



**HOUSE STATE & LOCAL GOVERNMENT COMMITTEE
OPPONENT TESTIMONY ON H.B. 145**

**Provided on June 20 by
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Associated General Contractors (AGC) of Ohio**

Chair John, Vice Chair Dean, Ranking Minority Member Brennan, and Representatives on State & Local Government Committee:

AGC of Ohio is a construction association that represents large and small, union and open shop (non-union), commercial building and industrial contractors from across the state. Our members build and renovate hospitals, offices, schools, wastewater treatment plants, warehouses and manufacturing facilities, mixed-use developments, and a host of other vertical structures. Most of them compete for public construction projects (generally the type of projects contained in the capital bill).

As you consider the testimony today, please keep in mind who Ohio's construction employers are. With few exceptions, they are small, closely held businesses that mostly work in specific geographic regions of the state. They pay their taxes and invest locally – employing local workers, contracting with local subcontractors, sponsoring local sports teams, donating to local charities, etc. They contribute to the economic engine locally and statewide.

AGC strongly supports open, competitive, and transparent public procurement laws and processes for construction services. While the bill's sponsors may have good intentions, cooperative purchasing for construction services undermines those principles. It is anti-competitive, anti-local jobs, anti-small business, and an abuse of taxpayer dollars. **As such, AGC of Ohio strongly opposes House Bill 145.**

Some of the previous testimony heard by this committee appeared to intersperse cooperative purchasing for commodities with construction services. Cooperative purchasing has proven effective for commodities like chairs, office supplies, or even police cruisers. **However, as other states have learned, cooperative purchasing does not work for construction because construction is a unique service.** No two projects are alike, and the job order contracting used in cooperative purchasing does not provide the benefits and savings seen in competitive procurement (i.e., competitive bid). **Ohio's current competitive procurement laws for construction allow local contractors to account for the different circumstances on each project and ensure the best price.**

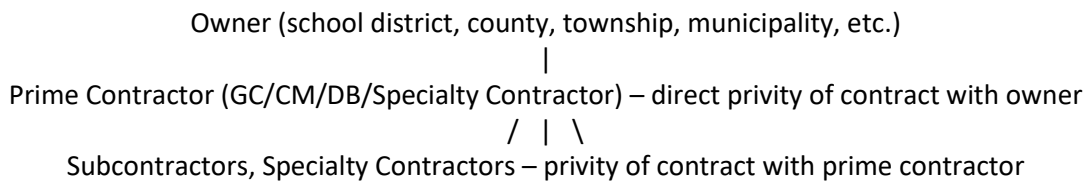


HOW CONSTRUCTION CONTRACTS ARE AWARDED UNDER CURRENT LAW; LACK OF COMPETITION UNDER H.B. 145

Proponent testimony indicated that cooperative contracts are competitively awarded. When it comes to construction services, that statement is blatantly misleading when you consider how public construction contracts are awarded under current law and the contractual relationships on projects.

There are multiple sections in the Ohio Revised Code that address this for state and political subdivisions, but in a nutshell: Above a certain dollar threshold, all construction contracts awarded by a public entity to the prime contractor (General Contractor, Design Builder, Specialty Contractor, Construction Manager, etc.), and each must undergo a competitive bid or competitive selection process.

Here's the general structure of the contractual relationships for a typical public project in Ohio:



For example, let's say Mansfield City Schools and Dayton City Schools are both building a new elementary school. Under current law, usually both school systems would put their project out to bid, and award it under a competitive bid or competitive selection process – most likely to two different prime contractors given the school's different geographical locations. And those two prime contractors provide bid opportunities to sub and specialty contractors, most of which operate in those local areas, utilizing local workforces.

For cooperative purchasing agreements, while the initial cooperative purchasing contract for a single political subdivision must be competitively awarded, other political subdivisions can simply sign onto that contract. Therefore, under H.B. 145, if those two school systems were part of the same cooperative purchasing program and opt to use that process, the entity with the cooperative purchasing agreement would be given both elementary school projects without any competition for the award of those individual contracts.

