under the influence ... or [is] convicted of driving without being licensed," and "is confined ... in ... jail ... a reasonable effort shall be made to determine the nationality of the person so confined." O.C.G.A. § 42-4-14(a) [as amended by 2008 Ga. Laws 1137, § 4]. "If the prisoner is a foreign national, the keeper ... shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and ... that such lawful status has not expired." *Id.* (b). After certain described verification procedures, "[i]f the prisoner is determined not to be lawfully admitted ... the keeper ... shall notify the United States Department of Homeland Security." *Id.*

"Registration of Immigration Assistance Act." In 2008 the General Assembly replaced original GSICA provisions[55] with new law having the similar purpose, "to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not exempted." O.C.G.A. § 43-20A-3 [2008 Ga. Laws 1112, § 15.] This Act requires an annual license, O.C.G.A. § 43-20A-4, in order to perform certain permissible services, such as translating and notarizing forms. O.C.G.A. § 43-20A-5. It establishes administrative procedure and criminal penalties for its enforcement. O.C.G.A. §§ 43-20A-7 through -21.

Tax Law. Summarizing principal provisions, as of January 1, 2008, no business deduction for state income tax purposes may be taken for the compensation of an employee unless the employee is an "authorized employee." O.C.G.A. § 48-7-21.1(b). An "authorized employee" is one "whose hiring for employment or continuing employment in the United States does not violate the provisions of 8 U.S.C. § 1324a." O.C.G.A. § 48-7-21.1(a)(1). As explained above, the provisions of 8 U.S.C. § 1324a are violated when a "person or other entity hire[s] ... an alien knowing the alien is an unauthorized alien," 8 U.S.C. § 1324a(a)(1), or "hire[s] ... an individual without complying with [specified] requirements [for verifying] "that the individual is not an unauthorized alien." *Id.* (a)(2), (b), or, having learned the individual is an unauthorized alien, to continue his or her employment. *Id.* (a)(2).[56]

Further, a person required to withhold income tax must "withhold state income tax at the rate of 6 percent" for compensation reported on Form 1099 when the subject has not provided a correct taxpayer identification number or provided an identification number for nonresident aliens. O.C.G.A. § 48-7-101(i)(1).

APPENDIX THREE
Comparison of Federal Law Making Certain Aliens
Ineligible for Federal Public Benefits, 8 U.S.C. § 1611,
Making Certain Aliens Ineligible for State and Local Public Benefits, 8 U.S.C. § 1621,
and State Law Requiring Electronic Verification of Eligibility for Each, 50-36-1.

| *§ 1611. Aliens who are not qualified aliens ineligible for Federal public benefits* | *§ 1621. Aliens who are not qualified aliens or nonimmigrants ineligible for State and local public benefits* | *50-36-1. Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations.* |
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| | | Except as provided in subsection (c) … or where exempted by federal law… every agency or a political subdivision of this state shall verify … lawful presence…. |
| (a) In general. Notwithstanding any other provision of law and except as provided in subsection (b), an alien who is not<br><br>a qualified alien (as defined in section 431 [8 USCS § 1641])<br><br>is not eligible for any | (a) In general. Notwithstanding any other provision of law and except as provided in subsections (b) and (d), an alien who is not--<br><br>(1) a qualified alien (as defined in section 431 [8 USCS § 1641]),<br>(2) a nonimmigrant under the Immigration and Nationality Act, or<br><br>(3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 USCS § 1182(d)(5)] for less than one year,<br>is not eligible for any State | (d) Verification of lawful presence … shall occur as follows:<br>(1) The applicant must execute an affidavit that he or she is a United States citizen or legal permanent resident 18 years of age or older; or<br>(2) The applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act 18 years of age or older lawfully present in the United States. |

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| Federal public benefit (as defined in subsection (c)). | or local public benefit (as defined in subsection (c)). | |
| (b) Exceptions. | (b) Exceptions. | |
| (1) Subsection (a) shall not apply with respect to the following Federal public benefits: | Subsection (a) shall not apply with respect to the following State or local public benefits: | (c) Verification of lawful presence under this Code section shall not be required: |
| | | (1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation; |
| (A) Medical assistance under title XIX of the Social Security Act [42 USCS §§ 1396 et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 USCS § 1396b(v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 USCS §§ 601 et seq.], supplemental security income benefits under title XVI of such Act [42 USCS §§ 1381 et seq.], or a State supplementary payment). | (1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of the Social Security Act [42 USCS § 1396b(v)(3]) of the alien involved and are not related to an organ transplant procedure. | (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; |

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| (B) Short-term, non-cash, in-kind emergency disaster relief. | (2) Short-term, non-cash, in-kind emergency disaster relief. | (3) For short-term, noncash, in-kind emergency disaster relief; |
| (C) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 USCS §§ 1396 et seq.]) 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. | (3) 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. | (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; |
| (D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) 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 (iii) are necessary for the protection of life or safety.* | (4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the 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.* | (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;* |
| * *See* Dep't of Justice, "Final Specification of Community | | |

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| Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation," 66 FR 3613 (Jan. 16, 2001). | | |
| | | (6) For prenatal care; or |
| | | (7) For postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of Technical and Adult Education shall set forth, or cause to be set forth, policies 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) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 [42 USCS §§ 1471 et seq.], or any assistance under section 306C of the Consolidated Farm and Rural Development Act [7 USCS § 1926c], to the extent that the alien is receiving such a benefit on the date of the enactment of this Act [enacted Aug. 22, 1996]. | | |
| (2) Subsection (a) shall not apply to any benefit payable under title II of the Social Security Act [42 USCS | | |

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| §§ 401 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act [42 USCS § 433], to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act [42 USCS § 402(t)], or to any benefit payable under title II of the Social Security Act [42 USCS §§ 401 et seq.] to which entitlement is based on an application filed in or before the month in which this Act becomes law. | | |
| (3) Subsection (a) shall not apply to any benefit payable under title XVIII of the Social Security Act [42 USCS §§ 1395 et seq.] (relating to the medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title [42 USCS §§ 1395c et seq.], who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits. | | |
| (4) Subsection (a) shall not | | |

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| apply to any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States. | | |
| (5) Subsection (a) shall not apply to eligibility for benefits for the program defined in section 402(a)(3)(A) [8 USCS § 1612(a)(3)(A)] (relating to the supplemental security income program), or to eligibility for benefits under any other program that is based on eligibility for benefits under the program so defined, for an alien who was receiving such benefits on August 22, 1996. | | |
| c) "Federal public benefit" defined. | (c) "State or local public benefit" defined. | |
| (1) Except as provided in paragraph (2), for purposes of this title the term "Federal public benefit" means-- | (1) Except as provided in paragraphs (2) and (3), for purposes of this subtitle [8 USCS §§ 1621 et seq.] the term "State or local public benefit" means-- | |
| (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and | (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and | |
| (B) any retirement, welfare, | (B) any retirement, welfare, | |

