HOUSE COMMERCE AND LABOR COMMITTEE
PROPONENT TESTIMONY ON H.B. 180
Provided on May 19, 2015 by
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Chairman Young and Representatives on the House Commerce and Labor Committee:

Thank you for the opportunity to share our support of H.B. 180. AGC of Ohio opposes employee residency mandates, often referred to as "local hiring preferences," and applauds Representative Maag's willingness to bring forth this important piece of legislation for the construction industry.

The Associated General Contractors (AGC) of Ohio represents large and small, union and open shop commercial builders from across the state. Our members construct schools and universities, industrial facilities, office and medical complexes, wastewater treatment plants, and many other types of vertical structures. Most work on publicly-funded as well as privately-funded construction projects.

Residency Requirements = Discrimination by Zip Code

The construction industry has a mobile workforce. Commercial builders work across geographic areas that span many municipal jurisdictions and counties. Very few can survive working in one city or county. The same goes for construction workers.

Employee residency mandates imposed by public entities limit the mobility of the construction workforce and discriminates against those tradespeople living in the wrong zip code or just outside the city limits. Ohio residents should have the right to live and work where they choose, and residency requirements infringe on that right by placing barriers around a city.

And, where will it end? As residency mandates proliferate and we see more and more political subdivisions (cities, counties, townships, etc.) build walls around their jurisdictional boundaries, how will any contractor or tradesperson be able to continue working?

Residency Requirements Put Out-of-State Companies at a Competitive Advantage and Encourage Use of Out-of-State Workers

In April, Smith Currie & Hancock LLP, a national practice focused on the construction industry and issues impacting the industry, prepared a legal brief for AGC of America about the constitutionality of hiring preferences for in-state and/or local residents. According to the brief, the U.S. Supreme Court's decision in the landmark case *United Building & Construction Trades Council of Camden Cnty. v. Mayor & Council of the City of Camden* makes clear that a nonresident's interest in employment with a private company constructing a public project is a fundamental right protected by the U.S. Constitution's Privileges and Immunities Clause. And, subsequent case law has rejected the two arguments most often cited as reasons for discrimination against nonresidents: the discrimination is necessary (1) to alleviate high unemployment in a particular jurisdiction or (2) to steer the short-term economic benefits of a public construction program to the local taxpayers funding the work.

As a result, public authorities cannot apply residency mandates to out-of-state employees. This means that those who primarily hire out-of-state employees, which are usually out-of-state contractors, do not have to comply with residency mandates. Out-of-state contractors that hire out-of-state workers do not have to incorporate the residency compliance costs into their bids or proposals, which puts them at a competitive advantage over Ohio contractors that hire Ohio residents.

Residency Requirements Increase Taxpayer Costs

Residency mandates limit competition and increase bid amounts since many contractors avoid them. Fewer general contractors (GC) or construction managers (CM) submit a bid or proposal on projects tied to residency mandates. And for those who do compete for the project, they struggle to find subcontractors willing to work on the job, or subcontractors increase their bids to the CM or GC. Also, when penalties are tied to residency requirements, the penalty amount is often incorporated into their bids or proposals in case the contractors cannot meet the mandate.

Residency mandates force contractors and subcontractors to move workers around from one project to another in order to ensure those who reside in a certain zip code are working in the correct zip code. At the same time, contractors must consider the specific skills and qualifications needed for that particular project, other work requirements, and the cohesion of the team assembled for the project. This type of logistical nightmare decreases workforce productivity and impacts the project schedule, thus increasing construction costs.

Lastly, if a contractor avoids the residency requirement by utilizing out-of-state workers, the money earned by the out-of-state workers goes home with them and is not spent in Ohio. The encouraged use of out-of-state workers also limits the job opportunities for Ohio tradespeople and could impact their employment.

The ultimate loser with residency mandates is the taxpayer. Taxpayers fund public projects, and must bear the added financial burden related to limited competition, increased project costs and loss of local revenue and opportunities.

Residency Requirements Hurt Small Contractors, Including Minority and Women-Owned Firms; Create Workforce Issues

Small construction companies, which include the majority of minority- and women-owned firms, are usually short-staffed. Most employees of these companies are trained when hired. These smaller contractors do not have the luxury of having a large staff to pull workers that reside in a certain zip code, nor do they have the ability to hire and train unskilled workers just to get a job.

Open shop contractors also struggle to comply with the residency mandates. They do not have hiring halls from which to pull a wide variety or multitude of tradespeople. They must struggle to find those who live in the correct zip code within their direct employees.

Lastly, residency mandates create workforce concerns for construction companies tied to collective bargaining agreements. Many labor unions must comply with federal requirements that force them to go through a queue, which prohibits them from skipping a qualified tradesperson simply because he or she resides in the wrong zip code.

Residency Mandates are Bad Public Policy

Any mandate that discriminates against Ohioans based on where they live, provides a competitive advantage to out-of-state employers and workers, increases taxpayers costs, hurts small businesses and creates workforce concerns for Ohio employers is simply bad public policy.

We urge your support of H.B. 180 to ban the use of residency mandates on public construction projects in Ohio.