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Bill Analysis
Legislative Service Commission

H.B. 507

125th General Assembly
(As Introduced)

Rep. J. Stewart

BILL SUMMARY

- Prohibits the appropriate local building department or the Superintendent of Industrial Compliance from approving plans submitted by a public authority for a public improvement that do not have evidence of contractor, subcontractor, and lower tier subcontractor compliance with certain laws.
- Prohibits a public authority from awarding a contract to a contractor who does not provide the required certificates of compliance.
- Requires contractors to supply a public authority with certificates of compliance from certain state agencies demonstrating compliance with certain state laws.
- Requires subcontractors and lower tier subcontractors to obtain affidavits demonstrating their compliance with certain state laws.
- Establishes criminal penalties for contractors and subcontractors who contract with subcontractors and lower tier subcontractors who violate certain laws.
- Requires employers to maintain records concerning employee's proof of legal status or authorization to work in the United States.
- Establishes a criminal penalty for employers who employ illegal aliens.

CONTENT AND OPERATION

Evidence of contractor, subcontractor, and lower tier subcontractor compliance with specified laws

Before beginning construction, existing law requires an owner to submit the plans, drawings, and other data for a building to which the Ohio Building Code applies (nonresidential buildings) to a certified municipal, township, or county building department for approval. If no certified local building department has jurisdiction, then the documentation must be submitted to the Superintendent of the Division of Industrial Compliance in the Department of Commerce. (Sec. 3791.04(A).) Continuing law prohibits the owner from proceeding with the construction, erection, alteration, or equipment of any such building prior to approval. Current law specifies that plans or specifications must not be approved unless the building represented would comply with the Building Standards Law (Chapters 3781. and 3791. of the Revised Code) or any rules adopted under those laws. (Sec. 3791.04(C) and (D)(1).)

The bill adds to the current law a prohibition against plans or specifications being approved or inspection approval given unless, if the building for which the plans and specifications are being submitted is a public improvement, the public authority contracting for the public improvement and the contractor, subcontractors, and lower tier subcontractors performing work for the public improvement are in compliance with the requirements in the bill concerning evidence of compliance with specified laws as described below. Under the bill, a "public authority" means an officer, board, or commission of the state or any political subdivision of the state, authorized to enter into a contract for the construction of a public improvement, and a "public improvement" means the construction of all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a public authority (sec. 153.02(G)(1) and (2)) (see **COMMENT** 1). The bill requires the public authority to submit copies of the contractor's certificates of compliance and the affidavits from the subcontractors and lower tier subcontractors regarding their compliance with the plans and specifications the public authority submits for approval. (Sec. 3791.04(D)(2) and (E).) Under existing law, made applicable by the bill, whoever violates these new approval requirements may be fined up to \$500 (sec. 3791.04(M)).

The bill defines a "contractor" as any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with the public authority responsible for

constructing the public improvement or the construction manager¹ for the public improvement (sec. 153.02(G)). The bill prohibits a public authority from awarding a contract for a public improvement to a contractor without first obtaining from the contractor all of the following certificates of compliance:

(1) A valid certificate issued by the Administrator of Workers' Compensation affirming that the contractor is in compliance with the Workers' Compensation Law (Chapters 4121. and 4123. of the Revised Code);

(2) A valid certificate issued by the Director of Job and Family Services affirming that the contractor is in compliance with the Unemployment Compensation Law (Chapter 4141. of the Revised Code);

(3) A valid certificate issued by the Director of Commerce affirming that the contractor is in compliance with the Prevailing Wage Law (Chapter 4115. of the Revised Code);

(4) A valid certificate issued by the Tax Commissioner affirming that the contractor has paid all taxes levied under the Corporation Franchise Tax Law, the Sales Tax Law, the Use Tax and Storage Tax Law, or the Income Tax Law (Chapters 5733., 5739., 5741., or 5747. of the Revised Code, respectively) for which the contractor is liable, is current in the remittance to the state of taxes withheld under continuing law (section 5747.07 of the Revised Code), and is current in the remittance to the state of any taxes levied under the Use Tax and Storage Tax Law or the Income Tax Law and collected by the contractor as a vendor;

(5) A valid certificate issued by the appropriate tax-collecting authority of each municipal corporation in which the contractor conducts business affirming that the contractor has paid all municipal corporation taxes for which the contractor is liable, and is current in the remittance of municipal income taxes withheld from employees subject to such withholding;

(6) A valid certificate issued by the county treasurer of each county in which property is located for which the contractor is liable for the payment of

¹ "Construction manager," as defined under continuing law, means a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement, but does not mean the person who provides the professional design services or who actually performs the construction, demolition, alteration, repair, or reconstruction work on the project (sec. 9.33, not in the bill).

property taxes or assessments affirming that the contractor is current in the payment of taxes and assessments on that property. (Sec. 153.02(A)(1) to (8).)

The bill requires the officials listed under (1) through (6) above to issue a certificate of compliance to a contractor if the contractor submits a request for a certificate and is in compliance with the applicable law administered or enforced by that official. Under the bill, these officials individually may design a certificate to be used for purposes of demonstrating compliance as each of these officials determines appropriate. (Sec. 153.02(B).)