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| health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States. | health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government. | |
| (2) Such term shall not apply-- | (2) Such term shall not apply-- | |
| (A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect; | (A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 [48 USCS § 1681 nts.](or a successor provision) is in effect; | |
| (B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to | (B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to | |

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| pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or | pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or | |
| (C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States. | (C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States. | |
| | (3) Such term does not include any Federal public benefit under section 401(c)[8 USCS § 1611(c)]. | |
| | (d) State authority to provide for eligibility of illegal aliens for State and local public benefits. | |
| | A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after the date of the enactment of this Act [enacted Aug. 22, 1996] which affirmatively provides for such eligibility. | |

| § 1625. Authorization for verification of eligibility for State and local public benefits |
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| A State or political subdivision of a State is authorized to require an applicant for State and local public benefits (as defined in section 411(c) [8 USCS § 1621(c)]) to provide proof of eligibility. |

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| § 1644. Communication between State and local government agencies and the Immigration and Naturalization Service |
| Notwithstanding any other provision of Federal, State, or local law, no State or local |

government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

§ 1641. Definitions

(a) In general. Except as otherwise provided in this title, the terms used in this title have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 USCS § 1101(a)].

(b) Qualified alien. For purposes of this title, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is--

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act,

(2) an alien who is granted asylum under section 208 of such Act [8 USCS § 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 USCS § 1157],

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 USCS § 1182(d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 USCS § 1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 USCS § 1153(a)(7)] as in effect prior to April 1, 1980;[,] or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 note]).

(c) Treatment of certain battered aliens as qualified aliens. For purposes of this title, the term "qualified alien" includes--

(1) an alien who--

(A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) has been approved or has a petition pending which sets forth a prima facie case for--

(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 USCS § 1154(a)(1)(A)(ii), (iii), or (iv)],

(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 USCS § 1154(a)(1)(B)(ii) or (iii)],

(iii) suspension of deportation under section 244(a)(3) of the Immigration and

Nationality Act [8 USCS § 1254(a)(3)] (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [8 USCS § 1101 note]).[,]

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 USCS § 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 USCS § 1154(a)(1)(B)(i)]; [, or]

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 USCS § 1229b(b)(2)];

(2) an alien--

(A) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1);

(3) an alien child who--

(A) resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1); or

(4) an alien who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 421(f) [8 USCS § 1631(f)], concerning the meaning of the terms "battery" and "extreme cruelty", and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program.

§ 1642. Verification of eligibility for Federal public benefits

(a) In general.

(1) Not later than 18 months after the date of the enactment of this Act [enacted Aug. 22, 1996], the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall promulgate regulations requiring verification that a person applying for a Federal public benefit (as defined in section 401(c) [8 USCS § 1611(c)]), to which the limitation under section 401 [8 USCS § 1611] applies, is a qualified alien and is eligible to receive such benefit. Such regulations shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1137 of the Social Security Act [42 USCS § 1320b-7]. Not later than 90 days after the date of the enactment of the Balanced Budget Act of 1997 [enacted Aug. 5, 1997], the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall issue interim verification guidance.

(2) Not later than 18 months after the date of the enactment of this Act [enacted Aug. 22, 1996], the Attorney General, in consultation with the Secretary of Health and Human Services, shall also establish procedures for a person applying for a Federal public benefit (as defined in section 401(c) [8 USCS § 1611(c)]) to provide proof of citizenship in a fair and nondiscriminatory manner.

(3) Not later than 90 days after the date of the enactment of the Balanced Budget Act of 1997 [enacted Aug. 5, 1997], the Attorney General shall promulgate regulations which set forth the procedures by which a State or local government can verify whether an alien applying for a State or local public benefit is a qualified alien, a nonimmigrant under the Immigration and Nationality Act, or an alien paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act [8 USCS § 1182(d)(5)] for less than 1 year, for purposes of determining whether the alien is ineligible for benefits under section 411 of this Act [8 USCS § 1621].

(b) State compliance. Not later than 24 months after the date the regulations described in subsection (a) are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations.

(c) Authorization of appropriations. There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this section.

(d) No verification requirement for nonprofit charitable organizations. Subject to subsection (a), a nonprofit charitable organization, in providing any Federal public benefit (as defined in section 401(c) [8 USCS § 1611(c)]) or any State or local public benefit (as defined in section 411(c) [8 USCS § 1621(c)]), is not required under this title to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.

§ 1643. Statutory construction

(a) Limitation.

(1) Nothing in this title may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requisite requirements for any Federal, State, or local governmental program, assistance, or benefits. For purposes of this title, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(2) Nothing in this title may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under Plyler v. Doe (457 U.S. 202)(1982).

(b) Benefit eligibility limitations applicable only with respect to aliens present in the United States. Notwithstanding any other provision of this title, the limitations on eligibility for benefits under this title shall not apply to eligibility for benefits of aliens who are not residing, or present, in the United States with respect to--

(1) wages, pensions, annuities, and other earned payments to which an alien is entitled resulting from employment by, or on behalf of, a Federal, State, or local government agency which was not prohibited during the period of such employment or service under section 274A [8 USCS § 1324a] or other applicable provision of the Immigration and Nationality Act; or

(2) benefits under laws administered by the Secretary of Veterans Affairs.

(c) Not applicable to foreign assistance. This title does not apply to any Federal, State, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General.

(d) Severability. If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any person or circumstance shall not be affected thereby.

APPENDIX FOUR
Prior Advice

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# Department of Law
# State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

WRITER'S DIRECT DIAL
(404) 651-6247
FAX (404) 657-3239

October 17, 2007

**MEMORANDUM:**

TO: Joseph Kim, Esq.
Department of Administrative Services

FROM: Wright Banks
Senior Assistant Attorney General

RE: O.C.G.A. §§ 13-10-90 and 13-10-91

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This responds to your request for informal advice regarding O.C.G.A. §§ 13-10-90 and 13-10-91. O.C.G.A. §§ 13-10-90 and 13-10-91 comprise Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated.

O.C.G.A. § 13-10-90 provides as follows:

> As used in this article, the term:
>
> (1) "Commissioner" means the Commissioner of the Georgia Department of Labor.
>
> (2) "Federal work authorization program" means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603.
>
> (3) "Public employer" means every department, agency, or instrumentality of the state or a political subdivision of the state.
>
> (4) "Subcontractor" includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

(emphasis added). O.C.G.A. § 13-10-91 provides:

> (a) On or after July 1, 2007, every public employer shall register and participate in the federal work authorization program to verify information of all new employees.
>
> (b) (1) No public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify information of all new employees.
>
> (2) No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.
>
> (3) Paragraphs (1) and (2) of this subsection shall apply as follows:
>
> (A) On or after July 1, 2007, with respect to public employers, contractors, or subcontractors of 500 or more employees;
>
> (B) On or after July 1, 2008, with respect to public employers, contractors, or subcontractors of 100 or more employees; and
>
> (C) On or after July 1, 2009, with respect to all public employers, contractors, or subcontractors.
>
> (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.[1]
>
> (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.

