



Ohio Legislative Service Commission

Bill Analysis

Wendy H. Gridley

S.B. 125

129th General Assembly
(As Introduced)

Sens. Seitz, Turner

BILL SUMMARY

- Generally authorizes political subdivisions to enter into agreements to perform services for one another.
- Authorizes a regional council of governments to enter into unit price contracts related to buildings or structures on behalf of member political subdivisions.

CONTENT AND OPERATION

The bill provides general authority for political subdivisions to enter into agreements to provide services to one another. (See **COMMENT 1**.) In order to provide a service, a contracting subdivision must otherwise have the legal authority to exercise, perform, or render the service. The respective legislative authorities of the contracting subdivisions must approve the subdivisions' participation in the agreement.¹ If the agreement does not specify by what officer, office, department, agency, or authority the powers and duties are to be exercised or performed, the legislative authority of the political subdivision must determine and assign the powers and duties. No agreement can suspend the possession by a contracting recipient political subdivision of any power or function exercised or performed on its behalf by another contracting subdivision in pursuance of the agreement.

The bill states that no agreement can be performed "within a political subdivision by another political subdivision without obtaining the written consent of the political subdivision which is not a party to the agreement and in which the agreement is to be performed prior to the performance of the agreement." This language appears to contemplate an agreement between two political subdivisions to performance within

¹ R.C. 9.64(B)(1).

another political subdivision that is not a party to the agreement between those subdivisions; it seems that an agreement would be necessary at some point with the political subdivision in which performance is to occur. Before performance of the agreement addressed in this provision of the bill, the non-party political subdivision must provide written consent.²

The bill prohibits any political subdivision from entering into any agreement under the bill to levy any tax or to exercise, with regard to public moneys, any investment powers, perform any investment functions, or render any investment service on behalf of a contracting subdivision.³

The bill provides that the political subdivision tort liability law, Chapter 2744. (sovereign immunity), applies to political subdivisions that are parties to an agreement under the bill and to their employees when they are rendering a service outside the boundaries of their employing political subdivisions under an agreement. Employees acting outside the boundaries of their employing subdivision while providing a service under an agreement may participate in any pension or indemnity fund established by the political subdivision to the same extent as while acting within the boundaries of the political subdivision, and are entitled to all the rights and benefits of the Workers' Compensation Law to the same extent as while they are performing a service within the boundaries of the political subdivision.⁴

Regional councils of governments

Unless certain provisions requiring separate bids apply (see **COMMENT 3**), the bill permits a regional council of governments (see **COMMENT 2**) to enter into a contract that establishes a unit price for, and provides upon a per unit basis, materials, labor, services, overhead, profit, and associated expenses for the repair, enlargement, improvement, or demolition of a building or structure if the contract is awarded pursuant to a competitive bidding procedure of a county, municipal corporation, or township or a special district, school district, or other political subdivision that is a council member; a statewide consortium of which the council is a member; or a multistate consortium of which the council is a member. The bill specifies that purchases under such a contract are exempt from any competitive selection or bidding requirements otherwise required by law.

² R.C. 9.64(B)(4).

³ R.C. 9.64(C).

⁴ R.C. 9.64(D).

Additionally, the bill permits a county, municipal corporation, or township and a special district, school district, or other political subdivision that is a council member to participate in such a contract. However, such a council member is not entitled to participate in such a contract if it has received bids for the same work under another contract, unless participation in the council's contract will enable the council member to obtain the same work, upon the same terms, conditions, and specifications, at a lower price.

The bill specifies that a public notice requirement pertaining to the contract must be considered to have been met if the public notice is given once a week for at least two consecutive weeks in a newspaper of general circulation within a county in Ohio in which the council has members and if the notice is posted on the council's Internet web site for at least two consecutive weeks before the date specified for receiving bids.⁵

COMMENT

1. Current law provides a variety of specific statutes authorizing political subdivisions to contract for certain services. See, for example, R.C. 9.60 (fire protection or emergency medical services); R.C. 505.37 (firefighting equipment); R.C. 311.29, 505.43, 505.50, and 737.04 (police services); R.C. 5535.08 (mutual aid agreements for road maintenance and repair); R.C. 715.02 (joint construction or management of public work, utility, or improvement). More general authority exists in authorization for intergovernmental agreements for exercising powers, performing functions, or rendering services (R.C. 307.15). And even more extensive general authority exists in the current chapter on regional councils of governments (R.C. Chapter 167). (See **COMMENT 2**.)

2. Chapter 167. of the Revised Code permits political subdivisions to enter into an agreement creating a regional council of government to, among other powers, promote cooperative arrangements and coordinate action among its members, contract among its members and other governmental agencies and private entities to address problems common to its members, and "perform. . . functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern." Governmental council members, the state, and the federal government may give the regional council moneys, real and personal property, and services. Any political subdivision may contract with the regional council to provide a service to or receive a service from the council, or authorize the council to perform any function or render any service on behalf of the political subdivision.

⁵ R.C. 167.081.

3. Under ongoing law, a public authority is required to solicit separate and distinct bids for furnishing materials or doing work for plumbing and gas fitting; steam and hot-water heating, ventilating apparatus, and steam-power plant; and electrical equipment. A public authority is not required to solicit separate and distinct bids if the cost is less than \$5,000. (R.C. 153.50, not in the bill.) A public authority cannot award a single, aggregate contract for an entire project or for a greater portion of the project than is embraced in one class of work unless one of the following applies: (1) the separate bids do not cover all the work or materials required or (2) the bids for the whole or two or more kinds of work or materials are lower than the separate bids combined (R.C. 153.51, not in the bill). Public authorities must award contracts for the separate branches of work described above to the lowest and best separate bidder. However, the separate bid requirements do not apply to the erection of buildings and other structures that cost less than \$50,000. (R.C. 153.52, not in the bill.)

HISTORY

ACTION	DATE
Introduced	03-22-11

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