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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Claggett and Workman

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SUMMARY

- Exempts charter counties and municipalities that have not adopted a charter from the Unlawful Labor Requirements in Public Improvement Contracts Law.
- Prohibits a public authority subject to the Law from either requiring (under current law) or prohibiting (added by the bill) certain labor requirements as a condition of performing public works.
- Prohibits state funds from being distributed for the construction of a public improvement by or on behalf of a charter county or a municipality if the county or municipality requires or prohibits labor requirements listed in the Law as a condition of performing the work.
- Repeals a requirement that a state agency hold a public hearing no more than 30 days before issuing a bid specification for a proposed public improvement that requires a contractor or subcontractor to enter into a project labor agreement.

DETAILED ANALYSIS

Unlawful labor requirements in public improvement contracts

Covered entities

The bill exempts a charter county from the Unlawful Labor Requirements in Public Improvement Contracts Law.[1] It also expands the current exemption in the Law for municipalities that have adopted a charter to include all municipalities. That Law prohibits the imposition of certain labor requirements as a condition of performing public works (essentially, project labor agreements (PLA)). As discussed below, the Law is not currently enforced.

[1] R.C. Chapter 4116.

Under continuing law, a "public authority" subject to the Law includes any officer, board, or commission of the state, any political subdivision of the state (other than a charter county or municipality as changed by the bill), and any institution supported in whole or in part by public funds, authorized to enter into a contract for the construction of a public improvement or to construct a public improvement by the direct employment of labor.[2]

The Law, with respect to procuring products or services or awarding contracts for, or overseeing construction of, a public improvement, prohibits a public authority from requiring a contractor or subcontractor to do either of the following:

1. Enter into an agreement with any labor organization (essentially, a union) on the public improvement;
2. Entering into any agreement requiring the contractor's or subcontractor's employees to join or affiliate with a labor organization or pay dues or fees to a labor organization as a condition of employment or continued employment.[3]

The Ohio Supreme Court held, in *Ohio State Building and Construction Trades Council v. Cuyahoga County Board of Commissioners*,[4] that the National Labor Relations Act[5] (NLRA) preempts the Unlawful Labor Requirements in Public Improvement Contracts Law. According to the Court, the Law essentially prohibits a public authority from entering or enforcing a PLA on a public construction project. The Court reasoned that the state may adopt a policy prohibiting PLAs when it purchases goods or services. However, when the state prohibits other entities, such as political subdivisions, from allowing PLAs it is attempting to regulate an activity protected under the NLRA and is, therefore, preempted.[6]

A PLA is a pre-hire collective bargaining agreement establishing the terms and conditions of employment for a specific construction project. A PLA typically includes provisions that recognize a specific union as the exclusive bargaining representative for employees on the project; require all employees on the project to become union members (or begin financially contributing to the union) within a certain time period; provide a project-specific dispute resolution procedure; and prohibit strikes and lockouts during the project.[7] The NLRA allows, but does not require, PLAs in construction.

In a separate case, the federal Sixth Circuit Court of Appeals (whose geographic jurisdictional area includes Ohio) concluded that the NLRA did not preempt a Michigan law

[2] R.C. 4116.01.

[3] R.C. 4116.02.

[4] 98 Ohio St.3d 214, 2002-Ohio-7213 (2002).

[5] 29 United States Code 151, *et seq*.

[6] *Ohio State Bldg. and Constr. Trades Council,* at ¶ 29-30, 41-42, 65-78, and 94-97.

[7] *See, e.g.*, *State ex rel. Associated Builders & Contractors Cent. Ohio Chapter v. Jefferson County Bd. Of Comm'rs*, 106 Ohio App.3d 176 (1995).

containing provisions similar to those in Ohio. According to the Sixth Circuit, the Michigan law was not regulatory in nature and was simply a blanket action by the state as a market participant.[8]

If the bill were challenged, a court likely would examine whether the bill regulates PLAs in a way not permitted under the NLRA or whether the bill is a permissible action by a market participant.