(emphasis added). In your request, you indicated that you have a question regarding whether O.C.G.A. § 13-10-91(b)(1) applies to all contracts involving the physical performance of services in this state or only applies to public works contracts involving physical performance of services in the state. As discussed above, O.C.G.A. §§ 13-10-90 and 13-10-91 comprise Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated. Article 3 is titled as Security and Immigration Compliance. Chapter 10 of Title 13 is entitled Contracts for Public Works.[2] However, I noted that the title to Ga. Laws 2006, p. 105 only contains the word "CONTRACTS."

As quoted above, the specific requirement of O.C.G.A. § 13-10-91(b)(1) is that "[n]o public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify information of all new employees." On its face, O.C.G.A. § 13-10-91 appears to broadly apply to "contract[s] for the physical performance of services within this state."[3] However, as you have pointed out, O.C.G.A.

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[1] Pursuant to this authority, the Labor Commissioner has adopted a number of regulations. Ga. Comp. R. & Regs. r. 300-10-1-.01 through 300-10-1-.09. Labor Rule 300-10-1-.01 sets forth several definitions, but does not provide a definition of a "contract for the physical performance of services within this state." If the Labor Department adopts an interpretation of the phrase, the interpretation would likely be entitled to deference by the courts. See Georgia Dep't of Community Health v. Satilla Heath Services, Inc., 266 Ga. App. 880 (2004).

[2] Some discussion of specific types of contracts being within the concept of public works contracts is found in 1976 Op. Att'y Gen. 76-98 and 1967 Op. Att'y Gen. 67-271. The Georgia Local Government Public Works Construction Law specifically defines "[p]ublic works construction" in relevant part to be "the building, altering, repairing, improving, or demolishing of any public structure or building or other improvements of any kind to any public real property other than those covered by Chapter 4 of Title 32."

[3] It is worth noting that the phrase "public works construction contracts" is not used in O.C.G.A. §§ 13-10-90 and 13-10-91 although it is used in other places in Chapter 10 of Title 13. O.C.G.A. § 13-10-60. It is also worth noting that, in addressing certain income tax withholding requirements, Ga. Laws 2006, p. 105, § 7 broadly defines the

§ 13-10-91 is part of Chapter 10 of Title 13 which relates to public works contracts. When enacting legislation, the General Assembly is presumed to act with knowledge of the existing law. Nicholl v. Great Atlantic & Pacific Tea Co., 238 Ga. App. 30, 39-40 (1999). "In the construction of a statute, all laws in pari materia should be considered in order to ascertain the intention of the legislature." Oxford v. Carter, 216 Ga. 821, 822 (1961) (citing Harrison v. Walker, 1 Ga. 32 (1846)). Statutes "must be construed with reference to other principles of existing law." McDougald v. Dougherty, 14 Ga. 674, 681 (1854).[4] Thus, in reading Chapter 13 of Title 10 together and in assuming the General Assembly realized O.C.G.A. §§ 13-10-90 and 13-10-91 would be part of Chapter 13 of Title 10, it seems that one could argue that O.C.G.A. §§ 13-10-90 and 13-10-91 were directed to only public works contracts entered into by "every department, agency, or instrumentality of the state or a political subdivision of the state."[5] However, I am not certain that this is the most likely outcome.

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term "labor services" as "the physical performance of services in this state." O.C.G.A. § 48-7-21.1(a)(3).

[4] In enacting O.C.G.A. §§ 13-10-90 and 13-10-91, the General Assembly made reference to the legislation being enacted "to provide for procedures and requirements applicable to certain contracts or subcontracts." (Ga. Laws 2006, p. 105) (emphasis added). In construing statutes, courts can look to the caption of the legislation to ascertain the legislative intention. Sovereign Camp Woodmen of the World v. Beard, 26 Ga. App. 130, 131 (1921). The phrase "to provide for procedures and requirements applicable to certain contracts or subcontracts" does not seem to add much in this case.

[5] I have given some consideration to the position that the General Assembly would have amended the State Purchasing Act if it wanted to address virtually all state contracts involving "the physical performance of services within this state." As you know, in 2004, the General Assembly enacted O.C.G.A. § 50-5-82 which addresses payment of sales tax by vendors contracting with the Department of Administrative Services or any other state agency subject to the State Purchasing Act. O.C.G.A. §§ 50-5-50 through 50-5-82. O.C.G.A. § 50-5-82(b) provides relevantly that "[o]n or after May 13, 2004, the Department of Administrative Services and any other state agency to which this article applies shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding $100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in paragraph (3) of Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under Chapter 8 of Title 48 on its sales delivered to Georgia." O.C.G.A. § 50-5-82 is part of the State Purchasing Act which empowers the Department of Administrative Services "[t]o canvass all sources of supply and to contract for the lease, rental, purchase, or other acquisition of all supplies, materials, equipment, and services other than professional and personal employment services required by the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of this state under competitive bidding in the manner and subject to the conditions provided for in this article." O.C.G.A. § 50-5-51(a).

In this matter, I think there is a fairly strong argument that the language of O.C.C.A. §§ 13-10-90 and 13-10-91 is clear and unambiguous and not subject to judicial construction. See Jersawitz v. Hicks, 264 Ga. 553, 554 (1994). Even if subject to construction, courts are generally required to construe statues in a way that will "uphold a statute in whole and in every part . . .." Exum v. City of Valdosta, 246 Ga. 169, 170 (1980). A statute's general language can be restrained only where an absurdity would result. Sirmans v. Sirmans, 222 Ga. 202 (1966). In reading the language of O.C.G.A. § 13-10-91, it appears that a construction of the language of O.C.G.A. §§ 13-10-90 and 13-10-91 which concludes the requirements therein only apply to public works contracts would create substantial confusion with the express provisions of O.C.G.A. § 13-10-91(a) which clearly require that "every public employer shall register and participate in the federal work authorization program to verify information of all new employees."[6] In O.C.G.A. § 13-10-91(a), the General Assembly clearly used language that broadly applies to "every public employer" and defined "public employer" in O.C.G.A. § 13-10-90(3) to include "every department, agency, or instrumentality of the state or a political subdivision of the state." Construing O.C.G.A. §§ 13-10-90 and 13-10-91 as applying only to public works contracts would appear to be inconsistent with the express statutory language used related to public employers and their employees. Therefore, I do not think a court is likely to conclude that the General Assembly intended that the requirements of O.C.G.A. §§ 13-10-90 and 13-10-91 only apply to public works contracts.

