



S.B. 114

124th General Assembly
(As Introduced)

Sens. Wachtmann, Jordan, Jacobson, Nein, Hottinger

BILL SUMMARY

- Limits the Prevailing Wage Law only to construction projects undertaken by or pursuant to a contract with the state on state-owned structures instead of also to construction projects undertaken by political subdivisions, as under current law.
- Establishes a two-year statute of limitations for actions alleging a violation of the Prevailing Wage Law.

CONTENT AND OPERATION

Prevailing Wage Law applied only to state-owned buildings

Currently, Ohio's Prevailing Wage Law generally requires public authorities engaging in the construction of a public improvement that costs above specified threshold amounts to ensure that workers employed on the project are paid the prevailing wage.¹ The bill modifies the definition of "public authority" and "public improvement" and thus alters the application of the Prevailing Wage Law.

¹ The "prevailing wage" is the sum of the basic hourly rate of pay, certain employer contributions to funds, plans, and programs, and fringe benefit costs such as insurance and vacation leave. It is determined by the Director of Commerce and cannot be less than the prevailing wages payable in the same trade or occupation in the locality of the public improvement under collective bargaining agreements. For calendar year 2001, the law applies to any new construction of a public improvement fairly estimated to cost more than \$58,958, and any renovation of a public improvement fairly estimated to cost more than \$17,687. Existing law requires that the foregoing cost thresholds be adjusted every even-numbered year according to changes in an index of construction costs regularly produced by the United States Department of Commerce.

Under existing law, "public authority" is defined broadly to include "any officer, board, or commission of the state, or any political subdivision of the state (school districts are already basically exempt), authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any institution supported in whole or in part by public funds and said sections apply to expenditures of such institutions made in whole or in part from public funds." The bill instead defines "public authority" to mean any "officer, board, or commission of the state authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, but does not include any state institution of higher education, as defined under the State Universities Law (R.C. Chapter 3345.). Thus, under the bill, political subdivisions would no longer be governed by the Prevailing Wage Law.

Current law defines "public improvement" to include "all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a public authority of the state or any political subdivision thereof or by any person who, pursuant to a contract with a public authority, constructs any structure for a public authority of the state or a political subdivision thereof." Additionally, when a public authority rents or leases a newly constructed structure within six months after completion of such construction, all work performed on such structure to suit it for occupancy by a public authority is a "public improvement." The bill revises this definition, instead stating that "public improvement" means "all *state-owned* buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other *state-owned* structures or works constructed by a public authority or by any person who, pursuant to a contract with a public authority, constructs any *state-owned* structure for a public authority."

The combined effect of these two definitional changes is that the Prevailing Wage Law, under the bill, applies only to construction projects undertaken by or pursuant to a contract with the state on state-owned structures instead of also to construction projects undertaken by political subdivisions, as under current law. Correspondingly, the bill eliminates references throughout the Revised Code that require various public improvements undertaken by political subdivisions to be governed by the Prevailing Wage Law. (Secs. 164.07, 166.02, 176.011, 307.671, 307.673, 307.696, 351.06, 1710.02, 1728.07, 3706.042, 4115.03, 4115.032, 4582.12, 4582.37, 4981.23, and 6121.061.)

Certain projects are exempt from the existing Prevailing Wage Law. Public improvement projects where the federal government furnishes funds for the improvement and specifies minimum rates for workers under federal prevailing wage statutes are exempt. Participants in certain subsidized employment

programs also are exempt under specified conditions. These exemptions are retained under the bill, but all other exemptions under existing law that apply to political subdivisions of the state are removed by the bill, being moot under the bill.² (Secs. 4115.03, 4115.04(B)(3) and (4), 5540.03, and 6117.012.)

Additional limitations

The bill further specifies that nothing in the Prevailing Wage Law can be construed to require projects undertaken by entities that are not subject to that law to become subject to it when state funds, loans, guarantees, or any other financial or technical assistance of the state is provided for the project. The bill also states that an entity that undertakes a project that is not subject to the state Prevailing Wage Law but that is subject to a local ordinance or regulation that establishes and enforces a type of prevailing wage law similar to the state Prevailing Wage Law cannot use any state funds for that project. Additionally, the bill specifies that enforcement of the state Prevailing Wage Law is limited to public authorities that undertake public improvements (see **COMMENT**). (Sec. 4115.17.)

