

**As Introduced**

**134th General Assembly  
Regular Session  
2021-2022**

**H. B. No. 309**

**Representative Brinkman**

**Cosponsors: Representatives Koehler, Zeltwanger, Riedel, Fowler Arthur, Vitale**

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**A BILL**

To amend sections 4116.01, 4116.02, 4116.03, and 1  
4116.04; to enact sections 4116.021, 4116.031, 2  
and 4116.05; and to repeal section 153.83 of the 3  
Revised Code to enact the Fair and Open 4  
Competition Act regarding project labor 5  
agreements in public improvement contracts. 6

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

**Section 1.** That sections 4116.01, 4116.02, 4116.03, and 7  
4116.04 be amended and sections 4116.021, 4116.031, and 4116.05 8  
of the Revised Code be enacted to read as follows: 9

**Sec. 4116.01.** As used in sections 4116.01 to 4116.04 of 10  
the Revised Code: 11

(A) ~~"Public" (1) Except as provided in division (A) (2) of~~ 12  
this section "public authority" means any officer, board, or 13  
commission of the state, ~~or any political subdivision of the~~ 14  
~~state,~~ or any institution supported in whole or in part by 15  
~~public state funds,~~ authorized to enter into a contract for the 16  
construction of a public improvement or to construct a public 17  
improvement by the direct employment of labor. ~~"Public"~~ 18

~~(2) "Public authority" shall not mean any municipal~~ 19  
~~corporation that has adopted a charter under sections three and~~ 20  
~~seven of article XVIII of the Ohio Constitution, does not~~ 21  
include a political subdivision unless the specific contract for 22  
a public improvement includes state funds appropriated for the 23  
purposes of that public improvement. 24

(B) "Political subdivision" means a county, township, 25  
municipal corporation, or any other body corporate and politic 26  
that is responsible for government activities in a geographic 27  
area smaller than that of the state. 28

(C) "Construction" means all of the following: 29

(1) Any new construction of any public improvement 30  
performed by other than full-time employees who have completed 31  
their probationary periods in the classified service of a public 32  
authority or political subdivision; 33

(2) Any reconstruction, enlargement, alteration, repair, 34  
remodeling, renovation, or painting of any public improvement 35  
performed by other than full-time employees who have completed 36  
their probationary period in the classified civil service of a 37  
public authority or political subdivision; 38

(3) Construction on any project, facility, or project 39  
facility to which section 122.80, 166.02, or 1728.07 of the 40  
Revised Code applies; 41

(4) Construction on any project as defined in section 42  
122.39 of the Revised Code, any project as defined in section 43  
165.01 of the Revised Code, any energy resource development 44  
facility as defined in section 1551.01 of the Revised Code, or 45  
any project as defined in section 3706.01 of the Revised Code. 46

~~(C)~~ (D) "Public improvement" means all buildings, roads, 47

streets, alleys, sewers, ditches, sewage disposal plants, water 48  
works, and other structures or works constructed by a public 49  
authority or political subdivision, or by any person who, 50  
pursuant to a contract with a public authority or political 51  
subdivision, constructs any structure or work for a public 52  
authority or political subdivision. When a public authority or 53  
political subdivision rents or leases a newly constructed 54  
structure within six months after completion of its 55  
construction, all work performed on that structure to suit it 56  
for occupancy by a public authority or political subdivision is 57  
a "public improvement." 58

~~(D)~~ (E) "Interested party," with respect to a particular 59  
public improvement, means all of the following: 60

(1) Any person who submits a bid for the purpose of 61  
securing the award of a contract for the public improvement; 62

(2) Any person acting as a subcontractor of a person 63  
mentioned in division ~~(D)~~ ~~(1)~~ (E) (1) of this section; 64

(3) Any association having as members any of the persons 65  
mentioned in division ~~(D)~~ ~~(1)~~ (E) (1) or (2) of this section; 66

(4) Any employee of a person mentioned in division ~~(D)~~ ~~(1)~~ 67  
(E) (1), (2), or (3) of this section; 68

(5) Any individual who is a resident of the jurisdiction 69  
of the public authority or political subdivision for whom 70  
products or services for a public improvement are being procured 71  
or for whom work on a public improvement is being performed. 72

