



Am. H.B. 101
123rd General Assembly
(As Passed by the House)

**Reps. Young, Jacobson, Corbin, Jordan, Netzley, Van Vyven, Hood,
Williams, Evans, Harris**

BILL SUMMARY

- Requires a public authority to ensure that bid specifications issued by the public authority for the proposed public improvement and any subsequent contract or other agreement to which the public authority and a contractor or subcontractor are direct parties do not require a contractor or subcontractor (1) to enter into agreements with labor organizations on that improvement or (2) enter into an agreement that requires its employees to become members of or pay fees and dues to a labor organization as a condition of employment or continued employment.
- Prohibits a public authority from awarding a contract for a public improvement if the contract's bid specifications contain the prohibited elements set forth above.
- Prohibits a public authority from discriminating against any bidder, contractor, or subcontractor for refusing to become a party to any agreement with a labor organization on a public improvement currently under bid or its related projects.
- Permits an interested party to file a civil action within two years of the date on which a contract for a public improvement was signed for alleged violations of the bill's provisions.
- Permits a court to award court costs, attorney's fees, and other costs to a prevailing plaintiff.

CONTENT AND OPERATION

Prohibiting the imposition of certain labor requirements in contracts for public improvements

The bill requires a public authority, when it procures products or services, awards contracts, or oversees procurement or construction for public improvements, to ensure that bid specifications issued by the public authority for the proposed public improvement, and any subsequent contract or other agreement to which the public authority and a contractor or subcontractor are direct parties do not require a contractor or subcontractor to do either of the following:¹

(1) Enter into agreements with any labor organization on the public improvement (see **COMMENT**);

(2) Enter into any agreement that requires the employees of that contractor or subcontractor to become members of or affiliated with a labor organization or pay dues or fees to a labor organization as a condition of employment or continued employment. (Sec. 4116.02.)

Prohibited actions by public authorities

The bill prohibits a public authority from doing any of the following:

(1) Awarding a contract for a public improvement if the contract and any subsequent contract or other agreement to which the public authority and a contractor or subcontractor are direct parties is required to contain any of the prohibited elements specified above;

(2) Discriminating against any bidder, contractor, or subcontractor for refusing to become a party to any agreement with a labor organization on the public improvement that currently is under bid or on projects related to that improvement;

¹ "Public authority" means the following when authorized to enter into a contract for the construction of a public improvement or to construct a public improvement by the direct employment of labor: (1) any officer, board, or commission of the state, (2) any political subdivision of the state, or (3) any institution supported in whole or in part by public funds. "Public authority" does not mean any municipal corporation that has adopted a charter under Sections 3 and 7 of Article XVIII of the Ohio Constitution, unless the specific contract for the public improvement includes state funds appropriated for the purposes of that public improvement (sec. 4116.01(A)).

(3) Violating its duty to ensure that bid specifications issued by the public authority for the proposed public improvement, and any subsequent contract or other agreement to which the public authority and a contractor or subcontractor are direct parties do not contain any of the prohibited elements specified above. (Sec. 4116.03.)

Public improvements to which the bill applies

The bill specifies that the term "public improvement" means (1) all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and other structures or works constructed by a public authority or by any person pursuant to a contract with a public authority, and (2) work performed on a newly constructed structure to suit it for occupancy by a public authority when that public authority leases or rents that structure within six months after its completion. (Sec. 4116.01(C).)

"Construction" means any new construction of a public improvement that is performed by other than full-time, nonprobationary employees in the classified service, and (2) any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement that is performed by other than full-time, nonprobationary employees in the classified civil service. The term "construction" further includes construction on projects financed from the Department of Development Financing Advisory Council, the Minority Business Enterprise Loan Fund, industrial development bonds, the economic development program, or for an energy resource development facility, a community redevelopment corporation, or the Air Quality Development Authority. (Sec. 4116.01(B).)

Enforcement

The bill permits an interested party to file a complaint against a contracting public authority alleging a violation of the bill's provisions within two years after the date on which the contract was signed, in the court of common pleas of the county where the public improvement was performed.² The performance of the contract forms the basis of the allegation of a violation. The court is required to

² The bill defines an "interested party" as (1) any person who submits a bid for the purpose of securing the award of a contract for the public improvement, (2) any subcontractor of a person mentioned in (1), (3) any association having as members any of the persons mentioned in (1) or (2), (4) any employee of a person mentioned in (1), (2), or (3), and (5) any individual who is a resident of the jurisdiction of the public authority for whom products or services for a public improvement are being procured or for whom work on a public improvement is being performed (sec. 4116.01(D)).

hear and decide the case, and upon a finding that a violation has occurred, void the contract and make any orders that will prevent further violations.

The rules generally applicable to civil actions in the courts of this state govern all actions under this section, and any determination of a court is subject to appellate review. The court may award reasonable attorney's fees, court costs, and any other fees incurred in the course of the civil action to the prevailing plaintiff if a violation is found.

COMMENT

The types of "agreements" to which the bill appears to be referring are often called "project labor agreements" ("PLA"). Such agreements are used by both private owners and public authorities to minimize labor disputes surrounding their construction projects. Usually a PLA is used for large projects involving a considerable volume of construction at a single site or group of interrelated sites over a period of years.³

A PLA may cover many different matters related to the project, but typically, also includes such provisions as: (1) recognition of the local building construction trades council and affiliated labor organizations as the exclusive bargaining representative for all craft employees on the project, (2) a union security clause that requires all employees to become union members within a certain number of days after their employment, (3) a commitment to rely primarily on designated union hiring calls for the project's skilled labor force, (4) a project-specific dispute resolution procedure, (5) a no strike/no lockout agreement for the duration of the project, and (6) a requirement that all contractors and subcontractors agree to be bound by the agreement.⁴

Currently, nothing in the Ohio Revised Code prohibits public authorities from requiring successful bidders to adhere to a PLA as a condition of being awarded a contract for a public improvement. In addition, one Ohio Court of

³ *D. QUINN, INDUSTRIAL RELATIONS AND MANPOWER IN CONSTRUCTION 40 (1972)*; see also *UNITED STATES DEPARTMENT OF LABOR, LABOR MANAGEMENT SERVICES ADMINISTRATION, THE BARGAINING STRUCTURE IN CONSTRUCTION: PROBLEMS AND PROSPECTS 14 (1980)*.

⁴ See, e.g., *State ex rel. Associated Builders and Contractors v. Jefferson Cty. Bd. of Comm. (Jefferson Cty. 1995)*, 106 Ohio App.3d 176, 179, discretionary appeal not allowed (1996) 74 Ohio St.3d 1499 (*upholding the use of a PLA in the construction of a county jail*).

Appeals has held that PLA requirements do not violate the Ohio Constitution or Ohio's competitive bidding laws.⁵

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-99	p. 120
Reported, H. Commerce & Labor	04-21-99	p. 454
Passed House (51-46)	05-12-99	p. 626

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⁵ State ex rel. Associated Builders and Contractors v. Jefferson Cty. Bd. of Comm., 106 Ohio App.3d 176. But see Enertech Electrical, Inc. v. Mahoning County Comm. (6th Cir. 1996), 85 F.3d 257 (refusing to decide whether PLAs violate Ohio's competitive bidding law because the Ohio Supreme Court has not expressly decided the issue).