



Department
of Commerce

Minimum and Prevailing Wages: Topics from the Ohio Bureau of Wage & Hour

A Continuing Legal Education Course
Sponsored by the Ohio Department of Commerce

November 29, 2018
Franklin County Government Center
Auditorium A
373 South High Street
Columbus, Ohio 43215

This course has been approved by the Supreme Court of Ohio Commission on Continuing Legal Education for 3.00 total CLE hour(s) instructions.

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November 29, 2018

Welcome from the Department of Commerce's Chief Legal Counsel

Welcome to the Department of Commerce's second annual Continuing Legal Education course. Last year's course examined Ohio Agency administrative hearing practice. This year's course, once again providing three free hours of CLE credit, focuses on two topics that arise from the Ohio Bureau of Wage & Hour: the minimum wage and prevailing wage. The Department is excited to host this year's CLE not only because its two topics are highly relevant and generate a great deal of legal work for Ohio practitioners, but also because the Bureau of Wage & Hour is one of the Department's most impactful, yet little known Sections.

To support today's two panels, the Department has invited experts from across the State, including economists, private practitioners, law professors, and our own Department specialists. These presentations will be timely, high-level, and engaging. We encourage you to ask questions and now today will be as informative as it is engaging.

Once again, welcome to the Department's second annual CLE. We hope you enjoy it.

Warm regards,

Kelly Kauffman, Esq.

Agenda

- | | |
|----------------------|--|
| 8:00 AM to 8:30 AM | Check-in and Registration |
| 8:30 AM to 8:40 AM | Welcome and Introductions

<i>Kelly Kauffman, Esq., Chief Legal Counsel, Ohio Department of Commerce</i> |
| 8:40 AM to 10:10 AM | Prevailing Wage Panel

<i>Aaron Johnston, Esq., Div. Counsel, Div. of Industrial Compliance
Steve Clegg, Chief Investigator, Bureau of Wage & Hour
Peter Hahn, Esq., Partner, Dinsmore & Shohl
Ryan Hymore, Esq., Mangano Law Offices Co., L.P.A.
Andrew Kidd, Ph.D., Economist, The Buckeye Institute
Nick Nykulak, Esq., Partner, Ross, Brittain & Schonberg</i> |
| 10:10 AM to 10:20 AM | Break |
| 10:20 AM to 11:50 AM | Minimum Wage Panel

<i>Courtlyn Roser-Jones, Esq. Prof. of Law, The Ohio State U. Moritz College of Law
Steve Clegg, Chief Investigator, Bureau of Wage & Hour
Robert Gitter, Ph.D., Prof. of Economics, Ohio Wesleyan University
Fred Pressley, Jr., Esq., Partner, Porter, Wright, Morris & Arthur
Shawn Rohlin, Ph.D., Assoc. Prof. of Economics, Kent State U.</i> |
| 11:50 AM to Noon | Closing Remarks; Attendance Certification and Survey Completion

<i>Kelly Kauffman, Esq.</i> |

Speaker Biographies

*in alphabetical order by last name

1. Steve Clegg, Chief Investigator, Ohio Bureau of Wage & Hour

Clegg graduated from the Ohio State University with a B.A. in Political Science in 2003. Upon graduation he worked as a legislative aide in the Ohio House of Representatives for four years before continuing his career in public service at Columbus State Community College where he served as the administrator for off-campus education programs. Since 2011, Clegg has been with the Ohio Department of Commerce as the Chief Investigator of the Bureau of Wage & Hour.

2. Robert Gitter, Ph.D., Professor of Economics, Ohio Wesleyan University

Gitter is the Joseph A. Meek Professor of Economics at Ohio Wesleyan University (“OWU”). Gitter has taught at OWU since 1976. His primary areas of focus are labor economics, public finance (the role of the government in the economy), economic principles, and econometrics. Gitter’s teaching has won multiple awards and he has authored over thirty articles and presentations, many of them on labor and employment. Gitter received his A.B. from the University of Michigan and his M.A. and Ph.D. from the University of Wisconsin.

3. Peter Hahn, Esq., Partner, Dinsmore & Shohl

Hahn is a partner at Dinsmore & Shohl in Columbus, Ohio. His practice focuses on construction law where he has developed an expertise in labor-related issues like federal and state prevailing wage. Hahn earned his B.A. from the College of Wooster and his J.D. from the Washington University School of Law. He has been named a *Best Lawyer* for construction law, an *Ohio Rising Star*, a top lawyer by the *Columbus CEO Magazine*, and a fellow in the Construction Lawyers Society of America. He is peer review rated preeminent by *Martindale-Hubbell*.

4. Ryan Hymore, Esq., Mangano Law Offices Co., L.P.A.

Hymore is a labor attorney with Mangano Law Offices, located in Cleveland and Cincinnati, Ohio. Since 2006, Hymore’s firm has been dedicated to providing representation to labor unions (particularly in the building and construction trades) in both the public and private sectors. Hymore’s practice encompasses all areas of labor law, including acting as general counsel, negotiations, litigation, arbitration, and mediation. Hymore received his undergraduate degree from Miami University (Ohio) and his law degree from the University of Toledo. He currently does pro bono work for the Volunteer Lawyers for the Poor Foundation, helping combat wage theft committed against Southwestern Ohio’s low wage workers. He is also interested in developing methods for unions to harness new technologies to retain and attract new membership.

5. Aaron Johnston, Esq., Division Counsel, Ohio Division of Industrial Compliance

Johnston graduated in 1999 with his B.S. from Eastern Michigan University. In 2003, he graduated from the Ohio State University Moritz College of Law as a public service fellow with special honors. Prior to joining the Division of Industrial Compliance as Division Counsel, he practiced

with the Office of the Ohio Attorney General where he was a Senior Assistant Attorney General in the Labor Relations Section. In that role, Johnston litigated in state and federal courts, administrative proceedings, and alternative dispute resolution venues in the substantive areas of prevailing wage law, minimum wage law, public labor law, and public contracts.

6. Andrew Kidd, Ph.D., Economist, The Buckeye Institute

Kidd is as an economist at The Buckeye Institute (“Institute”), a thinktank located in Columbus, Ohio. His research focuses on labor markets and the effects of public policy and demographics on labor market outcomes and behaviors. He regularly produces articles for the Institute. Prior to joining the Institute, Kidd served as a research assistant at the University of Wisconsin’s Population Health Institute. Kidd received his B.A. from Notre Dame University and his Ph.D. from the University of Wisconsin.

7. Nick Nykulak, Esq., Partner, Ross, Brittain & Schonberg

Nykulak is a partner at Ross, Brittain & Schonberg (“RBS”) in Cleveland, Ohio where he represents management in labor and employment law. He has litigated a variety of cases for employers before arbitrators, administrative agencies, and state and federal courts. Nykulak advises employers on personnel policies, state and federal prevailing wage compliance, construction and competitive bidding laws, state and federal wage and hour regulations, civil rights laws, ERISA, and a variety of NLRA issues including collective bargaining, unfair labor practices, pickets, grievance resolution, and representation hearings. Prior to joining RBS, Nykulak served as a law clerk for the Ohio Eighth District Court of Appeals. Nykulak received his J.D. from the Cleveland-Marshall College of Law and his B.A. from Cleveland State University.

8. Fred Pressley, Esq., Partner, Porter, Wright, Morris & Arthur

Pressley has been practicing law for over thirty years. He is currently a partner at Porter, Wright, Morris & Arthur in Columbus, Ohio. He is the firm’s Labor and Employment Department Chair. Pressley focuses his practice on employment discrimination litigation, union avoidance campaigns, collective bargaining, and wage and hour matters. His practice is national. Pressley has given numerous expert presentations and is recognized by *Ohio Super Lawyers* (Employment & Labor), *The Best Lawyers in America* (Employment Law), and *Chambers USA* (Labor & Employment). Pressley received his B.A. from Union College and his J.D. from the Northwestern University School of Law.

9. Shawn Rohlin, Ph.D., Associate Professor of Economics, Kent State University

In addition to being an Associate Professor of Economics at Kent State University, Rohlin is also the Director of Kent State’s Center for Entrepreneurship and Business Innovation. His research centers around urban, public, and labor economics, focusing in particular on how government policies impact local economies. Rohlin transitioned to Kent State in 2012 after beginning his teaching career in 2009 at the University of Akron. He has published fourteen academic works and received multiple awards for his teaching and scholarship. Rohlin earned his B.A. from the Rochester Institute of Technology and his M.A. and Ph.D. from Syracuse University.

10. Courtlyn Roser-Jones, Esq., Assistant Professor of Law, The Ohio State University Moritz College of Law

Roser-Jones is an Assistant Professor of Law at the Ohio State University Moritz College of Law, a position she started in this fall. Her primary areas of focus are labor law, contracts, employment discrimination, administrative law, and constitutional law. Roser-Jones has authored law review articles, her next forthcoming in the *Northwestern University Law Review*. She has also presented on eight different legal panels. Roser-Jones received her B.A. from Pennsylvania State University and her J.D. from the University of Notre Dame Law School. She anticipates earning her LL.M. from the University of Wisconsin School of Law this fall.

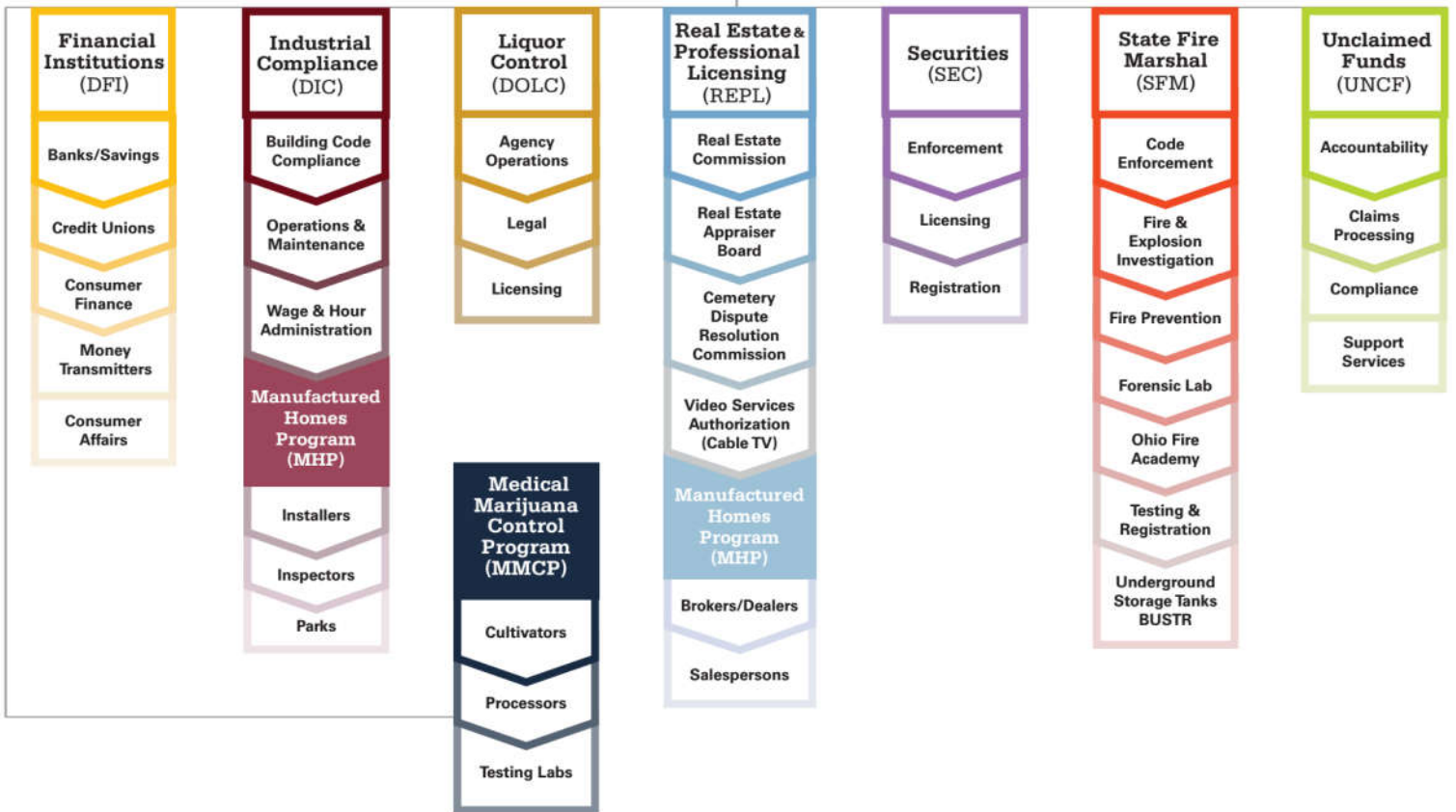
Ohio Department of Commerce Division Organizational Chart