I hope that this informal advice is helpful. If you would like to discuss this matter further, please contact me.

WB/jgb

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The requirements of the State Purchasing Act do not apply to local governments. Stryker v. Long County Bd. of Commissioners, 277 Ga. 624 (2004). Thus, if the General Assembly wanted to reach local governments as it clearly did based on the language of O.C.G.A. § 13-10-90(3), it would not have been able to address the local governments in the State Purchasing Act.

[6] A reading of O.C.G.A. § 13-10-91(b)(1) that resulted in its terms applying only to public works contracts would also appear to be inconsistent with the exception in O.C.G.A. § 13-10-91(d) related to "any contract or agreement relating to public transportation" which seems to be much broader than only public works contracts related to public transportation.

Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

Writer's Direct Dial
(404) 657-5759
(FAX) (404) 651-6341

October 6, 2008

**MEMORANDUM:**

TO: Jeffrey T. Ledford
Real Estate Commissioner
Georgia Real Estate Commission

FROM: Alison L. Spencer
Senior Assistant Attorney General
Regulated Industries and Professions Division
Professional Licensing Boards Section

RE: Application of O.C.G.A. § 50-36-1; Matter No. 1081352

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Recently, we discussed the implementation of O.C.G.A. § 50-36-1, the "Georgia Security and Immigration Compliance Act," (the "Act") by the Georgia Real Estate Commission ("GREC") and the Georgia Real Estate Appraisers Board ("GREAB"). This statute requires state agencies and political subdivisions to verify that applicants for public benefits are legally present in the United States of America.

Both GREC and GREAB currently take steps that are in the nature of verification of legal presence in the United States. You have requested guidance on what additional steps, if any, GREC and GREAB must take in order to fully comply with the requirements of O.C.G.A. § 50-36-1. The Act states that, except as otherwise provided by state or federal law:

> [E]very agency or a political subdivision of this state shall verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. section 1611....

Since "public benefit" is defined as including professional licenses, it is clear that inasmuch as both GREC and GREAB issue such licenses, the provisions of O.C.G.A. § 50-36-1 apply to GREC and GREAB. At present, applicants for professional licenses from GREC or GREAB must submit a written application, which must be signed.

However, under the provisions of the Act, it does not appear that a signature requirement is sufficient for compliance purposes.

While the Act states that the agency or political subdivision must verify the lawful presence of those who receive public benefits, it places the obligation to submit verification upon the person receiving those benefits. This verification is accomplished by the applicant executing an affidavit indicating that he or she is a U.S. citizen or a legal permanent resident of the United States aged 18 or older or by the applicant executing "an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act 18 years of age or older lawfully present in the United States." O.C.G.A. § 50-36-1(d)(1,2). Although the Act does not specifically address the form that the affidavit must take, based on the common meaning of "affidavit" the affidavit required by O.C.G.A. § 50-36-1 must be notarized. See Black's Law Dictionary, 7th Edition, 1999. Additionally, if the applicant executes an affidavit that he or she is "an alien lawfully present" in the U.S., then GREC or GREAB must verify the applicant's status through use of the federal "Systematic Alien Verification of Entitlement (SAVE) program." O.C.G.A. § 50-36-1(e).

Therefore, it appears that GREC and GREAB must do more than require a signed application, even if that signature is required under penalty of law, in order to insure compliance with O.C.G.A. § 50-36-1. If you would like my assistance in preparing a draft affidavit or in amending the presently used application forms, please so advise.

You have previously inquired what effect, if any, the fact that GREC and GREAB have the power to issue licenses to persons not living within the United States of America will have on the application of O.C.G.A. § 50-36-1. The answer can be found in the provisions of the federal law upon which the Act relies. The federal law states that the definition of "public benefit" does not include issuance of a professional license to a foreign national not physically present in the United States or to the renewal of a license to such person. 8 U.S.C. § 1621(c)(2)(C). Therefore, it would not be necessary for GREC or GREAB to verify the lawful presence in the United States of foreign nationals not physically present in the United States; however, I recommend that you have such persons affirm their status as foreign nationals not physically present in the United States and include that affirmation with their application or renewal request.

Finally, in our discussions on this topic you have asked what sanctions GREC and GREAB may be subject to in the event that they fail to comply with O.C.G.A. § 50-36-1. The Act provides that it shall be unlawful for any agency or political subdivision to provide public benefits without complying with the requirements of the Act, but does not specify any sanctions. Nonetheless, the absence of a specific sanction does not lessen the duty to comply with a statutory mandate.

I hope you find the memorandum to be informative. If you have any questions, or would like to discuss this matter further, please contact me at the telephone number referenced above.

AS #504507

JOHN DOUGLAS
District 17
295 Nicklaus Circle
Social Circle, GA 30025
Tel: (770) 787-1222

302 - A Coverdell Legislative Office Building
18 Capitol Square, SW
Atlanta, Georgia 30334
Tel: (404) 656-0503
Fax: (404) 657-3217

E-mail: John.Douglas@senate.ga.gov

# The State Senate

Atlanta, Georgia 30334

COMMITTEES:

Chairman, Veterans, Military and Homeland Security
Secretary, Science and Technology
Education and Youth
Transportation

September 9, 2008

The Honorable Thurbert Baker
Attorney General of Georgia
Department of Law
40 Capitol Square
Atlanta, GA 30334

Dear Attorney General Baker:

The purpose of this letter is to request an opinion establishing the requirements placed on local and state government by the Georgia Security and Immigration Compliance Act, (GSIAC), passed by the General Assembly in 2006. After the bill was signed by Governor Perdue in April of that year, it was scheduled to go into effect July 1, 2007, giving all level of government more than a year to implement its provisions.

Two key sections of the bill are apparently being ignored. Section 2 of GSICA requires all public employers to obtain a Memorandum of Understanding (MOU) with the United States Department of Homeland Security (DHS) to use the web based, no-cost federal employment eligibility verification system now called "E-Verify". This requirement applies to public contractors with 100 or more employees as well. According to a list recently obtained from DHS, many local agencies and governments have failed to implement Section 2.

More concerning, and the principle reason for my request for a review from your office, is the fact that the mandate regarding administering public benefits directed at Georgia's local governments and agencies in section nine of GSICA are being virtually ignored more than a year after having become law. Section nine of the law requires any and all Georgia government agencies that administer public benefits to obtain an MOU with DHS to use the Systematic Alien Verification for Entitlements (SAVE) database to verify eligibility of applicants eighteen years of age and over for most Public Benefits. To be clear: The SAVE verification system (for Public Benefits applicants) is the master database from which E-Verify (employment eligibility verification) is operated, but each program has a different and unique purpose and will produce a separate MOU with DHS.

