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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 246  
(with AMO454)  
136<sup>th</sup> General Assembly**

## **Fiscal Note & Local Impact Statement**

[Click here for H.B. 246's Bill Analysis](#)

**Version:** In House Commerce and Labor

**Primary Sponsors:** Reps. Swearingen and Fischer

**Local Impact Statement Procedure Required:** No

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### **Highlights**

- The costs for the Attorney General to investigate and enforce civil violations of the bill's E-Verify requirements will depend on the number of violations discovered and/or reported. Any increase in enforcement actions, including civil cases, pursued by the Attorney General are expected to be relatively small in the context of overall caseloads.
- An indeterminate amount of civil penalty money may be generated annually from persons or entities that fail to comply with the bill's E-Verify requirements and directed to the newly created E-Verify Enforcement Fund to be utilized by the Attorney General for enforcement costs.
- The Department of Administrative Services will incur some costs to develop and maintain a debarment list for state contracts; the totality of these costs will largely depend on the number of entities on this list.

### **Detailed Analysis**

The bill is unlikely to result in significant new costs for the state or political subdivisions. It requires certain employers in the construction industry (nonresidential construction contractors, subcontractors, and labor brokers) to use E-Verify to verify employment eligibility of new employees.<sup>1</sup> Under the bill, employers must keep a record of the verification for the duration

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<sup>1</sup> E-Verify is an internet-based system jointly administered by the U.S. Department of Homeland Security and the Social Security Administration. Employers use the system to enter information from an employee's Form I-9 to verify an employee's eligibility for employment in the United States. Use of the system is offered to employers at no cost. Although use of the system is free, employers must register to use the system.

of the employee's employment or three years, whichever is longer. In addition to penalizing a covered employer for failing to use E-Verify, the bill prohibits a covered employer from retaining an employee after the E-Verify system has issued a final notice to the employer that the employee's work authorization status could not be confirmed.

## **Enforcement**

The bill requires the Attorney General to enforce compliance with the bill's E-Verify verification and retention requirements for covered employers. If the Attorney General investigates a complaint and determines that reasonable evidence exists of a violation, the Attorney General must provide notice and an opportunity for a hearing before ordering the alleged violator to (1) pay a fine (\$250 per failure to use E-Verify and \$5,000 per failure to fire an employee after nonconfirmation with enhanced fines for repeat violations), and (2) provide satisfactory proof that the violation has been corrected.

If the violator fails to comply with the order within 30 days, the Attorney General then must sue in the court of common pleas of the county where the employer is located or does business or where the violation occurred. Penalties for violations include an additional \$1,000 fine per violation and two-year disqualification from state contracts. Disqualified entities must file an affidavit to regain eligibility.

The bill also penalizes state and local government agencies that fail to include E-Verify provisions in their contracts. The Attorney General will identify these violations through periodic reviews, and the extent of these reviews will determine the administrative burden on their office. Entities are subject to a \$5,000 fine for each instance of noncompliance.

The Attorney General's enforcement costs will depend on the number of complaints, resulting investigations, and lawsuits filed. There will also be some one-time costs to create complaint forms. Costs for the Attorney General to enforce the bill's E-Verify verification and retention requirements will be offset, to some degree, by any fine revenue collected under the bill and credited to the newly created E-Verify Enforcement Fund in the state treasury which is to be used by the Attorney General for the administration and enforcement of the E-Verify Program.

The Department of Administrative Services will incur some ongoing costs to maintain a debarment list, including maintaining a list of disqualified entities, removing them after the disqualification period, and keeping records of filed affidavits. The resulting administrative and personnel costs will depend on the workload for these tasks but will likely be absorbed utilizing existing staff and resources.

## **Revocation of licenses**

In an enforcement lawsuit described above, a court that determines a covered employer knowingly employed an unauthorized alien must order the appropriate agencies to permanently revoke all licenses held by the employer specific to the business location where the work was performed or, if no specific license is held, to permanently revoke all licenses necessary for the operation of the business in general. Consequently, political subdivisions that require covered employers (specifically nonresidential construction contractors or subcontractors) to obtain a license for work within their jurisdictions will forego future revenue from covered employers subject to court-ordered license revocation. This would also be the case for the Department of Commerce's Division of Industrial Compliance, which regulates commercial contractors

specializing in various trades. License fees paid to the Division of Industrial Compliance are deposited into the Industrial Compliance Operating Fund (Fund 5560). Contractors, subcontractors, and labor brokers affected by court orders could also lose their vendors licenses.