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# COUNTY ADVISORY BULLETIN

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**BULLETIN 1999-12**

**NOVEMBER 1999**

## **HOUSE BILL 101 OF THE 123<sup>RD</sup> GENERAL ASSEMBLY BARS USE OF “PROJECT LABOR AGREEMENTS” BY BOARDS OF COUNTY COMMISSIONERS AND PUBLIC AUTHORITIES ON CONSTRUCTION PROJECTS**

**BULLETIN: CUYAHOGA COUNTY COMMON PLEAS COURT JUDGE EILEEN GALLAGHER ISSUED AN ORDER BARRING THE STATE FROM ENFORCING HB 101 ON OCTOBER 18, 1999. THE OFFICE OF OHIO ATTORNEY GENERAL IS NOW CONSIDERING AN APPEAL OF GALLAGHER’S ORDER**

**Effective Date:** As enacted, the bill’s effective date was October 11, 1999. The order issued by Judge Gallagher on October 18 has delayed the effective date of the bill pending the outcome of any appeals process.

**Revised Code Sections Affected:** Newly Enacted 4116.01, 4116.02, 4116.03 and 4116.04.

**Lead Sponsor:** Young (R-Painesville).

**House Co-Sponsors:** Jacobson (R-Brookville), Corbin (R-Dayton), Jordan (R-Urbana), Netzley (R-Laura), Van Vyven (R-Sharonville), Hood (R-Canfield), Williams (R-Akron), Evans (R-Newark), and Harris (R-Ashland).

**Senate Co-Sponsors:** Nein (R-Middletown), Wachtmann (R-Napoleon), Finan (R-Evendale), Schafrath (R-Loudonville), Mumper (R-Marion), and Johnson (R-Westerville).

### **BACKGROUND AND OVERVIEW**

House Bill 101 (HB 101) of the 123<sup>rd</sup> General Assembly prohibits boards of county commissioners and other public authorities from imposing certain requirements on contractors and subcontractors who are hired to work on public improvement projects.

Most importantly, HB 101 bars a public authority from including in its bid specifications for a public improvement project any provision that 1) requires a contractor or subcontractor to enter into any agreement with a labor union during the course of the project, or 2) requires the employees of the contractor or subcontractor to become members of or pay

dues to a labor union as a condition of employment or continued employment on the project.

The act bars any public authority from awarding a contract for a public improvement if the contract's bid specifications contain the prohibited elements described above. It thus effectively prohibits what are commonly known as "project labor agreements."

HB 101 was enacted in part as a response to two courts cases that upheld the right of public authorities to require project labor agreements on public construction projects. Both court cases involved boards of county commissioners. *In Eneritech Electric, Inc. v. Mahoning County Commissioners* 85 F 3d 257 (6<sup>th</sup> Circuit 1996), the U.S. Court of Appeals upheld the commissioners denial of Eneritech's project bid after the company refused to accept a union local as the agent for the project's electricians. In *State ex. rel Associated Builders and Contractors v Jefferson County Board of Commissioners* 106 Ohio App. 3d 176, 665 NE 2d 723 (1995), Ohio's Seventh District Court of Appeals upheld's the board's authority to require contractors to sign a project labor agreement for a jail construction project.

## **1. WHAT KIND OF PROJECTS ARE AFFECTED BY HB 101? (ORC 4116.01)**

As a general rule, HB 101 applies to all "public improvements" that are "constructed" by "public authorities." These three terms are defined below.

**"Public improvements"** include all "buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks" and other structures or works constructed by a public authority itself, or by any person who has a contract with a public authority to construct any of those structures or works.

The act also includes in its definition of "public improvement" any work performed on a newly constructed structure to suit it for occupancy by a public authority, if that public authority leases or rents the structure within six months after its completion. (ORC 4116.01 (C)).

**"Construction"** of a public improvement means any new construction of a public improvement that is performed by workers who are not full-time, nonprobationary employees in the classified service of a public authority.

