

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

NAIOP OF OHIO

NAIOP Budget Report

Prepared by: Law Offices of Matthew G. Kallner

Report created on May 18, 2011

We've identified the following provisions found within the state budget as areas of interest for NAIOP Ohio and its members. These proposals have been broken down by subject within their respective departments of regulation.

DEPARTMENT OF COMMERCE

The Prevailing Wage Law

Works subject to the Prevailing Wage Law

(R.C. 4115.03, 4115.033, 4115.034, 4115.04, and 4115.10; repealed R.C. 4115.032 and 4582.37; R.C. 3345.12, 4582.01, and 4582.21, not in the bill)

The bill removes some projects from the Prevailing Wage Law, so that contractors and subcontractors on those public improvement projects do not have to pay workers the prevailing wage rate paid under collective bargaining agreements in the same area for similar work.

First, the bill removes from the Prevailing Wage Law's requirements some construction projects that cost \$3.5 million or less. Currently, any new construction on public improvements that costs \$78,258 or less is exempt from the Prevailing Wage Law (the statutory threshold of \$50,000 as adjusted biennially by the Director of Commerce pursuant to that Law). Reconstruction costing \$23,447 or less is similarly exempt (the statutory threshold of \$15,000 as biennially adjusted). Construction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction will continue to be subject to the current thresholds, adjusted biennially by the Director. All other construction on public improvements will be subject to the new threshold, which also must be adjusted biennially by the Director.

Second, the bill exempts from the Prevailing Wage Law any public improvement undertaken by or for a state institution of higher education. As such, contractors and subcontractors on projects for the following entities do not have to pay the prevailing wage rate:

- (a) Any public institution of higher education that is a body politic and corporate, including each of the following: the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, The Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, and Northeastern Ohio Universities College of Medicine and its board of trustees;

- (b) A community college district, technical college district, university branch district, or state community college, and the applicable board of trustees or other managing authority.

Third, the bill exempts from the Prevailing Wage Law any public improvement undertaken by, or under contract for, a port authority created by a municipal corporation, township, or county that was not included in a port authority in existence on December 16, 1964. The bill repeals accordingly a requirement under the law governing those port authorities that laborers and mechanics employed on the construction or repair of a port authority facility be paid pursuant to the Prevailing Wage Law.

Fourth, the bill specifies that "public improvement" does not include an improvement that is neither constructed by a public authority nor constructed for the benefit of a public authority. This exclusion applies even if the improvement uses or receives financing, grants, or in-kind support from a public authority.

Prohibited prevailing wage work

(R.C. 4115.04)

The bill prohibits a public authority from applying the prevailing wage requirements to a public improvement undertaken by or for the board of education of any school district or the governing board of any educational service center. Such public improvements are exempt from the Prevailing Wage Law under continuing law.

Interested parties' recourse for violations of the Prevailing Wage Law

(R.C. 4115.03 and 4115.16)

The bill removes an interested party's ability to file an action in court alleging a violation of the Prevailing Wage Law when the Director of Commerce does not timely rule on the party's prevailing wage complaint. An interested party under the Prevailing Wage Law, with respect to a particular public improvement, means (1) any contractor bidding on the public improvement, (2) any subcontractor of such a person, (3) a labor organization that represents employees of those contractors or subcontractors, and (4) any association having as members any of those contractors or subcontractors. Continuing law allows an interested party to file a complaint with the Director of Commerce alleging a violation of the Prevailing Wage Law, as can a person who is allegedly injured by such a violation. Unlike a person who is allegedly injured by a Prevailing Wage Law violation, an interested party can file a complaint in the appropriate court of common pleas if the Director does not rule on the merits of the complaint within 60 days after the interested party files the original complaint with the Director under current law. The bill removes this course of action.

Prevailing wage funds

(R.C. 4115.10 and 4115.101; Section 512.70)

The bill abolishes the Penalty Enforcement Fund and requires the Director of Budget and Management to transfer any funds remaining in the Penalty Enforcement Fund on July 1, 2011, to the Labor Operating Fund. The Director of Commerce is required, under the bill, to deposit all moneys received from prevailing wage penalties paid into the Labor Operating Fund, instead of the Penalty Enforcement Fund as is required under current law.