Ohio | Department of Commerce

John R. Kasich, Governor | Jacqueline T. Williams, Director

Divisions and Programs



Introduction to the Bureau of Wage & Hour

The Bureau of Wage & Hour (“Bureau”) is a section of the Division of Industrial Compliance, an arm of the Ohio Department of Commerce (“Department”). The Bureau investigates complaints about and enforces statutory requirements for (a) paying prevailing wages on public works projects, (b) Ohio’s minimum wage law, and (c) Ohio laws of for the employment of minors. The Bureau also promulgates rules that that govern working hours and prohibited occupations for minors, as well as for sheltered workshops employing persons with disabilities. This introduction familiarizes you with matters related to the prevailing and minimum wages since those two topics are what today’s Continuing Legal Education addresses. For more on matters related to child labor regulation, please feel free to reach out to the Bureau at the telephone number provided below.

By way of a statistical sample to introduce the work of the Bureau, in 2016, its handful of investigators resolved 576 minimum wage complaints and 62 prevailing wage complaints. In 2017, those numbers were 499 and 58 respectively. Through November 20, 2018, those numbers are 401 and 58 respectively.

1. Background on the Prevailing Wage

The prevailing wage is the wage that must be paid to hourly employees who work on public works projects (buildings, roadways, sewers, ditches, etc.) in the State of Ohio. The prevailing wage accounts for hourly workers’ base hourly rates of pay plus their life insurance, health insurance, pensions, vacation/paid holidays, apprenticeship programs, and other bonafide fringe benefits. The prevailing wage kicks in on any public works project (either new or in need of repair/renovation) once the value of that project hits a certain value threshold, e.g. for new buildings at \$250,000.00.

Every two years, the Director of the Department resets prevailing wage project value thresholds, which may not increase or decrease by more than three percent in any adjustment. The wage rate itself is determined on a project by project basis by the Department. Every contract for a public project must include a prevailing wage schedule.

2. Background on the Minimum Wage

Every September 13, the State recalculates the minimum wage for the upcoming calendar year. On January 1, 2019, the Ohio minimum wage will increase from \$8.30 per hour for non-tipped employees to \$8.55 per hour. For tipped employees, the minimum wage will likewise increase from at least \$4.15 per hour to at least \$4.30 per hour. The phrase “at least” is used because if an employee’s tips do not bring his/her earnings to an average of \$8.55 per hour, his/her employer must cover the difference.

Ohio businesses that gross less than \$305,000.00 per year may pay the Federal minimum wage. That is currently \$7.25 per hour. Additionally, businesses that are solely family-owned and operated do not have to pay any version of the minimum wage to the family members they employ. Employees of the U.S. government are also not entitled to Ohio minimum wage protections.

Babysitters and independent salesmen compensated by commission are also not entitled to the minimum wage.

Minimum wage enforcement extends to overtime pay. In Ohio, hourly employees that work for businesses that gross at least \$150,000.00 per year must generally earn 1.5 times their wage rate for any work that they do in excess of forty hours in any given week.

3. Additional Information about the Bureau

For additional information about the Bureau, see <http://com.ohio.gov/dico/default.aspx>, navigating to the “Wage & Hour” field under the “Sections” tab. To contact the Bureau by telephone, call (614) 644-2239.

Prevailing Wage Panel Speaker Materials

- A. “Public authority” is any officer, board, commission, or any political subdivision of the state that is authorized to contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any institution supported in whole or in part by public funds. R.C. 4115.03(A). The work is **by** a public authority if it is *pursuant to a contract* that is the animating force of the project. The contract should set forth the plans and specifications necessary for construction. The work is **for** a public authority, if a public authority (not just public at large) receives the benefit of construction either through maintaining a possessory or property interest in completed project or through the use of public funds in constructing the project.
- For example, a document may be considered the animating force of the construction and/or renovation if it includes information regarding the work timetable and monetary remuneration. *Episcopal Ret. Homes v. Ohio Dep’t of Indus. Rels.*, 61 Ohio St. 3d 366 (1991).
 - The use of public funds is not necessary for a construction project to qualify as a public improvement to which prevailing wage law applies. *Zurz v. 770 West Broad AGA, LLC*, 192 Ohio App.3d 521 (2011).
- B. R.C. 4115.03(B) defines **construction** as any **new** construction, **re-construction**, and/or **renovation** of a public improvement, to be distinguished from maintenance and repair.
- C. Thresholds
- There is no threshold amount for **residential** projects to qualify for prevailing wage.
 - The threshold for new construction on *commercial* projects (performed by other than full-time, non-probationary employees) is **\$250,000.00**.
 - The threshold for reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting is **\$75,000.00**.
 - New construction that involves roads, streets, alleys, sewers, ditches, and other works connection to road or bridge construction has a threshold level of **\$91,150.00**. Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of the same has a threshold level of **\$27,309.00**.
 - The Director of the Ohio Department of Commerce adjusts the thresholds biennially. Biennial adjustments to threshold levels are made according to the Price Deflator for Construction Index, U.S. Dept. of Commerce, Bureau of the Census. They may not increase or decrease by more than three percent in any adjustment.
 - Which threshold applies? The construction shall be “fairly estimated to be more than the threshold,” based on the **prevailing wage rates** in the locality at the time

the project is let out for bidding. See O.A.C. 4101:9-4-17(A). An estimate must include the prevailing wage rates, as well as, professional costs, such as architectural and engineering costs.

- D. Prevailing wage law does not mandate that prevailing wages be paid to persons who work **off-site** even if they are working on materials to be used on or in connection with the public improvement project. *Sheet Metal Workers' Int'l Ass'n v. Gene's Refrigeration, Heating & Air Conditioning, Inc.*, 122 Ohio St.3d 248 (2009).
- E. **Improper subdivision.** A project should not be broken into component parts or projects, the cost of which is fairly estimated to be less than threshold levels, unless the projects are conceptually separate and unrelated to each other or encompass independent and unrelated needs of the public authority. See O.R.C. § 4115.033.
- F. There are seven exemptions to prevailing wage under R.C. § 4115.04(B):¹
1. Source of funds is federal. See Davis-Bacon Act and related Acts.
 2. A participant in a work activity, developmental activity, or an alternative work activity under sections O.R.C. §§ 5107.40 to 5107.69 when a public authority directly uses the labor of the participant to construct a public improvement if the participant is not engaged in paid employment or subsidized employment pursuant to the activity;
 3. Public improvements by or for the Board of Education of any school district or educational service center;
 4. Public improvements by or for a county or municipal hospital if none of the construction funds are the proceeds of bonds or obligations that are secured by the full faith and credit of the state, a county, or a municipal corporation and none of the construction funds, including funds to repay those borrowed for construction, are funds that have been appropriated for that purpose by the state, county commissioners, or a municipal corporation from funds generated by tax levy, provided that a county or municipal hospital may elect to apply O.R.C. §§ 4115.03 to 4115.16 to a public improvement by or for the hospital;
 5. Any (**residential**) project described in O.R.C. § 176.05(D)(1)(A) to (D)(1)(E).
 6. Public improvements by or for a port authority as defined in O.R.C. § 4582.
 7. Any portion of a public improvement undertaken and completed solely with labor donated by the individuals performing the labor, by a labor organization and its members, or by a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project.

¹ Check project-specific statutory provisions for other exemptions.

Minimum Wage Panel Speaker Materials

DEBATING OHIO'S MINIMUM WAGE

Introduction

Although states routinely set minimum wage rates higher than the federal level, municipal and county governments (or “localities”) have only more recently began passing their own minimum wage ordinances. States like Ohio have responded to these initiatives with preemption laws prohibiting localities from raising their minimum wage above statewide minimums. But in states where they are not preempted, forty different localities have their own wage minimums. This trend is on the rise as, before 2012, only five localities had enacted minimum wage laws.

Local proposals to raise wages above statewide minimums have renewed discussions as to at which level of government minimum wage jurisdiction should reside. Those advocating for a more localized minimum wage point to the variance in living costs that exist not only between states, but also between municipalities within states. Meanwhile others who support state preemption of local wage initiatives argue for consistency. They contend that the added costs of complying with different local wage laws force employers to curtail hiring, which in turn, effects all state workers and intrastate commerce.

This panel takes up this important policy debate. With counsel from Ohio’s Department of Commerce, wage and hour practitioners, and subject-matter economists, it broadly examines Ohio’s minimum wage requirements, investigative procedures, and local preemptions—arguing both for and against them, and comparing them to other jurisdictions. The materials below are designed to provide useful background information, legal resources, and context for the panel’s discussion of Ohio’s minimum wage.

I. The Applicable Laws

A. The Fair Labor Standards Act: 29 U.S.C. § 201, *et seq.*

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage, as well as overtime pay and recordkeeping requirements for all private- and public-sector employers. Effective July 24, 2009, covered nonexempt employees are entitled to a minimum wage of no less than \$7.25 per hour. The FLSA also requires employers to pay covered nonexempt employees overtime pay at a rate not less than one and one-half times their regular rate of pay after forty hours of work in a particular “workweek,” or a seven consecutive-day period.

Although the scope of the FLSA is interpreted broadly, not all workers are covered as “employees” under the statute’s definition. Workers not covered as “employees” are outside of the FLSA’s purview and, as such, none of the statute’s provisions apply to them. 29 U.S.C. § 203(e). These uncovered workers include elected officials, political appointees, volunteers, and independent contractors.

Workers covered as “employees” under the FLSA may also be exempt from certain specific statutory provisions (generally minimum wage and/or overtime provisions) by virtue of their

occupation. The FLSA exempts both minimum wage and overtime pay for employees employed in *bona fide* executive, administrative, and professional roles, as well as outside sales employees and employees in certain computer-related occupations. 29 U.S.C. § 213(a). Most agricultural employees are exempt from overtime, but not minimum wage provisions. 29 U.S.C. § 213(b). Tipped employees are not exempt from overtime and minimum wage provisions, but employers can pay them as little as \$2.13 an hour in direct wages if their direct wages and tips combined equal at least \$7.25 per hour. 29 U.S.C. § 203(m). Non-exempt salaried employees must be paid at a rate sufficient to meet minimum wage and overtime requirements, as obtained by dividing their weekly salary rate by the actual number of hours worked. 29 C.F.R. § 541.602

The FLSA’s provisions are enforced through both administrative and legal procedures. Employees may file claims with the U.S. Department of Labor’s Wage and Hour Division, or file a civil action against employers in federal or state court, provided that the alleged violation occurred within two years from filing, 29 U.S.C. § 216. A three-year statute of limitations applies to willful violations of the FLSA. When timely minimum wage or overtime claims are established, employees may recover back wages, liquidated damages equal to the amount of back wages owed, and reasonable costs and attorney fees. 29 U.S.C. § 216(b).

