



IAN H. FRANK | Direct: (216) 515-1633
ifrank@frantzward.com

200 Public Square, Suite 3000, Cleveland, OH 44114
+1 (216) 515-1660 | Frantzward.com

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Chairman Roegner
Vice Chair Gavarone
Ranking Member Blackshear
Members of the Senate General Government Committee

RE: Senate Bill 262 – Show Your Work


Thank you for the opportunity to present sponsor testimony in support of Senate Bill 262. My name is Ian Frank, and I am the Chair of Frantz Ward LLP's Construction Practice Group. I have been practicing law for nearly 30 years, focusing exclusively on construction law. A significant portion of my practice has been dedicated to public works projects in Ohio and throughout the U.S., as well as the drafting and negotiation of construction agreements using industry standard contract forms.

I am pleased to offer my strong support for Senate Bill 262, which is a commonsense piece of legislation that would align the practices of Ohio public entities with the manner in which industry standard contract forms have been negotiated routinely for many years in the private market. The requirements of SB 262, requiring public entities and contractors alike to show all modifications to standard contract documents, merely follow these historical practices adhered to by private contracting parties and their counsel. In fact, each of the industry organizations that publish a suite of standard contract forms requires all of its licensees to show any changes to their standard forms in a redline/strikethrough or other similar format. The construction bar understands these requirements, and in my experience, such changes are almost universally reflected in this manner.

The purpose of this redlining process, and thus the benefits of SB 262, are transparency, fairness and efficiency. Many industry standard forms have been in publication for decades. They have been the subject of in-depth interpretation, litigation and analysis. The industry, in turn, has developed a common or shared understanding of the obligations and risks imposed by documents. Some of these forms are even considered customary or generally accepted by certain industry stakeholders, trade associations and market segments. Modifying these standard forms without disclosing the changes can mislead contractors into believing they are bound by well-accepted, industry developed contract documents, with which they are familiar, when that is not the case. SB 262 now requires that transparency.

Most contractors and subcontractors pursuing public projects in Ohio do not employ in-house counsel, nor have the budget to retain counsel to review every set of contract documents for every project. Contractors pursue multiple projects simultaneously and typically succeed in winning a small percentage of those they bid. It would be cost-prohibitive for most contractors to hire a lawyer to review the entirety of every public contract. Additionally, bidders are provided only a few weeks in most instances to fully analyze the scope of work, technical data, scheduling obligations and other information in a given procurement. Requiring public entities to show the revisions to industry standard forms will provide uniform clarity regarding unique modifications that have been made, put all bidders on all equal footing to determine whether to retain legal counsel to advise them regarding the impact of such changes, and allow bidders to manage the time-sensitive bidding process efficiently.

In conclusion, this legislation represents a necessary reform to require that public entities conduct their procurement process consistent with common industry practices and licensing requirements, foster trust in these processes through additional transparency, and ensure a fair bidding procedure that allows the parties to reach a true “meeting of the minds” with respect to the terms of the governing contracts.

A handwritten signature in blue ink, appearing to read 'I.H. Frank', is written over a horizontal line.

Ian H. Frank