I believe the language found in section nine is clear and without any ambiguity or doubt as to its spirit and intent. However, certain advocacy groups for local governments have told their members that they have little or no responsibility for implementation of the law. That is why an opinion from your office is necessary to clear up any misconceptions that may exist.

The state definition of Public Benefits is taken from long-standing federal law. Indeed, in large part, the intent of GSICA is to insist that here in Georgia our local governments comply with federal law. While the language of the federal law seems quite simple and direct, anyone not familiar with what constitutes a Public Benefit can view a detailed list of these benefits available on the United States Department of Homeland Security's SAVE registration Web page. Attached to this letter is that list as of August 1, 2008. I believe this to be a very important bit of information.

When registering to apply for authority to use the SAVE system, each government agency is required to produce a code giving it authority to regulate and administer that particular Public Benefit. For example: The city of Marietta has a Housing Authority, Board of Education and Business License office. According to GSICA, for them to administer any of the Public Benefits listed, each of these agencies are required to obtain a separate agreement with DHS to use the SAVE database to verify applicants eligibility.

Additionally, because homestead exemptions are public benefits, each county Tax Commissioner in Georgia should have been using the SAVE system since 1 July, 2007. There are no Tax Commissioners listed on the list of SAVE users in Georgia provided by DHS as of August 26, 2008. In fact, there are only nine agencies in Georgia listed as SAVE users, mostly state level departments. I am also attaching that list for your review. Please note that it is very possible to be a SAVE user and not be in compliance with GSICA if the user agency is not authorized to verify applicants eligibility for every Public Benefit administered.

At least one citizen who is very educated on the law cited here has reported to me that he is aware of many city and county Business License offices who are refusing to comply with section nine using the argument that their accepting and approving an application for permission to operate a commercial enterprise in their jurisdiction results in issuance of an "Occupational Tax Certificate – not a "business license", which is obviously a commercial license. If local governments are allowed to continue with this line of reasoning and self-interpretation of the law, it is not difficult to imagine the same people redefining the term "employee" so as to avoid compliance with section two which deals with employee verification.

I suspect that when the bill that became GSICA was going through its very public and well publicized legislation process in 2006, none of the legislators in the General Assembly who voted for the bill – myself included – ever imagined that it would be our local elected officials who would work to circumvent the law and will of most Georgians.

I also note that while U.S. Border Patrol Agents risk their lives to apprehend illegal immigrants and help prosecute the war on terror, it appears that virtually all of Georgia's local governments are choosing to violate federal - and now state - law to reward the individuals who escape apprehension.

I am requesting that the office of the Attorney General provide a legal opinion on what current Georgia law requires of different levels of government with regards to ensuring full compliance with the Georgia Security and Immigration Compliance Act.

Please feel free to contact me at 404-375-1234 with any questions.

Sincerely,

John Douglas
State Senator
District 17

Attachments

U.S. Citizenship and Immigration Services

Office of Records Services

Systematic Alien Verification for Entitlements (SAVE) Program

User Agencies with MOUs

(As of 8/26/08)

Georgia Department of Labor

148 International Blvd., N.E.

Atlanta, GA 30303

Signed MOU: April 1, 2004

Start Date: April 1, 2004

POC: Ann Smith

404-562-2122

ann.smith@dol.state.ga.us

Georgia Department of Human Services

2 Peachtree Street

Atlanta, GA 30303

Signed MOU: April 13, 2004

Start Date: April 21, 2004

POC: Dianne Smith

404-657-3608

dsmith1@dhr.state.ga.us

Georgia Student Finance Commission

2082 East Exchange Place

Tucker, GA 30084

Signed MOU: March 28, 2005

Start Date: March 28, 2005

POC: James Baumann

770-724-9300

jimb@gsfc.org

Georgia Department of Drivers Services

2206 East View Parkway

Conyers, GA 30012

Signed MOU: May 22, 2006

Start Date: May 22, 2006

POC: Jennifer Ammons

678-413-8769

jammons@dds.ga.gov

Cobb County Government

100 Cherokee Street, Suite 130

Marietta, GA 30090

Signed MOU: July 2, 2007

Start Date: July 13, 2007

POC: Robert J. Quigley

770-528-2485

rquigley@cobbcounty.org

City of Union City, Georgia

5047 Union Street

Union City, GA 30291

Signed MOU: September 4, 2007

Start Date: September 12, 2007

POC: Ann Lippmann

770-969-9266

alippmann@unioncityga.org

Georgia Secretary of State/PLB Division

237 Coliseum Drive

Macon, GA 31217

Signed MOU: May 8, 2008

Start Date: July 7, 2008

POC: Anna K. O'Neal

478-207-1390

kaoneal@sos.ga.gov

Gwinnett County Board of Commissioners, Financial Services

75 Langley Drive

Lawrenceville, GA 30045

Signed MOU: June 24, 2008

Start Date: July 7, 2008

POC: Anna K. O'Neal

478-207-1390

kaoneal@sos.ga.gov

Cobb County and Douglas County Community Services Board

3830 S. Cobb Drive, Suite 300

Smyrna, GA 30080

Signed MOU: January 17, 2008

Start Date: August 19, 2008

POC: Randall C. Edna

404-657-2302

ecrandall@dhr.state.ga.us

List of Public Benefits as taken from the SAVE registration Website

*Note...if the user were to check only "Community Transportation" – that agency could not be within the federal regulations to verify applicant's eligibility for "Rent Assistance" or any of the other benefits listed. It is very important to register correctly and accurately.*

Adoption Asst.
Adult Education
Agency Class License
Airport Badges
Background Invest
Boarding Home Care
Cash Assistance
Child Care
Chip
Choose-To-Work
CI CP
Civilian License
Commercial License
Community Education
Community Transportation
County General Asst.
Crew Vetting
Disability Insurance
Disability Asst.
Disaster Asst.
Down Payment Asst.
Emergency Assistance
Employment
Energy Assistance
Expense Voucher
Fed Relocation Grant
Fire Alarm License
Food Stamps
Foster Care
Gaming License
Government Badges
GSA Contract Empl
HAZMAT Endorsement
Health
Homestead Exemption
Housing Assistance
Law Enforcement Veri
Medicaid
Medicare