B. The Fair Minimum Wage Amendment: Ohio Const. art. II, § 34a

Despite having had minimum wage laws for decades, in 2006 Ohio voters approved a Fair Minimum Wage Amendment (FMWA) to the Ohio Constitution. The FMWA was intended to provide higher wage minimums and greater wage protections for Ohio workers than those provided by the FLSA. It includes the following stipulations, now enumerated in Article two, Section 34a of the Ohio Constitution.

(1) An Increase in Ohio’s Minimum Wage with Guaranteed Future Inflation Adjustments

The FMWA provides that every Ohio employer shall pay their employees a minimum wage, and that this “wage rate shall be increased effective the first day of the following January by the rate of inflation ... according to the consumer price index.” The FMWA set Ohio’s 2007 wage rate at no less than \$6.85 per hour and has since increased to \$8.30 per hour in 2018, and \$8.55 per hour in 2019. Employees under the age of sixteen, or working for employers grossing less than \$305,000 per year (\$314,000 in 2019) are exempt from Ohio’s minimum wage requirements.

Family members working in family-owned and-operated businesses are also exempt from Ohio’s FMWA. Moreover, employers may pay tipped employees a direct wage as little as half the Ohio minimum wage rate (\$4.15 in 2018)—provided that they can demonstrate that their tipped employees receive tips that, when combined with their direct wages, are equal to or greater than Ohio’s minimum wage rate of \$8.30 per hour.

(2) New Recordkeeping Requirements

Regarding recordkeeping, Ohio’s Fair Minimum Wage Amendment requires employees to “maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years following the last date

the employee was employed.” Upon request, Ohio employers must disclose all of this information to any employee, or any person acting on the employee’s behalf. “Such information must be provided without charge. Employers are also prohibited from retaliating against employees who request recordkeeping information pertaining to the FMWA.

(3) Enforcement Mechanisms and Remedies

Like the FLSA, Ohio’s FMWA provides both administrative and legal enforcement mechanisms. In addition to filing an administrative complaint with the Bureau of Wage & Hour to investigate possible violations, “an action for equitable and monetary relief may be brought against an employer by ... an employee or person acting on behalf of an employee or all similarly situated employees in any court of competent jurisdiction.” (*See* Appendix G, OHIO DEPARTMENT OF COMMERCE MINIMUM WAGE COMPLAINT FORM).

Like the FLSA, there are no administrative exhaustion requirements for bringing a civil action under Ohio’s FMWA. Though unlike the FLSA’s generally-applied two-year statute of limitations, Ohio employees have three years to bring claims alleging violations of Ohio’s FMWA. If an administrative complaint is initiated first, employees have “one year after notification to the employee of final disposition by the state of a complaint for the same violation” to file a civil action in court.

Aggrieved employees may recover back wages, damages, and reasonable costs and attorney’s fees for violations of Ohio’s FMWA, damages being calculated “as an additional two times the amount of the back wages.” In other words, while employers who violate the FLSA are only liable for two-times the amount of back wages owed (back wages + damages equal to the amount of back wages), employers who violate the FMWA are liable for three-times the amount of back wages owed (back wages + (damages = 2 x back-wage amount)), plus reasonable costs and attorney fees.

C. Ohio Revised Code §§ 4111.01-4111.10, & 4111.14

Before the FMWA was adopted, Ohio Revised Code (R.C.) §§ 4111.01-4111.10 contained Ohio’s minimum wage (§ 4111.02), overtime compensation (§ 4111.03), and recordkeeping requirements (§ 411.08). These statutory provisions mirrored the FLSA’s protections until House Bill 690 of the 126th General Assembly later revised R.C. §§ 4111.01-4111.10 (and added § 4111.14) to implement the new mandates of Ohio’s FMWA.

In another noteworthy revision, Senate Bill 331 of the 131st General Assembly added preemptive language to R.C. § 4111.02 in 2016 to block Ohio localities or “political subdivisions” from raising their minimum wage rates above the state minimum wage rate.

(1) Section 4111.02 Wage Rates & City Preemption

In addition to entrusting Ohio’s Director of Commerce with the task of adjusting the minimum wage rate annually for inflation, R.C. § 4111.02 states that “no political subdivision shall establish a minimum wage rate different from the wage rate required under” Ohio’s FMWA. Commonly referred to as the “Petland Bill” (because the Bill primarily concerned the sale of dogs from pet stores and dog retailers), SB 331 included several riders addressing local preemption issues—

including a provision preventing localities in Ohio from raising their minimum wage above the State's. Although then-Attorney General Michael DeWine (now Ohio Governor-elect) had questioned the constitutionality of localities raising rate minimums before SB 331 became law (Ohio Atty. Gen. Advisory Op. No. 2016-021), the added provision resolved any lingering uncertainties about local wage ordinances in Ohio. The 2016 law preemptively assailed a scheduled 2017 ballot measure in Cleveland, Ohio—seeking to raise the city minimum wage to \$15.00 per hour over the next four years.

(2) Section 4111.14 Defining “Employee”

The FMWA provides that “employee” shall have the same meaning as under the FLSA, and that “only the exemptions set forth in ... [the FMWA] shall apply to this section.” But R.C. § 4111.14(B) interprets “employee” under the Fair Minimum Wage Amendment as not just excluding individuals who are not *covered* under the FLSA’s definition of “employee,” but also as excluding individuals who are *exempted* from the minimum wage requirements of the FLSA.

Although this interpretation appears to ignore an important distinction between employees not *covered* by the FLSA and those merely *exempt* from some of the FLSA’s provisions, a divided Ohio Supreme Court upheld R.C. § 4111.14(B)’s broad interpretation of “employee” so as to include the FLSA’s enumerated exemptions. *Haight v. Minchak*, 2016-Ohio-1052 (2016).

(3) Section 4111.14(K) Employees’ “Opt-In” Requirement

Regarding employees’ rights to pursue minimum wage claims in private actions, R.C. § 4111.14(K) provides that “no employee shall join as a party plaintiff in any civil action...unless that employee first gives written consent to become such a party.” This amendment requires plaintiffs to explicitly “opt in” to group actions brought under the implementing provisions of Ohio’s FMWA—similar to the “opt in” requirement in Section 216(b) of the FLSA. But the FLSA’s “opt-in” requirement has been intertwined with the collective litigation procedures outlined in Rule 23 of the Federal Rule of Civil Procedure (asserting an “opt out” plaintiff presumption). Now it is common for the two “opt-in/opt-out” class procedures to be used in a single “hybrid” Rule 23 and FLSA lawsuit.

Likewise, a hybrid class action has also evolved out of Ohio’s FMWA and its implementing statutory provisions. In 2014, the Southern District of Ohio allowed plaintiffs to pursue their “opt out” class claims under the amendment despite R.C. § 4111.14(K)’s “opt-in” requirement, because Ohio’s FMWA is self-executing. *Brenneman v. Cincinnati Bengals, Inc.* No. 1:14 cv-136 (S.D. Ohio Oct. 24, 2014). In other words, the District Court allowed plaintiffs to bring “opt out” claims exclusively under Article II, § 34a of the Ohio Constitution, rather than the implementing statutory provision, R.C. § 4111.14(K).

II. Comparing Ohio’s Minimum Wage Laws

A. Ohio’s Minimum Wage Rate Compared to the Federal Minimum Wage Rate

In states like Ohio, where the state minimum wage is greater than the federal minimum wage, the state minimum wage prevails. According to the U.S. Department of Labor, twenty-nine states and

estimates that a full-time worker in Ohio would need to make a “Housing Wage” closer to \$15.25 per hour (or \$17.50 per hour in Columbus) to afford a two-bedroom apartment working forty hours per week.

In one crucial way, Ohio’s FMWA and implementing statutes are progressive. Ohio is one of only eighteen states (and the District of Columbia) to have scheduled annual minimum wage adjustments for inflation. Ohio ties its automatic wage increases to the Consumer Price Index (CPI), as do most of the other “indexing to inflation” states. Based on CPI-Urban Consumer measurements from the previous twelve-months, Ohio’s Department of Commerce Director determines and announces the state minimum wage rate for the following year in September.

Other states with scheduled annual inflation adjustments include: Alaska, Arizona, California, Colorado, Florida, Maine, Michigan, Minnesota, Missouri, Montana, Nevada, Oregon, New Jersey, New York, South Dakota, Vermont, and Washington.

2018 State Minimum-Wage Rates *states not listed are subject to the federal rate of \$7.25 per hour
District Columbia (\$13.25)
Washington (\$11.50)
California (\$11.00)
Massachusetts (\$11.00)
Oregon (\$10.75)
Arizona (\$10.50)
Vermont (\$10.50)
New York (\$10.40)
Colorado (\$10.20)
Connecticut (\$10.10)
Hawaii (\$10.10)
Maryland (\$10.10)
Rhode Island (\$10.10)
Maine (\$10.00)

Alaska (\$9.84)
Minnesota (\$9.65)
Michigan (\$9.25)
Nebraska (\$9.00)
South Dakota (8.85)
West Virginia (\$8.75)
New Jersey (\$8.60)
Arkansas (\$8.50)
Montana (\$8.30)
Ohio (\$8.30)
Delaware (\$8.25)
Florida (\$8.25)
Illinois (\$8.25)
Nevada (\$8.25)
Missouri (\$7.85)
New Mexico (\$7.50)

C. Ohio’s Local Wage Preemption

Ohio is by no means the only state to pass laws preempting local governments from passing minimum wage ordinances. According to the National Employment Law Project, twenty-five other states also have such laws. As of November 2018, these state include: Alabama, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Wisconsin.

