



**HOUSE COMMERCE & LABOR COMMITTEE
OPPONENT TESTIMONY ON H.B. 327**

**Provided on May 21, 2024 by
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Associated General Contractors (AGC) of Ohio**

Chair Johnson, Vice Chair Manchester, Ranking Minority Member McNally, and Representatives on the Commerce & Labor Committee:

AGC of Ohio and the Construction Employers Association (CEA) are construction associations that represent large and small commercial building, industrial and heavy/highway contractors. Our members work on both public and private projects. They build and renovate hospitals, roads and bridges, offices, schools, utilities, wastewater treatment plants, warehouses and manufacturing facilities, mixed-use developments, and a host of other structures. Our members are the nonresidential builders that are impacted by this legislation.

Thank you for the opportunity to provide our input on H.B. 327's latest substitute bill (or what we're calling "-6"). We again want to make clear that AGC and CEA do not support nor condone the use of undocumented workers in construction, or any industry. We appreciate the sponsors' and Chair Johnson's efforts to appease our concerns, and are grateful they shared the latest sub-bill with us yesterday afternoon.

However, at this time AGC of Ohio and CEA must come out against Sub. H.B. 327. In addition to our broader concerns about nonresidential contractors being the only ones in the construction industry covered, the disparate impact on smaller



contractors, and construction employers being treated differently than other employers... parts of this legislation remain very flawed.

- The definitions of public contractor, subcontractor and nonresidential contractor are inconsistent and confusing. They also include the word “individual,” and as drafted, an individual could include a foreman, superintendent, project manager, etc... anyone who has the responsibility for implementing the terms of a contract. Combined with the inclusion of the word “individual” in the penalty section, those individuals could be penalized in lieu of the company. Those definitions need cleaned up, and “individual” needs to be defined.
- Contractors are required to E-Verify individuals “assigned” to a project. However, Federal law only allows for an I-9 of individuals employed by an entity. As such, the bill directly conflicts with federal law and creates a state law that is impossible for contractors to comply with.
- Nothing in the legislation addresses the potential for frivolous complaints or the potential of weaponizing the complaint process. The Attorney General should have more discretion with investigating complaints. Additionally, a provision is needed to ensure any complaint is asserted in good faith and there is probable cause to believe a violation has occurred before the Attorney General investigates.
- The language related to penalties and how they apply is very confusing as drafted (i.e. application of the reckless standard, who is penalized). And the Attorney General should have more discretion in the process. *Sec.*

4151.06(B)(2)



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- A broader concern with the penalty process... The penalties in this bill focus on an administrative task: E-Verifying workers. Why aren't penalties tied directly to whether contractors or employers hire illegal workers?
 - The right to cure provisions should be broader to cover those who self-correct prior to an Attorney General investigation.
 - Voiding a contract has broader implications than just punishing the contractor whose contract is voided. In addition to that contractor not being able to recoup costs for any work completed and approved by the owner (per case law), others connected that contract (lower tier contractors, suppliers) could be impacted and not receive payment for work performed.
 - Regarding the private project contractor requirements... it appears that the contractor is responsible for the E-Verification of the subcontractors' workers. *Sec 4151.04(B)(1)*
 - We need clarification that the bill includes the appropriate reference to the E-Verify law governing continuous employment. The rehire language that was amended into the bill initially does not suffice. E-Verify's continuous employment regulations specifically address temporary layoffs, seasonal employment, medical leave, strikes, etc. That needs to be included in the bill.
 - Any public debarment process should be handled by the appropriate public entity (i.e. ODOT, OFCC), not a civil court.

Again, we appreciate the opportunity to share our concerns with Sub. H.B. 327. AGC of Ohio and CEA continue to welcome the opportunity to work with interested parties and help find a viable solution to address illegal arrangements



between employers and employees. However, until the problematic issues in the bill are addressed, we urge you to vote no on Sub. H.B. 327.