

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [ 4 PA. CODE CH. 9 ]

#### Reorganization of the Department of Revenue

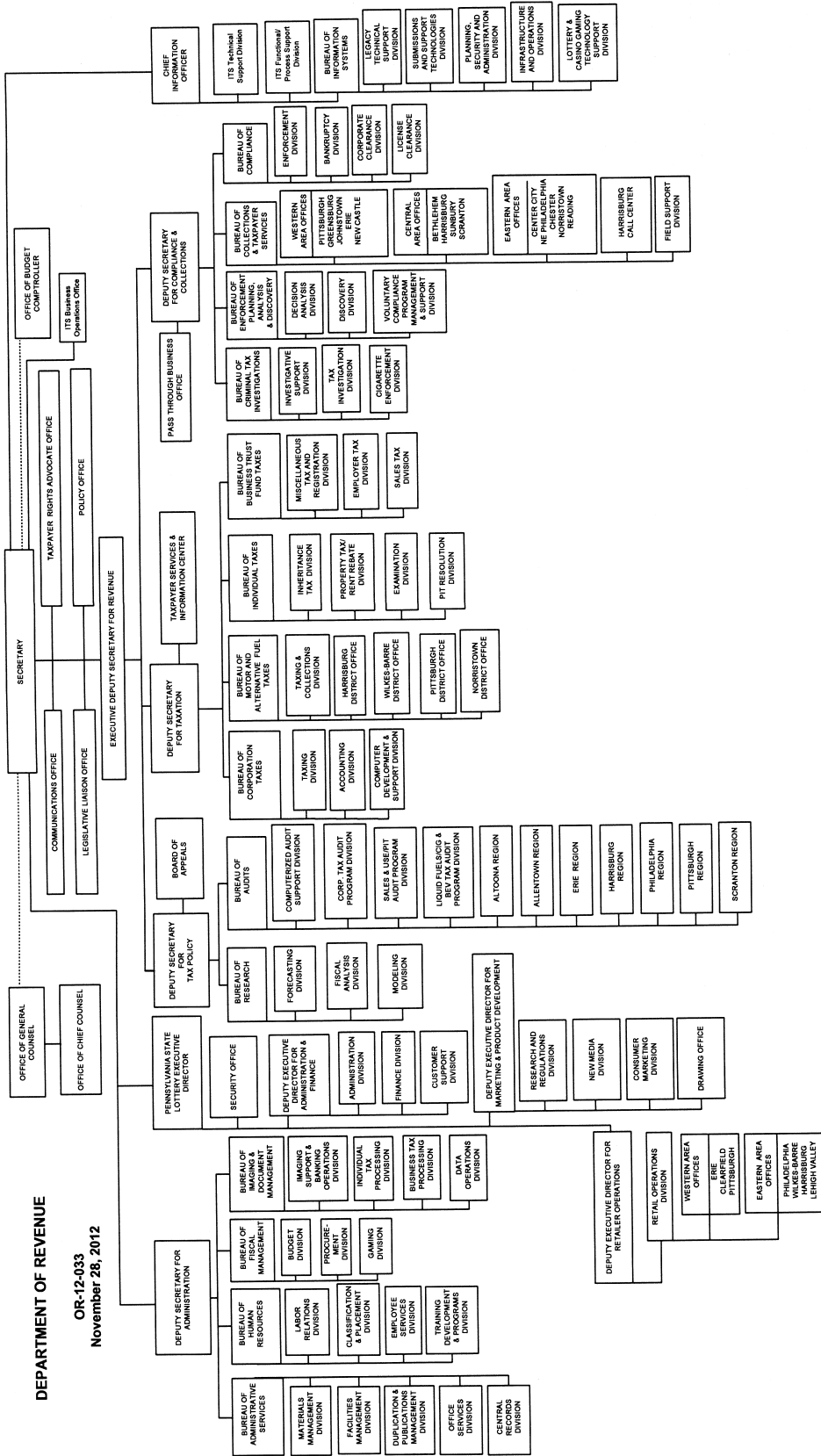
The Executive Board approved a reorganization of the Department of Revenue effective November 28, 2012.

