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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Wiggam and Swearingen

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SUMMARY

E-verify requirements for certain employers and contractors

- Requires a political subdivision, a private employer employing 75 individuals within Ohio, and a nonresidential construction contractor 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 all contracts for nonresidential construction projects to include a provision requiring the contractor responsible for the project and any subcontractor, regardless of tier, to use E-verify to confirm the identity and work eligibility of any tradesperson assigned to perform work on the project.
- Requires the Attorney General to investigate alleged violations of these requirements and, if reasonable evidence of a violation exists, to bring a civil action against the alleged violator.
- Requires, if a court determines that a violation has occurred, the violator to pay \$5,000 for each violation.
- Disqualifies a violator from participating in any state contract for a period of one year after the court has determined a violation occurred.

E-verify provisions in public contracts

- Requires a contract for a public improvement or a service entered into by a state agency or political subdivision to contain a provision requiring the contractor to use E-verify to confirm the identity and legal work status of specified individuals hired by the contractor.
- Voids any contract that fails to include the provision.

- Requires the Attorney General to conduct periodic reviews to ensure compliance by state agencies and political subdivisions.
- Requires a state agency or political subdivision be fined \$5,000 for each instance of noncompliance.

DETAILED ANALYSIS

E-verify requirements for certain employers and contractors

The bill requires the state, any political subdivision, any employer employing 75 individuals within Ohio, and any nonresidential construction contractor employing one or more individuals within Ohio (an “employer”) to do both of the following:

- After hiring an employee, verify the employee’s employment eligibility through the E-verify program (see “**Background – employee work eligibility and E-verify,**” below);
- Keep a record of the verification for the duration of the employee’s employment or three years, whichever is longer.¹

For purposes of the bill, a “nonresidential construction contractor” is any individual or company that satisfies both of the following:

- Is responsible for the means, method, and manner of construction, improvement, renovation, repair, or maintenance on a nonresidential construction project with respect to one or more trades and represents that the individual or company is permitted or qualified to perform or have responsibility for one or more trades on the project;
- Performs construction, improvement, or renovation on a nonresidential construction project with respect to the individual’s or company’s trade or employs tradespersons who perform the construction, improvement, or renovation.

A “nonresidential construction project” is any construction project involving a building or structure subject to the Ohio Building Code (commercial buildings), except that it does not include an industrialized unit.²

In addition, all contracts for a nonresidential construction project entered into on or after the bill’s effective date must require the contractor responsible for the project and any subcontractor, regardless of tier, to use E-verify to confirm the identity and work eligibility of any tradesperson assigned to work on the project.³

¹ R.C. 4151.10(B) and 4151.11(A).

² R.C. 4151.10(C) and (D).

³ R.C. 4151.11(B).

The Attorney General must prescribe a form an individual may use to allege that an employer has violated the bill's E-verify requirements. The Attorney General cannot require an individual filing a complaint to list the individual's Social Security number or have the form notarized.

The bill requires the Attorney General to investigate any violation alleged in a prescribed form filed with the Attorney General. 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. 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.

If the Attorney General investigates a complaint and determines that reasonable evidence exists that a person violated the bill's E-verify requirements, the Attorney General must sue the person in the court of common pleas of the county where the person is located or does business.⁴

If the court determines a person has violated the bill's requirements, the court must do both of the following:

- Order the person to pay \$5,000 for each violation;
- Disqualify the person from bidding on or participating in any contract for goods, services, or construction paid for in whole or in part with state funds (a "state contract") for a period of one year.⁵

After the one-year period described above elapses, a disqualified person may be eligible to bid for and participate in state contracts if the person files a sworn affidavit with the Attorney General that one year or more has elapsed since the disqualification and the person has not violated the E-verify requirements during the period. The Attorney General must maintain a list of all persons ineligible to bid for or participate in state contracts due to a violation and remove a person from the list when the one-year period ends. The Attorney General also must maintain a record of all affidavits filed with the Attorney General.⁶

E-verify requirements in public contracts

The bill requires a state agency or political subdivision desiring to enter into or renew a contract for a public improvement or services on or after the bill's effective date to include both of the following provisions in the contract:

- A provision that the contractor will use E-verify to confirm the identity and legal working status of each employee hired during the term of the contract to perform duties in Ohio and each individual assigned by the contractor to perform work on the contract in Ohio;

⁴ R.C. 4151.12.

