

## REPEAL FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONSTRUCTION ACT

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**House Bill 4231 as introduced**  
**Sponsor: Rep. Jenn Hill**  
**Committee: Labor**  
**Complete to 6-14-23**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4231 would repeal 2011 PA 98, the Michigan Fair and Open Competition in Governmental Construction Act, a law that restricts the use of project labor agreements (PLAs) in state and local government construction contracts. PLAs, a type of collective bargaining agreement unique to the construction industry, are negotiated between labor organizations and project owners to establish the terms and conditions of employment for a certain project.

The Fair and Open Competition in Governmental Construction Act generally prohibits *governmental units* and construction managers acting on their behalf from including a term in any bid specifications, project agreements, or other controlling documents for a construction project involving property owned or leased by the governmental unit that requires a bidder, offeror, contractor, or subcontractor to enter or adhere to an agreement with a labor organization. Terms that discriminate against a bidder, offeror, contractor, or subcontractor based on their status as a signatory to an agreement with a labor organization in relation to a construction project, or their willingness or refusal to adhere to such an agreement, are also prohibited.

*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.

Additionally, a governmental unit cannot award a grant, tax abatement, or tax credit that is conditioned on a requirement that the awardee include any of the terms described above in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or credit.

The act allows the head of a governmental unit to exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from any of the above requirements in order to avert an imminent threat to public health or safety. (A finding of special circumstances cannot be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are non-signatories or nonadherent to agreements with a labor organization or concerning employees on the project who are not affiliated with a labor organization.)

MCL 408.871 et seq. (repealed)

## **BACKGROUND:**

The original version of the Fair and Open Competition in Governmental Construction Act was ruled to be in violation of the National Labor Relations Act (NLRA) by a federal judge in 2012.<sup>1</sup> The law was then amended by 2012 PA 238, which includes a section stating the legislature's intent to increase the economical, nondiscriminatory, and efficient procurement of construction goods and services by the state and its political subdivisions. 2012 PA 238 was also challenged in court but was ultimately upheld by the United States Sixth Circuit Court of Appeals in 2013.<sup>2</sup>

In February of 2022, President Biden issued an executive order requiring the use of project labor agreements for large-scale projects that have an estimated cost to the federal government of at least \$35 million.<sup>3</sup> The order instructs federal agencies to require all contractors and subcontractors engaged in construction on the project to agree to negotiate or become a party to a PLA with at least one labor organization. Exceptions are permitted if the use of a PLA for a certain project would not promote the economic efficiency of the project, would substantially reduce the number of potential bidders for the project, or would be inconsistent with any laws, regulations, or other executive orders.

Twenty-five states, including Michigan, currently restrict the use of PLAs for government construction projects.<sup>4</sup> Supporters of these laws argue that PLAs discourage competitive bidding and increase taxpayer costs for government projects, while opponents argue that PLAs reduce the likelihood of labor disputes and increase worker wages. Wyoming is the most recent state to enact a PLA prohibition for government projects, which was passed in March 2023 and will go into effect in July 2023.<sup>5</sup>

## **FISCAL IMPACT:**

A fiscal analysis is in progress.

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

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<sup>1</sup> <http://www.gongwer.com/public/PLA%20Decision.pdf>.

<sup>2</sup> <https://www.opn.ca6.uscourts.gov/opinions.pdf/13a0266p-06.pdf>.

<sup>3</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/04/executive-order-on-use-of-project-labor-agreements-for-federal-construction-projects/>.

<sup>4</sup> Associated Builders and Contractors, which advocates for laws prohibiting government-mandated PLAs, tracks legislation and executive orders regarding this issue in every state: <https://www.abc.org/Politics-Policy/Issues/Project-Labor-Agreements#62839115-state--local>.

<sup>5</sup> <https://wyoleg.gov/2023/Summaries/SF0147.pdf>.