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BILL ANALYSIS



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Senate Bills 1371 and 1372 (as introduced 6-8-10)

Sponsor: Senator Michelle A. McManus

Committee: Commerce and Tourism

Date Completed: 9-21-10

CONTENT

Senate Bill 1371 would amend the Occupational Code to prohibit a personnel agency, or any licensed agent or other agent or employee of a personnel agency, from referring an individual for employment without having verified through the E-Verify system or a successor system authorized by the U.S. Immigration and Naturalization Service that the individual was authorized to work in the United States.

Senate Bill 1372 would create the "Public Contract and Employment Eligibility Verification Act" to do all of the following:

- **Require a public employer to register and participate in the E-Verify program.**
- **Prohibit a public employer from entering into a contract unless the contractor registered and participated in the E-Verify program.**
- **Prohibit a contractor or subcontractor from entering into a contract or subcontract with a public employer unless it registered with and participated in the E-Verify program.**
- **Require an employer, a State agency, or a political subdivision of the State to verify an individual's lawful presence by obtaining an affidavit, in addition to using the E-Verify system.**
- **Provide that a person who knowingly and willfully made a false statement in an affidavit would be guilty of perjury.**
- **Prohibit an employer from discharging a U.S. citizen or permanent resident alien, except for cause, if the employer knowingly employed an alien not authorized to work in the United States.**
- **Require the Department of Energy, Labor, and Economic Growth to promulgate rules to implement the proposed Act.**

Senate Bill 1372 would define "E-Verify" as the electronic verification of work authorization program operated by the U.S. Department of Homeland Security, or any equivalent Federal work authorization program operated by the Department or any other designated Federal agency authorized to verify the work authorization status of newly hired employees, pursuant to the Federal Immigration Reform and Control Act.

A detailed description of Senate Bill 1372 follows.

Public Employer & Contractors

A public employer would have to register and participate in the E-Verify program to verify the work authorization status of each new employee. "Public employer" would mean a department, agency, or instrumentality of the State or a political subdivision of the State.

A public employer could not enter into a contract for the performance of services within Michigan unless the contractor registered and participated in the E-Verify program to verify the work authorization status of all of its new employees. A contractor or subcontractor could not enter into a contract or subcontract with a public employer concerning the performance of services within Michigan unless the contractor or subcontractor registered with and participated in the E-Verify program to verify the work authorization status of all new employees.

Verification of Lawful Presence in U.S.

An employer or an agency or political subdivision of the State would have to verify the lawful presence of an individual in the United States by obtaining an affidavit that the individual executed under penalty of perjury. The affidavit would have to state that the person either was a U.S. citizen or was a qualified alien under the Federal Immigration and Nationality Act and was lawfully present in the United States.

The employer, agency, or political subdivision also would have to verify through the E-Verify system the status of an individual who executed an affidavit. Until that eligibility was verified, the affidavit would be presumed to be proof of lawful presence.

"Employer" would mean a person who employs for compensation 10 or more individuals at one time during the calendar year.

Employer Discharge of Employees

An employer could not discharge an employee who was a citizen or permanent resident alien, if on the date of the discharge, the employer knowingly employed an alien who was not authorized to work in the United States. A discharged employee would have a private cause of action for a violation. This prohibition would not apply to a discharge for cause.

Perjury

An individual who knowingly and willfully made a false, fictitious, or fraudulent statement or representation in an affidavit would be guilty of perjury punishable as provided in the Michigan Penal Code. (Under the Code, perjury is a felony punishable by up to 15 years' imprisonment (MCL 750.423).)

MCL 339.1019 (S.B. 1371)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 1371

The bill would have no fiscal impact on State or local government.

Senate Bill 1372

The Department of Energy, Labor, and Economic Growth would incur a minimal increase in costs to promulgate the rules required by the bill.

Otherwise, the fiscal impact of the bill on State or local government is not available at this time.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.