

Legislative Analysis



PUBLIC CONTRACT AND EMPLOYMENT ELIGIBILITY VERIFICATION ACT

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

House Bill 4061 as introduced
Sponsor: Rep. Mark Tisdell
Committee: Government Operations
Complete to 3-12-25

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

SUMMARY:

House Bill 4061 would create a new act, the Public Contract and Employment Eligibility Verification Act, to require state and local agencies and their contractors and subcontractors to verify the eligibility of their employees to work in the United States.

Verification

The bill would require *public employers* to register and participate in the *E-Verify* system to verify the documentation of all of its new employees.

Public employer would mean a department, agency, or instrumentality of the state or a political subdivision of the state.

E-Verify would mean the Electronic Verification of Work Authorization Program of 8 USC 1324a that is operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by that department or another designated federal agency authorized to verify the documentation of newly hired employees under the federal Immigration Reform and Control Act of 1986.¹

A public employer could not enter into a contract for the performance of services in Michigan, and a contractor or *subcontractor* could not enter into such a contract or subcontract with a public employer, unless the contractor or subcontractor, as applicable, registers and participates in the E-Verify program to verify the documentation of all of its new employees.

Subcontractor would include a subcontractor, contract employee, staffing agency, and contractor.

An *employer* or public employer would have to verify the lawful presence of an individual in the United States as required above by obtaining a *form I-9* or, in the case of an independent contractor, an affidavit that the independent contractor and each of its new employees executes under penalty of perjury and that states that the new employee is either of the following:

- A United States citizen.
- A qualified alien, as defined in 8 USC 1641,² who is lawfully present in the United States.

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

¹ See <https://www.e-verify.gov/> Also 8 USC 1324a: <https://www.law.cornell.edu/uscode/text/8/1324a>

² <https://www.law.cornell.edu/uscode/text/8/1641>

Form I-9 would mean the employment verification form that fulfills the employment verification obligations under 8 CFR 274a.2.³

The employer or public employer also would have to further verify, through the E-Verify system, the status of an individual who has executed a form I-9 or affidavit described above. The form I-9 or affidavit would be presumed to be proof of lawful presence for purposes of the act until further verification is made.

Contract sanctions

An employer that violates the act by entering into a contract or subcontract with a public employer for the performance of services in Michigan without registering and participating in the E-Verify system would be prohibited from contracting with any public body in Michigan for a period of one year after the date of the final determination of that violation by a public body or court of law.

A public employer would have to immediately terminate for default the public contract or subcontract of a subcontractor found to have employed two or more unauthorized aliens during the period in which the subcontractor was in violation as described above.

An employer would not be subject to the above sanctions for the violation of a subcontractor or individual independent contractor as long as the employer has not itself been in violation as described above and has cooperated with investigation of a subcontractor's alleged violation.

Penalties

An individual who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in a form I-9 or affidavit executed as described above would be guilty of a felony (perjury) punishable by imprisonment for up to 15 years.⁴

An individual who willfully and repeatedly violates the bill would be responsible for a state civil infraction and could be ordered to pay a civil fine of \$100 to \$1,000 per violation. (This sanction would apply only to individuals, i.e., not to businesses or other entities.)

Implementation and effectiveness

The Department of Labor and Economic Opportunity (LEO) would have to develop and issue rules to implement the bill.

The bill would take effect 90 days after the date it is enacted into law.

FISCAL IMPACT:

House Bill 4061 would have an indeterminate fiscal impact on the state and on local units of government. The bill would not have a direct fiscal impact on the Department of Technology, Management, and Budget (DTMB), the state's central procurement services provider. However, the state and local units of government could incur additional costs from the bill under certain conditions. There could be additional costs if DTMB were forced to terminate existing contracts, or subcontracts of a subcontractors, and renegotiate contracts in their place,

³ See <https://www.uscis.gov/i-9> Also 8 CFR 274a.2: <https://www.ecfr.gov/current/title-8/section-274a.2>

⁴ See <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-750-423>

depending on the terms of the new contract. It is also possible the state could incur costs if a vendor who would have otherwise been selected for a contract at a lower cost to the state can no longer compete due to not being a participating registrant of E-Verify. The contracting activities of many local units of government would be similarly affected.

The E-Verify service is free to use for both employers and contracting agencies. However, some private employers may incur minor indirect costs related to the use of staff time and resources to complete the training tutorial and to ensure ongoing compliance. Since the federal government uses E-Verify, as well as 25 states and local governments to varying degrees, many companies that fill government contracts would be unaffected.

To the extent that provisions of the bill result in an increase in felony convictions, the bill would result in increased costs related to state prisons and state probation supervision. Under the bill, an individual who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an I-9 form or an affidavit executed under the bill would be guilty of perjury, which is a felony punishable by imprisonment for not more than 15 years. In fiscal year 2024, the average cost of prison incarceration in a state facility was roughly \$46,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,500 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue.

In addition, an individual who repeatedly violates provisions of the bill would be responsible for a state civil infraction and could be ordered to pay a civil fine of not less than \$100 and not more than \$1,000 per violation. The fiscal impact would depend on the number of individuals ordered to pay a civil fine. Revenue collected from payment of civil fines is used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affect court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of civil fine revenue the state would collect, revenue for libraries, or costs to local courts cannot be made.

Finally, the bill would require the Department of Labor and Economic Opportunity to promulgate rules. The cost of this activity would likely be negligible and sufficiently absorbed by existing departmental resources.

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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.