



**WRITTEN TESTIMONY TO THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE
IN OPPOSITION TO HOUSE BILL 2492 AND HOUSE BILL 2577**

by Dan Morgan for
The Builders' Association and the Kansas City Chapter, AGC
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Thank you, Chairman Brunk and members of the Committee. My name is Dan Morgan. I am the past president of the Builders' Association in Kansas City and former executive director of the Kansas City Chapter, Associated General Contractors. I now provide governmental affairs representation for these organizations in Kansas and I am pleased to have the opportunity to submit this written testimony in opposition to House Bills 2492 and 2577 on their behalf. I would also tell you that these organizations have a neutral position of HB 2575 in its current form but they would also oppose that bill if it is amended to include political subdivisions or if it is amended to impact public works contracts. The Builders' Association and Kansas City Chapter, AGC represent more than 900 general contractors, subcontractors and suppliers engaged in the commercial and industrial building construction industry. Half of our members are located in the Kansas City area and are either domiciled in Kansas or perform work in the state.

We oppose state-mandated participation in E-Verify for those who contract for public work because the E-Verify system is flawed and because it unfairly impacts the vast majority of employers who never have and likely never will employ an illegal alien. In addition, we are very concerned about the significant potential for discrimination and wrongful termination lawsuits associated with employment decisions based on a flawed system. In fact, the system produces both "false positive" and "false negative" results that create fertile ground for such lawsuits. We do recognize and applaud the fact that both bills attempt to address wrongful termination suits brought under state law but a new state law cannot protect employers from discrimination suits brought pursuant to federal law.

A January 2010 study commissioned by the Department of Homeland Security, and conducted by research firm Westat, determined that only 6.2 percent of all E-Verify queries related to unauthorized workers. Importantly, Westat estimated that, primarily due to identity fraud, approximately half of unauthorized workers run through the E-Verify system receive an inaccurate finding of being authorized. For the most part, the system works well in producing good results for employers of authorized workers, but the system does falsely label some authorized workers as being unauthorized and, because the E-Verify system should not be used to pre-screen new employees, that produces fertile grounds for lawsuits as employers may take adverse action against such workers once the results are in.

We also oppose the strict penalty provisions in both bills. The possibility of having a contract terminated, being debarred from participation in further projects and having from 5 percent to 25 percent of the value of such contracts withheld as liquidated damages is excessive and even punitive in contested cases. Even the lower 5 percent liquidated damages penalty significantly exceeds the usual profit margin in commercial building construction projects.

Finally, we oppose legislation that mandates participation in E-Verify because it creates yet another requirement for law-abiding contractors to meet in order to compete for public funded projects, thereby chilling participation and reducing competition for such public projects. Reduced competition on public funded or assisted projects generally results in higher cost to Kansas taxpayers. We respectfully ask that you oppose HB 2492 and HB 2577 and thank you very much for your thoughtful consideration of our position on th

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