The organization chart at 42 Pa.B. 7820 (December 29, 2012) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

*(Editor's Note:* The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of *Pennsylvania Code*) as a document general and permanent in nature which shall be codified in the *Pennsylvania Code*.)

[Pa.B. Doc. No. 12-2524. Filed for public inspection December 28, 2012, 9:00 a.m.]

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## DEPARTMENT OF GENERAL SERVICES

## [ 4 PA. CODE CH. 66 ]

## Guidelines for Administering and Enforcing the Public Works Employment Verification Act

The Department of General Services (Department) adopts a statement of policy in Chapter 66 (relating to employment verification—statement of policy) to read as set forth in Annex A. Chapter 66 implements the Public Works Employment Verification Act (act) (43 P. S. §§ 167.1—167.11).

Chapter 66 establishes guidelines for administering and enforcing the act, which requires public works contractors and subcontractors performing work on public works projects in this Commonwealth to comply with the Federal E-Verify program to ensure employees are authorized to work in the United States. The E-Verify program is a free Internet-based program operated by the United States Department of Homeland Security that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from the United States Department of Homeland Security and Social Security Administration records to confirm employment eligibility. The purpose of this statement of policy is to establish guidelines for administering and enforcing the act.

*Fiscal Impact*

Civil penalties collected in the enforcement of the act will be retained by the Department to offset the costs of administering the Pennsylvania Public Works Employment Verification Program.

*Effective Date*

This statement of policy is effective January 1, 2013.

*Contact Person*

Specific questions regarding this statement of policy should be directed to the Department of General Services, Public Works Employment Verification Compliance Office, Room 105 Tent Building, Public Works Deputate, 18th and Herr Streets, Harrisburg, PA 17125.

SHERI PHILLIPS,  
Secretary

(Editor's Note: Title 4 of the *Pennsylvania Code* is amended by adding statements of policy in §§ 66.1—66.9 to read as set forth in Annex A.)

**Fiscal Note:** 8-17. This action will not result in a loss of revenue to the Commonwealth or its political subdivisions. This program may increase program costs for the administration and enforcement; however, such costs will be offset by any civil penalties collected through the enforcement of the act.

## Annex A

## TITLE 4. ADMINISTRATION

## PART III. DEPARTMENT OF GENERAL SERVICES

## Subpart C. CONSTRUCTION AND PROCUREMENT

## ARTICLE II. CONSTRUCTION

## CHAPTER 66. EMPLOYMENT VERIFICATION—STATEMENT OF POLICY

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## § 66.1. Background and purpose.

(a) To prevent unauthorized employment, the Federal government created the EVP system to ensure that companies employ a legal workforce. The EVP system is an Internet-based system operated by the United States Department of Homeland Security that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from United States Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

(b) The purpose of this chapter is to set forth the Department's policy guidelines for the scope, administration and enforcement of the act.

(c) The Department is responsible to implement the Commonwealth's process of notification, investigation and compliance with the act. Contractors and subcontractors performing work on a public works project shall comply with the act as set forth in this chapter by utilizing the EVP.

## § 66.2. Scope of work subject to the act.

(a) The act applies to public works contractors and subcontractors performing on a public works contract paid for in whole or in part out of the funds of a public body when the cost of the total project is in excess of \$25,000.

(b) The cost of the total project must include the sum of prime contracts to be issued by the public body for the project.

(c) To the extent the cost of the total project is in excess of \$25,000, contracts and subcontracts, regardless of value, shall comply with the act.

(d) The act does not apply to work performed under a manpower or rehabilitation training program.

## § 66.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Public Works Employment Verification Act (43 P. S. §§ 167.1—167.11).

*Contract*—A type of written agreement, regardless of what it may be called, for the procurement of construction work.

*Department*—The Department of General Services of the Commonwealth.