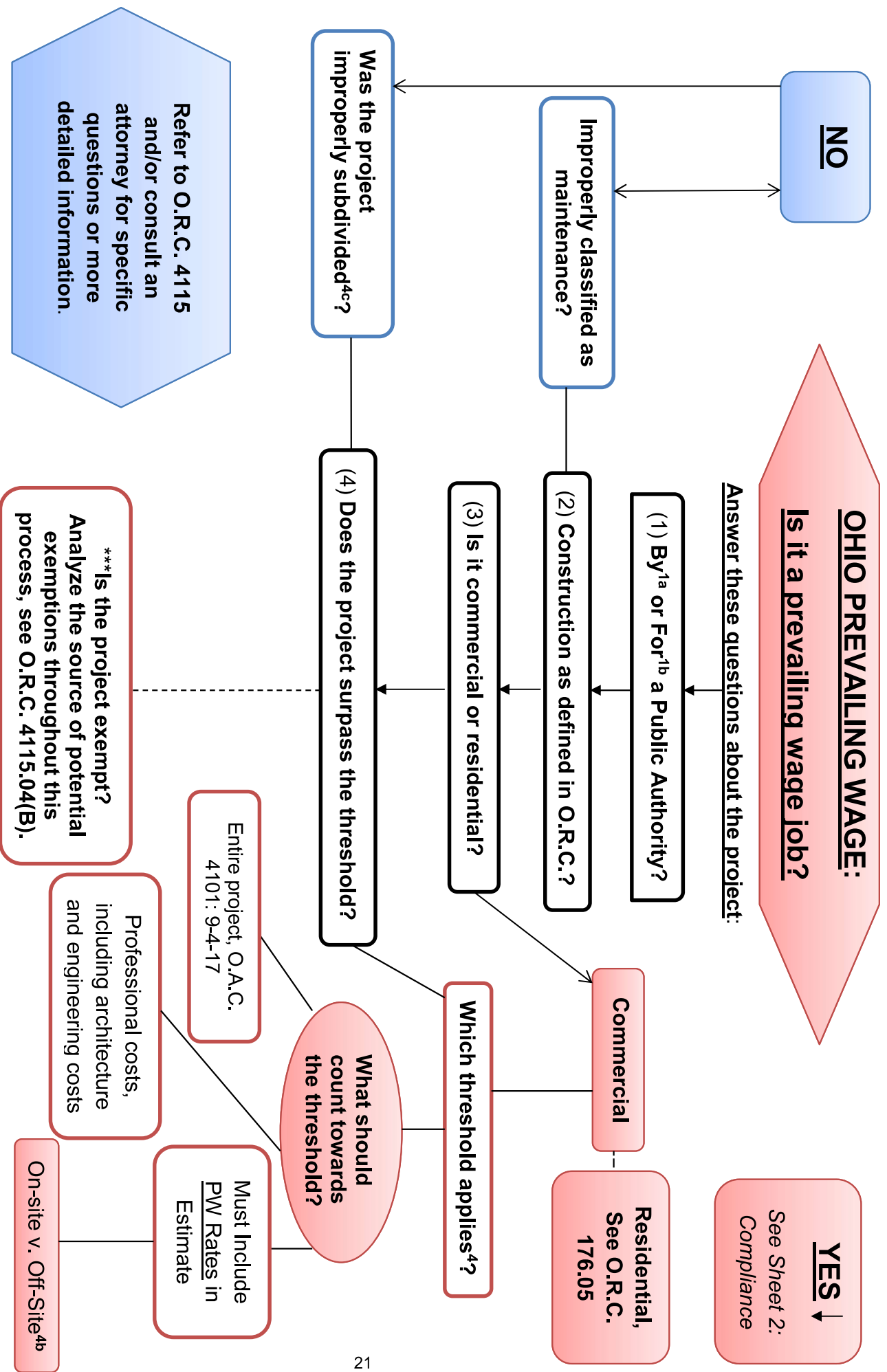
While Ohio's 2016 preemption law may have blocked an already scheduled local vote to increase wages in Cleveland, St. Louis was forced to roll back its \$10.00 per hour minimum wage ordinance in 2017 after Missouri passed a preemption law. (Although, shortly after the state's high-profile rollback, in November 2018 Missouri voters approved a measure to gradually boost the state's minimum wage from its current \$7.85 to \$12.00 per hour by 2023.) Similar rollbacks of locally-enacted wage minimums also occurred in Birmingham, Miami, Louisville, and Lexington—after Alabama, Florida, and Kentucky passed statewide preemption laws.

Of the states that do not preempt local minimum wage ordinances, California has more local minimum wage rates than any other. Not surprisingly, California cities with higher costs of living have adopted higher minimum wage rates—such as San Francisco (\$15.00 per hour) and Palo Alto (\$13.50 per hour and tips cannot count towards minimum wage rates). New York City's wage rate is \$15.00 per hour for most employers, except those employing less than ten employees may pay a minimum wage rate of \$13.50 per hour.

In 2014, the Seattle City Council voted to incrementally increase the city's minimum wage to \$15.00 per hour by 2021. Since then, researchers across the country have been closely watching how Seattle's local wage increases impact labor market opportunities and the local/state economy. The first phase of Seattle wage increases in 2015, which raised the minimum wage from \$9.47 to \$11.00 per hour, exhibited positive results for both low-wage workers and the local economy. But after the second phase-in of the Seattle Minimum Wage Ordinance, which raised the minimum wage from \$11.00 per hour to \$13.00 per hour in 2016, overall earnings actually lessened for some low wage workers, according to a University of Washington study. (*See Appendix H, UNIVERSITY OF WASHINGTON MINIMUM WAGE 2018 INDIVIDUAL EMPLOYMENT TRAJECTORIES: TWO PAGE OVERVIEW*). The study found that after the \$13.00 wage boost, low-wage workers saw an average six to seven percent reduction in hours worked, consequently offsetting their gain in wages. These offsets affected the earnings of low-wage workers with less work experience the most—as they suffered larger proportionate decreases in hours worked than their experienced counterparts did. The University of Washington's study came after a University of California, Berkeley study found that both phases of Seattle's wage increases had raised workers' pay without costing jobs in other specific industries, such as the restaurant industry.

Appendix A

Prevailing Wage Flow Chart



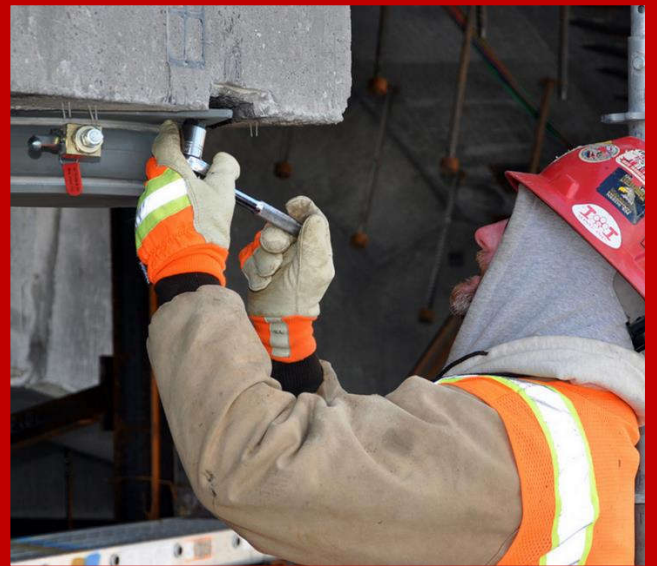
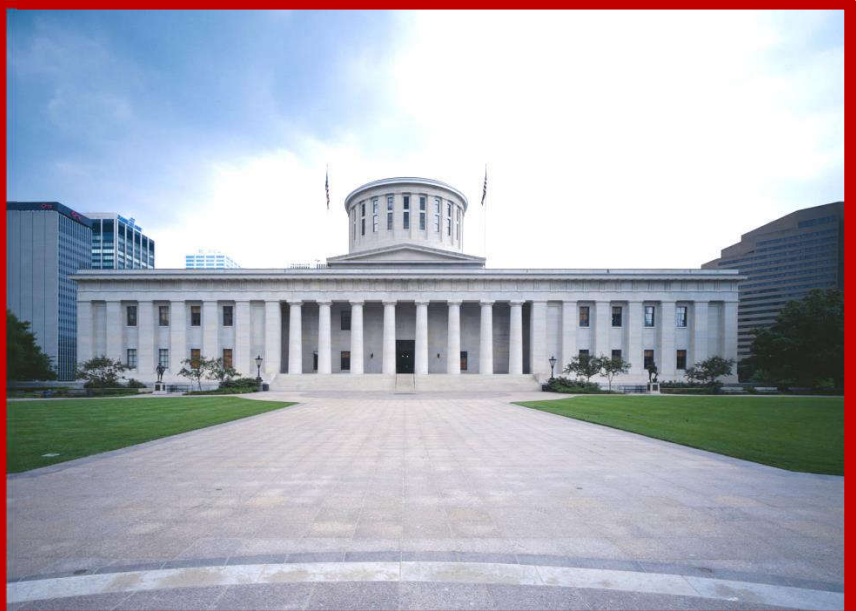
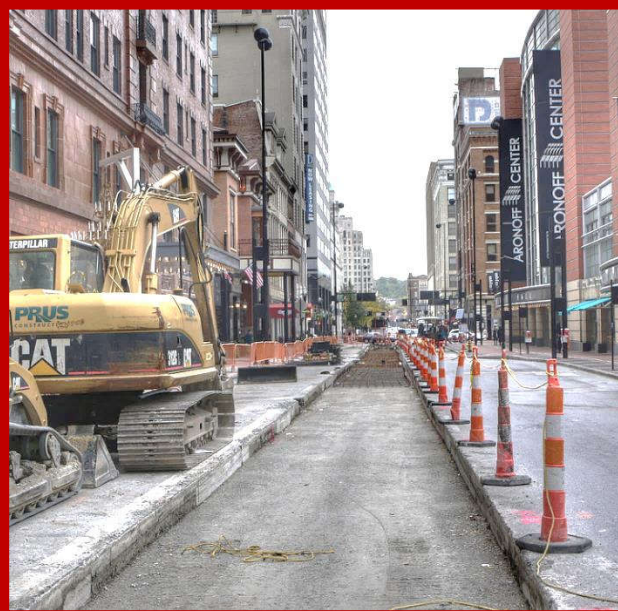
The numbers and letters on this chart correspond to the PW Information Sheet to provide additional guidance on each PW topic/question, i.e., (1) "Public authority".

Appendix B

The Economic, Fiscal, and Social Effects of Ohio's Prevailing Wage Law (2017)

The Economic, Fiscal, and Social Effects of Ohio's Prevailing Wage Law

April 10, 2017



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*Submitted to
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Alan Atalah, Ph. D. is a Professor of Construction Management, Associate Dean for Graduate Affairs, Faculty Affairs, and Assessment, and the interim Chair of the Construction Management Department in Bowling Green State University (BGSU). Dr. Atalah joined BGSU in 2000 to teach and lead research in the field of construction management. He has taught and mentored hundreds of construction management students over the last 17 years. Dr. Atalah earned his Doctor of Engineering, Master of Business Administration, and Master of Science in Civil Engineering from Louisiana Tech University, Ruston, LA. Dr. Atalah has been involved in the construction of water and wastewater projects for more than 34 years with several American and British firms. Dr. Atalah was a board member of the Great Lake Trenchless Technology Association for 11 years and board member of the North American Society for Trenchless Technology for six years. He has been a chair and committee member charged with developing several American Society of Civil Engineers (ASCE) Manuals and Reports. ASCE recognized his service by granting him fellow membership, which is a significant honor bestowed to less 4% of their membership.

Frank Manzo IV, M.P.P. is the Policy Director of the Midwest Economic Policy Institute, a division of the Illinois Economic Policy Institute. He holds a Master of Public Policy from the University of Chicago, Harris School of Public Policy and a Bachelor of Arts in Economics and Political Science from the University of Illinois at Urbana-Champaign. He specializes in labor market analysis, infrastructure investment, economic development, the low-wage labor force, and public finance. He has authored or coauthored several applied research papers specifically pertaining to prevailing wage laws, including studies for Illinois, Indiana, Kentucky, Michigan, New Hampshire, and New Mexico. Other projects include analyses on the social and economic effects of labor unions, construction apprenticeship programs, public spending on transportation and water infrastructure, and public-private partnerships.

Kevin Duncan, Ph. D. is a Professor of Economics at Colorado State University-Pueblo and has been a visiting scholar at the Institute for Research on Labor and Employment at the University of California, Berkeley. He teaches business and regional economics in the Hasan School of Business. Duncan has conducted applied research for the local chamber of commerce, the economic development corporation, state and local policy proposals, businesses, non-profits, and labor unions. He has also examined the effect of prevailing wage laws on construction costs and productivity, construction worker poverty and reliance on public assistance, minority employment in the construction industry, and the economic impact of the wage policy. Duncan has provided testimony and research related to construction labor market policy to state legislatures in Colorado, Hawaii, Kentucky, New Hampshire, and Vermont. His research on prevailing wage laws has appeared in leading national and international peer-reviewed academic journals such as *Construction Management and Economics* (University of Reading, UK), *Industrial and Labor Relations Review* (Cornell University), and *Industrial Relations* (UC Berkeley). He received his Ph. D. in Economics from the University of Utah and his BA in Economics from the University of California, Riverside.

