



H.B. 340

125th General Assembly
(As Introduced)

Reps. Young, Williams, Hagan, Brinkman, Seitz, Grendell, Gibbs, Buehrer, Schaffer, Reidelbach, Gilb

BILL SUMMARY

- Revises an existing statute that has been found unconstitutional, to provide that a state agency or public authority can neither require nor prohibit any person who submits a bid on a public improvement project from entering into or adhering to an agreement with a labor organization on the project.
- Prohibits a state agency or public authority from otherwise discriminating against a bidder on a public improvement project based on the bidder's decision to enter into or adhere to, or to refrain from entering into or adhering to, an agreement with a labor organization on the project.

CONTENT AND OPERATION

Background: existing law held preempted

Current law, enacted in Am. H.B. 101 of the 123rd General Assembly, requires a public authority,¹ when it procures products or services, awards contracts, or oversees procurement or construction for public improvements, to ensure that its bid specifications for the proposed improvement, and any subsequent contract or other agreement to which the public authority and a

¹"Public authority" means any officer, board, or commission of the state, any political subdivision of the state, or any institution supported in whole or in part by public funds, 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. However, "public authority" does not include any municipal corporation that has adopted a charter, unless the specific contract for a public improvement includes state funds appropriated for the purposes of that public improvement. (R.C. 4116.01(A), not in the bill.)

contractor or subcontractor are direct parties, do not require a contractor or subcontractor to do either of the following:

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

(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. (R.C. 4116.02.) (See **COMMENT.**)

In addition, public authorities are prohibited from discriminating against any bidder, contractor, or subcontractor for refusing to become a party to any agreement with any labor organization on the public improvement that currently is under bid or on projects related to that improvement. Current law also specifically prohibits a public authority from awarding a contract in violation of the above requirements or from otherwise violating those requirements. (R.C. 4116.03.)

In 2002, the Ohio Supreme Court found that Am. H.B. 101 is preempted by the National Labor Relations Act, and, therefore, violates the Supremacy Clause of the United States Constitution.² The Supremacy Clause of the Constitution states, "this Constitution and the laws of the United States...shall be the supreme law of the land...any thing in the Constitution or laws of any State to the contrary notwithstanding."³ Thus, under this clause, federal laws or regulations supercede any conflicting state law.

The bill's revisions

The bill repeals all of the existing requirements and prohibitions described above. Instead, the bill provides that state agencies and public authorities can neither require nor prohibit any person who submits a bid on a public improvement project to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction projects, or otherwise discriminate against any person who submits a bid on a public improvement project based on that person's decision to enter into or adhere to agreements or refrain from entering into or adhering to agreements with one or more labor organizations on the same or other related construction projects. The bill specifies that this requirement applies under the following circumstances:

² *Ohio State Building & Construction Trades Council v. Cuyahoga County Board of Commissioners*, 98 Ohio St.3d 214 (2002).

³ *Article VI, United States Constitution.*

(1) To state agencies, when engaged in procuring products or services, awarding contracts, or overseeing procurement or construction for public improvements;

(2) To public authorities, when engaged in procuring products or services, awarding contracts, or overseeing procurement or construction for public improvements and when doing so includes the use of state funds appropriated for the purposes of constructing a public improvement;

(3) To public authorities, when engaged in procuring products or services, awarding contracts, or overseeing procurement or construction for public improvements. (R.C. 4116.02.)

The bill also continues authority under existing law for an interested party⁴ to file a complaint against a public authority for alleged violations of these provisions. Complaints must be filed within two years after the date the contract for the public improvement was signed. The complaint must be filed in the court of common pleas where the public improvement was performed. The court is required to 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 court may also award the prevailing plaintiff reasonable attorney's fees, courts costs, and any other fees incurred by the plaintiff in the course of the action. (R.C. 4116.04.)

Applicability to previous contracts

The bill provides that its provisions are not applicable to contracts that originate on or before its effective date, or to subcontracts awarded pursuant to those contracts regardless of when the subcontracts are awarded. (Section 3.)

Legislative intent

The bill states that its purpose is neither to encourage nor discourage agreements with one or more labor organizations, but rather to ensure that the

⁴An "interested party" means the following: (1) any person who submits a bid for the purpose of securing the award of a contract for a public improvement, (2) any person acting as a 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 project is being performed. (R.C. 4116.01(D), not in the bill.)

decision to use agreements with one or more labor organizations is left to private market participants rather than to government entities. (Section 4.)

Severability

R.C. 1.50 provides that if any provision of a section of the Revised Code is found to be invalid, the invalidity of that provision does not affect the other provisions or applications of the section or related sections which can be given effect without the invalid provision. The bill specifies that this severability provision is applicable to the bill. (Section 5.)

COMMENT

The types of "agreements" referred to in Am. H.B. 101 and the bill would appear to include "project labor agreements." Typically, provisions of a project labor agreement may include, but are not limited to: (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 no strike/no lockout agreement for the duration of the project, and (5) a requirement that all contractors and subcontractors agree to be bound by the agreement.⁵

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-01-03	p. 1219

⁵See, e.g., *Associated Builders and Contractors v. Jefferson County Board of Commissioners*, 106 Ohio App.3d 176 (1995).