*EVP—E-Verify program*—The program operated by the United States Department of Homeland Security that electronically verifies employment eligibility.

*Employee*—An individual hired by a public works contractor or a subcontractor after January 1, 2013, for whom a public works contractor or subcontractor is required by law to file a Form W-2 with the Internal Revenue Service.

*Form*—Public Works Employment Verification Form.

*Maintenance work*—Annual inspection or routine upkeep of an existing facility which does not alter the use or size of the facility.

*Public body*—The Commonwealth of Pennsylvania, its political subdivisions, authorities created by the General

Assembly of the Commonwealth and instrumentalities or agencies of the Commonwealth.

*Public works—*

(i) The construction, reconstruction, demolition, alteration or repair work other than maintenance work done under contract and paid for in whole or in part out of the funds of a public body when the estimated cost of the total project is in excess of \$25,000.

(ii) The term does not include work performed under a manpower or rehabilitation training program.

*Public works contractor—*A contractor that provides work under a contract involving public works.

*Secretary—*The Secretary of the Department.

*Subcontractor—*

(i) A person, other than a natural person, including a staffing agency, that performs work for a public works contractor under a contract for public works.

(ii) The term includes subcontractors of every level, that is, sub-subcontractors, sub-sub-subcontractors, and the like.

(iii) The term does not include persons that supply materials for a project.

*Willful—*An action or conduct undertaken intentionally or with reckless disregard for or deliberate ignorance of the requirements and obligations established under the act.

**§ 66.4. General requirements for public works contractors and subcontractors.**

(a) Public works contractors and every subcontractor performing work under a public works contract shall utilize the EVP system to verify the employment eligibility of each new employee hired after January 1, 2013.

(b) Public works contractors and every subcontractor performing work under a public works contract shall submit the Form to the contracting public body to ensure compliance with the act.

(c) In addition to the Form, public works contractors and every subcontractor shall maintain documentation of continued compliance with the act by utilizing the EVP for new employees hired throughout the duration of the public work contract.

**§ 66.5. Specific requirements for public works contractors.**

(a) As a precondition to the award of a contract for public work, a public works contractor shall submit a completed Form to the public body that is bidding and awarding the public work contract. With respect to a contract that has been awarded but has not been fully executed as of January 1, 2013, a public works contractor is required to submit a completed Form to the contracting public body prior to contract execution. During a public works contract, a new employee hired by a public works contractor, regardless of whether he will be working onsite or offsite of a public work or otherwise, shall be verified within 5 business days of his start date.

(b) Subcontracts between a public works contractor and its subcontractors are required to contain notification of the applicability of the act, information regarding the use of EVP and reference to the Department's web site at [www.dgs.state.pa.us](http://www.dgs.state.pa.us) to obtain a copy of the Form.

(c) A public works contractor shall cooperate with the Department during an investigation or audit arising under the act.

**§ 66.6. Specific requirements for public works subcontractors.**

(a) Prior to beginning either onsite or offsite work on a public works project when the public works contractor's contract was executed after January 1, 2013, every subcontractor shall submit a completed Form to the contracting public body. During a public works contract, a new employee hired by a public works subcontractor, regardless of whether he will be working onsite or offsite of a public work or otherwise, shall be verified within 5 business days of his start date.

(b) Subcontracts between a subcontractor and its subcontractors are required to contain notification of the applicability of the act, information regarding the use of EVP and reference to the Department's web site at [www.dgs.state.pa.us](http://www.dgs.state.pa.us) to obtain a copy of the Form.

(c) A subcontractor shall cooperate with the Department during an investigation or audit arising under the act.

**§ 66.7. Public Works Employment Verification Form.**

(a) The Form for use by public bodies, public works contractors and subcontractors is posted on the Department's web site at [www.dgs.state.pa.us](http://www.dgs.state.pa.us). The Form may not be changed or altered.

(b) The Form shall be signed by an authorized representative of the public works contractor or subcontractor. The representative shall have sufficient knowledge to make the representations and certifications in the Form.