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Introduction

For decades, opponents have argued that prevailing wage regulations drive up the cost of public works construction. Claims of savings ranging between 10% and 40%, or the ability to build up to “five schools for the price of three,” have consistently been made by those seeking a repeal or considerable weakening of the law.¹ While acknowledging that local governments and other public agencies need to limit costs, cutting wage rates for construction workers is unlikely to result in any savings because labor costs are typically a low percentage of total construction costs (approximately 23% nationally). Furthermore, the claim that prevailing wage laws increase construction costs is not supported by the overwhelming majority of peer-reviewed research, including new research for Ohio reported in this study.

Recent examples of Ohio legislation drafted to repeal or severely weaken Ohio's prevailing wage law include HB 190 (Hood; 130th GA); HB 282 (Roegner; 131st GA); and more recently, SB 72 (Huffman; 132nd GA).² These efforts are incompletely conceived because they contain no plans to replace many of the functions of Ohio's present prevailing wage policy. Prevailing wage standards support apprenticeship programs and training that reduce injury rates. The wage policy also contributes to self-sufficient, blue-collar careers – particularly for military veterans who are disproportionately employed in Ohio's construction industry. By protecting local wage rates, Ohio's prevailing wage law protects work for local contractors and their employees.

The results of this study indicate that weakening or repealing Ohio's prevailing wage standard is unlikely to save taxpayer dollars. In fact, a weaker policy would increase taxpayer burdens as construction worker incomes decrease and their reliance on public assistance increases. Ultimately, a weaker law means fewer resources for apprenticeship training in this fast-growing sector, less work for Ohio businesses and Ohio workers, and negative overall impacts on the Ohio economy.

¹ For an example, see “The Case for Repealing Ohio's Prevailing Wage Law,” Associated Builders and Contractors, Inc., 2005.

² See HB 190, 130th General Assembly. Accessed at: <https://legiscan.com/OH/bill/HB190/2013>. HB 282, “Repeals the Prevailing Wage Law,” 131st General Assembly. Accessed at: <https://legiscan.com/OH/text/HB282/2015>. Senate Bill 72, 132nd General Assembly, Ohio Legislature. Accessed at: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-72>.

Executive Summary

The main purpose of a prevailing wage law is to protect local construction labor standards from distortions associated with publicly-funded construction. Large infusions of government spending into an area, along with a contract award process that favors the lowest bidder, may attract contractors from areas where construction worker wage rates are relatively low. Any appreciable infusion of low-wage contractors could result in the erosion of local compensation standards. Prevailing wage laws create a level playing field for all contractors by ensuring that public works expenditures maintain and support local area standards. This study examines the effects of Ohio's prevailing wage law on the cost of public construction, apprenticeship programs, military veterans employed in the construction industry, construction worker income, poverty and reliance on public assistance as well as the economic impact of the wage policy. This study is based on publicly available data. As a consequence, the results reported here are reproducible.

Research on Prevailing Wage Laws and Construction Costs

Seventy-six percent of peer-reviewed research conducted since 2000 fails to find evidence that federal, state, and municipal prevailing wage policies increase the cost of public construction. Why don't prevailing wages increase costs? Labor costs are a low and historically declining share of total construction costs—approximately 23% of all building costs in the United States. Consequently, minor changes in labor productivity and other construction costs are needed to offset the effect of the wage policy.

To provide recent evidence of the effect of prevailing wage requirements on the cost of public construction in Ohio, we use a sample of school projects that received federal funding and were covered by the federal Davis-Bacon Act. The results of our analysis of school projects built between 2013 and 2016 indicate that prevailing wage laws are not associated with increased construction costs. This result is consistent with the preponderance of peer-reviewed research. Additionally, the level of bid competition— an important determinant of project cost— is higher when prevailing wages apply to these projects. Finally, substantially more work is completed by in-state contractors when prevailing wages are required. In the absence of the wage policy, more of Ohio's tax dollars are used to employ companies and workers from other states, such as Indiana, Iowa, Kentucky, Michigan, and Pennsylvania.

Since 2001, five studies have examined the effect of prevailing wage laws or similar labor policies on school construction costs in Ohio. Three of these studies find that prevailing wages or similar labor requirements are unrelated to school construction costs. This includes the findings of the controversial 2002 report by the Ohio State Legislative Service Commission (LSC), when the results of this study are properly interpreted.³ Two other studies find that, while bids based on the payment of union rates are generally no higher than bids that are based on open

³ Professor Herbert Weisberg was the first to identify the shortcomings of the 2002 LSC report in stating that "... the cost-savings estimates are statistically fiction" because "the LSC equations find prevailing wage to be statistically insignificant, meaning that there is not statistical reason to believe that prevailing wage affects costs." James Burley, Director of the LSC in 2002, did not dispute Weisberg's criticism (see page 6 for references). Our analysis of the LSC study echoes Professor Weisberg's observations. When the analysis employed by LSC is properly interpreted, it shows that prevailing wages do not have a statistically significant effect on the cost of school construction, meaning that LSC had no valid basis upon which to claim a 10% cost savings resulting from the non-application of the prevailing wage law to school construction.

shop rates, there are some cases where bids are higher when union rates are paid. There are also cases where bids based on the payment of union rates are lower than bids based on open shop rates.

Ohio's Prevailing Wage Law and Income, Poverty, and Reliance on Public Assistance

Prevailing wage repeal decreases construction worker income and increases poverty and reliance on public assistance. Repealing or weakening prevailing wage in Ohio would lower blue-collar construction worker incomes by 16%, reduce employer-provided health insurance coverage by 2 percentage points, and decrease employer-provided pension coverage by 10 percentage points. Weakening or repealing prevailing wage in Ohio would significantly decrease private health and retirement coverage, forcing blue-collar construction workers who were previously self-sufficient to rely on public insurance programs.

Repealing prevailing wage reduces worker earnings and slashes employee benefits, resulting in fewer construction workers in the middle class. As a result, approximately 3,900 blue-collar construction workers would lose their employer-provided health insurance coverage and another 21,700 would lose their employer-provided pension plan if Ohio were to repeal or weaken its prevailing wage law. For approximately 16,000 workers, the wage cut would be so significant that they would fall below the official poverty line, qualifying them for Supplemental Nutrition Assistance Program (SNAP) government benefits. In addition, an estimated 13,800 blue-collar construction workers would newly qualify for Earned Income Tax Credit (EITC) assistance. Weakening or repealing prevailing wage in Ohio would thus force thousands of blue-collar construction workers onto public insurance programs, increasing costs to taxpayers.

Ohio's Prevailing Wage Law and Military Veterans

Military veterans employed in the construction industry would be particularly worse off from repealing or weakening prevailing wage. Veterans are more likely to work in construction than non-veterans. In 2014, veterans accounted for 8.5% of Ohio's blue-collar construction workforce but only 6.0% of total employment in the state's economy, a 2.5 percentage-point difference. Additionally, over the next decade, construction and extraction jobs are expected to grow faster than the state average – providing middle-class job opportunities for blue-collar veterans who populate the trades at higher rates than non-veterans.

Applying results from a peer-reviewed national study commissioned by VoteVets.org reveals that veterans would be negatively affected if the state were to weaken or repeal prevailing wage. Blue-collar construction occupations would become less attractive to veterans because these middle-class careers would be converted into low-wage, low-benefit jobs. In fact, weakening or repealing prevailing wage in Ohio would result in 4,100 blue-collar veterans separating from their construction jobs. Additionally, the total income of all veterans employed in construction jobs would decline by \$275 million in the state and at least 3,900 veterans would lose their employer-provided health coverage. The market share of veteran-owned construction companies would also decrease. Gutting prevailing wage would increase burdens on taxpayers and disproportionately impact veteran workers who served their country.

Ohio's Prevailing Wage Law and Apprenticeship Training in the State

Formal apprenticeship training is the foundation of skill development in Ohio's construction industry. Prevailing wages create a strong incentive to employ apprentices because contractors are allowed to pay trainees a lower rate than journeymen. This incentive increases demand for apprentices and draws more resources into training programs. The result is a stable supply of trained construction employees available for work throughout Ohio.

In the nonunionized segment of Ohio's construction industry, apprenticeship programs are sponsored by a single contractor or by groups of employers. In the unionized sector, apprenticeship training is jointly determined and managed by unions and contractors who are signatories to collective bargaining agreements. Union programs are financed by a "cents per hour" contribution that is part of the total wage and benefits package negotiated with contractors. Consequently, more of Ohio's construction apprentices are enrolled in, and graduate from, union-sponsored programs. Between 2004 and 2015, fully 79% of construction apprentices were enrolled in union training programs, which had a completion rate that is 21% higher than nonunion programs. As a result, 83% of apprentices graduated from union programs. These programs also provide training for the full-range of trades, while at least 47% of apprentices completing nonunion programs trained to be electricians. Data for 2016 indicate that 94% of female apprentices and 88% of minority apprentices are enrolled in union training programs. The substantial apprenticeship enrollment in union training programs is matched by an equally substantial financial commitment to training by building trades unions and their signatory contractors that spent over \$48 million on training programs in 2015. The investment in a strong workforce does not end after training. Pension contributions exceeded \$960 million in 2015 with \$750 million in health and welfare benefits. The overall contribution to fringe benefits and training programs by Ohio's building trades unions and their signatory contractors was approximately \$1.75 billion in 2015.

The Economic Impact of Ohio's Prevailing Wage Law

By protecting local wages, prevailing wage laws also protect work for local contractors and construction workers. The prevailing wage allows local contractors to submit competitive and profitable bids while attracting local workers possessing the skills needed for the project. When local companies and workers are employed on a state-funded project, more project funds remain in the local economy and stimulate additional economic activity. However, without adequate prevailing wage protection, more work is completed by out-of-area contractors and more project funds, jobs, income, spending, and economic activity leak out of the local economy.

Weakening or repealing Ohio's prevailing wage law would be associated with a \$725 million net leakage of construction business out of Ohio's building industry. This loss of construction business and spending would ripple throughout Ohio's economy and reduce economic activity by approximately \$1.4 billion. The corresponding total employment loss would be 9,700 jobs— including 5,500 construction jobs and 4,200 jobs in other industries, such as retail, service, and restaurants. The reduction in economic activity is associated with an approximate \$45 million decrease in state and local tax revenue. This is a statewide impact that would be experienced each year if the wage policy is repealed.

Finally, prevailing wage repeal represents a strong-head wind for an Ohio construction industry that has not yet fully recovered from the Great Recession. Construction employment remains approximately 8.8% below the 2007 level with the number of construction firms 17.2% below the pre-recession level. The consequences of repeal would further reduce construction industry employment and the number of establishments in Ohio. Weakening or repealing Ohio's prevailing wage law would open an industry that is still recovering to increased competition from workers and builders from other states.

The Purpose of Prevailing Wage Laws and Ohio's Prevailing Wage Policy

The main purpose of a prevailing wage law is to protect local construction labor standards from distortions associated with publicly-funded construction.⁴ Large infusions of government spending into an area, along with a contract award process that favors the lowest bidder, may attract contractors from areas where construction worker wage rates are relatively low. Any appreciable infusion of low-wage contractors could result in the erosion of local compensation standards. Prevailing wage laws create a level playing field for all contractors by ensuring that public works expenditures maintain and support local area standards.