The term also includes any "reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting" of any public improvement that is performed by workers who are not full-time, nonprobationary employees in the classified civil service of a public authority.

The term also includes any projects to which the following ORC sections apply:

1. ORC 122.452 - Department of Development Advisory Council Loans;
2. ORC 122.80 - Minority Business Enterprise Fund Loans;
3. ORC 165.031 - Industrial Development Bonds issued under ORC Chapter 165;
4. ORC 166.02 - Projects undertaken through the state's economic

- development program authorized under ORC Chapter 166;
5. ORC 1551.13 - Energy resource development facilities authorized under ORC Chapter 1551;
  6. ORC 1728.07 - Community redevelopment corporation projects authorized under ORC Chapter 1728; and
  7. ORC 3706.042 - Air Quality Development Authority projects authorized under ORC Chapter 3706.

**“Public Authority”** includes all of the following entities:

1. Any board, officer or commission of the state;
2. Any board, officer or commission of any political subdivision of the state, **including any county**; and
3. Any institution supported in whole or in part by public funds.

The term “public authority” does not include any municipal corporation that has adopted a charter under Section 3 and 7 of Article XVIII of the Ohio Constitution, unless its contract for the public improvement specifically includes state funds appropriated for the purposes of that improvement.

## **2. WHAT SPECIFIC CONTRACT PROVISIONS ARE PROHIBITED BY HB 101? (ORC 4116.02)**

HB 101 requires any county or other public authority to ensure that any bid specifications or subsequent contract that it issues for a proposed public improvement do not **require** a contractor or subcontractor to:

1. Enter any agreement with any labor organization, or
2. Enter into any agreement that requires the employees of the contractor or subcontractor to do any of the following as a condition of employment or continued employment:
  - a. Become members of a labor organization;
  - b. Become affiliated with a labor organization; or
  - c. Pays dues or fees to a labor organization.

These provisions apply to contracts for proposed public improvements to which a public authority and a contractor are **direct parties**.

## **3. WHAT SPECIFIC ACTIONS ARE PROHIBITED BY HB 101? (ORC 4116.03)**

HB 101 bars a public authority from doing any of the following:

1. Awarding a contract for a public improvement if that contract or any subsequent contract is required to include any of the elements listed in Section 2 above;
2. Discriminating against any bidder, contractor or subcontractor who refuses to become a party to any agreement with a labor organization on a public

- improvement that is currently under bid; and
3. Violating its duty to ensure that any bid specifications or subsequent contract for a proposed public improvement do not contain any of the elements listed in section 2 above.

#### **4. WHO MAY FILE A COMPLAINT AGAINST A PUBLIC AUTHORITY ALLEGING A VIOLATION OF HB 101? (ORC 4116.04)**

Any “interested party” may file a complaint against a public authority alleging a violation of HB 101 within two years after the date on which the contract was signed. The complaint must be filed in the court of common pleas of the county in which the contract was performed.

HB 101 defines an “interested party” as any of the following:

1. Any person who submits a bid for the purpose of obtaining a contract for a public improvement;
2. Any subcontractor of any person described in one above;
3. Any association that has members described in one or two above;
4. Any employee of a person or association described in 1), 2) or 3) above;
5. Any individual who resides within the jurisdictional area of the public authority that is the subject of the complaint.

If the court in which the complaint is filed finds that a violation of the act’s provisions has occurred, it must void the contract and issue any other orders that will prevent further violations.

If the court finds in favor of the plaintiff, it may award reasonable attorney’s fees, court costs and any other fees incurred by the plaintiff during the course of the legal proceeding.

If you have questions about the current status of Judge Gallagher’s order issued October 18 or about the provisions of HB 101, please contact Doug Putnam, CCAO Research and Information Manager, at 614/221-5627 or [dputnam@ccao.org](mailto:dputnam@ccao.org).