

Ohio's Budget, As Recently Passed By The House, Contains Key Changes To Public Construction

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On May 5, 2011, the Ohio House of Representatives passed H.B. 153, Ohio's main operating budget for fiscal years 2012 and 2013. The current bill contains some key provisions affecting the public construction industry in the areas of prevailing wage law and alternative delivery methods.

Prevailing Wage

Under the budget bill, for prevailing wage requirements to apply, a project must be constructed by a public authority or constructed for the benefit of a public authority to be considered a "public improvement project," even if the project uses or receives financing, grants, or similar support from a public authority.

The budget bill also increases the prevailing wage thresholds for both construction and reconstruction on public improvements to \$3.5 million (with a biennial adjustment as under current law by the Department of Commerce) for projects other than roads, sewers, ditches and other related works. (Threshold levels for road projects remain the same at \$78,258 for new construction and \$23,447 for reconstruction and repair.) It prohibits school districts and educational service centers from requiring prevailing wages, and exempts from prevailing wage requirements public improvement projects undertaken by, or under contract for, state colleges and universities, various economic development programs administered by the Department of Development, and the construction or repair of a port authority facility.

The budget bill also eliminates the ability of an interested party, such as a labor union, to file a lawsuit against a party that it believes has violated the statute before the Department of Commerce has made its determination.

Alternative Delivery Methods

The budget bill authorizes public authorities, other than the Ohio Turnpike Commission, to use the following alternative methods of construction delivery: construction manager-at-risk, design-build, design-assist, or general contractor. It also eliminates the requirement that the multiple-prime contracting method be used, but does not prohibit

its use. Construction manager-at-risk and design-build are defined in the bill, and the process that a public authority must employ to select them is specifically prescribed.

The budget will now be considered by the Senate, where significant changes can still be made. The goal is to have all legislative work on the budget completed and to the governor by June 30, 2011.