Ohio's prevailing wage law became effective in 1931, the same year that the first federal prevailing wage law, the Davis-Bacon Act, was enacted.⁵ Since its inception, Ohio's prevailing wage law has undergone numerous revisions regarding the types of projects covered and the value threshold for coverage. For example, Ohio exempted school construction projects from prevailing wage coverage in 1997.⁶ Changes in 2011 increased threshold coverage levels that trigger prevailing wage requirements.⁷ These changes also exempted numerous projects from prevailing wage requirements. For example, Port Authority construction and projects involving Department of Development loans, Minority Business Enterprise loans, Industrial Development Bonds, and other projects that received public assistance were exempt from the wage requirement. The changes in 2011 also prohibited school districts from voluntarily paying prevailing wages.

The payment of prevailing wage rates to laborers, mechanics, and other workers is required on covered public works projects. The prevailing wage rate is the wage and benefit rate determined by the relevant collective bargaining agreement in the project's immediate locality.⁸ If there is no collective bargaining agreement that applies to the immediate locality, the terms of the agreement in the nearest locality are the prevailing rates.

Compared to other states, Ohio's prevailing wage law can be considered average in terms of "strength," where strength is determined by the ability of a policy to protect local wage rates.⁹ As of January 1, 2017, there were 29 states (plus the District of Columbia) with prevailing wage

⁴ As an example, see "The Davis-Bacon Act Protecting Wage Equality Since 1931," Wage and Hour Division, U.S. Department of Labor. Accessed at: <http://www.dol.gov/whd/programs/dbra/Survey/conformancefaq.htm>.

⁵ For a description of Ohio's prevailing wage law see "The Effects of the Exemption of School Construction Projects from Ohio's Prevailing Wage Law," S.B. 102 Report, Staff Research Report No. 149, Legislative Service Commission, May 20, 2002. Accessed at: <http://www.lsc.ohio.gov/research/srr149.pdf>.

⁶ For more specifics see "Ohio Prevailing Wage Exemption for School Construction," OLR Research Report, August 30, 2006. Accessed at: <https://www.cga.ct.gov/2006/rpt/2006-R-0545.htm>.

⁷ See "New Ohio Prevailing Wage Laws Explained," AIA Ohio News, July 2011. Accessed at: <file:///G:/Consulting/Ohio/New%20Ohio%20Prevailing%20Wage%20Laws%20Explained.htm>.

⁸ See "Chapter 4115: Wages and Hours on Public Construction," LA Writer Ohio Laws and Rules. Accessed at: <http://codes.ohio.gov/orc/4115>.

⁹ In 1995 Armand Thieblot rated state-level prevailing wage laws based on factors including coverage thresholds, type of work excluded/included, and the determination of wage rates, etc. See Thieblot Armand J. 1995. "State Prevailing Wage Laws. An Assessment at the Start of 1995." Prepared for Associated Builders and Contractors, Inc. At the time of Thieblot's report, Ohio's prevailing wage law could be considered relatively strong based on the breadth of coverage and use of union rates. However, the changes in 1997 and 2011 have reduced the types of projects covered and the law can currently be considered average in terms of strength.

laws.¹⁰ 23 of the state-level laws can be considered average or strong in terms of policy strength.¹¹ Six states have weak laws and 21 states do not have a wage policy. Much of the analysis in this report is based on differences in construction industry and construction labor market characteristics in states with average and strong prevailing wage laws compared to states with weak or no prevailing wage laws.

¹⁰ For a list of states with prevailing wage laws, see “Dollar Threshold Amount for Contract Coverage,” Wage and Hour Division, U.S. Department of Labor. Accessed at <https://www.dol.gov/whd/state/dollar.htm>. Since this information was compiled, Indiana and West Virginia have repealed their prevailing wage policies.

¹¹ For a list of states with average/strong and weak/no prevailing wage laws see “How Weakening Wisconsin’s Prevailing Wage Policy Would Affect Public Construction Costs and Economic Activity,” by Kevin Duncan and Alex Lantsberg, May 22, 2015. Accessed at: <http://www.faircontracting.org/wp-content/uploads/2015/05/How-Weakening-Wisconsin%E2%80%99s-Prevailing-Wage-Policy-Would-Affect-Public-Construction-Costs-and-Economic-Activity2.pdf>. Information in this report is based on data from 2012 and does not reflect the repeal in prevailing wage laws in Indiana and West Virginia in 2015.

Prevailing Wage Laws and School Construction Costs

Current Research Results for School Construction in Ohio (2013-2016)

Federal funding for public school construction in Ohio provides an opportunity to examine the effect of prevailing wage requirements on construction costs. Part of the American Recovery and Reinvestment Act of 2009 included federal refunds for interest costs on school construction bonds (the Quality School Construction Program).¹² When funds from this federal program were used in school construction in Ohio, prevailing wage payments under the federal Davis-Bacon Act were required. To examine the effect of prevailing wages on construction costs in Ohio, we compare differences in construction bid-costs between school projects that were, and were not covered by prevailing wage regulations.

Our study is based on information available from the Ohio Facilities Construction Commission (OFCC).¹³ The OFCC record of school construction projects extends from 2013 to the present and includes capital construction projects for state agencies, state-supported universities and community colleges, and Ohio's comprehensive public K-12 school construction and renovation program.¹⁴ We collected information on all projects (132) available from the OFCC between August 2013 and October 2016 that involved K-12 school construction. These projects consist of school construction that received state support.

We used information from the Ohio School Facilities Commission and McGraw-Hill Construction to identify school projects that received funding through the Quality School Construction Program to determine which projects were and were not covered by prevailing wage requirements.¹⁵ While projects receiving federal funds are covered by the federal Davis-Bacon prevailing wage law, all of the specifications for the projects included in this study reference the payment of Ohio's prevailing wage rates. As described previously, union rates prevail under Ohio's wage policy. Union rates prevail under Davis-Bacon if they are the majority wage rate.¹⁶ Consequently, the comparison of school projects built with prevailing wages and those without prevailing wages is a strong test of Davis-Bacon when union rates prevail.

Of the 132 OFCC school projects that were open to bid between 2013 and 2016, we were unable to determine the prevailing wage status of 8 of these projects. Another fourteen projects

¹² See "Ohio School Facilities Commission. FY 2010 Annual Report. Accessed at: http://ofcc.ohio.gov/Portals/0/Documents/Resources/Publications/Annual%20Reports/Annual%20Report%20FY10_FINAL.pdf.

¹³ See "Welcome to the OFCC," Ohio Facilities Construction Commission. Accessed at: <http://ofcc.ohio.gov/>.

¹⁴ See "Construction Bidding," Ohio Facilities Construction Commission. <http://ofcc.ohio.gov/Opportunities.aspx>. Prior to 2013, information on state sponsored K-12 construction was reported by the Ohio School Facilities Commission accessed at: <https://cmw.osfc.state.oh.us/guest/>.

¹⁵ See "Ohio School Facilities Commission. Annual Report FY 2010." Accessed at: http://ofcc.ohio.gov/Portals/0/Documents/Resources/Publications/Annual%20Reports/OSFC%20Annual%20Report%20FY2011_Update.pdf. Project specifications obtained from McGraw-Hill Dodge Data and Analytics include statements by school districts and other contract information indicating if prevailing wages were required on the project. For more information about Dodge Data Analytics see: <http://construction.com/>.

¹⁶ Prevailing wage determination under the Davis-Bacon Act utilizes a modal/average approach. If the results of a wage survey indicate a majority wage rate for a particular job classification in a county, the majority wage is the prevailing rate. If there is no majority wage, the prevailing wage is the average wage, weighted by total employment in the job class. For more details on Davis-Bacon wage rates see "Davis-Bacon Surveys," Prevailing Wage Resource Book 2010. U.S. Department of Labor. Accessed at: <https://www.dol.gov/whd/recovery/pwrb/Tab12DBSurveys.pdf>.

did not include the engineer's estimate (or agency estimate) of the project cost. As a consequence, the study is based on 110 school projects containing complete information. These projects involved asbestos abatement, demolition, renovations, additions, and other building construction. Bids on these projects ranged from approximately \$23,000 to over \$28 million. The statistical technique of regression analysis is used to compare low bids for projects covered by prevailing wages (33) and projects that were not covered by the wage policy (77). Regression analysis allows for this comparison taking into consideration project type, size, and complexity, the level of bid competition, and the state residence of the winning contractor.

Results of the statistical analysis can be found in the [Appendix](#). The findings reveal no statistically significant difference in low bids for projects that were and were not covered by prevailing wage regulations. This means that project costs are not discernibly higher when prevailing wage standards apply, a result that is consistent with the preponderance of peer-reviewed research summarized on the next page of this report. The effect of prevailing wage requirements on the level of bid competition is also a matter of concern. Many assert that the wage policy reduces bid competition without offering any empirical evidence to support this claim.¹⁷ While this issue draws considerable attention, only two studies have examined this topic using bid data and statistical techniques. Neither of these peer-reviewed studies finds a difference in the level of bid competition between projects that do, and do not require the payment of prevailing wage.¹⁸ Results from our analysis indicate that the level of bid competition is 30% higher on projects that require prevailing wages. This effect *is* statistically significant.

Since the OFCC data include the business address of participating contractors, it is also possible to determine if prevailing wages protect work for local contractors. Of the 110 school projects included in this study, 15% (17/110) of the low bids were submitted by contractors from other states (Indiana, Iowa, Kentucky, Michigan, and Pennsylvania). For projects that did not require prevailing wages, 21% (16/77) of low bids were submitted by out-of-state contractors. This contrasts to 3% (1/33) on projects paying prevailing wages. Of the 17 out-of-state contractors included in the study, 94% (16/17) participated in projects that did not require prevailing wages. Only 3% (1/33) of contractors on prevailing wage projects were from another state.

Consistent with the preponderance of peer-reviewed research, the results of our analysis of recent school construction projects in Ohio indicate that prevailing wage laws are not associated with increased construction costs. Additionally, the level of bid competition— an important determinant of project cost— is higher when prevailing wages apply. Finally, substantially more work is completed by in-state contractors when prevailing wages are required. In the absence of the wage policy, more of Ohio's tax dollars are used to employ companies and workers from other states, such as Indiana, Iowa, Kentucky, Michigan, and Pennsylvania.

¹⁷ For an example, see George Leef. 2010. Prevailing Wage Laws: Public Interest or Special Interest Legislation? *Cato Journal*, 30(1):137-154.

¹⁸ See Kevin Duncan. 2015. "The Effect of Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations on Highway Maintenance Costs." *Industrial and Labor Relations Review*, Vol. 68, No. 1, pp. 212-237 and Jaewhan Kim, Chang Kuo-Liang, and Peter Philips. 2012. "The Effect of Prevailing Wage Regulations on Contractor Bid Participation and Behavior: A Comparison of Palo Alto, California with Four Nearby Prevailing Wage Municipalities." *Industrial Relations*, 51(4): 874-891.

