

"FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONSTRUCTION ACT"

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Senate Bill 165

(Enacted as Public Act 98 of 2011)

Sponsor: Sen. John Moolenaar

Senate Committee: Reforms, Restructuring, and Reinventing

House Committee: Commerce

Complete to 6-28-11

A SUMMARY OF SENATE BILL 165 AS REPORTED FROM HOUSE COMMITTEE

The bill would create a new act to be known as the Fair and Open Competition in Governmental Construction Act. It is substantially similar to House Bill 4287, which also has been reported from the House Commerce Committee and is on the House Floor. The new act would, generally speaking, prohibit governmental units from including either of the following as a term in a construction contract or as a condition in the awarding of a grant, tax abatement, or tax credit related to a construction contract:

- (1) a term that requires, prohibits, encourages, or discourages bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization relating to the construction project or related projects.
- (2) A term that discriminates against bidders, contractors, or subcontractors based on their status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or related projects.

Further, a governmental manager or construction manager or other contracting entity would be prohibited from placing such terms in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a facility.

Specifically, the bill says that a governmental unit could not enter into or spend funds under a contract for the construction, repair, remodeling, or demolition of a facility if the contract contains either of the terms listed above. A governmental unit could not award a grant, tax abatement, or tax credit conditioned on a requirement that the awardee include one of the terms listed above in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are subject to the grant, abatement, or credit.

However, the bill would not prohibit a governmental unit from awarding a grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or is party to an agreement with a collective bargaining organization, as long (1) entering into such an agreement is not a condition of the award; and (2) the

governmental unit does not discriminate based on a potential awardee's willingness or refusal to be part of such an agreement.

The term "governmental unit" means the State of Michigan, a county, city, township, village, school district, intermediate school district, community college, or public university that receives appropriations from the state, or any agency, board, commission, authority, or instrumentality of those entities.

The term "facility" means any actual physical improvement to real property, owned or leased directly or through a building authority, by a governmental unit, including roads; bridges; runways; rails; or buildings or structures, along with their grounds, approaches, services, and appurtenances.

The bill would not apply to construction contracts executed before the bill took effect. Also, the new act would not (1) prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the federal National Labor Relations Act or (2) interfere with the labor relations of parties protected under the National Labor Relations Act.

FISCAL IMPACT:

This fiscal impact and background information was originally provided for the analysis of House Bill 4287, which is a substantially similar bill.

The bill would have an indeterminate fiscal impact on the state and local units of government. The bill impacts the use of "project labor agreements" in construction contracts. A project labor agreement (PLA) is "a contractually binding agreement negotiated between a construction project owner, developer, and the Buildings and Trades labor unions. It is a form of pre-hire agreement, negotiated before any employees are hired, and becomes part of the bid specification that all winning contractors must follow...While the language of every PLA is different, PLA's typically guarantee uniform wages, work rules, and benefits across the multiple crafts employed on a project. In addition, PLA's provide grievance procedures for settling disputes, include no-strike and no-lockout provisions, and usually require that workers be hired through local union halls."¹ Others have noted, "PLAs do not preclude nonunion contractors from bidding on construction projects. But they authorize the unions to negotiate the wages and work rules under which a contractor (whether it uses union labor or not) must operate."²

Research on the cost impact on the use of such agreements is decidedly mixed. On this point a recent Congressional Research Service report notes, "[i]n short, much of the research on the effect of PLAs on the cost of constructed is inconclusive. In part, it can

¹ *Project Labor Agreements on Public Construction Projects: The Case For and Against*, Worcester Municipal Research Bureau, Report No. 01-4, March 21, 2001.

