Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **Am. H.B. 40**

DATE: **March 24, 1999**

STATUS: **As Reported by House Local Government and Townships**

SPONSOR: **Rep. Jolivette**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

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

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Non-chartered Counties and Municipalities, Townships and School Districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase or decrease
Special districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase or decrease

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- 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, depending upon the actions of local governments and businesses, the bill may or may not affect preference policies of awarding authorities, which may result in a continued potential increase in expenditures for affected local governments or possibly could result in a decrease in costs for public improvement contracts.

Detailed Fiscal Analysis

Bill's Provisions

The bill requires an awarding authority to give preferences to contractors principally located in political subdivisions that do not give preferences when awarding public improvement contracts, if a contractor principally located in a subdivision that does give preferences to its contractors is also bidding on the project. In such cases, the preference given to the other contractors would be the same as the preference received by the contractor that is principally located in subdivision that gives preferences to local business in awarding its contracts. These provisions would not impact projects funded by the state or federal governments.

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," but it 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. It is unclear how such preferences might be affected, if at all.

The bill only requires an awarding authority to determine if the same unit of government where the contractor's principal place of business is located provides or does not provide a preference. For example, if a county is awarding a contract for a public improvement it only must determine whether or not the county in which a contractor has its principal place of business grants a preference.

Fiscal Effects

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, any fiscal impact from the bill would be limited by two main factors:

- Awarding authorities, as defined in the bill, are required under current law competitively bid a project, or accept the lowest and best bid, once the cost of the project passes a certain threshold.

- Projects with any funding from the state or federal government are excluded from the bill's requirements. The majority of public improvement projects in the state involve state and/or federal money; so many projects would not be impacted by the bill's changes.

Public authorities, as defined in the bill, are currently quite restricted by the Revised Code in their ability to offer preferences. Once the cost of a project crosses a certain threshold it must be competitively bid to the "lowest ant best bidder." These cost thresholds are listed below for counties, municipalities, school districts and townships.

Political subdivision	Project must be competitively bid when cost is greater than:
County	$49,999 (ORC 307.86)
Township	$15,000 (ORC 511.12)
School district	$25,000 (ORC 3313.46)
Municipality (Public Service Division)	$10,000 (ORC 735.05).

There are approximately 954 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 direct fiscal impact on chartered municipalities nor Summit county, as the bill is 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. There are 1309 townships and 611 school districts that could be impacted by the bill.

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 awarding authorities on most expensive projects, the fiscal impact would generally only involve smaller or less expensive projects. Larger projects are more likely to involve state or federal moneys and so be excluded from the bill's provisions. 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.

Local political subdivisions could also incur costs to determine or verify whether or not contractors bidding on a project receive preferences in their principal places of business.

Hypothetical example of bill's impact

Please see the table below for a hypothetical scenario as to the bill's impact. In the scenario, two hypothetical firms are bidding on a public improvement contract from a school district that does not offer a preference. Assume firm A is a contractor from a jurisdiction that does not offer a preference to local business. Assume firm B is a firm from a political subdivision that does offer local firms a 6% 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 6% to firm B's bid would increase the bid for awarding purposes to $21,200. 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 the bill	Cost with the bill
1	$20,000	$21,150	A	A	$0
2	21,150	20,000	B	A	$1,150*

*As shown, adding $1,200 or 6% to firm B's bid for selection purposes would make the additional cost on the project to the school district $1,150. Assuming the district had an average daily membership of less than 1,000 students, this additional cost would surpass LBO's minimal cost threshold of $1,000 for individual districts of this size, meaning the bill falls within the local impact statement requirement.

Long Term Impact

The number of projects impacted by the bill could be small. The actual long term impact on the behavior of local governments offering preferences or firms bidding on public improvement contracts is difficult to determine, because the number of projects affected by the bill likely is limited. Therefore, in the future, depending upon the actions of local governments and businesses, the bill may or may not affect preference policies of Ohio local governments. If local governments *do not* change their preference policies due to the bill the result could be a continued potential increase in expenditures to affected local governments because the bill's preference requirements. However, if local governments do change their preference policies because of the bill the result could be a decrease in costs for public improvement contracts for local governments.

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