

**As Passed by the House**

**131st General Assembly**

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**Sub. S. B. No. 152**

**Senator Uecker**

**Cosponsors: Senators Seitz, Jones, Hottinger, Jordan, Lehner, Coley, Eklund, Oelslager Representatives Amstutz, Antani, Becker, Boose, Brenner, Brinkman, Buchy, Butler, Hood, Huffman, McClain, McColley, Perales, Roegner, Schaffer, Smith, R., Vitale, Young, Zeltwanger, Speaker Rosenberger**

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**A BILL**

To amend sections 4116.01, 4116.02, 4116.03, and 1  
4116.04; to enact sections 9.75 and 4116.031; 2  
and to repeal sections 153.013, 153.83, and 3  
5525.26 of the Revised Code to prohibit a public 4  
authority from requiring a contractor to employ 5  
a certain percentage of individuals from the 6  
geographic area of the public authority for the 7  
construction or professional design of a public 8  
improvement and to prohibit a state agency or 9  
state institution of higher education from 10  
requiring a contractor to or prohibiting a 11  
contractor from entering into certain labor 12  
agreements as a condition of performing or 13  
bidding on a public improvement project. 14

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

**Section 1.** That sections 4116.01, 4116.02, 4116.03, and 15  
4116.04 be amended and sections 9.75 and 4116.031 of the Revised 16  
Code be enacted to read as follows: 17

<u>Sec. 9.75. (A) As used in this section:</u>	18
<u>(1) "Construction manager" and "construction manager at risk" have the same meanings as in section 9.33 of the Revised Code.</u>	19 20 21
<u>(2) "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. "Contractor" may include 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.</u>	22 23 24 25 26 27 28 29 30 31 32
<u>(3) "Design-build firm" has the same meaning as in section 153.65 of the Revised Code.</u>	33 34
<u>(4) "Laborer" means a person who does any of the following in furtherance of a public improvement:</u>	35 36
<u>(a) Performs manual labor or labor of a particular occupation, trade, or craft;</u>	37 38
<u>(b) Uses tools or machinery of a particular occupation, trade, or craft;</u>	39 40
<u>(c) Otherwise performs physical work in a particular occupation, trade, or craft.</u>	41 42
<u>(5) "Professional design services" and "professional design firm" have the same meanings as in section 153.65 of the Revised Code.</u>	43 44 45

<u>(6) "Public authority" includes any of the following:</u>	46
<u>(a) The state;</u>	47
<u>(b) A county, township, municipal corporation, or any other political subdivision of the state;</u>	48 49
<u>(c) Any public agency, authority, board, commission, instrumentality, or special district of the state, a county, township, municipal corporation, or other political subdivision of the state;</u>	50 51 52 53
<u>(d) Any officer or agent of one of the entities listed in divisions (A) (6) (a) to (c) of this section 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.</u>	54 55 56 57 58
<u>(7) "Public improvement" means any of the following:</u>	59
<u>(a) A road, bridge, highway, street, or tunnel;</u>	60
<u>(b) A waste water treatment system or water supply system;</u>	61
<u>(c) A solid waste disposal facility or a storm water and sanitary collection, storage, and treatment facility;</u>	62 63
<u>(d) 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.</u>	64 65 66
<u>(B) Except as provided in divisions (C) and (D) of this section:</u>	67 68
<u>(1) No public authority shall require 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</u>	69 70 71 72

laborers a certain number or percentage of individuals who 73  
reside within the defined geographic area or service area of the 74  
public authority. 75

(2) No public authority shall provide a bid award bonus or 76  
preference to a contractor as an incentive to employ as laborers 77  
a certain number or percentage of individuals who reside within 78  
the defined geographic area or service area of the public 79  
authority. 80

(C) (1) Except as provided in division (C) (2) of this 81  
section, nothing in division (B) of this section prohibits the 82  
department of transportation from requiring, for a project 83  
administered by the department and subject to federal 84  
environmental justice mitigation or on-the-job training 85  
requirements, that a portion of the project be performed by 86  
residents of a particular area or region. 87

(2) No more than five per cent of the total number of 88  
labor hours anticipated to be needed on a single project 89  
administered by the department of transportation may be 90  
apportioned to residents of a particular area or region to meet 91  
on-the-job training requirements. 92

(D) This section does not apply to a multi-phase 93  
department of transportation project that is funded solely with 94  
state funds and is under development on or before the effective 95  
date of this section. 96

**Sec. 4116.01.** ~~As used in sections 4116.01 to 4116.04 of~~ 97  
~~the Revised Code~~ this chapter: 98

~~(A) "Public authority" "State agency" means any officer,~~ 99  
~~board, or commission of the state, or any political subdivision~~ 100  
~~of the state, or any institution supported in whole or in part~~ 101

~~by public funds,~~ authorized to enter into a contract for the 102  
construction of a public improvement or to construct a public 103  
improvement by the direct employment of labor and includes a 104  
state institution of higher education. ~~"Public authority" shall~~ 105  
~~not mean any municipal corporation that has adopted a charter~~ 106  
~~under sections three and seven of article XVIII of the Ohio~~ 107  
~~Constitution, unless the specific contract for a public~~ 108  
~~improvement includes state funds appropriated for the purposes~~ 109  
~~of that public improvement.~~ 110

(B) "Construction" means all of the following: 111

(1) Any new construction of any public improvement 112  
performed by other than full-time employees who have completed 113  
their probationary periods in the classified service of a ~~public~~ 114  
authority state agency or political subdivision; 115

(2) Any reconstruction, enlargement, alteration, repair, 116  
remodeling, renovation, or painting of any public improvement 117  
performed by other than full-time employees who have completed 118  
their probationary period in the classified civil service of a 119  
~~public authority state agency or political subdivision;~~ 120

