

**As Introduced**

**124th General Assembly  
Regular Session  
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**S. B. No. 236**

**SENATOR Coughlin**

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**A B I L L**

To amend sections 153.65, 153.68, and 153.69 and to  
enact sections 153.72, 153.73, 153.74, 153.75, and  
153.76 of the Revised Code to permit public  
authorities to use design-build firms in the  
construction of public improvements and to  
establish a two-phase procedure for selecting those  
firms.

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

**Section 1.** That sections 153.65, 153.68, and 153.69 be  
amended and sections 153.72, 153.73, 153.74, 153.75, and 153.76 of  
the Revised Code be enacted to read as follows:

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**Sec. 153.65.** As used in sections 153.65 to ~~153.71~~ 153.76 of  
the Revised Code:

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(A) "Public authority" means the state, or a county,  
township, municipal corporation, school district, or other  
political subdivision, or any public agency, authority, board,  
commission, instrumentality, or special district of the state or a  
county, township, municipal corporation, school district, or other  
political subdivision.

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(B) "Professional design firm" means any person legally  
engaged in rendering professional design services.

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(C) "Professional design services" means services within the scope of practice of an architect or landscape architect registered under Chapter 4703. of the Revised Code or a professional engineer or surveyor registered under Chapter 4733. of the Revised Code.

(D) ~~"Qualifications" means all of the following:~~

~~(1) Competence of the professional design firm to perform the required professional design services as indicated by the technical training, education, and experience of the firm's personnel, especially the technical training, education, and experience of the employees within the firm who would be assigned to perform the services;~~

~~(2) Ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design services competently and expeditiously;~~

~~(3) Past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines;~~

~~(4) Other similar factors~~ "Design-build firm" means a person capable of providing professional design services and construction services in the performance of a design-build construction contract.

(E) "Design-build construction contract" means any written agreement involving a project delivery system for the erection, alteration, repair, replacement, renovation, installation, or demolition of any public improvement by which a person is responsible contractually to a public authority for both the design and construction of the public improvement, which design and construction may include a performance-based specification established by the public authority rather than a specific design

as a public improvement goal. 52

(F) "Fixed price" means the total amount of money available 53  
for the public improvement. 54

(G) "Lump sum" means the lowest possible price for the public 55  
improvement. 56

(H) "Two-phase procedure" means the selection procedure 57  
described in section 153.74 of the Revised Code that uses one 58  
distinct phase to identify firms interested in entering into a 59  
design-build construction contract with a public authority and 60  
another distinct phase to identify the best qualified design-build 61  
firm for a design-build construction contract. 62

(I) "One-phase procedure" means the selection procedure 63  
described in section 153.74 of the Revised Code that uses only one 64  
phase to identify firms interested in entering into a design-build 65  
construction contract with a public authority to determine the 66  
lowest responsive and responsible bidder in accordance with 67  
section 9.312 of the Revised Code. 68

**Sec. 153.68.** Any public authority planning to contract for 69  
professional design services may institute prequalification 70  
requirements for professional design firms seeking to provide 71  
services to the public authority and may require that each 72  
prequalified firm maintain a current statement of qualifications 73  
on file with the public authority. The prequalification 74  
requirements shall be based on factors such as those set out in 75  
division ~~(D)~~(A)(2) of section ~~153.65~~ 153.69 of the Revised Code. 76

**Sec. 153.69.** (A)(1) For every professional design services 77  
contract, each public authority planning to contract for 78  
professional design services shall evaluate the statements of 79  
qualifications of professional design firms currently on file, 80  
together with those that are submitted by other professional 81

design firms specifically regarding the project, and may hold 82  
discussions with individual firms to explore further the firms' 83  
statements of qualifications, the scope and nature of the services 84  
the firms would provide, and the various technical approaches the 85  
firms may take toward the project. ~~Following this~~ 86

(2) When evaluating qualifications of a professional design 87  
firm, a public authority shall consider all of the following 88  
factors relative to the professional design firm: 89

(a) Competence of the professional design firm to perform the 90  
required professional design services as indicated by the 91  
technical training, education, and experience of the firm's 92  
personnel, especially the technical training, education, and 93  
experience of the employees within the firm who would be assigned 94  
to perform the services; 95

(b) Ability of the firm in terms of its workload and the 96  
availability of qualified personnel, equipment, and facilities to 97  
perform the required professional design services competently and 98  
expeditiously; 99

(c) Past performance of the firm as reflected by the 100  
evaluations of previous clients with respect to such factors as 101  
control of costs, quality of work, and meeting of deadlines; 102