Previous Research on School Construction Costs in Ohio

A 2002 report by the Ohio State Legislative Service Commission (LSC) examined the effect of the exclusion of public school construction from prevailing wage regulations.¹⁹ This study examines school projects that were built before and after the policy change in 1997. The analysis is based on F. W. Dodge data collected from 1992 to 2001.²⁰ The estimated results for new school construction and additions indicate that bid-costs were lower after 1997, suggesting an overall cost savings of 10.7% due to the exemption of the wage requirements. This study ignores the statistical significance of the estimated cost effect on the basis that the projects included in the study represent the population, not a sample. As a consequence, statistical tests do not apply. However, since the data were collected between 1992 and 2001, school projects built prior to 1992 are not included.²¹ Therefore, the study is not based on the examination of the population, but on a sample of projects. Under these conditions, tests for statistical significance are relevant.²² Such tests are important because an estimate that is *not* statistically significant is likely to have occurred due to chance. On the other hand, a statistically significant result is likely due to causation. None of the estimates of the cost effect of prevailing wage requirements that are reported in the study achieve conventional levels of statistical significance. When properly interpreted, the 2002 study by the LSC indicates that the cost of schools built before the prevailing wage exemption did not differ, in a statistically significant way, from the cost of schools built after the exemption.²³

Professor Herbert Weisberg was the first to criticize the 2002 LSC report by stating that “the cost-savings estimates are statistically fiction” because “the LSC equations find prevailing wage to be statistically insignificant, meaning that there is not statistical reason to believe that

¹⁹ See “The Effects of the Exemption of School Construction Projects from Ohio’s Prevailing Wage Law,” S.B. 102 Report, Staff Research Report No. 149, Legislative Service Commission, May 20, 2002. Accessed at: <http://www.lsc.ohio.gov/research/srr149.pdf>.

²⁰ For more information about this data source, see Dodge Data & Analytics. Accessed at: <http://www.construction.com/dodge/>.

²¹ Evidence indicates that prevailing wage coverage applied to school construction in Ohio at least to 1991. See Peter Philips, “A Comparison of Public School Construction Costs in Three Midwestern States that have Changed Their Prevailing Wage Laws in the 1990s,” February 2001. Accessed at:

http://www.faircontracting.org/PDFs/prevailing_wages/Public_School%20Peter%20Phillips.pdf.

²² Professor Weinberg of Ohio State University makes a similar criticism. See “Analysis of Regression and Surveys in Ohio LSC Report on S.D. 102 on Claimed Cost Savings from Exempting School Construction from Prevailing Wage Requirements.” Accessed at:

http://www.faircontracting.org/PDFs/prevailing_wages/Analysis%20of%20Regression%20and%20Surveys%20in%20Ohio%20LSC%20on%20SB%20102%20on%20Claimed%20Cost%20Savings.pdf.

²³ The LSC study also examines bid-costs from Westlake School District that requested contractors to submit two bids where one bid was based on the prevailing wage requirement while the other bid was not. Comparisons indicate that prevailing wage bids were 5.8% higher. Maryland’s Public School Construction Program also uses ‘side-by-side bids’ in claiming that prevailing wage requirements increase costs by over 11%. While side-by-side bids are compelling evidence at first glance, one of the authors of this report has found that the gap between prevailing wage and non-prevailing wage bids varies with the level of bid competition, contractor accumulated experience in bidding, contractor eagerness to win a project. Because the gap between side-by-side bids varies with bid and bidder characteristics, these are not accurate measures of the effect of the wage policy. See “The Cost of School Construction: A Comparison of the Monarch Global Academy and Conventional School Facilities.” Public School Construction Program. October 28, 2015. Accessed at:

<http://www.pscp.state.md.us/Reports/Monarch%20Final%20Report%2010-28-15.pdf> and Kevin Duncan. 2017.

“Prevailing Wage Regulations, Contractor Bid Behavior, and School Construction Costs in Maryland: Evidence from Side-By-Side Bids.” Accessed at:

<https://webcache.googleusercontent.com/search?q=cache:P0aKiMzQ8GsJ:https://www.aeaweb.org/conference/2017/preliminary/paper/5Zysz9sy+&cd=1&hl=en&ct=clnk&gl=us>.

prevailing wage affects costs.”²⁴ Furthermore, James Burley, Director of the LSC in 2002, did not dispute Weisberg’s criticism.²⁵ Our analysis of the LSC study echoes these criticisms. When the analysis employed by LSC is properly interpreted, it shows that prevailing wages do not have a statistically significant effect on the cost of school construction. **Put plainly, the LSC had no valid basis upon which to estimate a 10% cost savings resulting from the non-application of the prevailing wage law to school construction.**

In addition to the 2002 study by the LSC, there have been four other studies that examine the implications of prevailing wages or similar construction labor market policies on the cost of building public schools in Ohio. The results of these studies are consistent with the proper interpretation of the study by the LSC described above. For example, Professor Alan Atalah tests the hypothesis that prevailing wages increase Ohio school construction costs in two studies. Both are based on the examination of over 8,000 bids obtained from the Ohio School Facilities Commission. The first study compares winning bids that were submitted by contractors who are signatories to collective bargaining agreements and who pay union wage and benefit rates to the bids submitted by open shop contractors who typically pay lower rates. While schools were exempted from Ohio’s prevailing wage law in 1997, union rates prevail for other construction funded by the State of Ohio.²⁶ Consequently, Atalah’s union-nonunion comparison is an indirect test of the impact of prevailing wage and benefit rates, omitting any other unique administrative costs associated with the policy. A comparison of average bid-costs per square foot indicates that there is no statistically significant difference in this cost measure between the two groups of contractors across the state.²⁷ This is the case when all bids are compared and when only the low, winning bids are considered. When Ohio counties are divided into three regions (north, central, and southern), the results are the same for the northern and central regions. There are no statistically significant differences in union and nonunion bid costs, even if only winning bids are considered. The noteworthy exception is the southern region of the state that constitutes 33% of all of Ohio’s counties where all bids and winning bids by union contractors are *lower* than comparable bids placed by nonunion contractors. These differences are statistically significant. Since union rates are used to determine prevailing wage and benefit levels in Ohio, the implication of these results is that extending prevailing wage and benefit rates to state-funded school construction would not increase bid-costs. To the contrary, bids on prevailing wage projects would be lower in a large part of the state.

The second study by Professor Atalah yields mixed results regarding the cost impact of prevailing wages.²⁸ This examination is based on the same sample of over 8,000 school project bids used in the study described above. This study compares bids that were submitted by different trades that did and did not pay union rates. Results indicate that all bids and winning

²⁴ See Herbert Weisberg. 2002. “Analysis of Regression and Surveys in Ohio LSC Report on S.B. 102 on Claimed Cost Savings from Exempting School Construction from Prevailing Wage Requirements,” p. 1. Accessed at: http://www.ctnewsjunkie.com/upload/2015/OSU_Study.pdf.

²⁵ “Union studies dispute prevailing-wage claim,” Catherine Candisky, *Columbus Dispatch*, July 21, 2002. Accessed at: <http://www.necanet.org/news/news-release-archive/news/2002/07/31/union-studies-dispute-prevailing-wage-claim->

²⁶ See “Chapter 4115: Wages and Hours on Public Works,” LA Writer, Ohio Laws and Rules. Accessed at: <http://codes.ohio.gov/orc/4115>.

²⁷ Atalah, Alan. 2013. “Comparison of Union and Nonunion Bids on Ohio School Facilities Commission Construction Projects,” *International Journal of Economics and Management Engineering*, Vol. 3, Issue 1, pp. 29-35.

²⁸ Alan Atalah. 2013. “Impact of Prevailing Wages on the Cost among the Various Construction Trades,” *Journal of Civil Engineering and Architecture*, Vol. 7, No. 4, pp. 670-676.

bids— adjusted by school square foot size— were not higher for 15 of the 18 trades (83.3%) that paid union rates compared to the same trades that did not pay union rates. Specifically, all bids and winning bids were higher for union contractors doing three types of work (existing conditions, plumbing, and earthwork). In 2 of the 18 trade categories (11.1%), all bids and winning bids submitted by union contractors were lower. Specifically, HVAC and electrical union contracts had lower bid prices. There were no statistically significant differences in bid-costs per square foot for 72.2% of the other trades (13 out of 18 classifications), regardless of payment of union wage and benefit rates.²⁹ In sum, the studies by Professor Atalah find that, by and large, the payment of union wage rates are not associated with increased bid costs. There are a few cases where bids are higher for some trades when union rates are paid, but there are also a few cases where bids are lower for some trades when union rates are paid. Moreover, there is additional evidence that, for the southern region of the state, bids based on the payment of union wages are lower than bids based on nonunion wage rates.

In a study that is particularly relevant to Ohio, Professor Peter Philips examined school construction costs in Kentucky, Michigan, and Ohio during periods in the 1990s when prevailing wage policies for school projects changed within these states. Professor Philips finds that there was no statistically significant difference in school construction costs as Kentucky, Michigan, and Ohio introduced and repealed prevailing wage requirements for public school construction.³⁰

A 2014 study by Jeffrey Waddoups and David May examines the effect of responsible contracting policies on school construction costs in Ohio.³¹ These policies required contractors to incorporate health insurance benefits and other obligatory practices into their bids. For some school districts, the standards included the payment of prevailing wages and related requirements, such as the payment of retirement benefits and the participation in apprenticeship programs. The responsible contractor policies started in 2000, and an examination of school construction bids from 1997 to 2008 reveals no statistically discernible impact of the policies on construction bid costs.

Other Studies on Prevailing Wage Laws and School Construction Costs

The studies from Ohio are consistent with the preponderance of peer-reviewed research examining the effect of prevailing wage requirement on school construction costs. For example, in two studies that examine costs of over 4,000 schools built in the United States, Professors Azari-Rad, Philips, and Prus fail to find any statistically significant³² cost difference between schools built in states with and without prevailing wage laws.³³

²⁹ These projects include the trades involved in the following Construction Specifications Institute categories: communications, concrete, conveying equipment, electronic safety and security, equipment, finishing, fire suppression, furnishings, masonry, openings, structural steel, thermal and moisture protection, and wood, plastics and composites work.

³⁰ See Peter Philips, "A Comparison of Public School Construction Costs in Three Midwestern States that have Changed Their Prevailing Wage Laws in the 1990s," February 2001. Accessed at: http://www.faircontracting.org/PDFs/prevailing_wages/Public_School%20Peter%20Phillips.pdf.

³¹ See Jeffrey Waddoups and David May, "Do Responsible Contractor Policies Increase Construction Bid Costs?" *Industrial Relations*, Vol. 53, No. 2, April, 2014. Accessed at: <http://onlinelibrary.wiley.com/doi/10.1111/irel.12056/abstract>.

³² A statistically significant difference is likely not due to chance, implying causation. A difference that is not statistically significant is likely due to chance, implying the lack of causation.

³³ See Hamid Azari-Rad, Peter Philips and Mark Prus. 2003 'State Prevailing Wage Laws and School Construction Costs.' *Industrial Relations*, Vol. 42, No. 3, pp. 445-457 and Hamid Azari-Rad, Peter Philips and Mark Prus.

Several studies have taken advantage of the introduction of a prevailing wage policy in British Columbia to compare school construction costs. This policy is similar to the relatively strong prevailing wage laws in Washington and Illinois. Professors Bilginsoy and Philips were the first to examine the impact of British Columbia's Skill Development and Fair Wage Policy on school construction costs.³⁴ This study takes a number of factors into consideration—including the construction business cycle, number of competitors, type of school, and a time trend. Results from the analysis of 54 projects indicate that construction costs under the policy were not statistically different from costs of schools built before the introduction of prevailing wages.³⁵

Professors Duncan, Philips, and Prus examine the effect of British Columbia's prevailing wage standard by including a control group of private school projects.³⁶ This analysis indicates that before the introduction of the prevailing wage policy, the cost of building public schools was approximately 40% more expensive than the costs of comparable private schools.³⁷ This cost differential did not change after the wage policy was introduced. These authors have also used the British Columbian example to study the effect of prevailing wage laws on the productivity and efficiency of construction. They find that prior to the introduction of the wage legislation, public school projects were 16% to 19% smaller, in terms of square feet, than comparable private structures (given the same project expenditure). This size differential did not change after the policy was in effect.³⁸ These results suggest that prevailing wage requirements do not alter labor or other input utilization in a way that significantly affects the relative size of covered and uncovered projects. The authors also find that average total efficiency for public school construction is 94.6% (100% is optimal construction efficiency).³⁹ Average efficiency for projects covered by the introductory stage of British Columbia's construction wage legislation was 86.6%. However, this policy mandated apprenticeship training requiring journeymen to divide time between teaching and building, which can explain the decrease in efficiency when the policy was first introduced. On the other hand, by the time of the expansion of the policy 17 months later, the average efficiency of covered projects *increased* to 99.8%. These findings suggest that the introduction of prevailing wage laws initially disrupted construction efficiency. However, in a relatively short period of time, the construction industry adjusted to wage requirements by actually improving overall construction efficiency in a way that is consistent

2002. "Making Hay When It Rains: The Effect Prevailing Wage Regulations, Scale Economies, Seasonal, Cyclical and Local Business Patterns Have on School Construction Costs." *Journal of Education Finance*, Vol.27, 997-1012.

