

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: Am. H.B. 101

DATE: June 23, 1999

**STATUS: As Reported by Senate Insurance,
Commerce and Labor**

SPONSOR: Rep. Young

LOCAL IMPACT STATEMENT REQUIRED: No — Minimal cost

CONTENTS: Restricts public authorities' ability to impose certain labor requirements as a condition of awarding a public improvement contract

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund and Other State Funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Possible cost savings due to increased bid activity; potential minimal increase due to litigation	Possible cost savings due to increased bid activity; potential minimal increase due to litigation	Possible cost savings due to increased bid activity; potential minimal increase due to litigation

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- The bill establishes that an "interested party" may file a complaint against a public authority (in this case the state) alleging a violation of section 4116.02 or 4116.03 of this bill. As a defendant to these violations, the state would incur legal expenses related to defending their action. In addition, if a court finds that the state committed a violation of these sections, then the state may be required to pay reasonable attorney fees, court costs, and other fees to the prevailing party.
- It is unclear whether the ability of the common pleas court to void a state contract as defined in the bill will have negative fiscal consequences for the state. Depending upon whether the voided contract results in a discontinuation of work, renegotiating a contract, or re-letting a contract will ultimately determine the fiscal effect in this regard.
- The restrictions placed by the bill may lead to an increase in the number of contractors bidding on public improvement projects. Subsequent competition may lead to lower bids, thereby decreasing the total costs of some public improvements.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Political Subdivisions			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Possible cost savings due to increased bid activity; potential minimal increase due to litigation	Possible cost savings due to increased bid activity; potential minimal increase due to litigation	Possible cost savings due to increased bid activity; potential minimal increase due to litigation

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 establishes that an "interested party" may file a complaint against a public authority (in this case a political subdivision) alleging a violation of section 4116.02 or 4116.03 of this bill. As a defendant to these violations, the political subdivision would incur legal expenses related to defending their action. In addition, if a court finds that the state committed a violation of these sections, then the political subdivision may be required to pay reasonable attorney fees, court costs, and other fees to the prevailing party.
- It is unclear whether the ability of the common pleas court to void a political subdivision contract as defined in the bill will have negative fiscal consequences for political subdivisions. Depending upon whether the voided contract results in a discontinuation of work, renegotiating a contract, or re-letting a contract will ultimately determine the fiscal effect in this regard.
- The restrictions placed by the bill may lead to an increase in the number of contractors bidding on public improvement projects. Subsequent competition may lead to lower bids, thereby decreasing the total costs of some public improvements.
- This bill exempts charter municipalities from these restrictions, unless the specific contract for a public improvement includes state funds appropriated for the purposes of that public improvement. In those cases, expenditures are not expected to change.

Detailed Fiscal Analysis

Under this bill, several restrictions are placed upon public authorities' ability to impose certain labor requirements as a condition of awarding a public improvement contract. Section 4116.03 lists the specific restrictions. They are: (A) award a public improvement contract if the contract establishes labor organization requirements as detailed by section 4116.02 in the bill; and (B) discriminate against any bidder, contractor, or subcontractor for refusing to become a party to any agreement with any labor organization on a public improvement project. The bill does, however, exclude charter cities when not using state funds for public improvements.

Project Labor Agreements

These labor requirements are contained in what is commonly referred to as a project labor agreement (PLA). PLAs are a form of “prehire” collective bargaining agreement between contractors (or owners on behalf of contractors) and labor unions.¹ Although prehire agreements are generally prohibited by the National Labor Relations Act, the act does make an exception in respect to the construction industry. Proponents of PLAs claim that these agreements provide work continuity (avoidance of work stoppages), access to a skilled labor force, uniform work rules on the job site as well as various other benefits. Opponents, on the other hand, claim that PLAs discourage competition by favoring signatory contractors and result in higher costs due to a restricted number of bidders, higher union wages, and the imposition of union work rules.²

According to a GAO report published in May of 1998, performance comparisons between PLA and non-PLA projects are difficult to achieve. Many projects are unique in size, scope, and timing and would not lend themselves to true comparison. In addition, specific provisions of PLAs can vary based on local negotiations; comparing a non-PLA project to a PLA may not ensure the yield of a representative sample.³

The GAO study does cite an analysis conducted by the East Syracuse, NY chapter of the Associated Builders and Contractors Association in March 1995. The local chapter compared initial estimates and actual bids both with and without a required PLA on a project for the New York State Dormitory Authority at the Roswell Park Cancer Institute.⁴ The results of the analysis showed that the bids were 26 percent higher after the PLA requirement began than before the requirement existed.⁵

Since there is a lack of available comprehensive data on the use of PLAs in the public or private sector, no conclusion can be drawn on the effects on overall costs. However, the restrictions placed by the bill could result in the submission of lower bids for public improvement projects, which could lead to cost savings for both the state and political subdivisions.

¹ U.S. GAO. Project Labor Agreements: The Extent of Their Use and Related Information. May 1998, p.1.

² Ibid., pp1-2.

³ Ibid., pp.12-13.

⁴ Several contracts were awarded on the project before the PLA became effective, hence the possibility of a pre- and post- PLA comparison.

⁵ Ibid., p. 13.

This bill will not affect public entities that currently do not make use of PLA's. Public entities such as the City of Columbus Public Service Department and Franklin County Engineer's Office let out projects for bids that are not governed by a PLA. Therefore, costs for projects in these governmental units would not be affected by this bill.

Litigation Involving PLAs

Under the bill, an "interested party" is defined by section 4116.01(D). The bill establishes that an "interested party" may file a complaint against a public authority alleging a violation of section 4116.02 or 4116.03. As a defendant to these violations, the public authority would incur legal expenses related to defending their action. In addition, if a court finds that the public authority committed a violation of these sections, then the public authority may be required to pay reasonable attorney fees, court costs, and other fees to the prevailing party. Because a common pleas court may void a contract for violations of the aforementioned sections, a public authority may also be forced to renegotiate a contract, re-let a contract, or discontinue a contract. In any of these events, the effected public authority could face additional expenditures.

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