



# Ohio Legislative Service Commission

## Bill Analysis

Julie A. Rishel

### H.B. 102

129th General Assembly  
(As Introduced)

**Reps.** Young, J. Adams, Brenner, Roegner, Huffman, Blessing, Boose, Snitchler, Thompson, Wachtmann, Blair, Uecker, Bubb, Buchy, Hall, Damschroder, Grossman, Martin, Stebelton, Maag, Slaby, Sears

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## BILL SUMMARY

- Generally limits the application of the Unlawful Labor Requirements in Public Improvement Contracts Law to state agencies rather than public authorities generally as under current law.
- Requires a state agency to ensure that bid specifications issued by the state agency for the proposed public improvement and related contracts do not prohibit a contractor or subcontractor from entering into certain agreements with labor organizations or regarding labor organization membership and dues.
- Prohibits a state agency from issuing grants or entering into cooperative agreements for construction that have as a condition of the grant or agreement that bid specifications, project agreements, or other documents related to the grant or cooperative agreement contain either of the items described in the preceding dot point.
- Prohibits any state funds from being appropriated for the purpose of constructing a public improvement if any Ohio political subdivision, with respect to procuring services or products or a public improvement, requires a contractor or subcontractor to enter into, or prohibits a contractor or subcontractor from entering into, an agreement with labor organizations or regarding membership and dues.
- Prohibits a state agency from discriminating against specified entities 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.

- Requires a state agency to prevent a grant recipient or a party to a cooperative agreement from behaving inconsistently with the current prohibition against discriminating against specified entities.
- Allows an interested party to bring an enforcement action against a state agency rather than any public authority as under current law.

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## CONTENT AND OPERATION

### Entities to which bill applies

The bill limits the application of the Unlawful Labor Requirements in Public Improvement Contracts Law,<sup>1</sup> which prohibits certain labor requirements as a condition of performing public works, to only state agencies, rather than to public authorities under current law. A "state agency," under the bill, means any officer, board, or commission of the state 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. A "public authority" under current law includes a state agency as described above and any Ohio political subdivision and 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 mean any municipal corporation exercising the municipal corporation's home rule authority, unless the specific contract for a public improvement includes state funds appropriated for the purposes of that public improvement.<sup>2</sup>

The Ohio Supreme Court held in *Ohio State Bldg. and Constr. Trades Council, et al. v. Cuyahoga County Bd. of Trustees*<sup>3</sup> that the Unlawful Labor Requirements in Public Improvement Contracts Law is preempted by the National Labor Relations Act<sup>4</sup> and thus unconstitutional. Thus, the law is not currently enforced. (See **COMMENT.**)

### Imposition of certain labor requirements in public improvement contracts

As discussed above, the bill limits the prohibition against including certain labor requirements in bid specifications for a public improvement to state agencies. However, the bill also expands this provision by not permitting a state agency to

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<sup>1</sup> R.C. Chapter 4116.

<sup>2</sup> R.C. 4116.01(A).

<sup>3</sup> (2002), 98 Ohio St.3d 214, 2002 Ohio 7213.

<sup>4</sup> 29 United States Code 151 *et seq.*

*prohibit* the provisions either. Thus, under the bill, a state agency, when engaged in procuring products or services, awarding contracts, or overseeing procurement or construction for public improvements, must ensure that the agency-issued bid specifications for the proposed public improvement do not prohibit a contractor or subcontractor from doing either of the following:

(1) Entering into agreements with any labor organization (essentially, a union) on the public improvement;

(2) Entering 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.

As under current law, this provision also applies to any subsequent contract or other agreement for the public improvement to which the state agency and a contractor or subcontractor are direct parties.<sup>5</sup>

## **Prohibited actions by state agencies**

### **Limits on applicability of current law prohibitions**

Similar to current law, the bill prohibits a state agency (rather than a public authority under current law) from doing any of the following:

(1) Awarding a contract for a public improvement if the contract or subsequent contract or other agreement to which the state agency and a contractor or subcontractor are direct parties is required to or prohibited from containing the elements described in (1) and (2) under "**Imposition of certain labor requirements in public improvement contracts**," above;

(2) 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;

(3) Violating the state agency's duty to ensure that bid specifications issued by the state agency for the proposed public improvement, and any subsequent contract or other agreement for the public improvement to which the state agency and a contractor or subcontractor are direct parties, do not require or prohibit the elements described in

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<sup>5</sup> R.C. 4116.02.

