Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 102 of the 129th G.A. **Date**: March 2, 2011

Status: As Introduced **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

- Many studies on the impact of project labor agreements (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.
- 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). 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.

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. That is, the bill ensures that state agency bid specifications do not require or prohibit that a contractor enter into any agreement with any labor organization on a 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.

The bill also prohibits a state agency from (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 require a PLA and (2) discriminating against any grant recipient or party to a cooperative

agreement for construction for refusing to become a party to a PLA on the construction project.

PLAs appear to have been used only rarely on nonhighway state public improvement projects in the last five years. One such example was for the construction of a building on the campus of Youngstown State University, which was completed in CY 2010. Due to federal policy in effect up to February 2009, project labor agreements on highway construction projects were also likely rare. Executive orders issued by former President George W. Bush required any federal agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects to ensure that no project specifications either required or prohibited bidders from utilizing PLAs. Those orders were revoked by President Obama in February 2009 and replaced with an executive order encouraging the use of PLAs on large scale federal construction projects. That executive order authorizes the Federal Highway Administration (FHWA) to approve requests by states to use PLAs for highway construction projects under certain conditions. As of this writing, it is unclear how often PLAs have been used on Ohio highway construction projects since the new federal policy took effect.

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 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 or prohibits a PLA. Under the bill, a political subdivision would still be permitted to prohibit or require a PLA, 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.

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