



# Ohio Legislative Service Commission

## Bill Analysis

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### Am. S.B. 152

131st General Assembly  
(As Passed by the Senate)

**Sens.** Uecker, Seitz, Jones, Hottinger, Jordan, Lehner, Coley, Eklund, Oelslager

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## BILL SUMMARY

- Prohibits a public authority from requiring a contractor to employ a certain number or percentage of laborers from the public authority's defined geographic area or service area for the construction or professional design of a public improvement.
- Prohibits a public authority from providing a preference to a contractor who employs as laborers a certain number or percentage of individuals who reside within the public authority's defined geographic area or service area.

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## CONTENT AND OPERATION

### Local residency requirements in public improvement contracts

The bill prohibits a public authority from doing either of the following:

- Requiring 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 laborers a certain number or percentage of individuals who reside within the public authority's defined geographic area or service area;
- Providing a bid award bonus or preference to a contractor as an incentive to employ as laborers a certain number or percentage of individuals who reside within the public authority's defined geographic area or service area (see **COMMENT 1**).<sup>1</sup>

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<sup>1</sup> R.C. 9.75(B).

## Definitions

The bill defines the following terms for the prohibitions described above:

"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, including 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.

"Laborer" means a person who does any of the following in furtherance of a public improvement:

- Performs manual labor or labor of a particular occupation, trade, or craft;
- Uses tools or machinery of a particular occupation, trade, or craft;
- Otherwise performs physical work in a particular occupation, trade, or craft.

"Public authority" means any of the following:

- The state;
- A county, township, municipal corporation, or any other political subdivision;
- Any public agency, authority, board, commission, instrumentality, or special district of the state, a county, township, municipal corporation, or other political subdivision;
- Any officer or agent of one the entities listed above 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.

"Public improvement" means any of the following:

- A road, bridge, highway, street, or tunnel;
- A waste water treatment system or water supply system;



- A solid waste disposal facility or a storm water and sanitary collection, storage, and treatment facility;
- 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.<sup>2</sup>

### **Current law construction residency requirements**

The bill repeals current law provisions that, if all of the following apply, require a contractor for a project described below to comply with political subdivision regulations or ordinances that were in effect before July 1, 2009, and that specifically relate to the employment of residents and local businesses of the political subdivision in the performance of the work of the project:

- The project is for the construction or other improvement of a building or structure and is administered by the Executive Director of the Ohio Facilities Construction Commission or by another state agency authorized to administer a project under the Public Improvements Law,<sup>3</sup> or the project is for the construction or other improvement to a road or highway and is administered by the Department of Transportation or any local public authority authorized to administer such a project;
- The project is located in a municipal corporation with a population of at least 400,000 that is in a county with a population of at least 1.2 million;
- A political subdivision contributes at least \$100,000 to the project.

These ordinances or regulations currently must be included by reference unambiguously in the contract between the administering state agency, department, or local public authority, and the contractor for the project.<sup>4</sup>

### **Legislative intent and findings**

The bill states that in enacting the bill's prohibitions, the General Assembly declares its intent to recognize both of the following:

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<sup>2</sup> R.C. 9.75(A).

<sup>3</sup> R.C. Chapter 153.

<sup>4</sup> R.C. 153.013 and 5525.26, repealed.

- "The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution" (see **COMMENT 2**);
- 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.<sup>5</sup>

The bill also states that the General Assembly finds, in enacting the bill's prohibitions, 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.<sup>6</sup>

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## COMMENT

1. It is unclear if the bill's prohibitions infringe upon a municipal corporation's home rule authority under Article XVIII, Section 3 of the Ohio Constitution. Courts have held that, as a matter of local self-government, a municipal corporation may not necessarily be bound by state laws concerning construction contract provisions or competitive bidding, and that a municipal corporation could adopt ordinances that differed from the state laws.<sup>7</sup>

However, Article II, Section 34 of the Ohio Constitution (Section 34) allows the General Assembly to enact laws providing for the "health, safety, and general welfare of all employees" and provides that "no other provision of the constitution shall impair or limit this power." The Ohio Supreme Court found in *Lima v. State* that a state law that prohibits a political subdivision from requiring its employees to be political subdivision residents<sup>8</sup> was passed under Section 34. And because the law was passed under Section 34, the Court found that a home rule analysis was unnecessary and that the residency

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<sup>5</sup> Section 3.

<sup>6</sup> Section 4.

<sup>7</sup> See *Dies Electric Co. v. Akron*, 62 Ohio St.2d 322, 326 (1980) and *Greater Cincinnati Plumbing Contractors Assn. v. Blue Ash*, 106 Ohio App.3d 608 (1st Dist. 1995).

<sup>8</sup> R.C. 9.481, not in the bill.



statute supersedes a conflicting municipal ordinance regardless of a home rule analysis; the home rule authority in the Constitution cannot impair or limit Section 34.<sup>9</sup>

2. The implication of this language is unclear. The Ohio Supreme Court has not recognized a right to choose where to live. The U.S. Supreme Court and Ohio Supreme Court have held that a person does not have a constitutional right to be employed by a city while living elsewhere.<sup>10</sup>

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## HISTORY

ACTION	DATE
Introduced	04-29-15
Reported, S. Gov't Oversight & Reform	06-24-15
Passed Senate (21-11)	06-25-15

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<sup>9</sup> *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597 at ¶¶ 14-16.

<sup>10</sup> *Buckley v. Cincinnati*, 63 Ohio St.2d 42 (1980); *McCarty v. Philadelphia Civil Service Comm.*, 424 U.S. 645 (1976).

