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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 246
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Swearingen and Fischer

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SUMMARY

Nonresidential construction hiring and retention requirements

- Requires a nonresidential construction contractor, subcontractor, or labor broker to verify each new employee's work eligibility through the federal E-Verify program and keep a record of the verification for the duration of the employee's employment or three years, whichever is longer.
- Requires a nonresidential construction contractor, subcontractor, or labor broker to terminate an employee's employment after receiving a notice of final nonconfirmation for that individual from the E-Verify program.

Investigations and enforcement

- Requires the Attorney General to investigate alleged violations of the bill's requirements when a written complaint includes sufficient facts to reasonably conclude that a violation may have occurred.
- Requires, after an investigation and a hearing, the Attorney General to order a nonresidential construction contractor, subcontractor, or labor broker who has violated the bill to pay a fine and submit satisfactory proof of compliance.
- Requires the Attorney General to sue in a court of common pleas when a contractor, subcontractor, or labor broker does not comply with an order within 30 days of issuance.
- Requires a court to fine a violator and disqualify the violator from participation in state contracts for a two-year period.
- Requires a court, after determining in an enforcement lawsuit that a contractor, subcontractor, or labor broker knowingly employed an unauthorized alien, to suspend or revoke a license held by the contractor, subcontractor, or labor broker specific to the

business location where the work was performed or a general license necessary for the conduct of business.

Other provisions

- Requires the Attorney General to conduct periodic reviews to ensure state agencies and political subdivisions include provisions that comply with the bill's requirements in their nonresidential construction contracts.
- Subjects a state agency or political subdivision to a \$5,000 fine for each instance where it fails to include provisions that comply with the bill in a nonresidential construction contract.
- Creates the E-Verify Enforcement Fund to be used by the Attorney General for the bill's enforcement.

DETAILED ANALYSIS

Nonresidential construction hiring and retention requirements

Use of E-Verify for hired employees

The bill requires a nonresidential construction contractor, subcontractor, or labor broker to do both of the following:

- Except as described below, verify the employment eligibility of each employee hired to perform work on a nonresidential construction project through the E-Verify program (see **"Background – employee work eligibility and E-Verify,"** below);
- Keep a record of the verification for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later.¹

The bill defines "nonresidential construction contractor," "subcontractor," and "labor broker" as follows:

- **Nonresidential contractor:** Any individual or entity that is responsible for the means, method, and manner of construction, improvement, renovation, or repair of a nonresidential construction project with respect to one or more trades and represents that the individual or entity is permitted or qualified to perform or have responsibility for the means, method, and manner of construction, improvement, renovation, or repair on the project.
- **Subcontractor:** Any individual or entity who enters a contract with a nonresidential construction contractor or another subcontractor, regardless of tier, to perform work on a nonresidential construction project.

¹ R.C. 4151.02(A) and (B).

- **Labor broker:** Any individual or entity, other than a governmental entity or labor organization (essentially a union), who hires an employee and supplies the employee's labor to a nonresidential construction contractor or a subcontractor using a contract.²

The bill makes the individual or entity that employs an employee responsible for verifying the employee's identity and employment eligibility through E-Verify. An "employee" is any individual who performs services for a nonresidential construction contractor, subcontractor, or labor broker in exchange for a wage, salary, or other remuneration, and who is subject to the contractor's, subcontractor's, or labor broker's direction and control in both the details of how work is performed and the result accomplished.³

Under the bill, a "nonresidential construction project" is any construction project involving construction or renovation of any building, highway, bridge, utility, or related infrastructure, but does not include any of the following:

- An industrialized unit, manufactured home, or a residential building as defined in the Ohio Building Code Law;
- A building or structure that is incidental to the use of the land on which the building or structure is located for agricultural purposes;
- A mobile home as defined in continuing law.⁴

Exemption for certain employees

The bill exempts a nonresidential construction contractor, subcontractor, or labor broker from the E-Verify requirements when both of the following apply:

- The contractor, subcontractor, or labor broker previously used E-Verify to verify the employee's work eligibility;
- The contractor, subcontractor, or labor broker is not required to verify or reverify the employee's eligibility to work under the federal Immigration Reform and Control Act of 1986 (IRCA).⁵

Retention of unverified employees

The bill also requires a nonresidential construction contractor, subcontractor, or labor broker to terminate an employee's employment after receiving a notice of final nonconfirmation for that employee from the E-Verify program. A final nonconfirmation occurs when the contractor, subcontractor, or labor broker receives an E-Verify case result indicating that an employee's employment eligibility could not be confirmed and instructions to close the E-Verify

² R.C. 4151.01(D), (E), and (G), by reference to R.C. 3517.01, not in the bill.

