

Immigration and Employee Qualification Requirements

BY RYAN R. LOGHRY

The unauthorized alien debate continues... but not for contractors.

THE IMMIGRATION DEBATE is a hot topic. For example, citing the U.S. federal government's failure to enforce existing law, Arizona recently enacted an immigration law intended to stem human-trafficking and drug-related border violence. This law is supported by many Americans but has been met with highly publicized criticism by others. Recently, a federal judge struck down certain provisions of Arizona's new immigration law. To read a copy of the court's order, go to <http://bit.ly/boRf9D>.

Immigration and employment of unauthorized aliens are not new issues for the construction industry. Contractors are already subject to civil and criminal penalties under Immigration Reform and Control Act of 1986 ("IRCA"). Georgia, Tennessee, and other states have jumped into the fray by enacting their own laws that regulate the hiring of unauthorized aliens on public jobs.

This year in Kentucky, the House of Representatives overwhelmingly (99 to 3) passed HB 321. This legislation included, among other things, requirements for contractors and all of their subcontractors on public jobs to submit sworn affidavits that they have no unauthorized alien employees and that they are registered with and participating in a federal work authorization program under IRCA. HB 321 also addressed issues relating to indemnification, enforcement, penalties, and a "good faith" defense to alleged violations.

HB 321 did not make it through the Kentucky Senate before the legislation session ended, so it is not law. But renewed efforts to pass this type of legislation in Kentucky are likely.

What steps have you taken to ensure that your company is in compliance with IRCA or other laws that may regulate the hiring of unauthorized aliens? Do your

contracts or subcontracts address issues relating to the hiring of unauthorized aliens? If not, they should. **MSC**



Ryan Logbry is an associate in the Lexington, Ky., office of Stites & Harbison PLLC, where his practice includes construction litigation, contract review, and other business issues. He can be reached at rlogbry@stites.com.