



# THE PVC PIPE INDUSTRY'S ATTEMPTS TO CONTROL YOUR SPECS

One Water Government Affairs and Regulatory Workshop

# TOPICS TO COVER

- The History of this Type of Legislation
- The Locations Where it has Been Introduced
- The Whole Truth Behind the Legislation's Subtext
- The Detrimental Effects its Passing Would Have on our Industry
- It's Success/Failure Rate
- Why it's Failed
- And What the Municipality can do to Stop this from Happening Again

# The History of this Type of Legislation

- January 7<sup>th</sup>, 2014
- To Date: 12 States, Approx. 16 different introductions

## SENATE BILL No. 68

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-16-1-10 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2014]: Sec. 10. (a) This section applies to every public works  
4 project to which any section of this chapter applies.  
5 (b) As used in this section, "acceptable piping material" means  
6 piping material, including polyvinyl chloride piping material, that  
7 meets the recognized standards for piping material issued by:  
8 (1) the American Society for Testing and Materials; or  
9 (2) the American Water Works Association.  
10 (c) The specifications for a public works project must provide  
11 that all acceptable piping materials may be acquired for and used  
12 in the public works project.  
13 (d) In the acquisition of piping materials for a public works  
14 project, the following characteristics of the piping materials shall  
15 be considered:  
16 (1) Quality.

2014

IN 68—LS 6176/DI 55



## Locations Where it has Been Introduced

- 2014:
  - Indiana
  - Ohio



# Locations Where it has Been Introduced, cont.

- 2015-2016:

- Arizona
- Connecticut
- Virginia
- Ohio
- South Carolina
- Arkansas
- Texas
- Tennessee
- North Carolina
- Oklahoma



## Locations Where it has Been Introduced, cont.

- 2017:
  - Indiana
  - Michigan
  - Arkansas
  - South Carolina
  - Ohio



# 2017 Ohio Legislation

132nd General Assembly  
Regular Session  
2017-2018

S. B. No. 95

Senator Terhar  
Cosponsor: Senator Sykes

## A BILL

To enact section 153.75 of the Revised Code to require a public authority to consider all piping materials that meet the engineering specifications for a state-funded water or waste water project.

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

Section 1. That section 153.75 of the Revised Code be enacted to read as follows:

Sec. 153.75. (A) As used in this section, "public authority" means the state, a county, municipal corporation, water or sewer district, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special purpose district of the state or of a political subdivision.

(B) A public authority shall consider all piping materials for the construction, development, maintenance, rebuilding, improvement, repair, or operation of a water or waste water project that is funded in whole or in part with state money that meet the engineering specifications for the project as

S. B. No. 95  
As Introduced

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determined by the design engineer, who shall be a professional engineer registered under Chapter 4733, of the Revised Code.

(B) A public authority shall consider all piping materials for the construction, development, maintenance, rebuilding, improvement, repair, or operation of a water or waste water project that is funded in whole or in part with state money that meet the engineering specifications for the project as

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determined by the design engineer, who shall be a professional engineer registered under Chapter 4733, of the Revised Code.



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# The Whole Truth Behind the Legislation's Subtext

- Targets and lists "10-15 municipalities that have outdated ordinances that prohibit us from bidding our products on state-funded projects"
- They claim that current status-quo prohibits competition
  - Status Quo= 2 levels of competition
  - Future-state= 1 level of competition, based solely on price



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# The Whole Truth Behind the Legislation's Subtext, cont.

- Assumptions:
  - This is a fight between pipe-types
  - All waterworks projects are the same
  - All “approved piping materials” are good for all applications
  - Municipalities never evaluate their specifications regarding new materials

# The Whole Truth Behind the Legislation's Subtext, cont.

- Ambiguity
  - “Piping materials”- Does this include pipe, valves, hydrants, castings, brass, copper...???



# The Whole Truth Behind the Legislation's Subtext, cont.

- **Insinuations:**
  - The State is more qualified than the local municipality and engineer to make the correct choice
  - The Engineer's professional, ethical, and legal responsibilities do nothing towards selecting the appropriate type of piping materials

# The Detrimental Effects its Passing Would Have on our Industry

- Limited Competition
  - Competition between pipe types and piping material would no longer be based on a combination of features, benefits, and costs
  - Instead, all decisions would be based solely on acquisition costs

# The Detrimental Effects its Passing Would Have on our Industry, cont.

- Limited Choice
  - Municipalities would be forced to accept bids for all types of piping materials on every waterworks project funded by the State
  - Engineers would be forced to design every waterworks project funded by the State, without first knowing what type of pipe is to be used
  - Engineers would likely have a more difficult time designing uniform systems

# The Detrimental Effects its Passing Would Have on our Industry, cont.

- Unlimited Litigation & Red Tape
  - Municipalities would be opened to litigation every time they chose a more expensive option
  - Engineers would be opened to litigation on every project that fails because a pipe material selected failed due to an improper application
  - At best, this legislation would require owners and engineers to “paper their files” to help limit the threat of litigation

# Legislation's Success/Failure Rate

- It has failed every, single time it has been introduced



## Why it's Failed

- IT'S THE WRONG THING TO DO!
- Contingency of opposition
  - ***Water-Related Groups:***
    - AWWA, Ohio
    - Rural Water Association, Ohio
    - National Association of Water Companies, Ohio
    - Aqua, Ohio



## Why it's Failed, cont.

- IT'S THE WRONG THING TO DO!
- Contingency of opposition
  - ***Engineering Groups:***
    - American Council of Engineering Companies (ACEC), Ohio
    - County Engineers Association of Ohio
    - Ohio Society of Professional Engineers

## Why it's Failed, cont.

- IT'S THE WRONG THING TO DO!
- Contingency of opposition
  - ***Public Entity Groups:***
    - County Commissioners' Association of Ohio
    - Ohio Municipal League
  - ***Business/Industry Groups:***
    - American Concrete Pipe Association
    - Ductile Iron Pipe Research Association
    - National Clay Pipe Institute
    - Ohio Steel Council
    - Nucor Steel

## Why it's Failed, cont.

- Engineers and Municipalities need to retain local control based on their knowledge of factors important to their local communities
- The ultimate goal of this national effort is to use government to benefit an industry by forcing a product on engineers and water systems even when it is not the best material for a community
- Our water systems are too important to have outside, special interests undermine the ability of engineers and water works professionals to best serve the public.

## Why it's Failed, cont.

- This legislation will only delay critical waterworks projects from occurring due to increased costs through litigation and additional bureaucratic red tape
- ONCE THEY HEAR **YOUR** VOICES, LEGISLATORS SEE THROUGH THEIR SMOKE SCREEN!

# What the Municipality can do to Stop this from Happening Again

- Contact the members of the committee
- Contact your local Representative and Senator
  - Urge them to oppose this legislation



# What the Municipality can do to Stop this from Happening Again, cont.

- Spread the word
  - Contact your trade association and offer to help
  - Contact as many allies as possible



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## What the Municipality can do to Stop this from Happening Again, cont.

- The message is very simple:
- This legislation is a solution to a problem that doesn't exist. If they want to gain acceptance for a product, it should be done at the local level, not at the state level, just like everyone else has to do.

**IT IS UP TO US TO DEFEND WHAT'S RIGHT!**



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# QUESTIONS?

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