

- SUBJECT:** Denying public subsidies to businesses that hire unauthorized aliens
- COMMITTEE:** Economic Development — committee substitute recommended
- VOTE:** 7 ayes — Deshotel, Straus, Kolkhorst, Dunnam, Morrison, Ortiz, Veasey  
0 nays
- WITNESSES:** For — (*Registered, but did not testify:* John Kroll, Little Elm Economic Development Corporation, town of Little Elm)  
  
Against — (*Registered, but did not testify:* Shelton Green, Texas Association of Business; Benny Hernandez, American Civil Liberties Union of Texas)
- BACKGROUND:** Federal law — 8 U.S.C., sec. 1325(a) — prohibits the unauthorized entry of aliens into the United States without proper examination or inspection by immigration authorities. 8 U.S.C. sec. 1324a prohibits employers from knowingly hiring, recruiting, or continuing to employ unauthorized aliens.
- DIGEST:** CSHB 1196 would add Government Code, ch. 2264 to require any business that applied for an economic development grant or public subsidy from a public agency, taxing district, or economic development corporation to submit a statement certifying that the business did not and would not employ unauthorized aliens. The bill would define “public subsidy” as a public program, benefit, or assistance of any type designed to stimulate the economic development of a corporation, industry, or sector of the economy or to create or retain jobs in Texas.  
  
A business, or one of its branches or divisions, that received a public subsidy would have to repay the amount of the subsidy with interest if the business was convicted under 8 U.S.C., sec. 1324a of hiring, recruiting, or continuing the employment of an unauthorized alien. The business would have 120 days to make repayment after being informed of the violation by the entity that provided the subsidy. Before providing a public subsidy, a public agency, taxing district, or economic development corporation would be required to enter into a written agreement with the receiving business to stipulate the rate and terms of repayment in the event of a violation.

The bill would authorize an entity that issued a public subsidy or the attorney general to bring a civil action to recover any amounts owed to the entity, including court costs and reasonable attorney's fees.

A business would not be liable for violations of this bill committed by its subsidiaries, affiliates, or franchisees.

The bill would take effect September 1, 2007, and would apply only to public subsidies provided on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1196 would be a prudent tool in combating the illegal immigration problem on the demand side of the equation. There are an estimated 11 million unauthorized aliens in the United States, more than 1 million of whom live in Texas. This bill would help limit the lure of available jobs for unauthorized aliens and decrease the inducement for people to enter the country illegally. By ensuring that businesses seeking economic development grants did not employ or hire unauthorized aliens, the bill would protect the use of state funds for state interests. It would assure that state tax dollars were not used in violation of federal law and that legal residents received the full benefit of public subsidies paid for with their tax dollars.

CSHB 1196 would mirror requirements already in law. It would complement and supplement federal immigration law, rather than contradicting or countermanding it. It only would apply to businesses upon a final conviction under 8 U.S.C. Section 1324a. Businesses still would have the "good faith" exception available to them as an affirmative defense under the federal law, so no business would be required to repay any subsidy until there was a final determination upon conviction that it had knowingly employed or recruited an unauthorized alien. The bill also would ensure that businesses continued to adhere to existing laws that require documentation and verification of identity.

Businesses that receive incentives and public subsidies have a fiduciary duty to comply with a number of accounting requirements, financial reporting requirements, governance requirements, and requirements to verify identification. If it is reasonable for businesses to comply with these requirements in the course of doing business with public funds, then it should be reasonable for them to comply with the requirement not to knowingly hire, recruit, or employ unauthorized aliens. The requirements in CSHB 1196 would function similarly to existing "clawback" provisions

in economic development grants with which many receiving business already must comply.

OPPONENTS  
SAY:

CSHB 1196 would entangle Texas and its political subdivisions into the area of immigration employer sanctions, an activity that is the federal government's exclusive responsibility. Because immigration law is enforced by the federal government, including employer sanctions for hiring unauthorized aliens, it is likely in the event of conflict that federal law would control over the provisions of this bill. This could create unnecessary and expensive legal fights for the state or political subdivisions attempting to implement and enforce the bill.

By requiring a business applying for a public subsidy to provide a statement certifying that the business did not and would not employ an unauthorized alien, the bill would create a different legal standard than the federal employer sanctions regime. Federal law — 8 U.S.C., sec. 1324a — provides an affirmative defense against a violation if the business can show that it did not knowingly hire an unauthorized alien and made a good faith effort to obtain legal documentation demonstrating that an alien was authorized to live or work in the United States. CSHB 1196 would not allow for a business to offer a similar affirmative defense if it were required by a state agency or other entity to repay a public subsidy.

NOTES:

Unlike HB 1196 as introduced, the committee substitute would not hold a business liable for violations committed by its subsidiaries, affiliates, or franchisees. The substitute also eliminated a provision in the original that would have held a business liable if it employed a person convicted under 8 U.S.C. sec. 1324c, which concerns document fraud.