**Sec. 4116.02.** A public authority, when engaged in 73  
procuring products or services, awarding contracts, or 74  
overseeing procurement or construction for public improvements 75  
undertaken by or on behalf of the public authority, shall ensure 76

that bid specifications issued by the public authority for the 77  
proposed public improvement, and any subsequent contract or 78  
other agreement for the public improvement to which the public 79  
authority and a contractor ~~or~~, subcontractor, or other entity 80  
are direct parties, do not require or prohibit that a contractor 81  
or subcontractor ~~to~~ do any of the following: 82

(A) Enter into agreements with any labor organization on 83  
the public improvement; 84

(B) Enter into any agreement that requires the employees 85  
of that contractor or subcontractor to do either of the 86  
following as a condition of employment or continued employment: 87

(1) Become members of or affiliated with a labor 88  
organization; 89

(2) Pay dues or fees to a labor organization. 90

Sec. 4116.021. No state funds shall be distributed for the 91  
purpose of the construction of a public improvement by or on 92  
behalf of a political subdivision, if the political subdivision, 93  
in procuring products or services, awarding contracts, or 94  
overseeing procurement or construction for the public 95  
improvement, requires in the bid specifications a contractor or 96  
subcontractor to enter into, or prohibits in the bid 97  
specifications a contractor or subcontractor from entering into, 98  
an agreement described in division (A) or (B) of section 4116.02 99  
of the Revised Code. 100

Sec. 4116.03. (A) No public authority shall do any ~~either~~ 101  
of the following: 102

~~(A)~~ (1) Award a contract for a public improvement 103  
undertaken by or on behalf of the public authority in violation 104  
of section 4116.02 of the Revised Code; 105

<u>(2) Otherwise violate section 4116.02 of the Revised Code.</u>	106
(B) <del>Discriminate</del> <u>No public authority shall discriminate</u>	107
against any bidder, contractor, or subcontractor for refusing <u>or</u>	108
<u>electing</u> to become a party to any agreement with any labor	109
organization on the public improvement that currently is under	110
bid or on projects related to that improvement <del>+</del>	111
<del>(C) Otherwise violate section 4116.02 of the Revised Code.</del>	112
<b><u>Sec. 4116.031.</u></b> A public authority may award a contract,	113
<u>grant, tax abatement, or tax credit to a private owner, bidder,</u>	114
<u>contractor, subcontractor, or other person or entity who</u>	115
<u>voluntarily chooses to enter into an agreement described in</u>	116
<u>division (A) or (B) of section 4116.02 of the Revised Code,</u>	117
<u>provided that entering into the agreement is not a condition for</u>	118
<u>the award.</u>	119
<b>Sec. 4116.04.</b> (A) An interested party may file a complaint	120
against a contracting public authority <u>or political subdivision</u>	121
alleging a violation of section 4116.02 <del>or, 4116.021, 4116.03,</del>	122
<u>or 4116.031</u> of the Revised Code within two years after the date	123
on which the contract is signed for the public improvement in	124
the court of common pleas of the county in which the public	125
improvement is performed. The performance of the contract forms	126
the basis of the allegation of a violation. The court in which	127
the complaint is filed shall hear and decide the case and, upon	128
a finding that a violation has occurred, shall void the contract	129
and make any orders that will prevent further violations.	130
The Rules of Civil Procedure govern all actions under this	131
section. Any determination of a court under this section is	132
subject to appellate review.	133
(B) If, pursuant to this section, a court finds a	134

violation of section 4116.02 ~~or, 4116.021, 4116.03, or 4116.031~~ 135  
of the Revised Code, the court may award reasonable attorney's 136  
fees, court costs, and any other fees incurred in the course of 137  
the civil action to the prevailing plaintiff. 138

**Sec. 4116.05.** Sections 4116.01 to 4116.04 of the Revised 139  
Code do not do either of the following: 140

(A) Prohibit employers or other parties from entering into 141  
agreements or engaging in any other activity protected by the 142  
"National Labor Relations Act," 29 U.S.C. 151, et. seq. 143

(B) Interfere with labor relations of parties that are 144  
left unregulated under the "National Labor Relations Act," 29 145  
U.S.C. 151, et. seq. 146

**Section 2.** That existing sections 4116.01, 4116.02, 147  
4116.03, and 4116.04 of the Revised Code are hereby repealed. 148

**Section 3.** That section 153.83 of the Revised Code is 149  
hereby repealed. 150

**Section 4.** The provisions of this act are severable as 151  
provided in section 1.50 of the Revised Code. 152

**Section 5.** This act shall be known as the Fair and Open 153  
Competition Act. 154