⁵ R.C. 4151.13(A) and 4151.10(E), by reference to R.C. 9.242, not in the bill.

⁶ R.C. 4151.11(B) and (C).

- A provision requiring the state agency or political subdivision to cancel the contract if, after awarding or renewing it, the contractor does not use E-verify as required (see “COMMENT,” below).

Under the bill, any public contract entered into in violation of the requirement is void.⁷

The Attorney General must conduct periodic reviews to ensure state agency and political subdivision contracts include the E-verify provisions described above. Any state agency or political subdivision found to be in violation of the requirements is subject to a \$5,000 fine per violation.⁸

Background – employee work eligibility and E-verify

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits employing an alien who is not authorized to perform the type of job for which the alien is employed. The IRCA establishes penalties for employers found hiring unauthorized workers.⁹ To comply with the IRCA requirements, an employer and a new employee must complete the “I-9 Employment Eligibility Verification Form,” the “I-9 form.”¹⁰ 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 alike. In addition, as part of the required verification of employment eligibility, the employer must examine specified documents the employee provides.¹¹

As an option in the verification process, the employer may register in the “E-Verify program” and use the E-Verify verification system.¹² The E-Verify program is an Internet-based program that uses information from the I-9 form to help employers verify the eligibility for employment of newly hired employees. Participation in E-Verify is voluntary, unless participation is required by state or federal laws or regulations.¹³

⁷ R.C. 4151.02.

⁸ R.C. 4151.03.

⁹ 8 United States Code (U.S.C.) 1324a.

¹⁰ 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.

¹¹ 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.

¹² Originally known as the Basic Pilot/Employment Eligibility Verification Program, the program was renamed E-Verify in 2007.

¹³ 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.

The E-Verify program was established pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996¹⁴ and is administered by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA).¹⁵

COMMENT

If the bill were challenged with respect to the Ohio Constitution's Home Rule Amendment, a reviewing court might consider whether a municipal or charter county ordinance or resolution requiring a local agency or contractor to use a method other than E-verify to confirm an employee's eligibility to work is an exercise of local self-government. If that is the case, the ordinance or resolution prevails over the bill even if it conflicts with the bill's requirement. The Ohio Supreme Court has generally held that establishing the terms of public employment and contracting for goods, services, and construction are matters of local self-government under the Home Rule Amendment to the Ohio Constitution. With respect to a matter of local self-government, a municipality or charter county may adopt an ordinance or resolution that conflicts with state law.¹⁶

On the other hand, the Constitution also grants the General Assembly the power to pass laws fixing and regulating the hours of labor, establishing the minimum wage, and providing for the general welfare of all employees. No other provision of the Constitution may impair or limit this power.¹⁷ The Court has held that this power allows the General Assembly to provide for the welfare of Ohio's employees. When the General Assembly enacts a law to protect employees, it is not limited by a municipality's or charter county's exercise of the power of local self-government.¹⁸ Thus, one could also argue that the bill is for the protection of employees and cannot be limited by a conflicting local ordinance or resolution.

¹⁴ Pub. L. 104-208, Div. C, 110 Stat. 3009-546, 8 U.S.C. 1324a.

¹⁵ R.C. 4151.01(C) and 4151.10(A); 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.

¹⁶ Ohio Constitution, Article XVIII, Section 3. See, e.g., *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma*, 61 Ohio St.2d 375, 383 (1980) ("[T]he ability to determine the salaries paid to city employees is a fundamental power of local self-government.") and *Dies Electric Co v. Akron*, 62 Ohio St.2d 322, 326-327 (1980) (holding that a municipality may enact retainage provisions applicable to contracts for public improvements that differ from state law).

¹⁷ Ohio Const., art. II, sec. 34.

¹⁸ *City of Cleveland v. State*, 2019-Ohio-3820 ¶23, 31.

HISTORY

Action	Date
Introduced	11-13-23
