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Office

H.B. 327
(1_135_0215-6)
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, and directed to the newly created E-Verify Enforcement Fund to be utilized by the Attorney General.
- 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 construction or maintenance, to include provisions requiring contractors and subcontractors to use E-Verify.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. 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 requires the Attorney General to enforce compliance with the bill's E-Verify requirements for covered employers and breaches of E-Verify provisions in public improvement construction or maintenance contracts. 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 (\$1,000, \$2,500, or \$5,000 depending on the number of 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 bring a civil action in the court of common pleas of the county where the person is located or does business. Penalties for reckless violations include a \$10,000 fine per violation and one-year disqualification from state contracts. 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. Costs for the Attorney General 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.

Synopsis of Fiscal Effect Changes

In terms of fiscal effect, most notably when compared to the previous version of the bill (I_135_0215-4), the latest substitute bill (I_135_0215-6) modifies provisions related to the enforcement of E-Verify. The fiscal effect of these changes are summarized below:

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

- The latest version of the bill creates the E-Verify Enforcement Fund in the state treasury, requires fines levied under the bill to be deposited in the fund, and designates the amounts in the fund for use by the Attorney General to enforce the bill. The previous version did not specify which fund or party the fines would be credited to, and absent any special distribution language, any penalty revenue would have been credited to the state's GRF.
- The latest version of the bill provides a 30-day right to cure for the violations of the bill. This change may reduce the frequency of civil actions filed in courts of common pleas. The bill increases the penalty from \$5,000 to \$10,000 for violations. As a result, it is possible that additional revenue may be collected for the Attorney General's enforcement costs.
- The latest version of the bill specifies that the one-year disqualification from state contracts applies only to reckless violations. An individual or entity acts recklessly when they are found by the court to have conducted business in bad faith and has acted with conscious disregard or indifference to the E-Verify program. The bill also prohibits the Director of Administrative Services from removing an individual or entity from the list of those disqualified if they have not paid the required fine. Overall these changes will not significantly increase or decrease the related administrative work for the Department of Administrative Services.