Merchant Mariner Doc
Military Service
NASA Contractor Empl
Occupational License
Old Age Pension
Original SSN
Perm Fund Dividend
Professional License
Rebates
Refugee Assistance
Registered Traveler
Rent Assistance
Replacement SSN
Retirement Insurance
Section 8 Rental Subsidy
Small Business Loans
SSI
SSN
State Financial Asst.
State General Asst.
State Grant
State ID Cards
State Loan
State Supplement
Survivors Insurance
T 16
T 16 PE
T 18
T 2
T 2 PE
TANF
Territorial Assistance
Trade Act
Training
TWIC
Unemployment Insurance
USDA Farm Loan
SUDA Housing Grants
SUDA Housing Loans
USDA Housing Guarantee
USDA Loan Guarantee
USDA Rent Assistance
Voter Registration
Welfare to Work
Workers Compensation
Workforce Investment Act

## Endnotes

[1] 2006 Ga. Laws 105-117. GSICA Section 1 gives the Act its title and is not codified. 2006 Ga. Laws 105, 106. GSICA originated as Senate Bill 529 of that session and was approved April 17, 2006, as Act No. 457. *Id.* at 105, 117. See Appendix One at page 19. (The cover page of each appendix is numbered as part of this document as are the contents of Appendices Two and Three. Appendices One and Four have copied inserts which are not numbered as part of this document.)

[2] *Id.* at 105.

[3] *Id.* (caption). In addition to O.C.G.A. §§ 13-10-90, -91 and 50-36-1 discussed in the following pages, see Appendix Two at page 20.

[4] *Id.* at 106.

[5] GSICA in regard to employer requirements has been phased in. At present these Title 13 provisions apply to public employers, contractors and subcontractors "of 100 or more employees." O.C.G.A. § 13-10-91(b)(3)(B). "On or after July 1, 2009," the Act will apply "with respect to all public employers, contractors, or subcontractors." *Id* (C).

[6] The rules of the Commissioner of Labor are found at Ga. Comp. R. & Regs. 300-10-1. The corresponding policies of the Department of Transportation are posted online at http://www.dot.state.ga.us/doingbusiness/contractors/pages/immigration.aspx (last visited January 26, 2009). The rules of the Commissioner of Labor provide, in part:

> (3) As of the date of enactment of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "Employment Eligibility Verification (EEV) / Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA). Public employers, contractors and subcontractors subject to O.C.G.A. 13-10-91 shall comply with O.C.G.A. 13-10-91 and this rule by utilizing the EEV / Basic Pilot Program. The EEV / Basic Pilot Program can be accessed from the USDHS U.S. Citizenship and Immigration Services Internet website at https://www.visdhs.com/EmployerRegistration. Information and instructions regarding EEV / Basic Pilot Program Registration, Corporate Administrator Registration, and Designated Agent Registration can be found at that website address.
> (4) All rules, regulations, policies, procedures and other requirements of the EEV / Basic Pilot Program or any other federal work authorization program defined in Rule 300-10-1-.01 and permitted to be used to satisfy the requirements of O.C.G.A. 13-10-91 and these rules, shall be considered additional requirements of this rule.
> (5) In accordance with O.C.G.A. 13-10-91, public employers, contractors and subcontractors may utilize any other federal work authorization program operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, as such work authorization programs become available.

[7] In its regulations the Department of Homeland Security describes the various "Classes of aliens authorized to accept employment." 8 C.F.R. § 274a.12. Under Georgia law generally, "Aliens are the subjects of foreign governments who have not been naturalized under the laws of the United States." O.C.G.A. § 1-2-11(a). "Aliens who are subjects of governments at peace with the United States and this state [are] entitled to all the rights of citizens of other states who are temporarily in this state and shall have the privilege of purchasing, holding, and conveying real estate in this state." *Id.* (b).

[8] http://www.uscis.gov/files/form/I-9.pdf (last visited January 26, 2009). *See also* "Verification of employment eligibility," 8 C.F.R. § 274a.2.

[9] http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD (last visited January 26, 2009).

[10] *Id.*

[11] "If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated section [§ 1324(a)(1)(A) with respect to such hiring (or such recruitment or referral)." § 402(b), 110 Stat. 3009-655, as amen., annexed as a Note to § 1324a.

[12] The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329 §§ 106, 143 (Sept. 30, 2008).

[13] *See n 11.*

[14]

> Congress established the Basic Pilot, now E-Verify, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to verify the employment eligibility of both U.S. citizens and noncitizens at no charge to the employer.... Since 2004, it has been available free of charge to employers in all 50 states and in the U.S. territories where U.S. immigration laws apply.
>
> ... There has also been a substantial increase in the number of states that have passed legislation requiring usage of the E-Verify program for some or all employers within the state. Arizona and Mississippi have laws requiring all employers in the state to use E-Verify; and Georgia, Minnesota, Oklahoma, North Carolina, Rhode Island and Utah require some employers to use E-Verify.

Department of Homeland Security, "Statement for the Record: E-Verify," http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=bca6fa693660a110VgnVCM100000471819 0aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD. (last visited December 30, 2008).

[15] Code Section 13-10-91 discussed above imposes use of E-Verify upon "public employers," defined to mean, "every department, agency, or instrumentality of the state or a political subdivision of the state." O.C.G.A. § 13-10-90(3). In common usage, "instrumentality" would be a general enough term to include the state and local "authorities," the corporate entities used to perform some governmental functions. *See, e.g.*, O.C.G.A. §§ 50-23-3(a), -31 (creation of Georgia Environmental Facilities Authority and its Division of Energy Resources). Code Section 50-36-1, on the other hand, imposes its SAVE requirement upon "every agency or a political subdivision." O.C.G.A. § 50-36-1(a). In order to enforce the creation and use of authorities as being apart from the State, they are not usually considered within a term such as "agency" unless the relevant law expressly says otherwise, as is done, for example, in open meetings law. O.C.G.A. § 50-14-1(a)(1)(A); *see, e.g.*, 1982 Op. Att'y Gen. 82-24.

[16] Willful falsification of the affidavit is a violation of Code Section 16-10-20, defining the crime of false statements in matters "within the jurisdiction of ... government." O.C.G.A. § 50 36-1(f). However, "[n]otwithstanding subsection (f) ... any applicant ... shall not be guilty ... if said affidavit is not required by this Code section." Id. (j). The apparent intent of this latter subsection, (j), is to provide grace if the affiant made a misstatement when for whatever reason it turns out that the affidavit was not required. For example, the affidavit is made by an individual not yet 18 years of age or is made for a benefit not within the relevant definitions.

[17]

> The SAVE Program is an inter-governmental information sharing initiative designed to aid benefit granting agency workers in determining a non-citizen applicant's immigration status, and thereby ensure that only entitled non-citizen applicants receive federal, state, or local public benefits and licenses. It is an information service for benefit issuing agencies, institutions, licensing bureaus, and other entities.

