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Senator Uecker

Cosponsors: Senators Seitz, Jones, Hottinger, Jordan, Lehner, Coley, Eklund, Oelslager Representatives Amstutz, Antani, Becker, Boose, Brenner, Brinkman, Buchy, Butler, Hood, Huffman, McClain, McColley, Perales, Roegner, Schaffer, Smith, R., Vitale, Young, Zeltwanger, Speaker Rosenberger

A BILL

To amend sections 4116.01, 4116.02, 4116.03, and 1
4116.04; to enact sections 9.75 and 4116.031; 2
and to repeal sections 153.013, 153.83, and 3
5525.26 of the Revised Code to prohibit a public 4
authority from requiring a contractor to employ 5
a certain percentage of individuals from the 6
geographic area of the public authority for the 7
construction or professional design of a public 8
improvement and to prohibit a state agency or 9
state institution of higher education from 10
requiring a contractor to or prohibiting a 11
contractor from entering into certain labor 12
agreements as a condition of performing or 13
bidding on a public improvement project. 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4116.01, 4116.02, 4116.03, and 15
4116.04 be amended and sections 9.75 and 4116.031 of the Revised 16
Code be enacted to read as follows: 17

<u>Sec. 9.75. (A) As used in this section:</u>	18
<u>(1) "Construction manager" and "construction manager at risk" have the same meanings as in section 9.33 of the Revised Code.</u>	19 20 21
<u>(2) "Contractor" means a person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, drill, or provide professional design services for any part of a structure or public improvement. "Contractor" may include any public or business association and any person or entity that actively participates in whole or in part in the actual construction of a public improvement or provision of professional design services by itself, through the use of employees, or through the use of a construction manager, construction manager at risk, professional design firm, design-build firm, general contractor, or subcontractor.</u>	22 23 24 25 26 27 28 29 30 31 32
<u>(3) "Design-build firm" has the same meaning as in section 153.65 of the Revised Code.</u>	33 34
<u>(4) "Laborer" means a person who does any of the following in furtherance of a public improvement:</u>	35 36
<u>(a) Performs manual labor or labor of a particular occupation, trade, or craft;</u>	37 38
<u>(b) Uses tools or machinery of a particular occupation, trade, or craft;</u>	39 40
<u>(c) Otherwise performs physical work in a particular occupation, trade, or craft.</u>	41 42
<u>(5) "Professional design services" and "professional design firm" have the same meanings as in section 153.65 of the Revised Code.</u>	43 44 45

<u>(6) "Public authority" includes any of the following:</u>	46
<u>(a) The state;</u>	47
<u>(b) A county, township, municipal corporation, or any other political subdivision of the state;</u>	48 49
<u>(c) Any public agency, authority, board, commission, instrumentality, or special district of the state, a county, township, municipal corporation, or other political subdivision of the state;</u>	50 51 52 53
<u>(d) Any officer or agent of one of the entities listed in divisions (A) (6) (a) to (c) of this section who is 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.</u>	54 55 56 57 58
<u>(7) "Public improvement" means any of the following:</u>	59
<u>(a) A road, bridge, highway, street, or tunnel;</u>	60
<u>(b) A waste water treatment system or water supply system;</u>	61
<u>(c) A solid waste disposal facility or a storm water and sanitary collection, storage, and treatment facility;</u>	62 63
<u>(d) Any structure or work constructed by a public authority or by another person on behalf of a public authority pursuant to a contract with the public authority.</u>	64 65 66
<u>(B) Except as provided in divisions (C) and (D) of this section:</u>	67 68
<u>(1) No public authority shall require a contractor, as part of a prequalification process or for the construction of a specific public improvement or the provision of professional design services for that public improvement, to employ as</u>	69 70 71 72

laborers a certain number or percentage of individuals who 73
reside within the defined geographic area or service area of the 74
public authority. 75

(2) No public authority shall provide a bid award bonus or 76
preference to a contractor as an incentive to employ as laborers 77
a certain number or percentage of individuals who reside within 78
the defined geographic area or service area of the public 79
authority. 80