(d) Other similar factors. 103

(B) Following the evaluation specified in division (A) of 104  
this section, the public authority shall do all of the following: 105

~~(A)~~(1) Select and rank no fewer than three firms which it 106  
considers to be the most qualified to provide the required 107  
professional design services, except when the public authority 108  
determines in writing that fewer than three qualified firms are 109  
available in which case the public authority shall select and rank 110  
those firms; 111

~~(B)~~(2) Negotiate a contract with the firm ranked most 112  
qualified to perform the required services at a compensation 113  
determined in writing to be fair and reasonable to the public 114  
authority. Contract negotiations shall be directed toward: 115

~~(1)~~(a) Ensuring that the professional design firm and the 116  
agency have a mutual understanding of the essential requirements 117  
involved in providing the required services; 118

~~(2)~~(b) Determining that the firm will make available the 119  
necessary personnel, equipment, and facilities to perform the 120  
services within the required time; 121

~~(3)~~(c) Agreeing upon compensation which is fair and 122  
reasonable, taking into account the estimated value, scope, 123  
complexity, and nature of the services. 124

~~(C)~~(3) If a contract is negotiated with the firm ranked to 125  
perform the required services most qualified, the public authority 126  
shall, if applicable under section 127.16 of the Revised Code, 127  
request approval of the board to make expenditures under the 128  
contract. 129

~~(D)~~(4) Upon failure to negotiate a contract with the firm 130  
ranked most qualified, the public authority shall inform the firm 131  
in writing of the termination of negotiations and enter into 132  
negotiations with the firm ranked next most qualified. If 133  
negotiations again fail, the same procedure shall be followed with 134  
each next most qualified firm selected and ranked pursuant to 135  
division ~~(A)~~(B)(1) of this section, in order of ranking, until a 136  
contract is negotiated. 137

~~(E)~~(5) Should the public authority fail to negotiate a 138  
contract with any of the firms selected pursuant to division 139  
~~(A)~~(B)(1) of this section, the public authority shall select and 140  
rank additional firms, based on their qualifications, and 141  
negotiations shall continue as with the firms selected and ranked 142

initially until a contract is negotiated. 143

Sec. 153.72. (A) Notwithstanding sections 122.42, 122.74, 144  
122.75, 152.18, 153.08, 153.52, 306.43, 306.82, 307.86, 307.87, 145  
307.90, 308.13, 505.27, 505.376, 511.12, 515.01, 515.07, 521.05, 146  
727.24, 731.14, 731.141, 735.05, 747.05, 749.14, 749.31, 755.33, 147  
971.07, 1501.011, 1513.18, 1513.24, 1514.06, 1515.08, 1523.03, 148  
1710.11, 3313.46, 3318.10, 3345.63, 3354.16, 3355.12, 3357.16, 149  
3375.41, 3381.11, 3501.29, 3706.04, 3735.36, 3769.08, 3769.20, 150  
4121.121, 5120.112, 5126.071, 5517.011, 5517.02, 5525.01, 5525.05, 151  
5537.07, 5543.19, 5559.12, 5575.01, 5575.02, 5593.08, 6115.20, 152  
6119.10, 6119.28, 6121.04, 6121.044, 6123.04, 6131.44, 6137.05 of 153  
the Revised Code, a public authority may enter into a design-build 154  
construction contract for the construction of a public improvement 155  
if the public authority satisfies division (A)(1) of this section 156  
and either division (A)(2) or (3) of this section as follows: 157

(1) The public authority is not using separate professional 158  
design services and separate construction contracts to contract 159  
for the construction of the public improvement. 160

(2) The public authority determines pursuant to division (B) 161  
of this section that the two-phase procedure set forth in section 162  
153.74 of the Revised Code for selecting a design-build firm is 163  
appropriate for the construction of the public improvement. 164

(3) The public authority determines pursuant to division (C) 165  
of this section that the one-phase procedure set forth in section 166  
153.74 of the Revised Code for selecting a design-build firm is 167  
appropriate for the construction of the public improvement. 168

(B) A public authority, except for a public authority that is 169  
a political subdivision with a population of less than two hundred 170  
fifty thousand persons, shall use the two-phase selection 171  
procedure described in section 153.74 of the Revised Code to 172  
select a design-build firm for the construction of a public 173

improvement if the public authority determines that the two-phase procedure is appropriate to use for that public improvement. The public authority shall make this determination and issue it in writing after considering all of the following: 174  
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(1) Whether the public improvement the public authority intends to construct is suited to the use of design-build services; 178  
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(2) Whether the public authority has the capability to manage the two-phase selection procedure; 181  
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(3) Whether at least three capable and experienced design-build firms will seek the award of the design-build construction contract; 183  
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(4) How much time and money the public authority must expend for preliminary design work necessary to enable a design-build contractor to develop a price or cost proposal for the design-build construction contract; 186  
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(5) Whether entering into a design-build construction contract is suitable given the time constraints for the construction of the public improvement; 190  
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(6) Whether the use of a design-build construction contract will provide the opportunity for public comment, if needed, as determined by the public authority; 193  
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(7) Any other factors established by the public authority. 196

