



**SENATE GENERAL GOVERNMENT COMMITTEE
OPPONENT TESTIMONY ON H.B. 327**

**Provided on December 10, 2024
Andrea Ashley, Vice President of Government Relations
Associated General Contractors (AGC) of Ohio**

Chair Wilkin, Vice Chair Reineke, Ranking Minority Member DeMora, and Senators on the General Government Committee:

AGC of Ohio is a construction employer association representing large and small, union and open shop, commercial and industrial contractors across Ohio. Our members work on both public and private projects. They build and renovate hospitals, offices, schools, utilities, wastewater treatment plants, warehouses and manufacturing facilities, mixed-use developments, and other vertical structures.

AGC of Ohio does not support or condone the use of illegal workers in construction—or any industry. Nor are we opposed to the E-Verify system itself. However, we were compelled to oppose H.B. 327 because it weaponizes the administrative aspects of E-Verify, introduces conflicts with federal law, and creates risks that could put contractors out of business—even those who have never hired an illegal worker.

AGC of Ohio, along with other industry groups, engaged in good faith with the House sponsors of H.B. 327 to craft a rational E-Verify mandate. Unfortunately, when it became clear that our effort to improve the bill was not being considered in earnest, we were left with no choice but to oppose it. For further context, an email that was sent to the House Rules and Reference Committee is included at the end of this testimony. It outlines what AGC and OCA viewed as a fundamentally unfair and flawed process in the House.



For example, when examining the definitions in H.B. 327, they are both confusing and overbroad. AGC members could fall under numerous classifications, including “bidder,” “public contractor,” “employer,” “nonresidential construction contractor,” “maintenance” contractor, and “subcontractor,” each with different obligations under the bill. Additionally, the inclusion of the term “individual” in these definitions raises questions about whether the bill could apply penalties directly to company employees such as field superintendents or forepersons. For the purposes of today’s testimony, however, I will focus on the implications for construction employers.

As written, H.B. 327 mandates that contractors take actions that could directly conflict with federal E-Verify law and regulations today or as the federal government amends those regulations in the future . To address this issue, at a minimum, a catch-all provision is needed. It should state that nothing in the bill shall be interpreted as requiring a contractor—or any other entity identified within the legislation—to violate federal laws, rules, or requirements. This safeguard would ensure alignment with existing federal regulations and prevent unnecessary legal conflicts for contractors working in good faith to comply with the law.

Moreover, the penalties — even the most severe that could put a contractor out of business — are tied to administrative errors related to E-Verification rather than intentional (or unintentional) illegal hiring practices. This approach penalizes honest contractors while failing to address the root of the issue. Two examples:

- Sec. 4151.02(D). This provision requires state agencies and political subdivisions to include E-Verification requirements in their contracts and declares the contract void should it be omitted. Voiding a contract has far-ranging repercussions. *Buchanan Bridge v. Campbell*, 60 Ohio St. 406, 54 N.E. 372 (1899)) provides an important precedent for understanding the implications of statutory



noncompliance in contract law. A void contract is treated as if it never existed, and neither party can enforce its terms. This could mean the contractor has no right to payment, and the hiring entity (e.g., state agency or political subdivision) cannot enforce performance obligations.

Therefore, under this provision, a public project could be halted, even when halfway complete, because the public owner inadvertently excluded E-Verification language in the contract. When a contract is voided, contractors may not be compensated for work completed and could even be required to return payments for completed work to the owner; the project would have to be rebid, and its completion delayed significantly; and payment and performance bonds may also be voided. Additionally, innocent third parties (e.g., subcontractors, suppliers) could face nonpayment. This could put a contractor – and even some of its subcontractors – out of business.