Department of Homeland Security, "Systematic Alien Verification for Entitlements (SAVE) Program," http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=1721c2ec0c7c8110VgnVCM1000004718190aRCRD&vgnextchannel=1721c2ec0c7c8110VgnVCM1000004718190aRCRD. (web page last visited November 10, 2008).

[18] GSICA requires "an affidavit that [the applicant] is a United States citizen or legal permanent resident 18 years of age or older; or is a qualified alien or nonimmigrant." O.C.G.A. § 50-36-1(d). These specifications for the affidavit are imposed uniformly upon an applicant for federal or state or local public benefit but do not appear to line up exactly with the federal prohibitions for either benefit. Under 8 U.S.C. § 1611, only an alien who is a qualified alien can be eligible for a federal public benefit. *Id.* (a). Similarly, under 8 U.S.C. § 1621, an alien is ineligible for state or local public benefits who is not a qualified alien, but so, too, is an alien who is not a nonimmigrant or an alien paroled into the United States for less than one year by the Attorney General for urgent humanitarian reasons or in the public interest. *Id.* (a)(1), (2), (3); 8 U.S.C. § 1182(d)(5). In addition, the definition of a qualified alien includes an alien who is similarly paroled "for a period of at least one year." 8 U.S.C. § 1641(b)(4). See Appendix Three at page 31. A reasonable construction of Section 50-36-1(d) would require the applicant for a federal public benefit to claim status as a qualified alien and an applicant for a state or local benefit to claim status as a qualified alien, a nonimmigrant as defined, or a parolee as defined. Also, the affidavit requires a statement that the affiant is 18 or older. If there are situations in which the applicant may be less than 18, a reasonable interpretation is that the agency may put in place reasonable procedures for accepting or confirming a lesser age, and the affidavit and verification procedures of Section 50-36-1 will not then be followed.

[19] The applicable federal verification guidance for federal and state or local public benefits apparently has remained in an interim state since published but is authoritative. The Personal Responsibility and Work Opportunity Reconciliation Act Of 1996 ("PWRORA") provided, "Not later than 18 months after ... [... Aug. 22, 1996], the Attorney General of the United States ... shall promulgate regulations requiring verification that a person applying for a Federal public benefit ... is a qualified alien and is eligible to receive such benefit. Such regulations shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under [42 USCS § 1320b-7]." 8 USCS § 1642(a)(1). A final rule was proposed. Department of Justice, "Verification of Eligibility for Public Benefits," 63 Fed. Reg. 41662, 41664 (Aug. 4, 1998) ("Proposed Rule"). Apparently because of the complexity of the situation, it appears to remain pending. However, PWRORA also provided that "the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall issue interim verification guidance," 8 U.S.C. § 1642(a)(1), and this was done. Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (November 17, 1997) ("Interim Guidance"). [Section 42 U.S.C. § 1320b-7, referred to as a basis for verification procedures in 8 U.S.C. § 1642, provides for a document-based and "automated" income and eligibility system among states and federal agencies for determining eligibility for TANF, Medicaid, unemployment compensation, and other programs. *See id.* (a), (b). It specifically requires detailed procedures for determining eligibility for aliens, using "a declaration," documents and verification with the Immigration and Naturalization Service. *See id.* (d). These detailed procedures include requirements prohibiting delay, coordination with INS and opportunity for an "applicable fair hearing process." *Id.* (d)(4).

[20] *See* n 4.

[21] O.C.G.A. § 1-3-1(b).

[22] *Id.* (a).

[23] The possibility of different approaches to time of registration may be seen in a Federal Acquisition Rule, scheduled to take effect February 20, 2009, that implements a presidential executive order requiring federal contractors to participate in E-Verify. The new rule requires a contract clause: "If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall ... [e[nroll ... within 30 calendar days of contract award [and within] 90 calendar days of enrollment ... begin to use [it]." Federal Acquisition Regulations, 73 Fed. Reg. 67,651, 67,704-67,705 (Nov. 14, 2008) (to be codified as 48 C.F.R. § 52.222-54(b)(1)); *see also id*, 67,704 (to be codified as 48 C.F.R. 22.1802 (requiring the clause just quoted). The U.S. Chamber of Commerce has announced in a press release of January 9, 2009, that it is contesting these rules in litigation. The effective date of the rules has been postponed until February 20, 2009.
http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD. (Last visited January 26, 2009.)

[24] O.C.G.A. § 1-3-3(10); *see* Op. Att'y Gen. U75-10.

[25] Exec. Order No. 13,465 (June 6, 2008), 73 Fed. Reg. 33,285, 33,286 (June 11, 2008), *amending* Exec. Order No. 12,989 (Feb. 13, 1996), 61 Fed, Reg. 6091 through 6093, *as amen.* Exec. Order No. 13,286 (Feb. 28, 2003), 68 Fed. Reg. 10,619 through 10,633 (Mar. 5, 2003) (transition orders for Department of Homeland Security) (italics added). *See also* n 23, which cites to pending Federal Acquisition Regulations implementing the Executive Order and notes a postponement in effective date until February 20, 2009.

[26] O.C.G.A. § 1-3-1(a).

[27] *See, e.g.,* Op. Att'y Gen. 2002-6.

[28] See text beginning at page 17.

[29] *See IBM Corp. v. Evans*, 213 Ga. 333, 339 (1957).

[30] *See* Department of Justice, Interim Guidance, *supra n* 19, 62 Fed. Reg. at 61,345; *see also* n 17.

[31] *See* Department of Justice, Interim Guidance, *supra n* 19, 62 Fed. Reg. at 61,345.

[32] *Id.*

[33] *Id.* at 61,360, 61,361, "Attachment 3 – Federal Public Benefits."

[34] In regard to federal public benefits, Congress has provided, "... a nonprofit charitable organization, in providing any Federal public benefit ... or any State or local public benefit ... is not required ... to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits." 8 U.S.C. § 1642(d). The discussion of this topic is necessarily in summary form in these notes.

[35] *See Department of Justice, "Interim Guidance," supra n 19,* 62 Fed. Reg. 61,344, 61,349 (Nov. 17, 1997).

[36] See text at page 3.

[37] The Interim Guidance relies on originating agencies familiar with their programs to make decisions about whether the definitions of public benefit or exceptions apply. *See* Department of Justice, Interim Guidance, supra n 19, 62 Fed. Reg. at 61,362.

[38] *See Coggin v. Davey*, 233 Ga. 407, 411 (1975) ( "Sunshine Law" not applicable to legislative branch); *Harrison Co. v. Code Revision Comm.*, 244 Ga. 325, 328 (1979) (legislative branch not subject to procurement rule "unless named therein or the intent that it be included be clear and unmistakable"); *Fathers Are Parents Too, Inc. v. Hunstein*, 202 Ga. App. 716, 717 (1992) (in regard to open records law, the judiciary has certain inherent power and constitutional authority such that an act must "specifically reference the judicial branch, [or] otherwise apply ... in clear and unmistakable terms" to be considered for application).

