
Detailed Fiscal Analysis

Summary of the Bill

The bill establishes a general rule for the application of the Prevailing Wage Law to the construction of specified projects and facilities where a mix of public and private financing occurs.¹ Under the bill if at least 35% of the overall cost of a project or facility as fairly estimated is funded by public money (excluding public assistance in the form of tax abatements tax credits tax increment financing or other similar forms of *indirect* public contributions) the bill requires *all* construction on the project or facility to be considered construction of a public improvement for purposes of the Prevailing Wage Law. The private entity must pay the workers the prevailing rate of wages on the whole project or facility. If the amount of public money is less than 35% of the overall cost only the construction of that portion of the project or facility funded by public money is subject to the Prevailing Wage Law.

Publicly funded private sector construction projects that are currently subject to the Prevailing Wage Law and that would be affected by the bill include various Department of Development programs the construction or renovation of certain sports facilities funded by county sales taxes energy resource development facilities as well as those funded by community urban redevelopment corporations the Ohio Air Quality Development Authority Ohio Rail Development Commission and the Ohio Water Development Authority.

The bill also prohibits a private entity from subdividing a project or facility into component parts or projects such that the amount of the public funding is less than 35% of the parts or projects *unless the parts or projects are conceptually separate and unrelated to each other*. This is similar to a current law practice that prohibits public entities from subdividing a public improvement project into component parts or projects in an effort to evade the prevailing wage laws threshold levels (\$73891 for a new construction project and \$22166 for a renovation project) unless the parts or projects are conceptually separate and unrelated to each other. However the bill makes two specific exemptions for projects involving the (1) environmental remediation of a site and subsequent construction on or near that site or (2) construction of speculative buildings and any alterations made by private entities that purchase the buildings. Under the bill such projects would be considered separate and unrelated projects.

Comparison of Current Prevailing Wage Guidelines and S.B. 376

The Department of Commerce which enforces the states Prevailing Wage Law recently issued new guidelines concerning the laws implementation effective October 15 2008. These guidelines do not base the application of the Prevailing Wage Law on the proportion of public funds used in a project or facility. Instead the guidelines are generally based on factors such as

¹ Prevailing wage laws are meant to ensure that wages commonly paid to construction workers in a particular region will determine the minimum wage paid to the same type of workers employed on publicly-funded construction projects. As defined in section 4115.03 of the Revised Code, any public authority that seeks to contract for the construction of a public improvement project by the direct employment of labor is governed by the prevailing wage law. Under this law, the prevailing wage rate is the collective bargaining rate of the county where a public improvement project is performed.

whether an end user of an environmental remediation project has been identified at the time public funds are committed. The changes made by the bill would not appear to affect the Department of Commerces workload or costs for enforcing prevailing wage standards.

The following three examples compare the current prevailing wage guidelines with the changes made by S.B. 376. The scenarios include: (1) when public funds are used to support machinery and/or equipment being installed in a newly constructed or remodeled private structure; (2) when public funds are used to support remediation of environmental hazards when an end-user has or has not been identified at the time public funds are committed; and (3) when public funds are used to support infrastructure improvements on private land which are provided within six months of privately-funded construction or renovation activity.

Example 1: Machinery and Equipment Purchases

ABC Corporation intends to build a new manufacturing plant that will include new sophisticated machinery and equipment that ABC will be purchasing. The total project cost is \$30 million. ABC applies for and receives a \$5 million 166 Direct Loan through the Department of Developments Facilities Establishment Fund to purchase the new machinery and equipment and uses a combination of equity and bank financing to finance the remainder of the project. The state assistance represents about 17% of the project cost.

| Current Guidelines | Senate Bill 376 |
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| The Prevailing Wage Law applies to the construction of the new manufacturing plant since the machinery (purchased using public money) is deemed to be a part of the plants construction. | The Prevailing Wage Law would apply <i>only to the installation of the machinery and equipment</i> since the public money component (17%) is less than 35% of the overall project cost. |

In this example the bill would limit the application of the prevailing wage to the installation of the machinery. However if the machinery were to comprise 35% or more of total project costs then the prevailing wage would apply to the entire project in both cases. The bill would appear to have no impact on the amount of 166 Direct Loan provided by the Department of Development to the project. However it might affect the total cost of the project to the private entity assuming the application of the current guidelines and the bill would have resulted in different labor costs.

