

As Reported by the House Commerce and Labor Committee

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Representatives Wiggam, Swearingen

Cosponsors: Representatives Click, Creech, Cutrona, Edwards, Fowler Arthur, Gross, Hall, Hillyer, John, Johnson, Kick, King, Klopfenstein, Lorenz, Loychik, McClain, Merrin, Miller, K., Miller, M., Patton, Pizzulli, Plummer, Seitz, Stewart, Williams, Young, T.

A BILL

To enact sections 4151.01, 4151.02, 4151.03, 1
4151.04, 4151.05, and 4151.06 of the Revised 2
Code to require certain government contractors 3
and employers to use E-verify. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4151.01, 4151.02, 4151.03, 5
4151.04, 4151.05, and 4151.06 of the Revised Code be enacted to 6
read as follows: 7

Sec. 4151.01. As used in this chapter: 8

(A) "Bidder" means an individual or entity who submits a 9
bid to a state agency or political subdivision to perform work 10
under a public improvement or maintenance contract. 11

(B) "Public contractor" means any individual or entity who 12
directs, supervises, or has responsibility for the means, 13
method, and manner of implementing a contract for the 14
construction or maintenance of a public improvement. 15

(C) "E-verify" means the employment verification program 16
as jointly administered by the United States department of 17
homeland security and the social security administration under 18
section 101(a) (1) of the federal "Immigration Reform and Control 19
Act of 1986," 8 U.S.C. 1324a, or any of its successor programs. 20

(D) "Political subdivision" means any body corporate and 21
politic that is responsible for governmental activities in a 22
geographic area smaller than the state. 23

(E) "Public improvement" has the same meaning as in 24
section 9.75 of the Revised Code. 25

(F) (1) "Maintenance" means any activity necessary to keep 26
a public improvement, its fixtures, and its components in proper 27
working condition. "Maintenance" includes janitorial services, 28
disinfection, snow removal, landscaping, repairs, equipment 29
testing, and scheduled replacement of parts, components, or 30
materials. 31

(2) "Maintenance" does not include utilities, waste 32
management, software systems, or information technology 33
services. 34

(G) "State agency" means any organized body, office, 35
agency, institution, or other entity established by the laws of 36
the state for the exercise of any function of state government. 37

(H) "State contract" has the same meaning as in section 38
9.242 of the Revised Code. 39

(I) "Employer" means the state, any political subdivision 40
of the state, any employer employing seventy-five or more 41
individuals within the state, and any nonresidential 42
construction contractor employing one or more individuals within 43
the state. 44

(J) "Nonresidential construction contractor" means any individual or contracting company that satisfies both of the following: 45
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(1) Has responsibility 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 who offers, identifies, advertises, or otherwise holds out or represents that the individual or contracting company is permitted or qualified to perform or have responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance with respect to one or more trades on a construction project; 48
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(2) Does either of the following: 57

(a) Performs construction, improvement, or renovation on a nonresidential construction project with respect to the individual's or contracting company's trade; 58
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(b) Employs or assigns tradespersons to perform construction, improvement, or renovation on a nonresidential construction project with respect to the individual's or contracting company's trades. 61
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(K) "Nonresidential construction project" means a construction project involving a building or structure subject to Chapter 3781. of the Revised Code and the rules adopted under that chapter, but not any of the following: 65
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(1) An industrialized unit, manufactured home, or a residential building as defined in section 3781.06 of the Revised Code; 69
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(2) A building or structure that is incidental to the use of the land on which the building or structure is located for 72
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agricultural purposes as defined in section 3781.06 of the 74
Revised Code; 75

(3) A mobile home as defined in section 4501.01 of the 76
Revised Code. 77

Sec. 4151.02. (A) As used in this section, "subcontractor" 78
means any individual or entity who undertakes any part of a 79
contract for the construction or maintenance of a public 80
improvement project with any person other than the state agency 81
or political subdivision. 82

(B) Subject to division (C) of this section, each state 83
agency or political subdivision desiring to enter or renew a 84
contract for the construction or maintenance of a public 85
improvement on and after the effective date of this section 86
shall include in the contract a provision requiring the public 87
contractor who is awarded the contract and any subcontractor to 88
use e-verify. The public contractor shall use e-verify to 89
confirm the identity and legal working status of each employee 90
hired by the public contractor. A subcontractor shall use e- 91
verify to confirm the identity and legal working status of each 92
employee hired by the subcontractor. The public contractor and 93
each subcontractor shall use e-verify with respect to both of 94
the following types of employees: 95

