

Affiliated Construction Trades Ohio Foundation

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Rep. Marilyn John, Chair
House State & Local Government Committee
Ohio Statehouse
Columbus, Ohio 43215

Re: HB 145

Chairman John, Vice-Chair Dean, Ranking Member Brennan:

Please be advised that the Affiliated Construction Trades Ohio Foundation (“ACT Ohio”) is a 501(c)(5) organization created to facilitate economic and industrial development opportunities, and to promote industry-best practices for Ohio’s public and private construction.

ACT Ohio currently has 146 local affiliates across the state, who in the aggregate represent more than 96,000 building trades members. ACT Ohio has invested hundreds of thousands of dollars to promote careers in construction to Ohioans of all ethnic and socio-economic circumstances. We are aggressively recruiting the best and the brightest to seek an apprenticeship and develop skills that can sustain a family.

ACT Ohio strongly supports efficient and streamlined procurement policies at all levels of government. However, please be advised that ACT Ohio is opposed to HB 145 due to the bill’s negative impact on Ohio’s longstanding competitive bidding requirements.

Specifically, Ohio’s competitive bidding statute represents the bedrock foundation of public works construction contracting for taxpayer funded work. “The intent of competitive bidding is to protect the taxpayer, prevent excessive costs and corrupt practices, and provide open and honest competition in bidding for public contracts.” Cementech v. City of Fairlawn, 109 Ohio St.3d 475, 477, 2006-Ohio-2991. It is designed to “provide open and honest competition in bidding for public contracts and to save the public harmless, as well as bidders themselves, from any kind of favoritism or fraud in its varied forms.” Chillicothe Bd. of Education v. Sever-Williams Co., (1970), 22 Ohio St.2d 107; 258 N.E.2d 605. “Accordingly. “[s]tatutory requirements for competitive bidding on contracts are mandatory,” Communicare, Inc. v. Wood County Bd. of Commissioners, 161 Ohio App.3d 84, 93, and any exceptions must be “expressly exempted in the statute...” Id., 161 Ohio App.3d at 95.

In his August 13, 2019 opinion, Attorney General Yost correctly stated R.C. 9.48(B) does not authorize a political subdivision to acquire construction services through participation in a contract entered into by another political subdivision. In so stating, the Attorney General did not cause confusion – he reiterated and reinforced longstanding Ohio law.

In addition, Attorney General Yost reiterated his view of the law on this in his recently published March 18, 2024 AG Opinion:

R.C. 9.48 has not been amended since 2008. Thus, there has been no change to the law to alter the 2019 opinion's conclusion that "construction" and "construction services" are excluded from acquisition through joint purchasing programs authorized in R.C. 9.48. Without a statutory change or a development in the case law, I find no justification for a conclusion different than the one reached in 2019 Op. Att'y Gen. No. 2019-028.

Joint purchasing for materials is a longstanding practice under Ohio law – and makes sense. With construction, however, there are exponentially more variables than when commodities are purchased. How do you compare the bulk purchase of books, desks and chairs to the construction of an elementary school?

HB 145 would result in significantly less bidding opportunities and lessen transparency in the public works construction procurement process. It contradicts longstanding case precedent and legislative intent to promote open and honest competition resulting in local construction contractors employing local workers being cut out of opportunities to compete for projects.

Accordingly, ACT Ohio opposes HB 145.

Thank you for your time and consideration. Please feel free to contact me with any questions you may have.