



Ohio Legislative Service Commission

Bill Analysis

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H.B. 508

128th General Assembly
(As Introduced)

Reps. Garrison, Bolon, Murray, Weddington, Phillips, Sykes, B. Williams, Patten, Lundy

BILL SUMMARY

- Requires the Director of Commerce, if after an investigation the Director determines that a violation of the Prevailing Wage Law has occurred, to give the contractor, subcontractor, or officer of the contractor or subcontractor notice of the violation and the amount owed to the affected employee or employees, including any applicable penalty.
- Requires the Director to note the finding of violation on the records maintained by the Department of Commerce.
- Permits the contractor, subcontractor, or officer of the contractor or subcontractor may pay such amount to the Department, but the payment does not negate the Director's finding that a violation has occurred.
- Prohibits any settlement agreement with a contractor, subcontractor, or officer of the contractor or subcontractor from limiting the Director's finding, and makes any such agreement void and unenforceable.
- Requires, if the Director or an interested party enters into a settlement agreement with a contractor, subcontractor, or officer of a contractor or subcontractor regarding a violation of the Prevailing Wage Law, the Director to continue investigating the alleged violation and to make a recommendation as to whether an alleged violation was committed.
- Prohibits the Director from entering into any settlement agreement that has a term that prohibits the Director from placing the contractor, subcontractor, or officer of the contractor or subcontractor on the debarment list maintained under continuing law.

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 a public authority wishing to engage in construction of a public improvement project that costs more than the statutory threshold amount to pay workers employed on the project the prevailing wage. 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. Apart from specified exceptions, this requirement 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 Director of Commerce administers and enforces the Prevailing Wage Law. (R.C. 4115.03(B) and (E) and 4115.10(E), not in the bill.)

Continuing law prohibits any person, firm, corporation, or public authority that constructs a public improvement with its own forces, the total overall project cost of which is fairly estimated to be more than the adjusted statutory thresholds, from (1) violating the wage provisions of the Prevailing Wage Law, (2) suffering, permitting, or requiring any employee to work for less than the prevailing wage, or (3) violating the provisions of the Prevailing Wage Law concerning maintaining records and appointing a prevailing wage coordinator.¹ Except for an employee to whom or on behalf of whom restitution is made pursuant to continuing law (see "**Determination of Prevailing Wage Law violations**" below), an employee who has not been paid the prevailing wage may either file a suit or file a complaint with the Director to recover wages not paid and damages. The employee may file suit for recovery within 90 days of the Director's determination that the employer violated the Prevailing Wage Law. If the employee does not file a suit, the employee may file a complaint with the Director. Upon receiving a written complaint, the Director must take an assignment of the employee's claim in trust and bring any legal action that is necessary to recover for the employee. If the employee does not file a suit or file a complaint with the Director and the Director determines that an employer has violated the law, the Director must still bring any legal action necessary to recover for the employee and the Director. (R.C. 4115.10, not in the bill.)

¹ Additionally, continuing law prohibits any public official, authorized to contract for or construct with the official's own forces a public improvement, from failing, before advertising for bids or undertaking such construction with those forces or awarding the contract for the construction, to have the Director determine the prevailing rates of wages of mechanics and laborers for the class of work called for by the public improvement in the locality where the work is to be performed (R.C. 4115.08 and 4115.09, not in the bill).

Determination of Prevailing Wage Law violations

Current law

Under continuing law, upon the Director's own motion or within five days of the filing of a complaint under the Prevailing Wage Law, the Director, or a representative designated by the Director, must investigate any alleged violation of the Prevailing Wage Law. At the conclusion of the investigation, the Director or a designated representative must make a recommendation as to whether the alleged violation was committed. (R.C. 4115.13(A) and (B)(1).)

Continuing law specifies the procedures the Director or designated representative if the Director or designated representative recommends that the alleged violation was an intentional violation. These procedures include the provision of notices and the opportunity to be given a hearing to appeal the recommendation. An "intentional violation" means a willful, knowing, or deliberate failure to comply with any provision of the Prevailing Wage Law, and includes the following actions when conducted in the manner described below:

- (1) An intentional failure to submit reports as required under continuing law or knowingly submitting false or erroneous reports;
- (2) An intentional misclassification of employees for the purpose of reducing wages;
- (3) An intentional misclassification of employees as independent contractors or as apprentices;
- (4) An intentional failure to pay the prevailing wage;
- (5) An intentional failure to comply with the allowable ratio of apprentices to skilled workers as required under continuing law and by rules adopted by the Director;
- (6) Intentionally allowing an officer of a contractor or subcontractor who is known to be prohibited from contracting directly or indirectly with a public authority as described under "**Debarment list**" below.

Continuing law specifies factors that the Director may consider as to whether a violation is an intentional violation. (R.C. 4115.13(B)(3), (G), and (I)).