(C) (1) Except as provided in division (C) (2) of this 81
section, nothing in division (B) of this section prohibits the 82
department of transportation from requiring, for a project 83
administered by the department and subject to federal 84
environmental justice mitigation or on-the-job training 85
requirements, that a portion of the project be performed by 86
residents of a particular area or region. 87

(2) No more than five per cent of the total number of 88
labor hours anticipated to be needed on a single project 89
administered by the department of transportation may be 90
apportioned to residents of a particular area or region to meet 91
on-the-job training requirements. 92

(D) This section does not apply to a multi-phase 93
department of transportation project that is funded solely with 94
state funds and is under development on or before the effective 95
date of this section. 96

Sec. 4116.01. ~~As used in sections 4116.01 to 4116.04 of~~ 97
~~the Revised Code~~ this chapter: 98

~~(A) "Public authority" "State agency" means any officer,~~ 99
~~board, or commission of the state, or any political subdivision~~ 100
~~of the state, or any institution supported in whole or in part~~ 101

~~by public funds,~~ authorized to enter into a contract for the 102
construction of a public improvement or to construct a public 103
improvement by the direct employment of labor and includes a 104
state institution of higher education. ~~"Public authority" shall~~ 105
~~not mean any municipal corporation that has adopted a charter~~ 106
~~under sections three and seven of article XVIII of the Ohio~~ 107
~~Constitution, unless the specific contract for a public~~ 108
~~improvement includes state funds appropriated for the purposes~~ 109
~~of that public improvement.~~ 110

(B) "Construction" means all of the following: 111

(1) Any new construction of any public improvement 112
performed by other than full-time employees who have completed 113
their probationary periods in the classified service of a ~~public~~ 114
authority state agency or political subdivision; 115

(2) Any reconstruction, enlargement, alteration, repair, 116
remodeling, renovation, or painting of any public improvement 117
performed by other than full-time employees who have completed 118
their probationary period in the classified civil service of a 119
public authority state agency or political subdivision; 120

(3) Construction on any project, facility, or project 121
facility to which section 122.80, 166.02, or 1728.07 of the 122
Revised Code applies; 123

(4) Construction on any project as defined in section 124
122.39 of the Revised Code, any project as defined in section 125
165.01 of the Revised Code, any energy resource development 126
facility as defined in section 1551.01 of the Revised Code, or 127
any project as defined in section 3706.01 of the Revised Code. 128

(C) "Public improvement" means all buildings, roads, 129
streets, alleys, sewers, ditches, sewage disposal plants, water 130

works, and other structures or works constructed by a ~~public-~~ 131
~~authority state agency or political subdivision~~ or by any person 132
who, pursuant to a contract with a ~~public authority state agency~~ 133
~~or political subdivision~~, constructs any structure or work for a 134
~~public authority state agency or political subdivision~~. When a 135
~~public authority state agency or political subdivision~~ rents or 136
leases a newly constructed structure within six months after 137
completion of its construction, all work performed on that 138
structure to suit it for occupancy by a ~~public authority state~~ 139
~~agency or political subdivision~~ is a "public improvement." 140

(D) "Interested party," with respect to a particular 141
public improvement, means all of the following: 142

(1) Any person who submits a bid for the purpose of 143
securing the award of a contract for the public improvement; 144

(2) Any person acting as a subcontractor of a person 145
mentioned in division (D) (1) of this section; 146

(3) Any association having as members any of the persons 147
mentioned in division (D) (1) or (2) of this section; 148

(4) Any employee of a person mentioned in division (D) (1), 149
(2), or (3) of this section; 150

(5) Any individual who is a resident of the jurisdiction 151
of the ~~public authority state agency or political subdivision~~ 152
for whom products or services for a public improvement are being 153
procured or for whom work on a public improvement is being 154
performed. 155

(E) "Political subdivision" has the same meaning as in 156
section 9.23 of the Revised Code. 157