http://www.wrrb.org/files/downloads/reports/pub_admin/2001/01-4pla.pdf

² David Tuerck, "Why Project Labor Agreements are Not in the Public Interest", *Cato Journal*, Vol. 30, No. 1 (Winter 2010), pp. 45-65. <http://www.cato.org/pubs/journal/cj30n1/cj30n1-3.pdf>

be difficult to find similar projects where some use a PLA and the others do not. Instead of comparing similar projects, economists use statistical models that attempt to control for differences in the characteristics of construction projects. It can be difficult, however, to control for all factors that affect the costs of construction. For example, if the Davis-Bacon locally prevailing wage is the local union wage, contractors may pay workers the union wage whether or not the project is covered by a PLA. In addition, statistical models may not take into account the quality of construction, whether the projects are finished on time, or the safety records of different projects. Finally, the relationship between PLAs and construction costs may be interdependent. PLAs may affect construction costs, but the size and cost of construction may also effect the use of PLAs."³

Researchers from the Beacon Hill Institute (BHI) at Suffolk University in Massachusetts found that the presence of project labor agreements increased the cost of school construction projects in Massachusetts by 14% and Connecticut by 18%.⁴ On the other hand, researchers from Michigan State University, the University of Rhode Island, and the University of Utah reviewed the Beacon Hill study and found that the use of project labor agreements does not have a statistically significant effect on the final cost of a project. The authors noted, "[t]he inherent difficulties in this type of research – identifying the labor relations practices on projects, gathering information on building amenities, materials and aspects of design, etc. – make it unlikely that large samples can ever be used. But small samples, such as the ones by BHI and this one, have a number of problems. Perhaps the main problem is that they can be very sensitive to outlying values. One or two projects that are very different from the majority can skew results. Therefore results need to be interpreted with caution...Nonetheless, our conclusion is that the additional costs observed on PLA projects by previous researchers likely have little to do with the PLA itself, but result from the additional amenities or requirements that are inherent in large, complex jobs, which are more likely to be covered by PLAs. We find no strong evidence that PLAs affect final costs either positively or negatively."⁵

The extent to which project labor agreements are used in public construction projects in the state isn't immediately known.⁶ Although under Executive Order 13502 and U.S. Department of Transportation guidance,⁷ state transportation departments are permitted to use project labor agreements, the Michigan Department of Transportation apparently does not require them. This analysis will be updated as more information is available.

³ Gerald Mayer, *Project Labor Agreements*, Congressional Research Service, R41310, October 4, 2010.

⁴ Paul Bachman, Darlene Chisholm, Jonathan Haughton, and David Tuerck, *Project Labor Agreements and the Cost of School Construction in Massachusetts*, September 2003, Suffolk University, Beacon Hill Institute, <http://www.beaconhill.org/BHISTudies/PLApolycystudy12903.pdf>. See also, Paul Bachman, Jonathan Haughton, and David Tuerck, *Project Labor Agreements and the Cost of Public School Construction in Connecticut*, Suffolk University, Beacon Hill Institute, September 2004, <http://www.beaconhill.org/bhistudies/pla2004/plainct23nov2004.pdf>

⁵ Dale Belman, Matthew Bodah, and Peter Philips, *Project Labor Agreements*, ELECTRI International, <http://www.onlinecpi.org/downloads/PLA-report.pdf>. See, also, Dale Belman, Russell Ormiston, William Schriver, and Richard Kelso, *The Effect of Project Labor Agreements on the Cost of School Construction*, Industry Studies Association, Working Paper WP-2005-01, http://isapapers.pitt.edu/57/1/2005-01_Belman.pdf.

⁶ As drafted, the bill would not be limited to construction projects funded with state funds.

⁷ <http://www.fhwa.dot.gov/construction/contracts/100507.pdf>

POSITIONS:

The following indicated support for the bill to the House Commerce Committee on 6-21-11: the Associated Builders and Contractors; the Michigan Chamber of Commerce; the Michigan Business and Professional Association; the National Federation of Independent Business-Michigan (NFIB); the Small Business Association of Michigan (SBAM); the Michigan Association of Home Builders; the Michigan Association of Realtors; Americans For Prosperity -Michigan; the American Subcontractors Association of Michigan; and the Minority Contractors Association.

The following indicated opposition to the bill on 6-21-11: the AFL-CIO; the International Brotherhood of Electrical Workers; and the International Union of Local Operating Engineers, Local 324.

Legislative Analyst: Chris Couch
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.