(c) The Department may require the public works contractor or subcontractor to provide supporting documentation that the representative signing the Form had authority to legally bind the public works contractor or subcontractor.

(d) The submitted Forms shall be retained by the public body for the duration of the public work contract.

**§ 66.8. Violations.**

A public works contractor or subcontractor violates the act if it does either of the following:

(1) Fails to verify the employment eligibility of a new employee hired after January 1, 2013, through EVP in accordance with the act and this chapter.

(2) Makes a false statement or misrepresentation in connection with the completion or submission of the Form to a public body.

**§ 66.9. Enforcement.**

The Department will enforce the act through investigations, audits, sanctions and civil penalties in accordance with the following guidelines.

(1) *Investigations of complaints.* The Department will accept, review and investigate timely and credible complaints filed on the Complaint Form posted on the Department's web site.

(i) A complaint must contain sufficient information to enable the Department to investigate the allegation. The Department reserves the right to reject complaints that do not provide sufficient information. The Department will consider the timeliness of the complaint in assessing its credibility.

(ii) Public bodies, public works contractors and subcontractors shall cooperate with the Department during the investigation of a complaint.

(2) *Audits.* The Department will conduct complaint-based and random audits of public works contractors and subcontractors performing a public works contract for a public body in this Commonwealth. The Department reserves the right to determine the time, place and nature of audits.

(i) Public bodies, public works contractors and subcontractors shall cooperate with the Department during an audit.

(ii) Upon an audit, the Department may request, and the public works contractors and subcontractors shall provide, the following:

(A) Documentation of the date of hire of all employees.

(B) Documentation of compliance with the act through the utilization of EVP.

(C) Other information required by the Department to ensure compliance with the act and utilization of EVP.

(3) *Sanctions.*

(i) If the Department's investigation determines that a public works contractor or subcontractor failed to verify an employee through the use of EVP in accordance with the act and this chapter, the Department will issue sanctions as follows:

(A) *First violation.* The Department will issue a warning letter to the public works contractor or subcontractor detailing the violation. This letter will be posted on the Department's E-Verify web site at [www.dgs.state.pa.us](http://www.dgs.state.pa.us). A violation by a public works contractor or subcontractor that occurs 10 years or more after a prior violation will be deemed to be a first violation for purposes of sanctions.

(B) *Second violation.* The Department will initiate debarment proceedings against the public works contractor or subcontractor. Once final, these proceedings will prevent a public works contractor or subcontractor from

submitting a bid or being awarded a contract or subcontract on a public works contract in this Commonwealth for 30 calendar days from the date of debarment.

(C) *Third and subsequent violations.* The Department will initiate debarment proceedings against the public works contractor or subcontractor. Once final, these proceedings will prevent a public work contractor or a subcontractor from submitting a bid or being awarded a contract or subcontract on a public works contract in this Commonwealth for not less than 180 days and not more than 1 year from the date of debarment.

(ii) *Willful violation.* If the Department investigates and forms a reasonable belief that there has been a willful violation of the act, the Secretary will file a petition in Commonwealth Court seeking the Court to issue a rule to show cause why a public works contractor or subcontractor did not engage in a willful violation of the act. If the Court finds that there was a willful violation, the Department will petition to have the public works contractor or subcontractor debarred from public work contracts for 3 years from the date of the Court's determination.

(4) *Civil penalties.* If the Secretary or a designee makes a written determination that the violation is for failing to submit a complete Form or making a false statement or misrepresentation in the Form, the Department will assess a civil penalty of not less than \$250 and not more than \$1,000 for each violation. The amount of the penalty is at the Department's discretion. The Department will consider the severity of the violation, and prior violations in imposing civil penalties.

(5) *Notice and appeal.* Sanctions or civil penalties imposed by the Department, other than those violations found to be willful, are subject to the notice, appeal and other provisions of 2 Pa.C.S. (relating to administrative law and procedure).

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