(F) "State institution of higher education" has the same 158

meaning as in section 3345.011 of the Revised Code. 159

Sec. 4116.02. A ~~public authority state agency~~, when 160
engaged in procuring products or services, awarding contracts, 161
or overseeing procurement or construction for public 162
improvements undertaken by or on behalf of the state agency, 163
shall ensure that bid specifications issued by the ~~public-~~ 164
~~authority state agency~~ for the proposed public improvement, and 165
any subsequent contract or other agreement for the public 166
improvement to which the ~~public authority state agency~~ and a 167
contractor or subcontractor are direct parties, do not require 168
or prohibit that a contractor or subcontractor ~~to~~ do any of the 169
following: 170

(A) Enter into agreements with any labor organization on 171
the public improvement; 172

(B) Enter into any agreement that requires the employees 173
of that contractor or subcontractor to do either of the 174
following as a condition of employment or continued employment: 175

(1) Become members of or affiliated with a labor 176
organization; 177

(2) Pay dues or fees to a labor organization. 178

Sec. 4116.03. No ~~public authority state agency~~ shall do 179
any of the following: 180

(A) Award a contract for a public improvement undertaken 181
by or on behalf of the state agency in violation of section 182
4116.02 of the Revised Code; 183

(B) Discriminate against any bidder, contractor, or 184
subcontractor for refusing or electing to become a party to any 185
agreement with any labor organization on the public improvement 186

undertaken by or on behalf of the state agency that currently is 187
under bid or on projects related to that improvement; 188

(C) Otherwise violate section 4116.02 of the Revised Code. 189

Sec. 4116.031. No state funds shall be distributed for the 190
purpose of the construction of a public improvement by or on 191
behalf of a political subdivision, if the political subdivision, 192
in procuring products or services, awarding contracts, or 193
overseeing procurement or construction for public improvements 194
undertaken by or on behalf of the political subdivision, 195
requires in the bid specifications a contractor or subcontractor 196
to enter into, or prohibits in the bid specifications a 197
contractor or subcontractor from entering into, an agreement 198
described in division (A) or (B) of section 4116.02 of the 199
Revised Code. 200

Sec. 4116.04. (A) An interested party may file a complaint 201
against a ~~contracting public authority state agency or political~~ 202
~~subdivision~~ alleging a violation of section 4116.02 ~~or,~~ 203
4116.03, or 4116.031 of the Revised Code within two years after 204
the date on which the contract is signed for the public 205
improvement in the court of common pleas of the county in which 206
the public improvement is performed. The performance of the 207
contract forms the basis of the allegation of a violation. The 208
court in which the complaint is filed shall hear and decide the 209
case and, upon a finding that a violation has occurred, shall 210
void the contract and make any orders that will prevent further 211
violations. 212

The Rules of Civil Procedure govern all actions under this 213
section. Any determination of a court under this section is 214
subject to appellate review. 215

(B) If, pursuant to this section, a court finds a violation of section 4116.02 ~~or,~~ 4116.03, or 4116.031 of the Revised Code, the court may award reasonable attorney's fees, court costs, and any other fees incurred in the course of the civil action to the prevailing plaintiff.

Section 2. That existing sections 4116.01, 4116.02, 4116.03, and 4116.04 and sections 153.013, 153.83, and 5525.26 of the Revised Code are hereby repealed.

Section 3. In enacting section 9.75 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution;

(B) Section 34 of Article II, Ohio Constitution, specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees, and that no other provision of the Ohio Constitution impairs or limits this power, including Section 3 of Article XVIII, Ohio Constitution.

Section 4. The General Assembly finds, in enacting section 9.75 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees working on Ohio's public improvement projects to choose where to live, and that it is necessary in order to provide for the comfort, health, safety, and general welfare of those employees to generally prohibit public authorities from requiring contractors, as a condition of accepting contracts for public improvement projects, to employ a certain number or percentage of individuals who reside in any specific area of the state.