

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 229

Representative Young

**Cosponsors: Representatives Adams, J., Beck, Becker, Buchy, Hood,
Lynch, Roegner, Wachtmann**

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To amend sections 4116.01 to 4116.04; to amend, for 1
the purpose of adopting a new section number as 2
indicated in parentheses, section 4116.04 3
(4116.05); and to enact new section 4116.04 and 4
section 4116.06 of the Revised Code to expand the 5
number of potential bidders for public works 6
funded by a state agency and not discriminate in 7
favor of or against labor organizations by 8
requiring or prohibiting certain labor 9
requirements as a condition of performing these 10
public works, and to expand the potential number 11
of bidders for public works conducted by a 12
political subdivision of the state and not reward 13
discrimination in favor of or against labor 14
organizations by the appropriation of state funds 15
for public works when a political subdivision 16
discriminates by requiring or prohibiting certain 17
labor requirements as a condition of performing 18
public works. 19

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

Section 1. That sections 4116.01, 4116.02, 4116.03, and 20
4116.04 be amended, section 4116.04 (4116.05) be amended for the 21
purpose of adopting a new section number as indicated in 22
parentheses, and new section 4116.04 and section 4116.06 of the 23
Revised Code be enacted to read as follows: 24

Sec. 4116.01. As used in ~~sections 4116.01 to 4116.04 of the~~ 25
~~Revised Code~~ this chapter: 26

(A) "~~Public authority~~ State agency" means any officer, board, 27
or commission of the state, ~~or any political subdivision of the~~ 28
~~state, or any institution supported in whole or in part by public~~ 29
~~funds,~~ authorized to enter into a contract for the construction of 30
a public improvement or to construct a public improvement by the 31
direct employment of labor, and includes a state institution of 32
higher education. "~~Public authority~~" shall not mean any municipal 33
~~corporation that has adopted a charter under sections three and~~ 34
~~seven of article XVIII of the Ohio Constitution, unless the~~ 35
~~specific contract for a public improvement includes state funds~~ 36
~~appropriated for the purposes of that public improvement.~~ 37

(B) "Construction" means ~~all~~ both of the following: 38

(1) Any new construction of any public improvement performed 39
by other than full-time employees who have completed their 40
probationary periods in the classified service of a ~~public~~ 41
~~authority~~ state agency or political subdivision; 42

(2) Any reconstruction, enlargement, alteration, repair, 43
remodeling, renovation, or painting of any public improvement 44
performed by other than full-time employees who have completed 45
their probationary period in the classified civil service of a 46
~~public authority~~; 47

~~(3) Construction on any project, facility, or project~~ 48
~~facility to which section 122.80, 166.02, or 1728.07 of the~~ 49

~~Revised Code applies;~~ 50

~~(4) Construction on any project as defined in section 122.39 51
of the Revised Code, any project as defined in section 165.01 of 52
the Revised Code, any energy resource development facility as 53
defined in section 1551.01 of the Revised Code, or any project as 54
defined in section 3706.01 of the Revised Code state agency or 55
political subdivision. 56~~

~~(C) "Public improvement" means all buildings, roads, streets, 57
alleys, sewers, ditches, sewage disposal plants, water works, and 58
other structures or works constructed by a ~~public authority~~ state 59
agency or political subdivision or by any person who, pursuant to 60
a contract with a ~~public authority~~ state agency or political 61
subdivision, constructs any structure or work for a ~~public 62
authority~~ state agency or political subdivision. ~~When a public 63
authority rents or leases a newly constructed structure within six 64
months after completion of its construction, all work performed on 65
that structure to suit it for occupancy by a public authority is a 66
"public improvement."~~ 67~~

~~(D) "Interested party," with respect to a particular public 68
improvement, means all of the following: 69~~

~~(1) Any person who submits a bid for the purpose of securing 70
the award of a contract for the public improvement; 71~~

~~(2) Any person acting as a subcontractor of a person 72
mentioned in division (D)(1) of this section; 73~~

~~(3) Any association having as members any of the persons 74
mentioned in division (D)(1) or (2) of this section; 75~~

~~(4) Any employee of a person mentioned in division (D)(1), 76
(2), or (3) of this section; 77~~

