



## **Ohio Contractors Association**

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Senate General Government Committee  
Opponent Testimony on House Bill 327  
Chris Runyan, President  
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Chairman Wilkin, Ranking Member DeMora and members of the Senate General Government Committee, thank you for the opportunity to provide opponent testimony on House Bill 327. My name is Chris Runyan, and I am the President of the Ohio Contractors Association. Our members build Ohio's public infrastructure at the federal, state and local levels of government. While the majority of work our members perform is in the public sector, our members also perform work for private sector clients.

I want to begin by saying opposing this legislation was not an easy decision. In no way should our opposition be construed as supporting the hiring of undocumented individuals in the construction industry – or any industry for that matter. We unequivocally do not support this practice. Our opposition stems in large part from the inconsistencies and mechanics of the bill, as well as the lack of an opportunity to have meaningful input when the bill was considered in the House.

I'm going to keep my comments to a higher-level discussion for purposes of brevity today, but I would be more than happy to provide more detail on the glaring inconsistencies and confusing language of the bill. Our overarching concerns are:

1. Why is the construction industry, namely the public heavy/highway/civil and commercial sectors, being targeted? The threshold for other employers is 75 employees, but for construction the threshold for compliance starts with one employee.
2. Why is an administrative process – the E-Verify process – considered to be an effective deterrent to hiring undocumented workers? Shouldn't focus be directed to the actual hiring and employment of undocumented workers?
3. The bill would require public contractors to E-Verify individuals "assigned" to a project. Federal law only allows employers to obtain an I-9, which is needed to perform E-Verify, on individuals the employer hires and employees. As such, the bill requires employers to perform administrative tasks they cannot do per federal law.
4. The language that voids a public contract if it does not have an E-Verify requirement is extreme. There is case law dating back to 1899 setting the standard for the definition of a voided contract. If a contract is void, it is treated as if it never existed. So, the contractor will not be paid for any work completed and the public entity has no leverage to compel a contractor to work. The surety bond cannot be enforced because legally, it never existed. To fully understand the implications of this on the public sector side, is the public interest being protected by allowing a highway construction project to be halted at any stage of completion simply because the contract did not include an administrative task?

Just think what would happen if the contract for a project like the expansion of I-70/I-71 split project or even a small county bridge replacement project inadvertently lacked the required E-Verify provision. The project would come to a dead halt, and the project owner would have to rebid the project which would account for a significant delay and increased costs to the public. And the contractor would likely be unable to recover from this lost work as they would not legally be able to be paid for work completed.

5. This bill ignores federal E-Verify protections for seasonal workers.
6. The definitions in the bill are quite frankly confusing and inconsistent. Our members could meet more than one definition, and many of our members could meet all the definitions. And the terms defined in the bill are not used in the penalty provisions creating even more confusion.
7. While the debarment penalty was changed to a higher standard in the House, we still have grave concerns with state debarment being in this bill. Contract owners like ODOT already have authority to debar contractors. Contrary to what another witness shared previously, ODOT's debarment authority is broad and gives the Director authority to set debarment periods, as well as rescind debarment. This bill would interject the civil court system in the debarment process which takes authority away from the contract owner, mainly a public agency. I cannot help but pose the question of what public interest is served by a large highway contractor being debarred for not completing an administrative task?
8. All the language in the bill focuses on contract compliance. However, the E-verify requirement in the bill applies to all employees hired in the state by an entity during the term of the contract, yet these employees may not be working on that contract in question.

Bottom line – If you think E-Verify is a solution to help curb the issue of hiring undocumented illegals in Ohio, remove all the construction-related mumbo jumbo from this bill and apply one threshold for all employers. If you want to target only a segment of the construction industry and give the most prolific construction violators, along with those in other industries, a pass, make that intent equally clear. Please keep in mind that with yet another administrative mandate, the cost of publicly bid projects only continues to increase due to even more paperwork and its related overhead. In either case, please keep E-Verify compliant to the rules and regulations of the federal mandates and do not make it more complex by adding Ohio edits.

Thank you for the opportunity to address House Bill 327 and I am happy to address any questions you may have.