(1) and (2) under "**Imposition of certain labor requirements in public improvement contracts,**" above.<sup>6</sup>

### **Prohibitions added by the bill**

The bill also prohibits a state agency from doing either of the following:

(1) Issuing grants or entering into cooperative agreements for construction that have as a condition of the grant or agreement that bid specifications, project agreements, or other documents related to the grant or cooperative agreement contain either of the items described under "**Imposition of certain labor requirements in public improvement contracts,**" above;

(2) Discriminating against any grant recipient or party to a cooperative agreement for construction for refusing to become a party to any agreement with any labor organization on the grant project or cooperative agreement construction project.<sup>7</sup>

### **Oversight by state agencies**

Within the authority granted to a state agency by the Revised Code, under the bill the state agency must prevent a grant recipient or a party to a cooperative agreement from behaving inconsistently with the prohibition against 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.<sup>8</sup>

### **Use of state funds for certain local projects**

The bill prohibits any state funds from being appropriated for the purpose of constructing a public improvement, if any Ohio political subdivision, in procuring products or services, awarding contracts, or overseeing procurement or construction for public improvements, requires a contractor or subcontractor to enter into, or prohibits a contractor or subcontractor from entering into, an agreement described under "**Imposition of certain labor requirements in public improvement contracts,**" above.<sup>9</sup>

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<sup>6</sup> R.C. 4116.03(A)(1) to (3).

<sup>7</sup> R.C. 4116.03(A)(4) and (5).

<sup>8</sup> R.C. 4116.03(B).

<sup>9</sup> R.C. 4116.03(C).

## Public improvements to which the bill applies

The bill applies only to the construction of a public improvement undertaken by a state agency as opposed to current law, which applies to construction of a public improvement undertaken by *any public authority* and construction in the private sector that is funded pursuant to certain statutory programs. Similar to current law, under the bill a "public improvement" means all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and other structures or works constructed by a state agency or by any person who, pursuant to a contract with a state agency, constructs any structure or work for a state agency. When a state agency rents or leases a newly constructed structure within six months after completion of its construction, all work performed on that structure to suit it for occupancy by a state agency is a "public improvement."

"Construction," under the bill, is limited to (1) any new construction of any public improvement performed by other than full-time employees who have completed their probationary periods in the classified service of a state agency and (2) any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of any public improvement performed by other than full-time employees who have completed their probationary period in the classified civil service of a state agency.<sup>10</sup>

## Enforcement

Continuing law permits an interested party to bring an action to enforce the Unlawful Labor Requirements in Public Improvement Contracts Law, however, the bill permits those actions to be brought against state agencies only. An "interested party," under continuing law and with respect to a particular public improvement, includes all of the following:

- (1) Any person who submits a bid for the purpose of securing the award of a contract for the public improvement;
- (2) Any person acting as a subcontractor of a person mentioned in (1), above;
- (3) Any association having as members any of the persons mentioned in (1) or (2), above;
- (4) Any employee of a person mentioned in (1), (2), or (3), above;
- (5) Any Ohio resident.

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<sup>10</sup> R.C. 4116.01(B) and (C).

Similar to current law, the bill permits an interested party to file a complaint against a state agency alleging a violation of the bill within two years after the date on which the contract is signed for the public improvement in the court of common pleas of the county in which the public improvement is performed. Under continuing law, the performance of the contract forms the basis of the allegation of a violation. Continuing law requires the court in which the complaint is filed to hear and decide the case and, upon a finding that a violation has occurred, must void the contract and make any orders that will prevent further violations. If the court finds a violation has occurred, 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. Under continuing law, the Rules of Civil Procedure govern these actions, and any determination of a court is subject to appellate review.<sup>11</sup>

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## COMMENT

In 2002, the Ohio Supreme Court held that specified provisions of the federal National Labor Relations Act (NLRA) preempted the Unlawful Labor Requirements in Public Improvement Contracts Law. The NLRA generally applies to the private sector, and a state may be limited in regulating labor relations between private employers and unions. Sections 8(e) and (f) of the NLRA specifically allow the construction industry to enter into agreements and take other actions that other private employers cannot. The Court held that the Revised Code provisions essentially prohibit project labor agreements, and that those sections of the NLRA allow such agreements. The Court stated that if the state, as a market participant, wants to prohibit the use of project labor agreements, the state may do so as the purchaser of the product or services. However, by prohibiting other entities, such as political subdivisions, from using project labor agreements, the prohibition amounts to a regulation, and the Court held that the state cannot pass laws to regulate the construction industry in contravention of the NLRA.<sup>12</sup>

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## HISTORY

ACTION	DATE
Introduced	02-15-11

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<sup>11</sup> R.C. 4116.01(D) and 4116.04.

<sup>12</sup> *Ohio State Bldg. and Constr. Trades Council* at ¶¶65, 69, and 94.