(3) Construction on any project, facility, or project 121  
facility to which section 122.80, 166.02, or 1728.07 of the 122  
Revised Code applies; 123

(4) Construction on any project as defined in section 124  
122.39 of the Revised Code, any project as defined in section 125  
165.01 of the Revised Code, any energy resource development 126  
facility as defined in section 1551.01 of the Revised Code, or 127  
any project as defined in section 3706.01 of the Revised Code. 128

(C) "Public improvement" means all buildings, roads, 129  
streets, alleys, sewers, ditches, sewage disposal plants, water 130

works, and other structures or works constructed by a ~~public-~~ 131  
~~authority state agency or political subdivision~~ or by any person 132  
who, pursuant to a contract with a ~~public authority state agency~~ 133  
~~or political subdivision~~, constructs any structure or work for a 134  
~~public authority state agency or political subdivision~~. When a 135  
~~public authority state agency or political subdivision~~ rents or 136  
leases a newly constructed structure within six months after 137  
completion of its construction, all work performed on that 138  
structure to suit it for occupancy by a ~~public authority state~~ 139  
~~agency or political subdivision~~ is a "public improvement." 140

(D) "Interested party," with respect to a particular 141  
public improvement, means all of the following: 142

(1) Any person who submits a bid for the purpose of 143  
securing the award of a contract for the public improvement; 144

(2) Any person acting as a subcontractor of a person 145  
mentioned in division (D) (1) of this section; 146

(3) Any association having as members any of the persons 147  
mentioned in division (D) (1) or (2) of this section; 148

(4) Any employee of a person mentioned in division (D) (1), 149  
(2), or (3) of this section; 150

(5) Any individual who is a resident of the jurisdiction 151  
of the ~~public authority state agency or political subdivision~~ 152  
for whom products or services for a public improvement are being 153  
procured or for whom work on a public improvement is being 154  
performed. 155

(E) "Political subdivision" has the same meaning as in 156  
section 9.23 of the Revised Code. 157

(F) "State institution of higher education" has the same 158

meaning as in section 3345.011 of the Revised Code. 159

**Sec. 4116.02.** A ~~public authority state agency~~, when 160  
engaged in procuring products or services, awarding contracts, 161  
or overseeing procurement or construction for public 162  
improvements undertaken by or on behalf of the state agency, 163  
shall ensure that bid specifications issued by the ~~public-~~ 164  
~~authority state agency~~ for the proposed public improvement, and 165  
any subsequent contract or other agreement for the public 166  
improvement to which the ~~public authority state agency~~ and a 167  
contractor or subcontractor are direct parties, do not require 168  
or prohibit that a contractor or subcontractor ~~to~~ do any of the 169  
following: 170

(A) Enter into agreements with any labor organization on 171  
the public improvement; 172

(B) Enter into any agreement that requires the employees 173  
of that contractor or subcontractor to do either of the 174  
following as a condition of employment or continued employment: 175

(1) Become members of or affiliated with a labor 176  
organization; 177

(2) Pay dues or fees to a labor organization. 178

**Sec. 4116.03.** No ~~public authority state agency~~ shall do 179  
any of the following: 180

(A) Award a contract for a public improvement undertaken 181  
by or on behalf of the state agency in violation of section 182  
4116.02 of the Revised Code; 183

(B) Discriminate against any bidder, contractor, or 184  
subcontractor for refusing or electing to become a party to any 185  
agreement with any labor organization on the public improvement 186

undertaken by or on behalf of the state agency that currently is 187  
under bid or on projects related to that improvement; 188

(C) Otherwise violate section 4116.02 of the Revised Code. 189

**Sec. 4116.031.** No state funds shall be distributed for the 190  
purpose of the construction of a public improvement by or on 191  
behalf of a political subdivision, if the political subdivision, 192  
in procuring products or services, awarding contracts, or 193  
overseeing procurement or construction for public improvements 194  
undertaken by or on behalf of the political subdivision, 195  
requires in the bid specifications a contractor or subcontractor 196  
to enter into, or prohibits in the bid specifications a 197  
contractor or subcontractor from entering into, an agreement 198  
described in division (A) or (B) of section 4116.02 of the 199  
Revised Code. 200

**Sec. 4116.04.** (A) An interested party may file a complaint 201  
against a ~~contracting public authority state agency or political~~ 202  
~~subdivision~~ alleging a violation of section 4116.02 ~~or,~~ 203  
4116.03, or 4116.031 of the Revised Code within two years after 204  
the date on which the contract is signed for the public 205  
improvement in the court of common pleas of the county in which 206  
the public improvement is performed. The performance of the 207  
contract forms the basis of the allegation of a violation. The 208  
court in which the complaint is filed shall hear and decide the 209  
case and, upon a finding that a violation has occurred, shall 210  
void the contract and make any orders that will prevent further 211  
violations. 212

The Rules of Civil Procedure govern all actions under this 213  
section. Any determination of a court under this section is 214  
subject to appellate review. 215

(B) If, pursuant to this section, a court finds a violation of section 4116.02 ~~or, 4116.03, or 4116.031~~ 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.

**Section 2.** That existing sections 4116.01, 4116.02, 4116.03, and 4116.04 and sections 153.013, 153.83, and 5525.26 of the Revised Code are hereby repealed.

**Section 3.** In enacting section 9.75 of the Revised Code in this act, the General Assembly hereby declares its intent to recognize both of the following:

(A) The inalienable and fundamental right of an individual to choose where to live pursuant to Section 1 of Article I, Ohio Constitution;

(B) 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.

**Section 4.** The General Assembly finds, in enacting section 9.75 of the Revised Code in this act, 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.