(1) All individuals hired during the contract term by the 96
public contractor or subcontractor to perform duties within this 97
state; 98

(2) All individuals assigned by the public contractor or 99
subcontractor to perform work within this state on the contract. 100

(C) A contract for the construction or maintenance of a 101
public improvement entered into or renewed on and after the 102

effective date of this section may include a provision waiving 103
the requirement in division (B) of this section when both of the 104
following apply: 105

(1) The public contractor or subcontractor hires or 106
rehires an employee whose identity and working status the public 107
contractor or subcontractor has previously confirmed using e- 108
verify. 109

(2) The public contractor or subcontractor is not required 110
to verify or reverify the employee's eligibility to work under 111
section 101(a) (1) of the federal "Immigration Reform and Control 112
Act of 1986," 8 U.S.C. 1324a(b). 113

(D) No state agency or political subdivision shall award a 114
a contract for the construction or maintenance of a public 115
improvement to a bidder unless the contract contains terms 116
consistent with this section. Any contract entered into in 117
violation of this section is void. 118

Sec. 4151.03. (A) The attorney general shall conduct 119
periodic reviews of state agencies and political subdivisions to 120
ensure that state agencies and political subdivisions are 121
including within their contracts for the construction or 122
maintenance of public improvements provisions required by 123
section 4151.02 of the Revised Code. 124

(B) Each state agency or political subdivision found in 125
violation of division (D) of section 4151.02 of the Revised Code 126
shall be fined five thousand dollars per violation. 127

Sec. 4151.04. (A) (1) Every employer shall do both of the 128
following: 129

(a) Except as provided in division (A) (2) of this section, 130
after hiring an employee, verify the employment eligibility of 131

the employee through the e-verify program; 132

(b) Keep a record of the verification for the duration of 133
the employee's employment with the employer or three years, 134
whichever is longer. 135

(2) An employer is not required to comply with division 136
(A) (1) (a) of this section if both of the following apply: 137

(a) The employer has previously complied with division (A) 138
(1) of this section with respect to that individual. 139

(b) The employer is not required to verify or reverify the 140
employee's eligibility to work under section 101(a) (1) of the 141
federal "Immigration Reform and Control Act of 1986," 8 U.S.C. 142
1324a(b). 143

(B) (1) Subject to division (B) (2) of this section, a 144
contract for a nonresidential construction project entered into 145
on or after the effective date of this section shall include a 146
provision requiring the nonresidential construction contractor 147
responsible for the project and any subcontractor, regardless of 148
tier, that provides construction services with respect to the 149
contract to use e-verify to confirm the identity and work 150
eligibility of any tradesperson assigned to perform work on the 151
project. 152

(2) A contract for a nonresidential construction project 153
entered into on or after the effective date of this section may 154
include a provision waiving the requirement in division (B) (1) 155
of this section when both of the following apply: 156

(a) The nonresidential construction contractor responsible 157
for the project or a subcontractor hires or rehires a 158
tradesperson whose identity and working status the contractor or 159
subcontractor has previously confirmed using e-verify; 160

(b) The contractor or subcontractor is not required to 161
verify or reverify the tradesperson's eligibility to work under 162
section 101(a)(1) of the federal "Immigration Reform and Control 163
Act of 1986," 8 U.S.C. 1324a(b). 164

Sec. 4151.05. (A)(1) The attorney general shall prescribe 165
a complaint form for an individual to allege a violation of a 166
contract provision required by section 4151.02 of the Revised 167
Code or a violation of section 4151.04 of the Revised Code. The 168
attorney general shall not require the complainant to list the 169
complainant's social security number on the complaint form or to 170
have the form notarized. A complainant shall submit the 171
complaint to the attorney general. Except as provided in 172
division (B) of this section, the attorney general shall 173
investigate any violation alleged in a prescribed form submitted 174
to the attorney general. 175

(2) This section does not prohibit an individual from 176
filing an anonymous complaint on a form other than the 177
prescribed complaint form. Except as provided in division (B) of 178
this section, the attorney general may, but is not required to, 179
investigate a violation alleged in a form other than a 180
prescribed form. 181

(B) The attorney general shall not investigate a complaint 182
that is based solely on race, color, or national origin. 183