[39] *See* nn 2 & 4.

[40] *See generally* Office of Legal Counsel, Department of Justice, "Memorandum Opinion for the General Counsel Immigration and Naturalization Service," 2000 OLC LEXIS 28 (March 15, 2000) (§ 1324a, requiring verification of eligibility for employment, applies to each federal branch, and the Immigration and Naturalization Service may enforce the Section against entities of each branch). In this cited memorandum, § 1324a already had been amended to provide expressly that the operative term, "entity," includes "an entity in any branch of the Federal Government," *id.* (a)(7), and the question was whether the U.S. Constitution allowed the agency to enforce beyond its own branch. Also see the discussion below at page 17

[41] *See, e.g., Sams v. Olah*, 225 Ga. 497, 501-02 (1969); O.C.G.A. § 15-19-30.

[42] The verb "are" is in the original federal text.

[43] Department Of Health And Human Services, "Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of 'Federal Public Benefit'" 63 Fed. Reg. 41,658, 41,659 (Aug. 4, 1998). *See also* Michael J. Sheridan, "The New Affidavit Of Support and Other 1996 Amendments To Immigration And Welfare Provisions Designed To Prevent Aliens from Becoming Public Charges," 31 Creighton L. Rev. 741, 746 (1998) (calling definition "capricious[]") (also found in Mathew Bender, 14-1 Agency Manuals 20-1 (Lexis)).

[44] "*Noscitur a sociis* is a familiar rule of construction, and ascertains the precise meaning of words from others with which they are associated and from which they cannot be separated without impairing or destroying the evident sense they were designed to convey in the connection used." *Mott v. Central R. R.*, 70 Ga. 680, 683-684 (1883); *see also Department of Human Resources v. Coley*, 247 Ga. App. 392, 397-398 (2000).

[45] *Jarecki v. G. D. Searle & Co.* 367 U.S. 303, 307, 81 (1961) ("The maxim ... while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress").

[46] *See County of Alameda v. Agustin*, 2007 Cal. App. Unpub. LEXIS 7665, 6-11 (Cal. App. Sept. 24, 2007), rev. den. 2007 Cal. LEXIS 14154 (Dec. 12, 2007).
[47] *In re Continental Airlines, Inc.*, 932 F.2d 282, 288 (3d. Cir. 1991).
[48] Department of Justice, Interim Guidance, *supra,* n 19 at 61,361
[49] By way of summary, three federal publications provided contemporary viewpoints: *See* Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344, 61362 (Nov. 17, 1997); *also* Department of Justice, Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662, 41665 (Aug. 4, 1998) (proposed rule); Department of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41658 (Aug. 4, 1998). Opinions of Attorneys General in other states have referred to these publications for guidance. *See* 2007 Wis. Op. Att'y Gen. OAG -3-07; 2004 Az. Op. Att'y Gen. I04-010 (R04-036); 2005 Az. Op. Att'y Gen. I05-009 (R04-040).

Beyond this there is little precedent. The Attorney General in Virginia concluded that a program encouraging the small businesses of disabled veterans to participate in state procurement created a "benefit" under 8 U.S.C. § 1121. 2007 Va. Op. Att'y Gen. No. 07-055. In an unpublished opinion, an intermediate appellate court in California addressed the "issue ... whether child support payments or child support collection services constitute a 'similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.'" *County of Alameda v. Agustin*, 2007 Cal. App. Unpub. LEXIS 7665, 6-7 (Cal. App. Sept. 24, 2007), rev. den. 2007 Cal. LEXIS 14154 (Dec. 12, 2007). The court first concluded quickly, "Child support payments clearly do not fall into this category. They are not 'provided . . . by an agency of a State or local government or by appropriated funds of a State or local government.' Rather, they are payments made by private individuals. The fact that the County might assist in their collection does not change the private source of the payments." *Id.* at 7, *citing City Plan Dev. v. State*, 117 P.3d 182, 190 (Nev. 2005) (contractor's duty to pay prevailing wages under public contract is not a public benefit to employee).

> Child support collection services present a closer question. Unlike child support payments, these services are a benefit "provided . . . by an agency of a State or local government," as required by the section 1621(c)(1)(B). Under the language of the statute, the provision of such services to a person not residing legally in the United States is therefore barred by section 1621 if such services are "similar" to the benefits expressly listed in section 1621(c)(1)(B). We therefore consider whether child support collection services constitute a "similar benefit."
>
> The purpose of section 1621 is to reduce the incentives for illegal immigration by denying publicly financed social welfare benefits to aliens not residing legally in the United States. "The enactment of that federal legislation was fueled by concerns regarding a rising unauthorized immigrant population in the United States." [cit. om.] "In enacting [section 1621], Congress declared national policy continued to be that aliens in the United States not depend on public resources to meet their needs; that the availability of public benefits not constitute an incentive for immigration to the United States; that compelling government interests required enactment of new rules to assure that aliens be self-reliant consistent with national immigration policy; and that the federal government has 'a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.' [Cit. om.]"
>
> The benefits specifically listed in section 1621—"retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, [or] unemployment benefit[s]"--are all either direct income support payments or services intended to meet the daily needs of disadvantaged persons. Significantly, such payments and services are continuing, or potentially continuing benefits, intended to provide ongoing public support for the recipients for as long as required. Child support collection services are quite different. Far from fostering dependence on public support, these services are intended to help

recipients support themselves by ensuring that all parents bear their fair share of the burden of supporting their children. Indeed, when properly provided, child support collection services return to the local agency considerably more funds than they cost. (cit. om.) Further, such services are ongoing only if it is necessary continually to compel payments from a resolutely deadbeat parent; ideally, the services terminate with the award of child support. Accordingly, because they provide no continuing public assistance to recipients, child support collection services create little or no incentive for illegal immigration. For this reason, child support collection services are not "similar" to the benefits expressly listed in section 1621(c)(1)(B), and their provision is not prohibited by that statute.

*Id.* at 7 through 11.

[50] See text beginning at page 13.

[51] *See Jarecki, supra, n* 45.

[52] Ruth Ellen Wasem, "Unauthorized Aliens' Access to Federal Benefits: Policy Issues," (Congressional Research Service: May 21, 2008).

[53] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. 10.

[54] The Oklahoma statute was also attacked for provisions similar to O.C.G.A. §§ 48-7-21 (prohibiting a business expense deduction for compensation paid an unauthorized alien) and 48-7-101(i)(1) (imposing a maximum withholding obligation on an employer of an employee without valid tax identification). See Appendix Two at page 20.

[55] 2006 Ga. Laws 105, 110 through 113.

[56] See text at page 3.