Labor requirements in public improvement contracts

The bill also expands the Unlawful Labor Requirements in Public Improvement Contracts Law by specifying that a public authority also may not "prohibit" a contractor or subcontractor from entering an agreement described in (1) or (2) under "**Covered entities**," above. Thus, under the bill, a public authority subject to the Law may neither require nor prohibit a contractor or subcontractor from entering a PLA when procuring products or services or awarding contracts for, or overseeing construction of, a public improvement. This applies to any subsequent contract or other agreement for the public improvement to which the public authority and a contractor or subcontractor are direct parties (as under current law).

A public authority subject to the Law also may not do either of the following with respect to a public improvement undertaken by or on behalf of the public authority:

- Discriminate against any bidder, contractor, or subcontractor for refusing (current law) or electing (added by the bill) to become a party to any agreement with any labor organization on a public improvement currently under bid or on projects related to that improvement;
- Otherwise violate the public authority's duty to ensure that bid specifications for the proposed public improvement, and any subsequent contract or other agreement related to the public improvement, comply with the Law.[9]

Use of state funds for certain local projects

As noted above, under the bill, a municipality or charter county is not a public authority subject to the Unlawful Labor Requirements in Public Improvement Contracts Law. However, the bill prohibits distributing state funds for the purpose of constructing a public improvement by or on behalf of a municipality or charter county if the municipality or county, in procuring products or services, awarding contracts, or overseeing procurement or construction for the public improvement, requires or prohibits a contractor or subcontractor from entering into agreements described in (1) and (2) under "**Covered entities**," above.[10]

The bill specifies that a public authority (including a municipality or charter county) may award a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor,

[8] *Mich. Bldg. & Constr. Trades Council & Genessee v. Snyder*, 729 F.3d 572 (6th Cir. 2013); Mich. Comp. Laws 408.875.

[9] R.C. 4116.02 and 4116.03.

[10] R.C. 4116.021.

subcontractor, or other person or entity who voluntarily chooses to enter into a described agreement, provided that entering the agreement is not a condition for the award.[11]

Enforcement

An interested party may sue a public authority for violating the prohibitions described above. An "interested party," under continuing law and with respect to a particular public improvement, includes all the following:

1. Any person who submits a bid to secure a contract for the public improvement;
2. Any person acting as a subcontractor of a person mentioned above;
3. Any association having as members any of the persons mentioned in (1) or (2), above;
4. Any employee of a person mentioned in (1), (2), or (3), above;
5. Any resident of the jurisdiction of the public authority or political subdivision for which products or services are being procured or for which work on a public improvement is being performed.

An interested party may sue in the court of common pleas for the county in which the public improvement is performed. The interested party must file the suit within two years after the date on which the contract for the public improvement is signed. Performing the contract forms the basis of the alleged violation. If the court finds that a violation has occurred, it must void the contract and make any orders that will prevent further violations. The court may award a prevailing plaintiff reasonable attorney's fees, court costs, and any fees incurred due to the suit. The Rules of Civil Procedure govern the suit, and any determination by the court may be appealed.[12]

Limitations

The bill specifies that the Unlawful Labor Requirements in Public Improvement Contracts Law does not do either of the following:

1. Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the NLRA.
2. Interfere with labor relations of parties that are left unregulated under the NLRA.[13]

The U.S. Supreme Court has held that the NLRA prohibits state and local regulation of activities prohibited or protected under the NLRA.[14] The Court also has held that the NLRA prohibits state and local regulations of areas that Congress intended to leave unregulated so that

[11] R.C. 4116.031.

[12] R.C. 4116.01(D) and 4116.04.

[13] R.C. 4116.05.

[14] *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).

they could be "left to the free play of economic forces."[15] If the bill were challenged, only a court can determine whether the NLRA prohibits a specific state or local regulation.

Public hearing requirement for project labor agreements

The bill eliminates a requirement that a state agency hold a public hearing no more than 30 days before issuing a bid specification for a proposed public improvement that requires a contractor or subcontractor to enter a PLA.[16]

HISTORY

Action	Date
Introduced	10-14-25

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[15] *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 147-149 (1976).

[16] R.C. 153.83, repealed.