- Sec. 4151.06. This section requires a civil court to find that any individual or entity who recklessly violates an E-Verify requirement on a public contract ineligible to “bid or participate” on public contracts for one year. Under this provision, not only would a contractor be barred from bidding on future public projects, but the inclusion of the word 'participate' means the contractor would also be removed from its current public projects. It leaves no discretion for the courts to consider mitigating circumstances, and it bypasses the established debarment processes already in place for state agencies and political subdivisions. And again, this penalty could be levied for simply failing to complete an administrative task – even if no undocumented worker was ever hired.



H.B. 327 also fails to address the potential for frivolous complaints or the weaponization of the complaint process. The Attorney General (AG) is afforded little discretion in the investigation process. The bill mandates that the AG investigate all complaints submitted on a prescribed form, without any requirement to assess probable cause or legitimacy before initiating an investigation. Moreover, H.B. 327 lacks any 'right to cure' provisions for those who identify and self-correct violations before an AG investigation, particularly for entities acting in good faith to comply with the law. (Sec. 4151.05)

On a more technical note, the rehire language amended into the bill during the House process is insufficient and fails to reference the appropriate sections of federal E-Verify. Federal continuous employment regulations explicitly address circumstances such as temporary layoffs, seasonal employment, medical leave, and strikes. To ensure consistency with these regulations, the correct federal references must be incorporated into the bill.

There are many other aspects of H.B. 327 that could be improved. AGC of Ohio remains committed to working collaboratively with this committee and other stakeholders to craft a meaningful and effective solution to address illegal hiring arrangements.

However, as currently written, this legislation poses significant risks of unintended consequences for contractors who are already striving to comply with labor laws and operate legitimate businesses. We respectfully urge the committee to carefully evaluate the potential impacts of H.B. 327 on Ohio's construction industry, its workforce, and the critical projects that depend on it.



From: Andrea Ashley

Sent: Monday, June 10, 2024 7:55 AM

To: rep48@ohiohouse.gov; rep07@ohiohouse.gov; rep10@ohiohouse.gov; rep94@ohiohouse.gov; rep43@ohiohouse.gov; rep81@ohiohouse.gov; rep24@ohiohouse.gov; Rep01@ohiohouse.gov; rep73@ohiohouse.gov; Rep92@ohiohouse.gov; rep66@ohiohouse.gov

Cc: Michelle Holdgreve <MHoldgreve@ohiocontractors.org>

Subject: RE: Request to Rules Committee to re-refer HB 327 for additional consideration

Separate from the coalition correspondence, the Ohio Contractors Association (OCA) and Associated General Contractors of Ohio (AGC) felt it important to highlight the process related to H.B. 327. We've heard repeatedly from legislators that the sponsors and proponents have told them that they went out of their way to address our concerns in the six different drafts of the legislation. We strongly disagree.

At no point did we have the opportunity to review any draft language or even discuss the specifics of what would be included to address our issues. Additionally, an amendment was offered on behalf of the "Ohio Contractors," and at no point was the Ohio Contractors Association made aware that an amendment was being offered, let alone examine the amendment in advance. (Interestingly, the amendment that was offered referenced the incorrect provision from federal E-Verify.)

Another failure in the process involved a virtual meeting we had with the bill's sponsors, House policy staff, and LSC where we went over our key concerns. At the conclusion of the meeting, we were told that they'd try to address the issues and to send them language. Three days later, as our two associations were reviewing the recommended language changes from our legal counsel (which we had to hire due to the complicated and serious nature of the bill for contractors), we received a draft of a new sub-bill (-5) that made significant changes to the legislation, well beyond what was discussed during the prior meeting. And then, a few days later (less than 48 hours before the hearing where HB 327 was voted out of committee), we received a copy of a new sub-bill (-6). At no point with any of the versions were we consulted or even informed of the changes being made on our behalf, despite the sponsors and proponents touting that they "addressed our concerns." There was no communication outside of that virtual meeting.

In our combined over 40 years' experience at the statehouse, we have never experienced anything like this. The process has been incredibly disappointing. We strongly encourage you to consider re-referring H.B. 327 and sincerely consider the concerns of the nonresidential contractors impacted by this legislation.

Sincerely,

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