³ R.C. 4151.01(B) and 4151.02(A).

⁴ R.C. 4151.01(F), by reference to R.C. 3781.06 and 4501.01, not in the bill

⁵ R.C. 4151.02(B), by reference to 8 United States Code (U.S.C.) 1324a(b).

case associated with the employee (see “**Background – employee work eligibility and E-Verify**,” below).⁶

Investigation and enforcement

Under the bill the Attorney General must prescribe a complaint form an individual may use to allege a violation of the requirements described above. The Attorney General cannot require an individual filing a complaint to list the individual’s Social Security number or have the form notarized. The Attorney General must investigate any violation alleged in a prescribed form when the Attorney General determines the complaint contains sufficient facts to reasonably conclude a violation may have occurred. An individual may file a complaint using a different form, but the Attorney General is not obligated to investigate a complaint filed using a nonprescribed form.⁷

The Attorney General cannot investigate a complaint based solely on race, color, or national origin. A local law enforcement officer may assist the Attorney General’s investigation.⁸

If the Attorney General investigates a complaint and finds reasonable evidence exists of a violation, the Attorney General must, after providing notice and an opportunity for a hearing in accordance with the Administrative Procedure Act,⁹ issue an order that does both of the following:

- Directs the nonresidential construction contractor, subcontractor, or labor broker to provide the Attorney General with satisfactory proof that any violation has been corrected;
- Imposes a monetary penalty.

The Attorney General cannot issue an order, or sue as described below, if a violation was the result of an isolated technical error or a malfunction in the E-Verify program.¹⁰

The penalty varies depending on the number of violations discovered and whether the contractor, subcontractor, or labor broker has been ordered to pay a penalty in the preceding three years. When a contractor, subcontractor, or labor broker has not been ordered to pay a fine within the preceding three years, the fine for failing to use E-Verify is \$250 per failure. The fine for failing to fire an employee after a notice of final nonconfirmation is \$5,000 per failure.

If the contractor, subcontractor, or labor broker has been ordered to pay a fine for violations during the preceding three years, the fine for failing to use E-Verify is \$1,000 per failure. The fine for failing to fire an employee after a notice of final nonconfirmation is \$10,000 per failure.

⁶ R.C. 4151.03.

⁷ R.C. 4151.04(A).

⁸ R.C. 4151.04(B) and (C).

⁹ R.C. Chapter 119.

¹⁰ R.C. 4151.04(D) and (G).

Where a contractor, subcontractor, or labor broker has been ordered to pay the enhanced fine described above during the preceding three years, the fine for failing to use E-Verify is \$1,500 per failure. The fine for failing to fire an employee after a notice of final nonconfirmation is \$25,000 per failure.¹¹

If a contractor, subcontractor, or labor broker fails to comply with the Attorney General's order within 30 days after its issuance, the Attorney General must sue in the court of common pleas of the county where the contractor, subcontractor, or labor broker is located or does business or where the violation occurred.¹²

On determining a contractor, subcontractor, or labor broker has violated the bill, a court must do both of the following:

- Order the contractor, subcontractor, or labor broker to pay any portion of the penalty imposed by the Attorney General that the court determines to have been validly imposed based on the evidence presented plus an additional \$1,000 for each violation;
- Bar the contractor, subcontractor, or labor broker from bidding on or participating in any state contract for a period of two years.¹³

After the two-year period described above elapses, a disqualified contractor, subcontractor, or labor broker may be eligible to bid for and participate in state contracts if the contractor, subcontractor, or labor broker files a sworn affidavit with the Director of Administrative Services that two years or more have elapsed since the disqualification and the contractor, subcontractor, or labor broker has not violated the bill during the period. The Director must maintain a list of all individuals and entities ineligible to bid for or participate in state contracts due to a violation. The Director must remove a contractor, subcontractor, or labor broker from the list when the two-year period ends, unless the contractor, subcontractor, or labor broker has an unpaid fine levied under the bill. A court must provide the Director with a copy of any disqualification order, and the Department must maintain a record of all orders and affidavits filed with the Director.¹⁴

Employment of unauthorized alien

In a lawsuit described above, the Attorney General also may present evidence that a nonresidential construction contractor, subcontractor, or labor broker knowingly employed an individual who is not a U.S. citizen or national and who is not authorized to be employed under the IRCA (an "unauthorized alien").¹⁵ If the court determines the contractor, subcontractor, or labor broker knowingly employed an unauthorized alien, the court must order the appropriate agencies to permanently revoke all licenses held by the contractor, subcontractor, or labor broker

¹¹ R.C. 4151.04(E).