Continuing law permits the Director or designated representative, if any underpayment by a contractor or subcontractor was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, to make a decision ordering the employer to make restitution to the employees, or on their behalf, the

plans, funds, or programs for any type of fringe benefits described in the applicable wage determination. In accordance with the Director's finding that any underpayment was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, employers who make restitution are not subject to any further proceedings pursuant to the Prevailing Wage Law. (R.C. 4115.03(C).)

The bill

The bill adds that, if the Director determines that a violation has occurred, the Director must give the contractor, subcontractor, or officer of the contractor or subcontractor notice of the violation and the amount owed to the affected employee or employees, including any applicable penalty. The Director must note the finding of violation on the Department's records. Under the bill, the contractor, subcontractor, or officer of the contractor or subcontractor may pay such amount to the Department for deposit into the Prevailing Wage Custodial Fund and the Penalty Enforcement Fund, as applicable, but such payment does not negate the Director's finding that a violation has occurred. Such finding of violation may be appealed under the Administrative Procedure Act (R.C. 119.12, not in the bill). The bill prohibits any settlement agreement with a contractor, subcontractor, or officer of the contractor or subcontractor from limiting the Director's finding, and any such agreement is void and unenforceable. (R.C. 4115.13(B)(2).) It is unclear how this provision affects any employer who makes restitution as permitted under continuing law or if the payment permitted by the bill constitutes the restitution.

If at any time after the Director commences an investigation the Director enters into a settlement agreement with the contractor, subcontractor, or officer of the contractor or subcontractor who is the subject of the investigation, the bill requires the Director to continue the investigation process and make a recommendation as to whether an alleged violation was committed as described above. Any contractor, subcontractor, or officer who is found to have intentionally violated the Prevailing Wage Law must be prohibited from contracting for the construction of a public improvement as described under "**Debarment list**" below. The contractor, subcontractor, or officer has the same right to appeal as under continuing law for Prevailing Wage Law violations that result in being placed on the debarment list. (R.C. 4115.13(H).)

Debarment list

Under continuing law, the Director must file with the Secretary of State a list of contractors, subcontractors, and officers of contractors and subcontractors who have been prosecuted and convicted for violations of or have been found to have intentionally violated the Prevailing Wage Law. The Director must not include on the

list a contractor, subcontractor, or officer of a contractor or subcontractor until the expiration of any applicable appeal period relative to the finding, or if appealed, until the date of the final judgment of a court. Continuing law prohibits any public authority from awarding a contract for a public improvement to any contractor, subcontractor, or officer of a contractor or subcontractor during the time that the contractor's, subcontractor's, or officer's name appears on the list (one year generally, three years for intentional violations that occur within the five-year period beginning on the date the contractor's, subcontractor's or officer's name first appears on the list). Additionally, the contractor, subcontractor, or officer of a contractor or subcontractor is prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement or from performing any work on the same. Continuing law specifies a process to appeal a decision to debar a contractor, subcontractor, or officer. (R.C. 4115.13(D) and 4115.133.)

The bill prohibits the Director from entering into any settlement agreement with a contractor, subcontractor, or officer of the contractor or subcontractor that has a term that prohibits the Director from placing the contractor, subcontractor, or officer of the contractor or subcontractor on the list (R.C. 4115.133(D)).

Actions by interested parties

Under continuing law, an interested party also may file a complaint with the Director. An interested party is defined as a bidder on a project, a subcontractor of a bidder, a labor union authorized to represent employees of bidders or their subcontractors, or any association having as members bidders or their subcontractors. Upon receipt of the complaint, the Director must determine whether the employer violated the Prevailing Wage Law. If the Director determines that no violation has occurred or that the violation was not intentional, then the interested party may appeal to the court of common pleas. If the Director does not rule on the merits of the complaint within 60 days after it is filed, the interested party may file a complaint with the court of common pleas. If the court finds a violation of the law, the court must award the relief specified under the Prevailing Wage Law as it applies to the interested party. If the court finds that no violation has occurred, the court may award court costs and attorney's fees to the prevailing party, other than the Director or a public authority, if the court finds the action brought was unreasonable or without foundation, even if the action was not brought in subjective bad faith. (R.C. 4115.03(F) and 4115.16.)

Under the bill, if the interested party enters into a settlement agreement and dismisses the action commenced by the interested party, the interested party must notify the Director that a settlement has been reached. Upon the receipt of the notification from the interested party, the bill requires the Director to resume the investigation the Director commenced upon receiving the interested party's complaint

and to make a recommendation in the same manner as required under the bill concerning settlements (see "**The bill**" above) but must be subject to the same right of appeal as described in continuing law for the debarment list.

HISTORY

ACTION	DATE
Introduced	05-11-10

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