Example 2: Environmental Remediation

The bill alters the application of the Prevailing Wage Law on certain projects where publicly-supported environmental remediation has occurred such as the use of Clean Ohio funding. In the following example City A remediates a brownfield using Clean Ohio funding of \$200000 with the expectation that XYZ Inc., will construct a new building on the site after the environmental clean-up has been completed. All of the XYZ Inc. buildings construction costs have been financed privately.

| Current Guidelines | Senate Bill 376 |
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| <p>The Prevailing Wage Law applies to the construction of the XYZ Inc.s, new building since the end user was identified at the time the public funds were committed. The remediation and subsequent construction of XYZs new building are considered a single project triggering prevailing wage for the entire project.</p> <p>If no end user was identified when City A committed its funds the Prevailing Wage Law would apply only to the brownfield remediation.</p> | <p>Since no public funds are involved in constructing XYZ Inc.s new building the Prevailing Wage Law would apply <i>only to the environmental remediation of the site</i> since the environmental remediation and subsequent construction on or near the remediated site are to be considered separate unrelated projects.</p> |

In the example above the Prevailing Wage Law already applies to the remediation of the brownfield thus the bill would not affect the extent of Clean Ohio funds expenditures by the political subdivision but may alter the total cost of the privately-owned new building (whether or not the end user was identified at the time the public funds were committed).

Similarly the bill declares construction on a speculative basis of a publicly funded structure and any alteration of that structure by a private entity that purchases it as separate unrelated projects. This would apply in a situation where a political subdivision builds a speculative building that a private firm buys and subsequently modifies to suit the companys needs.

Example 3: Infrastructure improvements

City B demolishes an existing structure on private property and pays for water and sewer infrastructure upgrades so that Z Industries can construct a new building at the location within six months. The citys contribution makes up 20% of the total project costs.

| Current Guidelines | Senate Bill 376 |
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| <p>The prevailing wage law would apply to the construction of the Z Industries building since the citys infrastructure improvements <i>make way for or facilitate</i> the use of the privately-funded construction within six months. Thus the public infrastructure improvements and the private construction are considered a single project.</p> | <p>The Prevailing Wage Law would apply <i>only to the public infrastructure improvements</i> since less than 35% of the total overall cost of the project is funded by public money.</p> |

The example above pertains to infrastructure improvements on private land that are provided within six months of privately funded construction or renovation. The current guidelines differ when public funds are used to facilitate infrastructure improvements on public land or easements granted to a public authority when privately financed construction on adjacent private land. According to the guidelines public roads and sidewalks have a variety of public purposes that are not necessarily tied to private construction on adjacent land. In this instance

prevailing wage would apply to the infrastructure improvements on the public land but not to the construction on the adjacent private land.

Fiscal Effects of the Bill

Government programs affected by the bill make money available for those privately constructed projects on a project-by-project basis that is not typically related to the project costs incurred by the private sector entities involved. Hence changes to project costs may not automatically affect government spending. Using the examples above changes to the applicability of the Prevailing Wage Law as specified in S.B. 376 appear to create no or little direct fiscal effect in the way of increased or reduced expenditures or appropriations on the state or political subdivisions. The bill however may lead to potential changes in labor costs for a variety of publicly supported privately constructed projects. LSC is unable to ascertain the number and the size of those projects that may be affected nor the percentage of public funds in those projects. Due to the large number of projects that may be supported in a variety of ways by the state and its political subdivisions the overall indirect fiscal effect of the bill is difficult to determine.

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