The bill requires the Director of Commerce, if the Director determines that any funds in the Prevailing Wage Custodial Fund are not returnable to employees, to certify to the Treasurer of State the amount of the funds that are not returnable. The Treasurer of State is required, upon the receipt of such a certification, to transfer the certified amount of the funds from the Prevailing Wage Custodial Fund to the Labor Operating Fund.

DEPARTMENT OF DEVELOPMENT

Loan guarantees for historic rehabilitation projects

(Section 521.80 and 801.20)

The bill authorizes the Director of Development to try to obtain up to \$75 million in federal economic stimulus funds and to make the funds available to secure and guarantee loans made for historic building rehabilitation projects that have been approved for an Ohio historic rehabilitation tax credit (see R.C. 149.311). The federal funds would be any funds available under the federal American Recovery and Reinvestment Act of 2009 or any other federal source of money that may lawfully be applied to that purpose. Any such funds obtained by the Director must be credited to the Ohio Historic Preservation Tax Credit Fund created by the bill.

If the Director is successful in obtaining federal funds, the Director then must enter into loan guarantee contracts under the same general provisions governing Chapter 166 loan guarantees (R.C. 166.06, as authorized by Section 13, Article VIII, Ohio Constitution), except that the guarantee is secured solely by money in the Ohio Historic Preservation Tax Credit Fund instead of the existing Chapter 166 Loan Guarantee Fund. The loan guarantee amount for any project may not exceed the tax credit amount. Rehabilitation projects approved in the first round of rehabilitation tax credit awards would have first priority for loan guarantees.

LOCAL GOVERNMENT

New community authorities (NCA)

Removal of sunset date

(R.C. 349.01, 349.03, 349.04, 349.06, 349.09, 349.14, and 349.17)

The bill removes the sunset date for the amendments made to the New Community Authority Law by Sub. H.B. 313 of the 128th General Assembly and makes those changes applicable to all new community authorities. Under the bill, the following apply to all NCAs as a result of the removal of the sunset date, not just to those created between July 7, 2010, and January 1, 2012, as under existing law:

- (1) A new community may be planned in relation to an existing community, not necessarily in relation to an existing new community, so that the community includes facilities for conducting community activities.
- (2) An NCA may finance, construct, own, and operate various types of community facilities, including town buildings or other facilities, health care and hospital facilities, and off-street parking facilities.
- (3) A new community development program undertaken under the bill need not itself exhibit a "well-balanced and diversified" land use pattern so long as such a pattern remain present in the wider new community once the development occurs.
- (4) A developer of a proposed new community district must own or control land through leases of at least 40 years.
- (5) Any organizational board of commissioners may provide, by resolution, for an alternative means of dissolution of a district, in lieu of dissolution by a majority of the voters of the district.
- (6) An NCA is authorized to provide activities and services for visitors to and employees and employers in the district in addition to residents of the community.
- (7) An NCA may enter into agreements with political subdivisions providing for revenue sharing, for services, products, and materials, and for the administration, calculation, or collection of community development charges in addition to contracting with local governments.

Confidential

The bill makes other changes to provisions covered by the sunset date in existing law as well as changes to provisions not affected by the sunset date.

Establishing an NCA

(R.C. 349.01 and 349.03)

Under the bill, the general procedure for establishing an NCA remains the same as under existing law: a developer by petition to a board may establish a new community district that must be approved by a proximate city. The bill makes changes regarding the board that receives the petition, acreage requirements for districts, the definition of a proximate city, the time frame for certain procedures and filings, and the manner of dealing with a petition that is not approved.

In order to organize an NCA, the bill requires that a petition be filed by a developer with the clerk of the organizational board of commissioners, not with the office of the clerk of the board of county commissioners as required by existing law (see "**Organizational board of commissioners**").

If more than half of a proposed new community district is or was contained within a joint economic development district, the bill exempts the proposed new community district from the requirement that the total acreage included in the district be 1,000 acres or more. This exemption is in addition to the continuing exemption for districts that are wholly contained within municipalities.