Extrapolate that to multiple school districts or multiple county detention centers or multiple city parks and recreation facilities... when utilizing cooperative purchasing, all those projects would be given to one entity, and that entity allows only its preferred vendors/contractors to bid on the work. You are essentially cutting out a large number of Ohio companies who would, under current law, have the



opportunity to bid and be awarded the contracts; plus you're cutting out those companies' local subcontractors and local tradespeople.

Simply put, cooperative purchasing allows political subdivisions to sole source their construction projects to one entity, and that entity to a much smaller, limited number of contractors. It cuts out most local, small contractors from even having the opportunity to compete for those local projects.

H.B. 145 IS NOT BUSINESS FRIENDLY; IT ONLY BENEFITS THOSE ENTITIES AWARDED COOPERATIVE PURCHASING CONTRACTS AND THEIR LIMITED POOL OF BIDDERS

By passing H.B. 145, the cooperatives that testified as proponents could gain access to public construction projects without having to compete for them individually the way our members (and other contractors) would under current law. And, it's important to understand how cooperatives operate.

Sourcewell, who testified, describes itself in its promotional materials as a governmental entity; its website is www.sourcewell-mn.gov. Sourcewell partners with Gordian, Bluescope, and NuCor, all of whom have been pushing cooperative purchasing programs in our state. Through their partnership, those companies encourage construction companies to sign contracts with Sourcewell; these contracts are called ezIQC Construction Procurement Contracts. Currently, seventeen contractors are listed as Ohio ezIQC Construction Contractors; it is all public record on Sourcewell's website.

The ezIQC contractors pay a 7% fee to Sourcewell and its partners for any work the contractor does under their cooperative purchasing agreements. While that 7% may not be paid directly by the local government, those contractors are including it in their project costs. (For comparison, our members' construction management fees on public projects are usually less than half of what is being charged under the ezIQC contracts.) And, local governments utilizing cooperative purchasing often pay a percentage of the project amount to the cooperative purchasing entity.

In short, under these circumstances, H.B. 145 will be a financial boon to an out-of-state government entity and its national partners. While seventeen Ohio contractors may benefit, the bill has the potential to **cut out thousands of other Ohio contractors and their tradespeople from working on public projects in this state.**

LESSONS LEARNED FROM OTHER PARTS OF THE COUNTRY

Other states and local governments have tried to utilize cooperative purchasing for construction services and have since rolled back its usage. The promise of efficiencies of scale did not materialize, and



cooperative purchasing for construction resulted in increased costs to the taxpayers instead of savings. Additionally, many states have refused to pass similar legislation. Here are some examples:

- Earlier this year, North Dakota amended a cooperative purchasing bill to exclude construction [Amendment to Bill No. 2370 - 2023 Regular Session - LC Number 23.0564.02004 Title Number 03000 \(ndlegis.gov\)](#). Other states that have refused to pass legislation like this include North Carolina, Georgia, Idaho, and Nevada.
- Virginia General Assembly, in a bipartisan capacity, recognized problems associated with procuring construction via cooperatives and corrected it. When a proposal was made to expand cooperative purchasing again, legislators rejected it. [Votes: VA HB467 | 2020 | Regular Session | LegiScan](#)
- California is rolling back its measure allowing for construction contracts to be included in cooperative purchasing programs ([Bill Text - AB-635 Public contracts: roof projects. \(ca.gov\)](#)).
- City of Long Beach in 2016 performed an audit on Job Order Contracting, the type of procurement done under cooperative purchasing for construction. The audit found that the program was highly vulnerable to fraud. And, significant change orders and cost overruns were present in 91% of the projects reviewed during the audit period. [BACKGROUND \(cityauditorlauradoud.com\)](#)
- Minnesota's St. Cloud School District discovered in 2015 they were overpaying by an estimate of \$4 million for construction between 2012-2015. [State auditor finds holes in St. Cloud school roof bids \(sctimes.com\)](#). The Minnesota State Department of Administration has recently suspended indefinitely its partnership with its cooperative purchasing entity for construction services.

In conclusion, AGC of Ohio urges you to oppose H.B. 145. **Cooperative purchasing for construction services has been a proven failure in other states. It will lessen opportunities for local contractors and tradespeople to work on public projects, and undermines Ohio's current open, transparent and competitive procurement laws for public construction.**