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H.B. 327
(1_135_0215-4)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 327's Bill Analysis](#)

Version: In House Commerce and Labor

Primary Sponsors: Reps. Wiggam and Swearingen

Local Impact Statement Procedure Required: No

Tom Wert, Senior Budget Analyst, and other LBO staff

Highlights

- Provisions requiring the state and political subdivisions to use E-Verify to verify new hire employment eligibility and that require the state and political subdivisions to include terms in contracts for public improvements requiring contractors to use E-Verify may result in a slight uptick in administrative costs.
- 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.
- 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

E-Verify

The bill is unlikely to result in significant new costs for the state or political subdivisions. It requires the state, political subdivisions, employers employing 75 or more employees, and nonresidential construction contractors employing one or more individuals within the state, to use E-Verify to verify employment eligibility of new employees. 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. Additionally, the bill requires state agencies and political subdivisions, when

contracting for public improvement services, to include provisions requiring contractors to use E-Verify and provides that the contracts be canceled if the contractor recklessly failed to use E-Verify.¹ The bill specifies that a contractor is liable for a state agency's or a political subdivision's foreseeable economic damages, including the reasonable costs of soliciting a new bid, when a contract is canceled in accordance with the bill.

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. Registration for use of the system and data entry of Form I-9 information may result in a slight uptick in administrative costs for the state and political subdivisions. However, many public employers may already use the system under existing federal rules that require entities receiving federal contracts to use E-Verify.

Enforcement

The bill authorizes the Attorney General to enforce compliance with the bill's E-Verify requirements for employers and contractors, including performing periodic reviews. If the Attorney General investigates a complaint and determines that reasonable evidence exists of a violation, the Attorney General shall bring a civil action in the court of common pleas of the county where the person is located or does business. Penalties for violations include a one-year disqualification from state contracts and a \$5,000 fine per violation. Disqualified entities must file an affidavit to regain eligibility.

The Attorney General's enforcement costs will depend on the number of complaints and resulting investigations and lawsuits. There will also be some one-time costs to create complaint forms. The Director of Administrative Services is responsible for 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.

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 bill does not specify which fund or party the fines would be credited to. That said, it appears likely that the Attorney General would assess and collect the civil penalties, and absent any special distribution language, any penalty revenue would be credited to the state's GRF.

Synopsis of Fiscal Effect Changes

The substitute bill (I_135_0215-4) changes the agency responsible for tracking persons disqualified from bidding on a state contract and those who have established eligibility from the Attorney General to the Director of Administrative Services, shifting the associated administrative costs. The substitute bill also allows a covered employer to forgo using E-Verify for rehires under certain conditions, and establishes various new provisions related to

¹ The bill provides certain exceptions to the requirement to use E-Verify in the case of rehired employees.

cancellation of public contracts and subcontracts. With the exception of the transfer of duties to maintain the list of entities, these changes are largely procedural and do not carry significant fiscal effects.