¹² R.C. 4151.04(F) and 4151.05(A).

¹³ R.C. 4151.05(B)(1).

¹⁴ R.C. 4151.05(B)(2) and (3) and (C).

¹⁵ R.C. 4151.01(A) and (H) and 4151.04(F).

specific to the business location where the unauthorized alien worked. If the contractor, subcontractor, or labor broker does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the business in general, the court must order the appropriate agencies to permanently revoke all licenses held by the contractor, subcontractor, or labor broker at its primary place of business. The appropriate agencies immediately must revoke the licenses after receiving the order.¹⁶

When deciding whether an employee was an unauthorized alien at the time of employment, a court may consider only the alien's status as determined by the federal government pursuant to federal immigration law. The federal government's determination creates a rebuttable presumption of the alien's status. The court may take judicial notice of the determination and may request the federal government to provide automated or testimonial verification.¹⁷

Public contracts

Under the bill, the Attorney General must conduct periodic reviews to ensure state agencies and political subdivisions include provisions that comply with the bill's requirements in their nonresidential construction contracts. Any state agency or political subdivision that fails to include provisions requiring compliance with the bill is subject to a \$5,000 fine per failure.¹⁸

E-Verify Enforcement Fund

The bill creates the E-Verify Enforcement Fund in the state treasury. Fines collected under the bill must be deposited to the credit of the fund. The Attorney General must use the fund to administer and enforce the bill.¹⁹

Background – employee work eligibility and E-Verify

The IRCA prohibits hiring or employing an unauthorized alien and establishes criminal and civil penalties for knowingly doing so.²⁰ To comply with the IRCA, an employer and a new employee must complete the "I-9 Employment Eligibility Verification Form," known as the "I-9 form."²¹ An employer and all new employees must complete this form during the first three days of employment. The form must be completed for all new employees, citizens and noncitizens

¹⁶ R.C. 4151.06(A)

¹⁷ R.C. 4151.06(B).

¹⁸ R.C. 4151.07.

¹⁹ R.C. 4151.05(D).

²⁰ 8 U.S.C. 1324a.

²¹ See [OMB No. 1615-0047 \(PDF\)](#), which may be accessed by conducting a keyword "I-9 form" search on the U.S. Citizenship and Immigration Services (USCIS) website: www.uscis.gov.

alike. In addition, as part of the required verification of employment eligibility, the employer must examine specified documents the employee provides.²²

As an option in the verification process, the employer may register in the “E-Verify program” and use the E-Verify verification system.²³ Participation in E-Verify is voluntary, unless participation is required by state or federal laws or regulations.²⁴

E-Verify is an internet-based program that helps employers verify newly hired employees work eligibility by comparing information from the I-9 form against databases maintained by the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA). An employer creates a case in the system for each new employee and provides the required information from the I-9 form.

The E-Verify system responds to each case by either confirming the employee’s employment eligibility or indicating that further action is necessary to complete the verification. If E-Verify cannot confirm an employee’s employment eligibility after receiving the additional information, or no information is provided, the system notifies the employer that the employee could not be verified and instructs the employer to close the case. Federal law allows, but does not require, an employer to fire an employee based on a final notice that the system could not confirm the employee’s work authorization.²⁵

The IRCA includes a provision expressly prohibiting any state or local law “imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ . . . unauthorized aliens.” If the bill’s requirement to terminate an employee’s employment based on a final nonconfirmation from E-Verify were challenged, a reviewing court might examine the IRCA and federal interpretations of it to determine whether the requirement is preempted under the Supremacy Clause of the U.S. Constitution.²⁶

²² 8 Code of Federal Regulations (C.F.R.) 274a.2. See also [Handbook for Employers M-274](#), sections [2.0](#), [3.0](#), and [4.0](#), which may be accessed by conducting a keyword “employer handbook” search on the USCIS website and clicking on the link for the desired section.

²³ Originally known as the Basic Pilot/Employment Eligibility Verification Program, the program was renamed E-Verify in 2007.

²⁴ See, e.g., 48 C.F.R. 22.1802 and [E-Verify Requirements Status](#), which may be accessed by conducting a keyword “E-verify” search on the World Population Review website: www.worldpopulationreview.com.

²⁵ R.C. 4151.01(C); see also [About E-Verify](#), which may be accessed by clicking the “About E-Verify” link on the E-Verify website: www.e-verify.gov and [E-Verify User Manual – 3.6 Final Nonconfirmation](#), which can be accessed on the E-Verify website: www.e-verify.gov.

²⁶ See U.S. Constitution, Article VI, Clause 2 and *Chamber of Commerce v. Whiting*, 563 U.S. 582 (2011).

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 04-29-25 |
