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Bill Analysis
Legislative Service Commission

S.B. 376*
127th General Assembly
(As Introduced)

Sen. Carey

BILL SUMMARY

- Specifies that, if a private entity receives public money, as defined in the bill, to construct a specific type of project or facility, and if at least 35% of the total overall cost of the project or facility, as fairly estimated, is funded by public money, all construction on the project or facility is considered construction of a public improvement for purposes of the Prevailing Wage Law.
- Specifies that if the amount of public money is less than 35% of the total overall cost of that project or facility, only the construction of the portion of the project or facility funded by public money is considered construction of a public improvement for purposes of the Prevailing Wage Law.
- Prohibits a private entity from subdividing the project or facility into component parts or projects such that the amount of the public funding is less than 35% to the parts or projects unless the parts or projects are conceptually separate and unrelated to each other.
- Requires the Director of Commerce to consider projects concerning remediation and speculative buildings and subsequent construction at the site or on the building as separate, unrelated projects and to separately determine whether each project is subject to the Prevailing Wage Law.

* This analysis was prepared before the report of the introduction appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Overview of the Prevailing Wage Law

Ohio's Prevailing Wage Law (R.C. 4115.03 to 4115.21 and 4115.99) requires that any public authority wishing to engage in construction of a public improvement ensure that the workers employed on the project are paid the "prevailing rate of wages." The prevailing wage is the sum of the basic hourly rate of pay, contributions by a contractor or subcontractor to a fund, plan, or program, and the costs to the contractor or subcontractor in providing various fringe benefits (unless the benefits are required under federal, state, or local law) (R.C. 4115.03, not in the bill).

The requirement to pay the prevailing wage applies to any officer, board, or commission of the state, any political subdivision, and any institution supported in whole or in part by public funds. The law applies to any new construction of a public improvement¹ fairly estimated to cost more than \$73,891, and any renovation of a public improvement estimated to cost more than \$22,166 and if the construction or renovation is performed by other than full-time employees of the political subdivision of the governmental public authority who are not in the classified service of the public authority. (R.C. 4115.03, 4115.034, and 4115.08 to 4115.10, not in the bill.)

Various projects are exempt from the prevailing wage requirements, such as public improvement projects where the federal government furnishes funds for the improvement and specifies under its prevailing wage statute the minimum rates of pay for workers on the projects.

Private sector construction projects that are funded completely by private money generally are not subject to Prevailing Wage Law. However, the state or a political subdivision may grant public money to a private entity that is used in whole or in part for the construction or remodeling of a privately owned facility, and in certain cases, Ohio law defines the use of such public funding for private-sector construction projects as being subject to the Prevailing Wage Law.

The Director of Commerce administers and enforces the Prevailing Wage Law. A public authority must appoint a "prevailing wage coordinator" for each

¹ The Prevailing Wage Law defines a "public improvement" as 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, a political subdivision of the state, or by any person who contracted with the state or political subdivision to undertake such construction (R.C. 4115.03(C), not in the bill).

public improvement subject to the law and must comply with various record-keeping and procedural requirements. In September 2008, the Director issued guidelines regarding the application of the Prevailing Wage Law to publicly funded private sector projects. Those guidelines took effect October 15, 2008.²

Application of the Prevailing Wage Law to specified projects and facilities

The bill creates a "general rule" regarding the application of the Prevailing Wage Law to specified publicly funded private sector projects, facilities, and project facilities currently subject to the Prevailing Wage Law. Under the bill, the following conditions apply to the payment of wages to laborers or workers for construction on those projects, facilities, or project facilities:

(1) If at least 35% of the total overall cost of the project, facility, or project facility, as fairly estimated, is funded by public money, all construction on the project, facility, or project facility is considered construction of a public improvement and subject to the Prevailing Wage Law.

(2) If less than 35% of the total overall cost of the project, facility, or project facility, as fairly estimated, is funded by public money, only construction on the portion of the project, facility, or project facility funded by public money is considered construction of a public improvement and subject to the Prevailing Wage Law. (R.C. 4115.032(B).)³

As discussed under "Overview of the Prevailing Wage Law" above, the Prevailing Wage Law also only applies to construction of a public improvement the cost of which is above the statutorily prescribed thresholds. Thus, under the bill, if a project is considered a public improvement under (1) above, the fairly estimated cost of that public improvement also must be higher than the statutory threshold for the requirements of the Prevailing Wage Law to apply. If only a portion of a project is considered a public improvement as described under (2) above, the fairly estimated costs of the portion that is considered a public

² Ohio Department of Commerce, Division of Labor and Worker Safety, Public/Private Prevailing Wage Guidelines, available at <http://www.com.ohio.gov/laws/> (last visited November 7, 2008).

