



Ohio Legislative Service Commission

Jason Phillips

Fiscal Note & Local Impact Statement

Bill: [Sub. H.B. 102 of the 129th G.A.](#)
[\(LSC 129 0267-3\)](#)

Date: May 11, 2011

Status: In House Commerce & Labor

Sponsor: Rep. Young

Local Impact Statement Procedure Required: No

Contents: Prohibits state agencies from requiring or prohibiting certain labor requirements on public works and prohibits the appropriation of state funds for public works on local projects containing these requirements

State Fiscal Highlights

- The bill requires state agency bid specifications to be neutral on the presence of a project labor agreement (PLA). Many studies on the impact of PLAs on public construction projects come to opposing conclusions. Some suggest that by requiring construction bid specifications to remain neutral on PLAs, there could be a greater number of competitive bids. Alternatively, it has been posited that PLAs promote labor productivity, yield project efficiencies, and reduce construction costs. Even so, PLAs have been used only rarely on state public improvement projects in recent years.
- The bill allows interested parties to file a complaint against a state agency alleging a violation of the bill. As a defendant to these complaints, the state may incur legal expenses related to defending their actions. In addition, if a court finds that the state committed a violation of these sections, the state may be required to pay reasonable attorney's fees, court costs, and other fees to the prevailing party.
- Because a common pleas court may void a contract for violations of the bill, a state agency may be forced to renegotiate a contract, re-let a contract, or discontinue a contract. In any of these events, the state agency could face additional expenditures.

Local Fiscal Highlights

- The bill prohibits state funds from being used on local public improvement projects if a political subdivision requires or prohibits a project labor agreement (PLA) in bid specifications. One likely outcome is that political subdivisions would be disinclined to use PLAs in order to qualify local construction projects for state capital funding.

Detailed Fiscal Analysis

Overview

The bill limits the application of the Unlawful Labor Requirements in Public Improvement Contracts Law (R.C. 4116.), which generally prohibited project labor agreements (PLAs) as a condition of performing public works. When the law was passed in calendar year (CY) 1999, the law applied to both the state and local governments. However, in CY 2002, the Ohio Supreme Court ruled in *Ohio State Bldg. and Constr. Trades Council, et al. v. Cuyahoga County Bd. of Trustees* that the law was preempted by the federal National Labor Relations Act (NLRA) and was therefore unconstitutional. More specifically, the Ohio Supreme Court held that the state law essentially prohibited the use of PLAs even though those agreements were permitted under the NLRA. Though the state could prohibit the use of PLAs as the purchaser of products or services, it could not prohibit other entities, such as local governments, from using them, as that would amount to an impermissible regulation of the construction industry in contravention of the NLRA. As a result, the law is not currently enforced. In response, the bill limits the application of the Unlawful Labor Requirements in Public Improvement Contracts Law to only state agencies and prohibits state funds from being appropriated for local construction projects if a local government either prohibits or requires a PLA in bid specifications. Further, the bill prohibits anything in the Unlawful Requirements in Public Improvements Law from being construed as regulating the conduct of a private entity and states that the law applies only to the state or a state agency that is acting in a proprietary capacity as a market participant.

Fiscal effects

Project labor agreements

As noted above, the bill limits the application of the Unlawful Labor Requirements in Public Improvement Contracts Law to state agencies, including state institutions of higher education. That is, the bill ensures that the bid specifications for public improvements undertaken by or on behalf of a state agency do not require or prohibit that a contractor enter into any agreement with any labor organization on the public improvement or enter into any agreement that requires the employees of a contractor to become members of or affiliated with a union or pay dues or fees to a union. Such requirements are typically contained in what is referred to as a PLA, which is a form of "prehire" collective bargaining agreement between the project owner and labor unions that, in advance, sets forth the terms and conditions for the labor involved on a project. All successful contractors bidding on a project, whether union or non-union, are required to abide by the employment terms of the PLA. By ensuring that bid

specifications neither require nor prohibit a PLA, a state agency's bid specifications would have to be neutral on the presence of a PLA.

According to officials from both the Department of Administrative Services (DAS) and the Ohio Department of Transportation (ODOT), PLAs have been used only rarely on state public improvement projects in the last five years. One such example identified by DAS was for the construction of a building on the campus of Youngstown State University, which was completed in CY 2010. ODOT indicated that PLAs have not been used on its highway construction projects in several years.