(C) A public authority shall use the one-phase procedure described in section 153.74 of the Revised Code to select a design-build firm for the construction of a public improvement if the public authority determines that the one-phase procedure is appropriate to use for that public improvement. The public authority shall make this determination and issue it in writing after considering all of the following: 197  
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<u>(1) Whether the public improvement the public authority intends to construct is suited to the use of design-build services;</u>	204
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<u>(2) Whether the public authority has the capability to manage the one-step selection procedure;</u>	207
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<u>(3) Whether enough capable and experienced design-build firms will participate in the bidding process to make it competitive;</u>	209
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<u>(4) How much time the use of a design-build construction contract can save in constructing the public improvement;</u>	212
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<u>(5) How much money the use of a design-build construction contract can save in constructing the public improvement;</u>	214
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<u>(6) Whether the use of a design-build construction contract will provide the opportunity for public comment, if needed, as determined by the public authority;</u>	216
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<u>(7) Any other factors established by the public authority.</u>	219
<u><b>Sec. 153.73.</b> (A) A public authority that intends to enter into a design-build construction contract for the construction of a public improvement shall develop, or contract for the development of, a scope-of-work statement for that public improvement that defines the public improvement and provides interested persons with sufficient information regarding the public authority's requirements for the public improvement to enable those persons to submit proposals for consideration that are consistent with the needs of the public authority.</u>	220
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<u>The scope-of-work statement may include preliminary criteria, design criteria, budget parameters, and schedule and delivery requirements for the public improvement.</u>	229
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<u>(B) A public authority that contracts for the development of</u>	232

a scope-of-work statement shall contract for the professional design services necessary to develop that statement pursuant to sections 153.65 to 153.71 of the Revised Code. A professional design firm that prepares a scope-of-work statement for a design-build construction contract for a public improvement is ineligible to hold any interest in any design-build construction contract for that public improvement.

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Sec. 153.74. (A) For both the two-phase and one-phase procedure a public authority shall advertise, in a newspaper of general circulation in the county where the design-build construction contract is to be performed, notice of its intent to use a design-build firm for a public improvement. The public authority also may advertise in other forms of media, appropriate trade journals, and any other publications considered appropriate and may notify design-build firms believed to be interested in contracting for public improvements.

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(B) The public authority shall advertise, or cause to be advertised, notice of its intent to use a design-build firm for a public improvement in accordance with all of the following specifications:

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(1) The advertisement shall be published at least thirty days before the deadline for accepting proposals.

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(2) The advertisement shall invite interested persons to submit proposals for consideration.

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(3) The advertisement shall include a general description of the public improvement, a statement of the professional design and construction services required for the public improvement, and the method by which a design-build firm may submit a statement of qualifications to be considered by the public authority in awarding the design-build construction contract.

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(4) The advertisement either shall include the scope-of-work statement in the advertisement or state that interested persons may obtain the scope-of-work statement from the public authority. 263  
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(5) When the public authority is using the two-phase selection procedure, the advertisement shall request a response to the scope-of-work statement but shall not request detailed design, cost, or price information, and when the public authority is using the one-phase selection procedure, the advertisement shall request a response to the scope-of-work statement and cost information and shall request that the bidder submit the bid for the public improvement in a separately sealed envelope. 266  
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(C) The public authority shall evaluate any responses submitted to it pursuant to division (B)(5) of this section on the basis of the professional design and construction qualifications and the technical approach to the scope-of-work statement of the design-build firms who submit a response. The public authority also shall evaluate bids submitted under the one-phase procedure in accordance with division (H) of this section. 274  
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(D)(1) Except as provided in division (D)(2) of this section, after completing this evaluation, in the two-phase procedure, the public authority shall select not less than three nor more than five design-build firms that it considers to be the most qualified to provide the required professional design and construction services. 281  
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(2) If the public authority determines that less than three design-build firms are qualified, the public authority may select less than three design-build firms on the condition that the public authority issues a written statement that includes the rationale for its determination. 287  
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(E) Next, in the two-phase procedure to select a design-build firm, a public authority shall request from the most qualified 292  
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design-build firms selected pursuant to division (D) of this 294  
section, a technical submission for the public improvement that 295  
includes design concepts and addresses the requirements set forth 296  
in the scope-of-work statement for that improvement. 297