³ These conditions would appear to conflict with the guidelines issued by the Director that took effect on October 15, 2008. Those guidelines appear to base the application of the Prevailing Wage Law to the construction of a project or facility on certain factors, including a description of the project or facility and who will be the end user of the project or facility. The factors do not include how much of the construction is publicly versus privately financed, although certain construction may not be subject to the Prevailing Wage Law based upon the type of public financing used on the project.

improvement also must be higher than the statutory thresholds for those requirements to apply.

The bill specifies that "public money," as used above, does not include financial assistance in the form of tax abatements, tax credits, tax increment financing, or any other similar form of indirect public contribution to the construction of a project, facility, or project facility (R.C. 4115.032(A)). The bill applies the conditions described above to the projects, facilities, and project facilities identified in the table below.

R.C. section or sections specifying that the project is subject to Prevailing Wage Law	General description of project
122.0818	Eligible projects that receive a grant under the Job Ready Site Program.
122.452 and 4115.032*	Certain construction from funds lent or mortgages insured under Ohio's Development Financing Advisory Council Law (R.C. 122.39 to 122.62).
165.031 and 4115.032*	Projects for which bonds are issued under the Industrial Development Bonds Law (R.C. Chapter 165.).
166.02 and 4115.032*	Project facilities that receive specified financial assistance under the Economic Development Programs Law (R.C. Chapter 166.).
307.673(D) and 307.696(F)	Construction of a professional sports facility pursuant to a cooperative agreement entered into between a board of county commissioners, the legislative authority of a municipal corporation, a port authority, a corporation, and an owner, or any combination thereof, for that professional sports facility or an agreement between a board of county commissioners that levies a specified tax and a corporation for that facility (R.C. 307.673 and 307.696, respectively).
1551.13 and 4115.032*	Certain projects for which the Department of Development undertakes or makes grants of any funds or in which the Department otherwise participates involving energy research or energy resource development facilities.
1728.07(K) and 4115.032*	Specified projects undertaken by Community Urban Redevelopment Corporations.
3706.042 and 4115.032*	Certain projects for which the Ohio Air Quality Development Authority grants or loans funding.

4115.032*	Construction on any project funded by the Minority Business Enterprise Loan Fund (R.C. 122.80).
4981.23	Specified projects for which bonds are issued by the Rail Development Commission.
6121.061	Projects for which the Ohio Water Development Authority issues any bonds or in which the Authority otherwise participates.

* The Prevailing Wage Law specifically references that the type of project is subject to the Prevailing Wage Law.

Current law states that all contractors and subcontractors working on projects, facilities, or project facilities specifically identified in the Prevailing Wage Law (those indicated with an asterisk in the table above) are subject to and must comply with that law, and the Director of Commerce must, and any interested party may, bring proceedings under the Prevailing Wage Law to enforce compliance. Under the bill, all contractors and subcontractors working on projects, facilities, or project facilities that are considered public improvements under (1) or (2) above are subject to and must comply with the Prevailing Wage Law.

Continuing law requires the Director to make the determination of wages as required under the laws governing those projects and must designate one of the Director's employees to act as the prevailing wage coordinator for any project, facility, or project facility for which a coordinator has not been designated by any public authority. (R.C. 4115.032.)

Subdividing public improvements

Continuing law prohibits any public authority from subdividing a public improvement project into component parts or projects, the cost of which is fairly estimated to be less than the threshold levels set forth in continuing law, unless the projects are conceptually separate and unrelated to each other, or encompass independent and unrelated needs of the public authority (R.C. 4115.033). The bill specifies that the parts, in addition to the projects, must be conceptually separate and unrelated to each other. The bill also requires the Director, in making determinations regarding whether a project is subject to the Prevailing Wage Law, to consider the following projects as separate, unrelated projects and to separately determine whether each project is subject to that law:

(1) Environmental remediation supported by public money and subsequent construction on or near the site that is facilitated by that remediation;⁴

(2) Construction, on a speculative basis, of a publicly funded structure and any alteration of that structure by a private entity that purchases it. (R.C. 4115.033(A) and (C).)

Additionally, the bill prohibits a private entity, with respect to projects, facilities, or project facilities that are subject to the conditions set forth in (1) and (2) under "*Application of the Prevailing Wage Law to specified projects and facilities*" above, from subdividing the project, facility, or project facility into component parts or projects, such that the condition identified under (2) above applies to the parts or projects, unless the parts or projects are conceptually separate and unrelated to each other (R.C. 4115.033(B)).

HISTORY

ACTION	DATE
Introduced	---

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⁴ This provision would conflict with the guidelines issued by the Director that took effect on October 15, 2008. Under those guidelines, whether the Prevailing Wage Law applies to construction undertaken after a remediation depends upon when a developer or end user for that site has been identified.