Two-year statute of limitations

General limitation

The bill creates a general statute of limitations and places limitations on related provisions in existing law, as explained below. In the general provision, the bill specifies that a person who files an action alleging a violation of the Prevailing Wage Law must file the action within two years after the alleged violation occurred or be barred from further action under the Prevailing Wage Law. (Sec. 4115.18.)

Interested parties

Under existing law, an interested party may file a complaint with the Director of Commerce alleging a violation of the Prevailing Wage Law. The Director, upon receipt of a complaint, must investigate.³ If the Director

² *Examples of exemptions that apply to political subdivisions include those for specified county ditch projects, and public improvements undertaken by boards of education, and under specified conditions, for soil and water conservation districts and by county hospitals.*

³ *An "interested party" is defined by the Prevailing Wage Law as: (1) any person who submits a bid for the purpose of securing the award of a contract for construction of the public improvement, (2) any person acting as a subcontractor of a person mentioned in (1) above, (3) any bona fide organization of labor which has as members or is authorized to represent employees of a person mentioned in (1) or (2) above and which exists, in*

determines that no violation has occurred or that the violation was not intentional, or, if the Director has not ruled on the merits of the complaint within 60 days after its filing, the interested party may appeal the decision to the court of common pleas of the county where the violation is alleged to have occurred. The bill specifies that an interested party must file this appeal within two years after the alleged violation occurred. (Sec. 4115.16.)

Employees

Existing law allows an employee who is paid less than the prevailing wage to file a complaint with the Director. Within five days of that filing, the Director must investigate. An employee may file suit for recovery within 60 days of the Director's determination of a violation. Additionally, the Director can take an assignment of a claim in trust for an employee and bring any legal action necessary to collect the claim, at the employee's request.

The bill specifies that complaints must be filed with the Director within one year after the alleged violation occurred. It also states that if the Director has not issued a determination within 60 days after the employee files a complaint with the Director, the employee may file a complaint in the court of common pleas of the county in which the alleged violation occurred, on the condition that the employee files the complaint within two years after the alleged violation occurred. If the Director takes an assignment of a claim in trust for an employee, the bill requires the Director to bring an action within one year after the assigning employee filed the complaint. (Sec. 4115.10(A) and (B).)

Under current law, after 60 days after the Director determines a violation, if no employee has brought suit or requested the Director to take an assignment of a claim as described above, the Director must bring legal action to collect any amounts owed to employees and the Department of Commerce. The bill requires the Director to bring this action within two years after the violation occurred. (Sec. 4115.10(C).)

Suits brought by the Attorney General

Under current law, if a person, public authority, or prevailing wage coordinator has not complied with the Prevailing Wage Law, the Director must give written notice of the violation to the person or public authority. Sufficient time must be allowed for compliance as the Director deems necessary, not to

whole or in part, for the purpose of negotiating with employers concerning the wages, hours, or terms and conditions of employment of employees, (4) any association having as members any of the persons mentioned in (1) or (2) above.

exceed 30 days from the date of notice. At the expiration of that prescribed time, the Director must inform the Attorney General, in writing, that the notice has been given and that the person, public authority, or prevailing wage coordinator to whom it was directed has not complied with the notice. On receipt, the Attorney General must bring suit in the name of the state in the court of common pleas of the county in which the person, public authority, or prevailing wage coordinator is located to enjoin the awarding of the contract for a public improvement, or if the contract has already been awarded, to enjoin further work under the contract until the requirements of the notice are complied with. The bill requires the Attorney General to bring the suit within two years after the alleged violation that is the subject of the notice occurred. (Sec. 4115.14.)

COMMENT

The bill's inclusion of this statement seems redundant, as the law already is limited, without this statement, to the public authorities that undertake public improvements, according to the definitions of those terms, as explained in the analysis (see "*Prevailing Wage Law applied only to state-owned buildings*").

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-17-01	p. 380

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