There are a wide variety of conclusions regarding the fiscal effect of PLAs on public construction costs. On the one hand, proponents of PLAs claim that these agreements provide work continuity by reducing the likelihood of work stoppages, access to a skilled labor force, uniform work rules on the job site, as well as various other benefits. As a result, PLAs are said to promote labor productivity, which enables projects to be completed on schedule and in a high quality manner, with the effect of reducing costs in the long term. On the other hand, opponents of PLAs claim that they discourage competition by favoring unionized companies and result in higher costs due to a restricted number of bidders, higher union wages, and the imposition of union work rules. Overall, if the bill were to lead to an increase in the number of contractors bidding on some public improvement projects, the subsequent competition may lead to lower bids, thereby decreasing the total costs of those projects.

Interested party complaints

Under the bill, an interested party may file a complaint against a state agency alleging that the state agency either required or prohibited a PLA in project bid specifications or otherwise violated the bill's requirements or prohibitions. Interested parties are defined by the bill as contractors, subcontractors, any associations having contractors or subcontractors as members, any employee of a contractor, subcontractor or affiliated association, and any individual who is a resident of the state. As a defendant to these complaints, a state agency may incur legal expenses related to defending their actions. In addition, if a court finds that a state agency committed a violation of these sections, then the state agency may be required to pay reasonable attorney's fees, court costs, and other fees to the prevailing party. Because a common pleas court may void a contract for violations of the bill, a state agency may also be forced to renegotiate, re-let, or discontinue a contract. In any of these situations, the state agency could face additional costs.

Use of state funds for certain local projects

The bill prohibits any state funds from being appropriated for the purpose of the construction of a public improvement by or on behalf of a political subdivision, if the political subdivision, in procuring products or services, awarding contracts, or overseeing procurement or construction for such public improvements, requires or prohibits a PLA in bid specifications. Under the bill, a political subdivision would still

be permitted to prohibit or require a PLA in bid specifications, but it would not be eligible to obtain state funding for the project. While this provision may reduce state funding for local governments that persist in requiring or prohibiting a PLA for a public improvement project, presumably local governments would simply opt to discontinue PLAs on projects in order to remain eligible for state funding.

Synopsis of Substitute Bill Changes

This section summarizes the difference in fiscal effects between Sub. H.B. 102 (LSC 129 0267-3) and H.B. 102, As Introduced. Overall, the bill's fiscal effects appear to remain unchanged under the substitute bill. Brief descriptions of the differences between the bills are provided below.

The substitute bill eliminates language in the As Introduced version that 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 language that either requires or prohibits a contractor or subcontractor from entering into agreements with labor unions on the public improvement or entering into agreements that require the employees of the contractor or subcontractor to either become members of or affiliated with a labor union or pay dues or fees to a labor union. The substitute bill also eliminates language in the As Introduced bill that prohibits a state agency from discriminating against any grant recipient or party to a cooperative agreement with a labor union on the grant project or cooperative agreement for refusing to become party to any agreement with a labor union on the grant project or cooperative agreement construction project. The third change in this area removes language in the As Introduced bill that requires a state agency to prevent a grant recipient or a party to a cooperative agreement from discriminating against bidders, contractors, or subcontractors for refusing to become a party to a PLA. These changes are intended to prevent the bill from being construed as potentially regulating the private sector with respect to PLAs, which is likely preempted under the NLRA.

The substitute bill removes a requirement that all work performed on a newly constructed structure to suit the structure for occupancy by a state agency, when a state agency rents or leases that structure within six months after completion of construction, be considered a "public improvement." As a result, the bid specifications for such a project may either require or prohibit the use of a PLA, continuing the status quo. The As Introduced version of the bill would have required the bid specifications to be neutral on that issue.

The As Introduced version of the bill prohibited state funds from being appropriated for political subdivision public improvement projects if the political subdivision, in producing 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, a PLA. The substitute bill clarifies that this prohibition applies to public improvements undertaken by or on behalf of the political subdivision and to such language included in a political subdivision's bid specifications.

Other changes made by the substitute bill involve clarifications and adjustments to various definitions. When referring to state agency public improvement projects, the substitute bill clarifies throughout the bill that these are public improvements undertaken by or on behalf of the state agency. The substitute bill also explicitly includes a state institution of higher education in the definition of "state agency." Arguably, state institutions of higher education are already included under the definition of "state agency" in the As Introduced version of the bill.