(F) A public authority's request for a technical submission 298  
shall provide all of the following information: 299

(1) The estimated fixed price or lump sum cost of the public 300  
improvement; 301

(2) The criteria that the public authority will use in 302  
evaluating a technical submission; 303

(3) The deadline for submitting a technical submission. 304

(G) The technical submission of a design-build firm with whom 305  
the public authority does not enter into a design-build 306  
construction contract remains the property of the design-build 307  
firm. 308

(H) In the one-phase procedure, following the evaluation 309  
described in division (I) of this section, the public authority 310  
shall open the bids of those it determines to be responsive and 311  
responsible and award the contract to the lowest responsive and 312  
responsible bidder. 313

(I) When evaluating the qualifications of a design-build firm 314  
in either the one-phase or two-phase procedure, a public authority 315  
shall consider all of the following factors relative to the 316  
design-build firm: 317

(1) Competence of the design-build firm to perform the 318  
required professional design and construction services as 319  
indicated by the technical training, education, and experience of 320  
the firm's personnel, especially the technical training, 321  
education, and experience of the firm's employees who would be 322  
assigned to perform the services; 323

(2) Ability of the design-build firm in terms of the firm's workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design and construction services competently and expeditiously; 324  
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(3) Past performance of the design-build firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines; 328  
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(4) Financial responsibility as evidenced by the capability to provide a letter of credit pursuant to Chapter 1305. of the Revised Code, a surety bond, certified check, or cashier's check in an amount equal to the value of the design-build construction contract, or by other means acceptable to the public authority; 332  
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(5) Other similar factors. 337

**Sec. 153.75.** (A) For selecting a design-build firm using the two-phase procedure, a public authority shall rank design-build firms that submit technical submissions pursuant to section 153.74 of the Revised Code in the order of their qualifications from the most to least qualified. The public authority shall enter into negotiations for a design-build construction contract with the design-build firm it ranks most qualified to perform the required professional design and construction services at a compensation the public authority and design-build firm determine to be fair and reasonable. The public authority shall issue a written statement that includes the rationale for the price determination. 338  
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(B) The public authority and design-build firm shall enter into negotiations for a design-build construction contract to ensure both of the following: 350  
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(1) The design-build firm and the public authority mutually 353

understand the essential requirements involved in providing the 354  
required professional design and construction services. 355

(2) The design-build firm will make available the necessary 356  
personnel, equipment, and facilities to perform the professional 357  
design and construction services within the time required by the 358  
design-build construction contract. 359

(C) If the public authority fails to negotiate a construction 360  
contract with the design-build firm it ranks most qualified, the 361  
public authority shall inform the firm in writing of the 362  
termination of negotiations. The public authority then shall enter 363  
negotiations with the design-build contractor it ranked next most 364  
qualified. If these negotiations fail, the public authority shall 365  
inform the design-build firm in writing of the termination of 366  
negotiations, and the public authority shall enter negotiations 367  
with each next most qualified design-build firm it selected and 368  
ranked pursuant to division (A) of this section, in order of the 369  
firm's ranking, until a design-build construction contract is 370  
negotiated or until the public authority exhausts the number of 371  
design-build firms it initially selected. 372

(D) A public authority that fails to negotiate a design-build 373  
construction contract with any of the design-build firms selected 374  
and ranked pursuant to division (A) of this section may do either 375  
of the following: 376

(1) Select additional design-build firms, rank those firms on 377  
the basis of their qualifications, and enter into negotiations 378  
with the firm it ranks most qualified, in the manner specified in 379  
divisions (A) to (C) of this section; 380

(2) Use any other procedure permitted by law to contract for 381  
the construction of the public improvement. 382

**Sec. 153.76.** A design-build firm that is awarded a 383

design-build construction contract for the construction of a 384  
public improvement shall provide a bond in accordance with 385  
sections 153.54 to 153.571 of the Revised Code for not less than 386  
an amount equal to the amount of the contract minus the amount of 387  
the contract related to providing design services. The 388  
design-build firm shall have and maintain, or be covered by, a 389  
professional liability insurance policy in accordance with 390  
division (A) of section 153.70 of the Revised Code. The bond and 391  
the liability insurance policy shall be provided by a company that 392  
is authorized to do business in this state. 393

**Section 2.** That existing sections 153.65, 153.68, and 153.69 394  
of the Revised Code are hereby repealed. 395