

CREATE PUBLIC CONTRACT AND EMPLOYMENT ELIGIBILITY VERIFICATION ACT

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<http://www.house.mi.gov/hfa>

House Bill 4130 as introduced
Sponsor: Rep. Jim Runestad
Committee: Commerce and Trade
Complete to 5-2-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4130 would create the Public Contract and Employment Eligibility Verification Act. Generally speaking, the bill's provisions would require verification that public contracts and public employment are performed by individuals who are legally authorized to work in the US. The bill would take effect 90 days after being enacted into law.

A more detailed description of the bill follows.

E-verify

E-verify is an electronic verification of work authorization program operated by the U.S. Department of Homeland Security. The bill would make the following requirements for its use:

- A public employer (defined as a "department, agency, or instrumentality of this state or a political subdivision of this state") must register and participate in the E-verify system to verify the documentation of each new employee.
- A public employer could not enter into a service contract unless the contractor registers and participates in E-verify to verify the documentation of its new employees. (Similarly, a contractor or subcontractor could not enter into a service contract with a public employer unless it registers with and participates in E-verify.)

Documentation

To verify the lawful presence of an individual in the United States, an employer, agency, or political subdivision would obtain an I-9. In the case of an independent contract, the employer would obtain an affidavit that the contractor and each of the contractor's new employees must execute under penalty of perjury and state that he or she is either (1) a US citizen, or (2) a qualified alien as defined in the federal code, and lawfully present in the US.

The employer, agency, or subdivision would further verify the status of an individual with the information provided above through the E-verify system. Until the E-verify verification is made, the I-9 or affidavit would be presumed to be proof of lawful residence.

Penalties

- An individual who knowingly and willfully makes a false, fictitious, or fraudulent statement on an I-9 or affidavit would be guilty of perjury, punishable under the Michigan Penal Code.

- An individual who willfully and repeatedly violates the act would be responsible for a state civil infraction, and would pay a civil fine of between \$100 and \$1,000 per violation.
- Any business that enters into a service contract with a public employee without registering with and participating in E-verify would be debarred from contracting with any public body in the state for one year after the final determination of the violation.
- A public employer would immediately terminate for default the public contract of any business found to have employed two or more unauthorized aliens during the period in which the business was not compliant with the E-verify requirement.
- An employer who has complied with the E-verify requirements would not be subject to penalties for a subcontractor or independent contractor.

CURRENT PROVISIONS:

Two sections of boilerplate in the current FY17 budget bill (PA 268, 2016) require similar verification processes and mandate the use of E-verify for new department employees, as well as new contractor and subcontractor employees. These boilerplate sections are: Section 291 (Department of Health and Human Services) and Section 381 (Department of Transportation).

FISCAL IMPACT:

Public Employment and Contracting

The bill would have varying indeterminate, though mostly minor, cost implications for the state, local governments, and private employers who are not already users of E-Verify. Costs would primarily be from the indirect opportunity costs of employers (public and private) completing the E-Verify registration process and undergoing the associated training and administrative tasks required to comply with the conditions of the E-Verify service and the bill. These indirect costs would be related to reviewing the applicable Memorandum of Understanding between the employer and the Social Security Administration (SSA) and the Department of Homeland Security (DHS), and completing applicable training programs by managers and Human Resource personnel.

The Department of Technology, Management, and Budget (DTMB), which is the state's general procurement service provider, would not likely incur any costs from the bill unless it became necessary to terminate an existing contract in accordance with the new requirements and negotiate a new contract in its place. The fiscal impact to the state and DTMB would depend on the size and terms of the new contract, the time and resources to renegotiate, and the potential disruption of service to the state. There would otherwise be little to no impact to the DTMB or state from the contracting process due to the cost of using E-Verify being incorporated into the winning contracts of the competitive vendor bidding process. 2008 federal report on the adoption of E-Verify among certain federal agencies¹ provided an estimate of the cost of using E-Verify for hypothetical contractors

¹ Federal Acquisition Regulation; FAR Case 2007-013, Employment Eligibility Verification [73 FR 33374] [FR 49-08]. <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-145991/0-0-0-151304/0-0-0-155348.html>

with varying numbers of employees during the initial year of enrollment, which is expected to bear the highest costs. For these contractors, the estimated average direct costs in the first year were:

10 employees:	\$419
50 employees:	\$1,168
100 employees:	\$2,102
500 employees:	\$8,964

Factors used to calculate these estimates were the time used for training, time spent on processing employee verifications, as well as the cost of employee turnover from the added enforcement. This last factor, however, should not be considered a direct impact from the bill since it would be bringing employers into compliance with current immigration laws. It is not known whether developments in the E-Verify software and training requirements since 2008 would result in any lower costs from when the report was published in 2008.

Civil infraction fines

Civil infraction penalties would increase revenues going to the state Justice System Fund, which supports various justice-related endeavors in the judicial branch, and the Departments of State Police, Corrections, and Health and Human Services. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected court caseloads and related administrative costs.

Perjury Felony

Costs to state and local correctional systems would be increased, based on the number of additional convictions and incarcerations for perjury. New felony convictions would result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision.

The average cost of prison incarceration in a state facility is roughly \$36,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,500 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.
