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Office of Research
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Office

H.B. 246
136th General Assembly

Fiscal Note & Local Impact Statement

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

Version: As Passed by the Senate

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 Commerce will incur costs to conduct hearings following a notice of violation from the Attorney General. Any increase in annual operating costs will depend on the number of violators and the frequency at which hearings are requested, which is unknown but expected to be relatively small.
- 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.¹ Under the bill, employers must keep a record of the verification for the duration 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.

Additionally, state agencies must include in their contracts for the construction or renovation of a nonresidential construction project provisions requiring compliance with the above E-Verify verification and retention requirements.

Enforcement

Attorney General

The bill requires the Attorney General to investigate any alleged violation, submitted on a prescribed form, if the complaint contains sufficient facts to reasonably conclude a violation may have occurred. If the investigation finds reasonable evidence exists of a violation, the Attorney General must issue a notice that (1) directs the violator to provide satisfactory proof within ten days that employees are authorized to work under federal law, (2) specifies the applicable penalty (\$250 per failure to use E-Verify and \$5,000 per failure to discharge an employee after nonconfirmation with enhanced fines for repeat violations), (3) informs the violator that two or more willful violations will result in an up to two-year suspension from future state contracts, and (4) inform them of their right to a hearing that must be requested within ten business days after being served.

If the violator fails to request a hearing by the Department of Commerce within the specified period, the notice of violation becomes an enforceable order. 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 court-determined violations include an additional \$1,000 fine per violation and up to two-year disqualification from future state contracts. Disqualified entities must file an affidavit to regain eligibility.

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.

Additionally, the Attorney General will identify violations where state agencies fail to include E-Verify provisions in their contracts through periodic reviews, and the extent of these reviews will determine the administrative burden on their office. The Attorney General is

¹ 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.

required to notify the state agency and the Director of Administrative Services of any contract the Attorney General identifies as not including the required provisions. For a period of one year, a state agency that fails to include required provisions in a nonresidential construction contract will be required to submit any proposed nonresidential construction contract to the Director of Administrative Services.

Department of Commerce

The bill permits a contractor, subcontractor, or labor broker to request an adjudicatory hearing not more than ten days after being served a notice of violation from the Attorney General. The Department of Commerce will experience some manner of ongoing costs to conduct hearings following a notice of violation from the Attorney General. Any increase in annual operating costs will depend on the number of violators and the frequency at which hearings are requested, which is unknown but expected to be relatively small.

Department of Administrative Services

The Department of Administrative Services will incur some ongoing costs to manage a list of disqualified entities, including removing entities from the list once their disqualification period ends and all fines are paid, as well as keeping records of filed affidavits. Additional costs will also be incurred to review proposed nonresidential construction contracts for compliance, notifying state agencies of compliance determinations, and instructing revisions when necessary. 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.