~~(5) Any individual who is a resident of ~~the jurisdiction of 78
the public authority for whom products or services for a public 79~~~~

~~improvement are being procured or for whom work on a public~~ 80
~~improvement is being performed this state.~~ 81

(E) "Political subdivision" has the same meaning as in 82
section 9.23 of the Revised Code. 83

(F) "State institution of higher education" has the same 84
meaning as in section 3345.011 of the Revised Code. 85

Sec. 4116.02. A ~~public authority state agency~~, when engaged 86
in procuring products or services, awarding contracts, or 87
overseeing procurement or construction for public improvements 88
undertaken by or on behalf of the state agency, shall ensure that 89
bid specifications issued by the ~~public authority state agency~~ for 90
the proposed public improvement, and any subsequent contract or 91
other agreement for the public improvement to which the ~~public~~ 92
~~authority state agency~~ and a contractor or subcontractor are 93
direct parties, do not require or prohibit that a contractor or 94
subcontractor ~~to~~ do any of the following: 95

(A) Enter into agreements with any labor organization on the 96
public improvement; 97

(B) Enter into any agreement that requires the employees of 98
that contractor or subcontractor to do either of the following as 99
a condition of employment or continued employment: 100

(1) Become members of or affiliated with a labor 101
organization; 102

(2) Pay dues or fees to a labor organization. 103

Sec. 4116.03. No ~~public authority state agency~~ shall do any 104
of the following: 105

(A) Award a contract for a public improvement undertaken by 106
or on behalf of the state agency in violation of section 4116.02 107
of the Revised Code; 108

(B) Discriminate against any bidder, contractor, or subcontractor for refusing or electing to become a party to any agreement with any labor organization on the public improvement undertaken by or on behalf of the state agency that currently is under bid or on projects related to that improvement;

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

Sec. 4116.04. No state funds shall be appropriated for the purpose of the construction of a public improvement by or on behalf of a political subdivision, if the political subdivision, in procuring products or services, awarding contracts, or overseeing procurement or construction for public improvements undertaken by or on behalf of the political subdivision, requires in the bid specifications a contractor or subcontractor to enter into, or prohibits in the bid specifications a contractor or subcontractor from entering into, an agreement described in division (A) or (B) of section 4116.02 of the Revised Code.

Sec. 4116.04 4116.05. (A) An interested party may file a complaint against a ~~contracting public authority~~ state agency alleging a violation of section 4116.02 ~~or~~, 4116.03, or 4116.04 of the Revised Code within two years after the date on which the contract is signed for the public improvement in the court of common pleas of the county in which the public improvement is performed. The performance of the contract forms the basis of the allegation of a violation. The court in which the complaint is filed shall hear and decide the case and, upon a finding that a violation has occurred, shall void the contract and make any orders that will prevent further violations.

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

(B) If, pursuant to this section, a court finds a violation of section 4116.02 ~~or~~, 4116.03, or 4116.04 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.

Sec. 4116.06. (A) Nothing in this chapter shall be construed as regulating the conduct of a private entity. This chapter applies only to the state or a state agency that is acting in a proprietary capacity as a market participant.

(B) The intent of this chapter is to achieve all of the following:

(1) To ensure that all construction contracts undertaken by or on behalf of the state are let for bid without unnecessary restrictions that arbitrarily may reduce the potential pool of bidders, thereby increasing procurement and construction costs for the taxpayers of this state;

(2) To ensure that a contract for construction undertaken by or on behalf of a state agency is awarded to the lowest responsive and responsible bidder or based upon any other applicable competitive bidding standard;

(3) To prevent political kickbacks, favoritism, discrimination, cronyism, or collusion between government officials and any individual, employee, or organization;

(4) To prevent discrimination by a state agency based upon a contractor's or subcontractor's relationship with a labor organization or lack thereof;

(5) To expand job opportunities for small and disadvantaged businesses.

Section 2. That existing sections 4116.01, 4116.02, 4116.03,

and 4116.04 of the Revised Code are hereby repealed. 168

Section 3. The items of law contained in this act, and their 169
applications, are severable. If any item of law contained in this 170
act, or if any application of any item of law contained in this 171
act, is held invalid, the invalidity does not affect other items 172
of law contained in this act and their applications that can be 173
given effect without the invalid item of law or application. 174