(C) Any local law enforcement officer may assist in 184
investigating a complaint filed under this section. 185

(D)(1) If the attorney general conducts an investigation 186
under this section and determines that reasonable evidence 187
exists that an individual or entity has violated a contract 188
provision required by section 4151.02 of the Revised Code or 189

violated section 4151.04 of the Revised Code, the attorney 190
general shall, after providing notice and an opportunity for a 191
hearing in accordance with Chapter 119. of the Revised Code, do 192
both of the following: 193

(a) Except as provided in division (D)(2) of this section, 194
order the individual or entity to pay a fine of one thousand 195
dollars; 196

(b) Order the individual or entity to provide the attorney 197
general with satisfactory proof that any violation has been 198
corrected. 199

(2) If the attorney general's investigation reveals two 200
violations, the attorney general shall order the individual or 201
entity to pay a fine of two thousand five hundred dollars for 202
the second violation. If the attorney general's investigation 203
reveals three or more violations, the attorney general shall 204
order an individual or entity to pay a fine of five thousand 205
dollars for each violation beyond the second. 206

(E) If an individual or entity fails to comply with an 207
order issued by the attorney general under division (D) of this 208
section within thirty days after the attorney general issues the 209
order, the attorney general shall bring a civil action against 210
the individual or entity in accordance with section 4151.06 of 211
the Revised Code. 212

Sec. 4151.06. (A) If an individual or entity fails to 213
comply with an order issued by the attorney general under 214
division (D) of section 4151.05 of the Revised Code within the 215
period specified in division (E) of that section, the attorney 216
general shall bring a civil action against the individual or 217
entity in the court of common pleas of the county where the 218

individual or entity is located or does business. 219

(B) (1) Except as provided in divisions (B) (2) and (D) of 220
this section, if the court determines that an individual or 221
entity violated a contract provision required by section 4151.02 222
of the Revised Code or violated section 4151.04 of the Revised 223
Code, the court shall do both of the following: 224

(a) Order the individual or entity to pay five thousand 225
dollars for each violation; 226

(b) Order the individual or entity to otherwise comply 227
with the attorney general's order. 228

(2) If the court determines the individual or entity 229
recklessly violated a contract provision required by section 230
4151.02 of the Revised Code or violated section 4151.04 of the 231
Revised Code, the court shall do both of the following: 232

(a) Order the individual or entity to pay a fine of ten 233
thousand dollars for each reckless violation; 234

(b) Order that the individual or entity is not eligible to 235
bid for or participate in any state contract for a period of one 236
year. 237

(3) The court shall provide a copy of the order to the 238
director of administrative services. 239

(4) After the one-year period described in division (B) (2) 240
(b) of this section has elapsed, an individual or entity who has 241
been ordered ineligible may be eligible to bid for and 242
participate in state contracts if the individual or entity files 243
a sworn affidavit with the director that one year or more has 244
elapsed since the order described in division (B) (2) (b) of this 245
section and that the individual or entity has not violated a 246

contract provision required by section 4151.02 of the Revised 247
Code and has not violated section 4151.04 of the Revised Code 248
during the one-year period. 249

(C) (1) The director shall maintain a list of all 250
individuals and entities ineligible to bid for or participate in 251
any state contract for a period of one year under division (B) 252
(2) (b) of this section. Except as provided in division (C) (2) of 253
this section, the director shall remove an individual or entity 254
from the list when the one-year period ends. The director also 255
shall maintain a record of all affidavits filed with the 256
director under division (B) (4) of this section. 257

(2) The director shall not remove an individual or entity 258
from the list maintained under division (C) (1) of this section 259
if the individual or entity has not paid a fine ordered under 260
this section. 261

(D) If a violation of a contract provision required under 262
section 4151.02 of the Revised Code and a violation of section 263
4151.04 of the Revised Code arise from the same facts and 264
circumstances, a court shall fine an individual or entity for 265
only one of the violations. 266

(E) For purposes of this section, an individual or entity 267
acts recklessly when the individual or entity has conducted 268
business in bad faith and has acted with conscious disregard or 269
indifference to the e-verify program. 270

(F) The e-verify enforcement fund is created in the state 271
treasury. Fines collected pursuant to this chapter shall be 272
deposited to the credit of the fund. The attorney general shall 273
use the fund to administer and enforce this chapter. 274