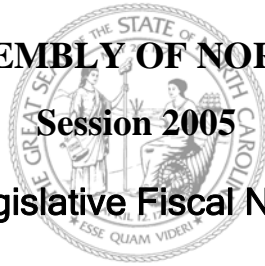# GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1942 (Third Edition)

SHORT TITLE: Verify Public Employee Legal Status/Funds.

SPONSOR(S):

<table>
<tr><td colspan="6">FISCAL IMPACT</td></tr>
<tr><td></td><td>Yes ( )</td><td>No ( )</td><td colspan="3">No Estimate Available ( )</td></tr>
<tr><td></td><td>FY 2006-07</td><td>FY 2007-08</td><td>FY 2008-09</td><td>FY 2009-10</td><td>FY 2010-11</td></tr>
<tr><td>REVENUES:</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>EXPENDITURES:</td><td>No Estimate Available</td><td></td><td></td><td></td><td></td></tr>
<tr><td>POSITIONS
(cumulative):</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="6">PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:</td></tr>
<tr><td colspan="6">EFFECTIVE DATE:</td></tr>
</table>

BILL SUMMARY: Creates Article 16 of Chapter 126 requiring all State agencies, departments, institutions, universities, local subdivisions under G.S. 126-5(a)(2) and (3), local education agencies, and the community colleges to use the Federally authorized Basic Pilot Program to verify a newly hired employee's legal status and authorization to work in the United States. The Basic Pilot Program is a web-based electronic verification of work authorization program administered jointly by the Social Security Administration and the U.S. Department of Homeland Security and is authorized under 8 U.S.C. § 1101, et seq. Requires the Office of State Personnel to provide technical assistance and training to various governmental entities in complying with act and to provide this assistance from funds appropriated.

ASSUMPTIONS AND METHODOLOGY: The Basic Pilot Program permits employers to electronically verify whether their new employees are authorized to work in the United States. Employers are already required to complete Forms I-9 for all newly hired employees in accordance with the Immigration Reform and Control Act of 1986. Upon completion of the forms, an employer may query the Basic Pilot Program's automated system by entering employee information from the Form I-9 into the Basic Pilot Program web site. The pilot program

electronically matches the entered information against information in the Social Security Administration's (SSA) and, if necessary, the Department of Homeland Security's (DHS) databases to determine whether the employee is eligible to work. The Basic Pilot Program notifies the employer electronically whether the employee's work authorization was confirmed. Queries that the DHS automated verification cannot confirm are referred to DHS immigration status verifiers who check employee information against other DHS information. In cases where the Basic Pilot Program cannot confirm an employee's work authorization status either through the automatic check or the check by an immigration status verifier, the system issues the employer a tentative nonconfirmation of the employee's work authorization status. In these cases, the employer must notify affected employees of the finding, and the employee has the right to contest their tentative nonconfirmation by contacting the SSA or the U.S. Citizenship and Immigration Services (CIS) to resolve any inaccuracies within 8 days. Employers are required to either immediately terminate the employee or notify DHS of the continued employment of workers who do not successfully contest the tentative nonconfirmation and those who the Basic Pilot Program finds are not work-authorized.

The Basic Pilot Program is currently available on a voluntary basis to all employers in the United States. As of June 2006, 8,600 of approximately 5.6 million employer firms nationwide have registered to use the program. Of those registered, approximately 4,300 are active users. In North Carolina, 266 employers have registered to use the program.

The Basic Pilot Program was created by Congress in 1996 and initially had a number of weaknesses. The weaknesses generally related to high rates of nonconfirmations. At one point, DHS had estimated it would be unable to electronically verify employment eligibility in 35 percent of all cases due to delays in updating computer records, name-matching problems, and errors in the databases. A report to Congress on the Basic Pilot Program dated June 2004 submitted by the Secretary of the Department of Homeland Security indicates that both the SSA and the DHS have substantially increased the reliability of the data contained in their databases resulting in significantly higher rates of electronic confirmations.

Testimony by Richard M. Stana, Director of Homeland Security and Justice, to the Subcommittee on Immigration, Border Security, and Citizenship, Committee on the Judiciary, US Senate on June 19, 2006 indicates that the Basic Pilot Program is still not without significant weaknesses. Specifically, the current Basic Pilot Program cannot help employers detect identity fraud. For example, if an employee presents valid documentation that belongs to another person authorized to work or if the employee presents counterfeit documentation that contains valid information, the Basic Pilot Program will likely find the employee to be work-authorized. Delays in the entry of information into the DHS databases on arrivals and employment authorization continue to compromise DHS databases and lengthen the verification process. Mr. Stana stated "…although the majority of pilot program queries entered by employers are confirmed via the automated SSA and DHS verification checks, about 15 percent of queries authorized by DHS required secondary verifications by immigration status verifiers in fiscal year 2004…" According to CIS officials, current staff may not be able to complete timely secondary verifications if the number of employers using the program significantly increase.

The Fiscal Research Division attempted unsuccessfully to contact employers in North Carolina who are currently using the Basic Pilot Program to obtain data regarding rates of nonconfirmations and the costs of efforts required by employers to resolve any such nonconfirmations. Costs associated with an employer using the Basic Pilot Program when the employer receives an immediate confirmation of work authorization would be negligible. We, however, have been unable to obtain any data from an employer using the Basic Pilot Program in order to determine current expected rates of nonconfirmations and any costs that may be associated with the resolution of those nonconfirmations.

SOURCES OF DATA: U.S. Government Accountability Office; the Social Security Administration, Office of the Inspector General, Administrative Challenges Facing the Social Security Administration presented to the U.S. Senate Committee on Finance, March 14, 2006; U.S. Department of Homeland Security Report to Congress on the Basic Pilot Program, June 2004; N.C. Department of Public Instruction; U.S. Office of Congressional Relations

TECHNICAL CONSIDERATIONS: The Basic Pilot Program was authorized by Congress in 1996, has been extended several times, and currently expires in November 2008. House Bill 1942, third edition, creates a new article in Chapter 126 permanently requiring State agencies, departments, institutions, universities, local subdivisions under G.S. 126-5(a)(2) and (3), local education agencies, and community colleges to verify an employee's work-authorization using a pilot program that is scheduled to expire in November 2008.

PREPARED BY: J. Marshall Barnes

APPROVED BY: Lynn Muchmore, Director
                   Fiscal Research Division

DATE: July 12, 2006