The bill shortens the time frame for an organizational board of commissioners to schedule a hearing on the petition for the establishment of the proposed NCA to between 30 and 45 days after the petition was filed. Under current law, hearings are scheduled between 95 and 115 days after the filing date, except in cases where the petition is signed by all proximate cities in the proposed NCA.

The bill requires a proximate city to affirmatively disapprove a petition on the basis of good cause shown in order to halt the organization proceedings for a new community and changes the timeframe for approval or disapproval. Once a notice is published in a newspaper of general circulation and given to the clerk of the legislative authority of each proximate city that did not sign a petition as under continuing law, the bill requires a proximate city that intends to disapprove the establishment of the proposed NCA to deliver an ordinance, resolution, or motion of disapproval to the clerk of the organizational board of commissioners with which the petition was filed. The disapproval must be delivered to the board within 28 days of the proximate city's legislative authority receiving the notice of the petition. A disapproval must be for good cause shown that the proposed district will not be conducive to the public health, safety, convenience, and welfare, and that it is not intended to result in the development of a new community. In order to disapprove the establishment of an NCA under current law, a proximate city is not required to take any action; if an approved petition is not returned within 90 days of the publication of the notice of a public hearing, the proceedings for the establishment of an NCA are terminated.

The bill expands the definition of "proximate city" to include a municipal corporation in which any part of the new community district is located or, if more than half of the new community district is or was located within a joint economic development district, the township containing the greatest portion of the new community district.

Under the bill, if the clerk of the organizational board of commissioners does not receive the disapproval of a proximate city for good cause shown within 28 days of the proximate city's legislative authority receiving the notice of the petition, the NCA is declared organized. Conversely, if the clerk of the organizational board of commissioners has received a disapproval

for good cause shown from a proximate city, the petition will be rejected and the proceedings will be terminated. This is in addition to the provision under continuing law that terminates the establishment of an NCA if the board finds that the district will not be conducive to the public health, safety, convenience, or welfare.

Organizational board of commissioners

The bill replaces the term "board of county commissioners" with "organizational board of commissioners" to encompass proposed new community districts where more than half of the district is located within the boundaries of a municipal corporation. In this case, the bill changes the organizational board of commissioners to the legislative authority of a municipal corporation.

The bill specifies that, after the creation of an NCA, a developer may file an application with an organizational board of commissioners that sets forth a general description of the territory it desires to add or to delete from the district. Current law requires the application be filed with the clerk of the board of county commissioners.

The bill requires that each member of the board of trustees of the NCA file an oath with the clerk of the organizational board of commissioners. Current law requires the oath be filed with the clerk of the board of county commissioners.

Board of trustees

(R.C. 349.04)

The bill, by removing the sunset date, authorizes citizen members of NCAs to be selected by means other than an election if the organizational board of commissioners, by resolution, provides for such alternative means and permits the citizen members to represent present and future employers within a district. Additionally, the bill provides that a means of selection for citizen members may be adopted by petition.

NCA bonds

(R.C. 349.09)

The bill provides that bonds and notes of an NCA are lawful investments for certain specified private and public entities and are acceptable as security for public moneys.

NCA may act as a county regarding delinquent properties

(R.C. 323.78 and 349.17; conforming changes in R.C. 349.07)

The bill permits a county to enter into an agreement with an NCA that gives the NCA the authority to act on the county's behalf with regard to delinquent property within the NCA boundaries and the county when all or a portion of the community development charges related to the property are not paid when due. The agreement may permit an NCA to, on behalf of the county, elect that the alternative redemption period following an adjudication of foreclosure apply to foreclosures of property within the new community district due to nonpayment of community development charges, taxes, or other charges.

Dissolution of an NCA

(R.C. 349.14)

The bill provides that, upon dissolution of an authority, any property of an NCA that is not located within a municipal corporation may vest in the township where the property is located, if the township agrees. This is in addition to continuing law's provision that property from an NCA dissolution may vest in a county. A township may agree to this vesting through acceptance of the property by resolution of the board of township trustees by resolution or petition. If property is vested in a township after dissolution by petition, any funds of the NCA will be transferred to

the township, as provided in the resolution or petition for dissolution, in the proportion to the assessed valuation of taxable real property of the NCA within such township as the valuation appears on the current assessment rolls.

