Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL:	**Am. Sub. H.B. 587**	DATE:	**November 17, 1998**
STATUS:	**As Re-referred to House Commerce and Labor**	SPONSOR:	**Rep. Wachtmann**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Requires political subdivisions to provide a preference in the awarding of public improvement contracts under certain circumstances**

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Non-chartered Counties, Non-chartered Municipalities, Townships and School Districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase or decrease	Potential decrease
Other Special Districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase or decrease	Potential decrease

- Initially, the bill could increase costs to certain local governments contracting out public improvement projects by increasing the likelihood that the low bidder will be not chosen.

- In the future, by limiting the advantages gained from preferences given to local contractors, the bill could reduce expenditures on public improvement projects depending upon the actions of local governments and businesses.

Detailed Fiscal Analysis

Bill's Provisions

The bill requires a political subdivision or awarding authority to give preferences to contractors principally located in the public authority's jurisdiction and to contractors outside of its jurisdiction that do not receive preferences in their home jurisdiction over contractors outside of the public authority's jurisdiction that do receive preferences in their home jurisdictions.

The bill defines an awarding authority as any political subdivision, agency, authority, board, commission or instrumentality of a political subdivision that does not provide local preferences. The bill is likely to be applicable only to non-chartered political subdivisions and not to charter municipal corporations and counties. Generally, non-chartered municipalities, townships, counties, and single purpose public authorities must use competitive bidding and accept the lowest and best bid on public improvement projects. However, there are several exceptions to this general rule. For example, the Ohio Revised Code establishes cost thresholds that must be exceeded before competitive bidding is required.

The bill does not explicitly define what is meant by a "preference," although it does specify that no preference that it establishes takes precedence over programs or statutes established by law that provide preferences to minority and/or female owned and/or operated businesses. The bill could generally refer to any method of evaluating contractor bids that treats or scores the bids differently and is designed to benefit local contractors. A common example is to increase the dollar amount bid of non-local contractors by a certain percentage for scoring purposes. This analysis assumes that this is the type of preference given. However, other preferences, such as for war veterans, could fall under the term preference.

Fiscal Effects

Short Term Impact

Initially, the bill could increase costs by requiring public authorities that normally do not grant preferences to do so, when a contractor from a jurisdiction that grants preferences is bidding on a project. The result could be that the lowest and best bidder would not be awarded the contract if the low bidder were a firm from a jurisdiction that granted a local preference. The fiscal effect would depend upon the size or cost of a particular project and the range of bids received. The higher the total cost of the project, the more costly a preference could be. However, it is important to note that generally public authorities, as defined in the bill, are required to accept the lowest and best bid once the cost of a project passes a certain threshold. The threshold for counties is $49,999 (ORC 307.86), for townships it is $15,000 (ORC 511.12), for school districts its $25,000 (ORC 3313.46), and for municipal public service divisions the cost threshold is $10,000 (ORC 735.05). Therefore, the fiscal impact of the bill statewide could be limited.

There are approximately 939 municipalities in Ohio, of which 721 municipalities are not chartered. Of Ohio's 88 counties, all are non-charter counties except for Summit County. The bill would not have a fiscal impact on chartered municipalities nor Summit county as the bill is likely

not applicable to them. Chartered counties and municipalities can set their own rules for letting public contracts, as long as the rules comply with their charter.

Please see the table below for a hypothetical scenario as to the bill's short term impact. In the scenario, two hypothetical firms are bidding on a public improvement contract from a political subdivision that does not offer a preference. Assume firm A is a contractor from a jurisdiction that does not offer a preference. Assume firm B is a firm from a political subdivision that does offer local firms a 3% preference on public improvement contracts. Under the bill, firm A would receive the same preference as firm B does in its home political subdivision. In the case of project one in the table this would not impact the awarding of the contract. Conversely, in project 2 adding 3% to firm B's bid would increase the bid for awarding purposes to $10,300. Therefore, firm A would be considered to be the low bidder and would be awarded the contract, even though firm B was actually the low bidder.

Hypothetical bidding scenarios

Project	Firm A's Bid	Firm B's Bid	Accepted bid under current law	Accepted bid under H.B. 587	Cost with H.B. 587
1	$10,000	$10,299	A	A	$0
2	10,299	10,000	B	A	299

A representative from the Associated General Contractors of Ohio (AGCO) said that typically the highest bid and the lowest bid on a project vary by about 10 percent. However, on more costly projects the difference is smaller and it can be more difficult for non-local contractors to overcome the advantage of the local preference. Therefore, the preference is most likely to impact larger projects because on larger projects the difference between high and low bids is more likely to be less than 3 percent. However, because state law requires the lowest and best bid to be accepted by public authorities, as defined in the bill, the fiscal impact would generally only involve smaller or less expensive projects. These smaller projects are less likely to have non-local contractors bidding on them and the preference is more easily overcome because the actual dollar amount of the preference is smaller than on large projects.

Long Term Impact

In the longer term, LBO expects that the bill could result in reduced costs to all public authorities because firms and/or public authorities would alter their behavior due to the bill's provisions. For example, firms in a county that offer a preference may relocate or expand their locations if they desire to obtain contracts outside the county. Also a public authority that grants a preference may cease doing so because its local firms are at a disadvantage when bidding on contracts outside of the public authority's jurisdiction.

If adjustments such as these occurred, then preferences would cease to impact the bidding process and all public authorities could reduce expenditures because the lowest and best bidder would always be awarded a public improvement contract. Again, the actual impact in the long term could be minimal since public authorities, as defined in the bill, are quite restricted in their ability to offer preferences.

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