



## Ohio Contractors Association

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### Testimony on House Bill 327- E-Verify

May 7, 2024

Chair Johnson, Vice Chair Manchester, Ranking Member McNally and members of the Committee.

Thank you for the opportunity to provide interested party testimony on House Bill 327. My name is Chris Runyan, and I am the President of the Ohio Contractors Association. Our membership is comprised of 200 contractors and 260 supplier and related industry companies. Our members build Ohio's public infrastructure with clientele at the federal, state and local levels of government. This work ranges from every transportation mode and utilities. Our work is predominantly public sector work.

First off, I want to be very clear that my comments today should not be construed in any way as supporting the use of undocumented workers in construction. We unequivocally do not support this practice. My purpose in speaking on the bill is to share how it will impact Ohio's heavy/highway industry and to point out some inconsistencies in how the bill would have us administer the federal e-verify program.

Ohio's heavy/highway construction industry differs from other areas of construction in that a vast majority are union contractors. OCA negotiates and holds statewide agreements with our five major union partners, which include the Laborers, Operating Engineers, Carpenters, Cement Masons, and Teamsters. These multi-year contracts set forth pay and other work conditions for highway and utility work in Ohio. Nearly 95 percent of our contractor members are union contractors. This model allows our members to have a stable workforce despite the seasonal and transitory nature of highway construction.

When I hear huge numbers of how many undocumented individuals work in Ohio, I wonder how many have been attributed to our largely unionized, highway and utility construction sector. In my 17-plus years with OCA, I have not heard of a single citation, or an individual being removed post-employment because of their work visa status. Now I don't doubt there are some violators out there. Many times, the bad news doesn't reach me, but the rumor mill does. Hearing nothing in all those years, I wonder how much of a dent this will put in those large numbers given that the greatest non-compliant segment of the construction industry was exempted, namely residential construction. I can only assume the principle target audience is the public sector construction industry because the excluded contractors enter into private sector contracts and it's easiest to squeeze only the public sector portion of the market.

We do wonder why construction starts with a ceiling at the first employee hired and not the 75<sup>th</sup> like the other business requirements. I imagine somebody convinced someone that

this was needed, and public sector construction was the largest turkey to shoot at. This appears to be another example of where the hammer misses the nail.

Because of the public nature of infrastructure work our members are familiar with the E-verify process as many have or currently hold direct federal contracts where this process is required. Many members have also shared that they voluntarily use E-verify as a routine practice. Feedback from our members has been mixed, some say it is easy, others say it can be burdensome because of the voluminous administrative mandates. When explaining the additional requirements to one of OCA's small, minority-owned members, the response was, "Just one more thing to do. Government just makes it more and more challenging to do business. I hear the talk about helping small business but I don't see much action."

Be that as it may and with that feedback in mind, we do not object to an E-verify requirement. We do respectfully request that any E-verify requirements for construction be consistent with federal requirements. An amendment was offered and approved at an earlier hearing in an attempt to address a concern from OCA on this topic. I would like to share that while we appreciate the attempt to address our concern, we were not given the opportunity to review the amendment before it was approved.

The amendment would require a new I-9 form when a person is rehired only if the rehire takes place three years after the person was initially hired. This 3-year timeframe is already a component of federal requirements for rehires. Upon further investigation, federal law allows an employer to return a previously hired person to work if the employee is continuing in their employment and has a reasonable expectation of employment at all times. This is referred to as "Continuing Employment." Lack of work, seasonal employment, maternity or paternity leave, even strikes and labor disputes are a part of the list of continuing employment considerations. After further vetting the amendment, we have determined the amendment is not necessary within the constricts of the e-verify program and only serves to muddy the waters when it comes to laid off or seasonal workers.

The sub bill also attempts to address our concern related to E-verify requirements for prime contractors and their subcontractors. We are currently reviewing those provisions. A first blush seems that the language over-complicates the issue by blurring the line of a responsible party under the terms of a contract. We believe a short, simple statement to the effect that each contractor is only responsible for verifying their own employees regardless of their standing – prime or sub – in the contract. Once our review is complete, we will communicate our comments to Chairman Johnson.

Finally, we understand that penalty provisions would be a part of the bill. From our perspective, we view the initially proposed penalties as being extreme. Debarring a construction firm whose primary marketplace is heavy highway or public utility construction from bidding for one year for a paperwork violation can be a death knell. Our members rely on public projects. Being prohibited from working for ODOT or other public agencies could shutter our small contractors and greatly impact our biggest contractors. Not only is this bad for the economy, it will increase public construction prices as the pool of bidders shrinks generating less competition, all-the-while increasing risk to the contractor. As risk increases, so do costs. It will also result in job loss for union workers.

Thank you for this opportunity to share our perspective. I will be happy to answer any questions you may have.