Application of amendment to the NCA Law
(Section 803.50)

The amendments made to the NCA Law apply to any pending and in progress proceedings and any proceedings commenced after the amendment's effective date. They also apply to proceedings that are completed on the effective date, notwithstanding applicable law previously in effect or contrary provisions. The amendments provide additional and supplemental provisions for subject matter that may also be the subject of other laws, and the amendments are not in derogation of any authority provided by, derived from, or implied by the Ohio Constitution or any other law.

DEPARTMENT OF TAXATION

New refundable job retention tax credit
(R.C. 122.171)

Credit eligibility

Continuing law authorizes the Ohio Tax Credit Authority to award to eligible businesses involved in significant capital investment projects a refundable or nonrefundable job retention tax credit (JRTC) against the income tax, commercial activities tax, insurance company premiums tax, or corporation franchise tax. Either credit is measured as a percentage of the state income taxes withheld from full-time employees working at a project site. However, qualifying businesses may only receive the existing refundable credit if the business' credit application is recommended for approval before July 1, 2011.

The bill authorizes the Tax Credit Authority to grant a new, separate refundable credit to certain qualifying businesses between July 1, 2011, and December 31, 2013. To qualify for the new refundable credit, an eligible business must have an annual payroll of at least \$20 million, invest at least \$5 million at a project site located within the same political subdivision as that in which the business has its principal place of business, and meet other existing JRTC program requirements.

Capital investment requirement

To be considered an "eligible business" for the purposes of the existing credits, a business must invest at least \$50 million in assets in manufacturing operations or \$20 million in assets for "significant" corporate administrative functions. Additionally, a business applying for the existing refundable JRTC must make a capital investment of \$25 million, regardless of investment type. The required capital investment must involve capitalized costs of basic research or new product development, or the acquisition, construction, renovation, or repair of buildings, machinery, or equipment.

To qualify for the bill's new refundable credit, a business need only make a capital investment of \$5 million.

Historic building rehabilitation tax credit
(R.C. 149.311)

The historic building rehabilitation tax credit is a credit against the income tax (R.C. Chapter 5747.), corporation franchise tax (R.C. Chapter 5733.), and dealers in intangibles tax (R.C.

5707.03(D) and 5725.15). The credit equals 25% of qualified expenditures made for rehabilitating a building of historical significance, and that meets certain historic preservation criteria as determined by the State Historic Preservation Officer.

Under current law, the credit effectively ends June 30, 2011, the last day on which applications for credits may be filed. The bill removes this deadline, extending the credit perpetually.

Current law limits the amount of credits that may be issued in a fiscal year to \$60 million. The bill reduces this amount to \$25 million per fiscal year.

Historic rehabilitation tax credit against insurance tax

(R.C. 149.311, 5725.34, 5725.98, 5729.17, and 5729.98)

The bill extends eligibility to foreign and domestic insurance company taxpayers for the existing refundable historic rehabilitation tax credit. A foreign or domestic insurance company would thus be permitted to claim the credit against the insurance company gross premiums taxes, provided the company satisfies all other eligibility requirements.

Under current law, a refundable credit is provided against the dealer in intangibles tax, the corporation franchise tax (on financial firms), or the income tax equal to 25% of the "qualified rehabilitation expenditures" incurred by the property owner in rehabilitating an historic building. "Qualified rehabilitation expenditures" are those paid or incurred during the "rehabilitation period," and before and after that period as determined under federal rehabilitation tax credit law, by an owner of an historic building to rehabilitate the building. The maximum credit amount is \$5 million, but not more than \$3 million may be taken in a year; any excess above \$3 million may be applied to up to five subsequent years' tax liability.

Enterprise zone extension

(R.C. 5709.62, 5709.63, and 5709.632)

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for tax exemptions and other incentives.

Current law authorizes local governments to enter into enterprise zone agreements through October 15, 2011. The bill extends the time during which local governments may enter these agreements to October 15, 2012.