The bill specifies that a certificate of compliance is considered valid if the date the certificate was issued is not later than one year prior to the date the contractor submits the certificate to the public authority. Under the bill, a public authority must retain the certificates of compliance and affidavits obtained for a public improvement until all work performed for the public improvement is completed. (Sec. 153.02(C) and (D).)

Subcontractors and lower tier subcontractors

Under the bill, a "subcontractor" is any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with any person other than the public authority responsible for constructing the public improvement (sec. 153.02(G)(5)). The bill prohibits a contractor from entering into a contract with a subcontractor to perform work for the public improvement unless the subcontractor provides to the contractor an *affidavit*, as opposed to a certificate of compliance, affirming compliance with the Prevailing Wage Law, the Unemployment Compensation Law, and the Workers' Compensation Law, and affirming that the subcontractor has paid or remitted all applicable taxes referred to in (4), (5), and (6) above. Upon receipt of the affidavit, the bill requires the contractor to provide a copy of the affidavit to the public authority with whom it has contracted for the public improvement. The contractor must retain the affidavits obtained for a public improvement until all work performed for the public improvement is completed. (Sec. 153.02(E).)

A lower tier subcontractor, under the bill, means a subcontractor who is not in privity of contract with a contractor but is in privity of contract with another subcontractor (sec. 153.02(G)(6)). Under the bill, the subcontractor is prohibited from entering into a contract with a lower tier subcontractor unless the lower tier subcontractor submits an affidavit meeting the same requirements as the affidavit for a subcontractor; additionally, the lower tier subcontractor submits the affidavit to the subcontractor, and the subcontractor must submit copies to the public authority upon receipt of the affidavit. The bill does not mention whether the

contractor receives a copy of the lower tier subcontractor's affidavit, nor does it specify how long the subcontractor retains an affidavit. (Sec. 153.02(F).)

Under the bill, a contractor who enters into a contract with a subcontractor who does not provide an affidavit, and a subcontractor who enters into a contract with a lower tier subcontractor who does not provide an affidavit are guilty of a first degree misdemeanor for a first offense and a fourth degree felony for each subsequent offense (sec. 153.99(C)).²

Employment of illegal aliens

The bill defines an alien as an individual who is not a citizen of the United States. The bill prohibits an employer from employing, hiring, recruiting, or referring, either for the employer or on behalf of another employer, for private or public employment within this state, an alien who is not authorized to work in accordance with the conditions imposed in section 101(a) of the "Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 U.S.C.A. 1324a, as amended (see **COMMENT**) (sec. 4113.82(A)).³

The bill requires an employer to verify a prospective employee's legal status or authorization to work prior to employing the individual or contracting with the individual for employment services. Proof of legal status or authorization under the bill includes, but is not limited to, valid forms of any of the following documentation:

- (1) A social security card;
- (2) An immigration visa;
- (3) A birth certificate;
- (4) A passport;

² *A first degree misdemeanor may carry a possible jail term of not more than 180 days, a possible conventional fine of not more than \$1,000, and other possible sanctions (see secs. 2929.24 and 2929.29, not in the bill). A fourth degree felony may carry a prison term for 6 to 18 months, a fine of not more than \$5,000, or both, and other possible sanctions (see secs. 2929.14 and 2929.18, not in the bill).*

³ *The bill defines "employer" as any person who has one or more employees. "Employer" includes an agent of an employer, the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality thereof (sec. 4113.51(B), not in the bill, and sec. 4113.81(C)).*

- (5) A photograph identification card issued by a government agency;
- (6) Permits issued by the United States Department of Justice;
- (7) Other documents providing evidence of legal residence or authorization to work in the United States.

The bill also requires that the identification for an alien must include some form of photograph identification. (Sec. 4113.82(B) and (C).)

The bill requires every employer to maintain records of the employer's employees that must include records of proof of the legal status or authorization to work of all employees. The employer must maintain the records at the place of employment and make the records available for inspection and investigation by the Director of Commerce or the Director's authorized representative at any reasonable time for the purposes of determining whether any employer has violated any provision of the bill relating to the employment of aliens. (Sec. 4113.83.) Under the bill, anyone who violates the provisions in the bill relating to the employment of aliens is guilty of a first degree misdemeanor for the first offense and a fourth degree felony for each subsequent offense (sec. 4113.99(D)).⁴

COMMENT

1. As defined under continuing law, "construction" means either of the following:

(1) Any new construction of any public improvement, the total overall project cost of which is fairly estimated to be more than \$50,000 adjusted biennially by the Director of Commerce pursuant to continuing law (currently and for calendar years 2004 and 2005, \$65,843) and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.

(2) Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement, the total overall project cost of which is fairly estimated to be more than \$15,000 adjusted biennially by the administrator pursuant to continuing law (currently and for calendar years 2004 and 2005, \$19,752) and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority. (Sec. 4115.03, not in the bill.)

⁴ See footnote 2, above.

2. Section 101(a) of the Immigration Reform and Control Act of 1986, 100 Stat. 3360, 8 U.S.C.A. 1324a, as amended (IRCA), states that the IRCA preempts "any state or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ or recruit or refer for a fee for employment, unauthorized aliens" (IRCA, 8 U.S.C.A. 1324a(h)(2)). Therefore, the bill potentially may conflict with federal law.

HISTORY

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