³⁴ Cihan Bilginsoy and Peter Philips. 2000. "Prevailing Wage Regulations and School Construction Costs: Evidence from British Columbia." *Journal of Education Finance*, Vol. 24, 415-432.

³⁵ Statistical analysis makes a distinction between 'statistically significant' and 'statistically insignificant' results. A statistically significant result is unlikely to have occurred due to chance. If a result is statistically insignificant, then the measured result is likely to have occurred due to chance.

³⁶ Kevin Duncan, Peter Philips, and Mark Prus. 2014. "Prevailing Wage Regulations and School Construction Costs: Cumulative Evidence from British Columbia." *Industrial Relations*, Vol. 53, No. 4, October, pp. 593-616.

³⁷ Professors Duncan and Prus examine the effect of the British Columbian wage policy on assorted building types, (assembly halls, hospitals, offices, schools, etc., and find a similar effect. See Duncan, K. and Prus, M. 2005. "Prevailing Wage Laws and Construction Costs: Evidence from British Columbia's Skills Development and Fair Wage Policy" in *The Economics of Prevailing Wage Laws*, Azari-Rad, Hamid, Philips, Peter and Prus, Mark, eds. (Aldershot, G.B.: Ashgate), pp. 123-148.

³⁸ Kevin Duncan, Peter Philips, and Mark Prus. 2006. "Prevailing Wage Legislation and Public School Construction Efficiency: A Stochastic Frontier Approach," *Construction Management and Economics*, Vol. 24, June 2006. pp. 625-634.

³⁹ Kevin Duncan, Peter Philips, and Mark Prus. 2009. "The Effects of Prevailing Wage Regulations on Construction Efficiency in British Columbia," *International Journal of Construction Education and Research*, Vol. 5, No.1, pp. 63-78.

with stable total costs. A similar pattern was observed with respect to cost efficiency.⁴⁰ All of these studies are based on the examination of between 420 and 550 school projects. Taken together, these studies of prevailing wages in British Columbia provide a comprehensive analysis that fails to find an effect on construction costs or efficiency consistent with the view that prevailing wages increase construction costs.

Professors Keller and Hartman compare labor costs under prevailing wage regulations and “open shop” conditions and report that Pennsylvania’s prevailing wage law adds, on average, 2.25% to the cost of building public schools, though this analysis is based on the flawed wage differential method.⁴¹ In a comparison of about 2,600 schools built in the United States, Vincent and Monkkonen report a prevailing wage cost effect ranging between 8% and 13%.⁴² The data used in this study is similar to that used in the studies by Professors Azari-Rad, Philips, and Prus who find no statistically significant prevailing wage cost impact. One flaw, however, in Professor Vincent and Monkkonen’s analysis is that they do not consider the effect of economic conditions on costs. Professors Azari-Rad, Philips and Prus find that doubling the unemployment rate within a state can reduce school construction costs by as much as 21%. If states built under prevailing wage requirements also have lower unemployment rates, then the prevailing wage cost estimate of 8% to 13% is too high in Vincent and Monkkonen’s study.

In addition to these studies that focus on school construction, six other peer-reviewed studies have examined the effect of prevailing wage laws on construction costs for different types of projects, such as highways, low-income housing, and offices.⁴³ Results from only two of these studies (33%) suggest that prevailing wage requirements increase costs. Of the combined 17 peer-reviewed studies that examine this issue, fully 76% find that prevailing wages are not associated with increased construction costs.

Why don’t prevailing wages increase construction costs? First, labor costs are a low and historically declining percentage of total costs in the construction industry— approximately 23% of all building costs in the United States.⁴⁴ As the data presented in Figure 1 indicate, contractors reduce expenditures on materials, fuels, and rental equipment, and accept marginally lower profit margins when wages are higher.⁴⁵ Finally, peer-reviewed research indicates that when wages increase in the construction industry, contractors respond by utilizing more capital equipment

⁴⁰ Kevin Duncan, Peter Philips, and Mark Prus. 2012. “Using Stochastic Frontier Regression to Estimate the Construction Cost Efficiency of Prevailing Wage Laws.” *Engineering, Construction and Architectural Management*, Vol. 19, No. 3, pp 320-334.

⁴¹ This 2001 study is the last peer-reviewed paper based on the wage differential method. See Keller, Edward C. and William T. Hartman. 2001 ‘Prevailing Wage Rates: The Effects on School Construction Costs, Levels of Taxation, and State Reimbursements,’ *Journal of Education Finance*, Vol. 27, pp. 713-728.

⁴² See Jeffrey Vincent, Jeffrey and Paavo Monkkonen. 2010. “The Impact of State Regulations on the Cost of Public School Construction,” *Journal of Education Finance*, Vol. 35, No. 4, spring, pp. 313-330.

⁴³ For a review of these studies see Kevin Duncan, “The Effect of Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations on Highway Maintenance Costs,” *Industrial and Labor Relations Review*, January, 2015, Vol. 68, No. 1, pp. 212-237. Accessed at: <http://ilr.sagepub.com/content/68/1.toc>.

⁴⁴ See the 2012 U.S. Census Bureau, *Economic Census of Construction*, Construction: Geographic Area Series: Detailed Statistics for Establishments, accessed at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_23A1&prodType=table.

⁴⁵ Kevin Duncan and Alex Lantsberg. 2015. “How Weakening Wisconsin’s Prevailing Wage Policy Would Affect Public Construction Costs and Economic Activity.” Accessed at: <http://www.faircontracting.org/wp-content/uploads/2015/05/How-Weakening-Wisconsin%E2%80%99s-Prevailing-Wage-Policy-Would-Affect-Public-Construction-Costs-and-Economic-Activity2.pdf>.

and substituting skilled workers for less-productive counterparts.⁴⁶ Since labor costs represent a small portion of overall costs, relatively minor changes are needed to offset the effect of the wage policy.

Prevailing Wage Laws and Construction Worker Income, Poverty, and Reliance on Public Assistance

Background on the Statistical Analysis of Repealing or Weakening Prevailing Wages

This section compares labor market outcomes for construction workers residing in a 9-state region with Ohio near the center (Figure 1). The states are categorized by those with strong or average prevailing wage laws (PWLs) and those with weak or no prevailing wage policies.⁴⁷ Note that Indiana observations starting in July 2015 and West Virginia observations starting in May 2016 are classified as occurring in weak or no law states because these states repealed prevailing wage during the period of analysis.⁴⁸ Data from the Annual Social and Economic Supplement (ASEC) of the *Current Population Survey* contain economic and demographic information on a large number of construction workers.⁴⁹ The *Current Population Survey* is a random poll of households, jointly sponsored by the U.S. Census Bureau and the U.S. Bureau of Labor Statistics. Weights are provided by statisticians at the U.S. Census Bureau to match the survey sample to the overall population in each state.

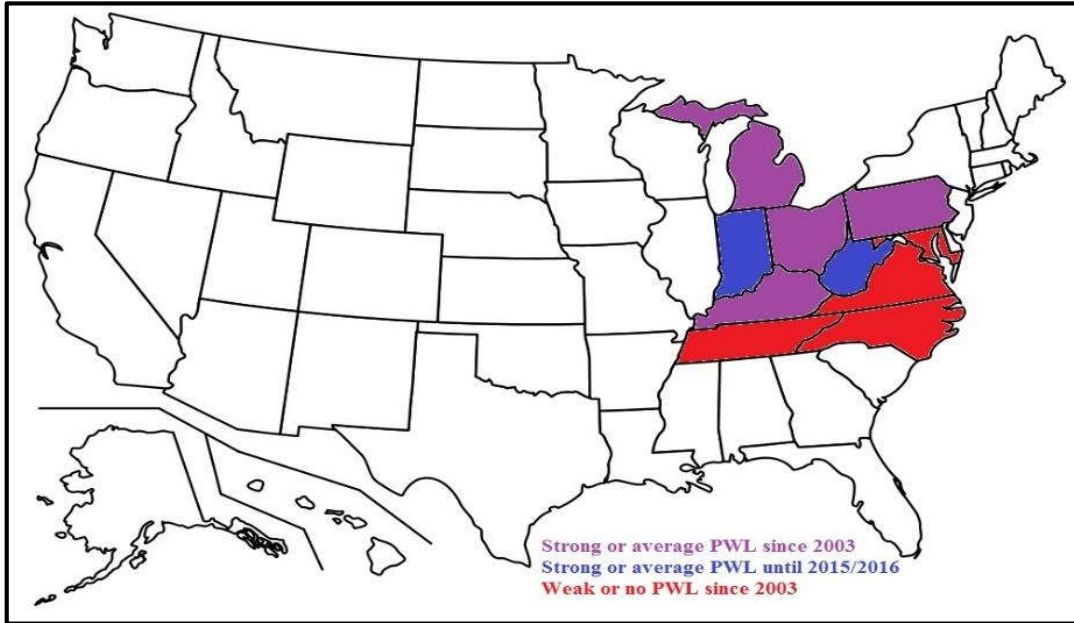
Figure 1. Map of Ohio and Eight Neighboring States Used in Analysis, 2003-2016

⁴⁶ See William Blankenau and Steven Cassou, "Industry Differences in the Elasticity of Substitution and Rate of Biased Technological Change between Skilled and Unskilled Labor." *Applied Economics*, 2011, Vol. 43, pp. 3129-3142 and Edward Balistreri, Christine McDaniel and Eina Vivian Wong, "An Estimation of U.S. Industry-Level Capital-Labor Substitution Elasticities: Support for Cobb-Douglas." *The North American Journal of Economics and Finance*, 2003, Vol. 14, No. 3, 343-356.

⁴⁷ In 1995 Armand Thieblot rated state-level prevailing wage laws based on factors including coverage thresholds, type of work excluded/included, and the determination of wage rates, etc. See Thieblot Armand J. 1995. "State Prevailing Wage Laws. An Assessment at the Start of 1995." Prepared for Associated Builders and Contractors, Inc. We updated Thieblot's classifications reflective of subsequent policy changes and other research. A description of state-level prevailing wage laws is available at: <http://www.dol.gov/whd/state/dollar2011.htm#1>. A summary of recent state-level prevailing wage characteristics is available at www.cga.ct.gov/2010/rpt/2010-R-0526.htm.

⁴⁸ See Indiana Department of Labor, "Common Construction Wage Home." Accessed at <http://www.in.gov/dol/2723.htm>. See WSAZ, "UPDATE: West Virginia repeal of state prevailing wage takes effect" (May 5, 2016). Accessed at: <http://www.wsaz.com/content/news/West-Virginia-House-to-vote-on-repeal-of-prevailing-wage-366679441.html>

⁴⁹ See "Poverty," *Current Population Survey Annual Social and Economic Supplement*, US Census Bureau. Accessed at: <http://www.census.gov/hhes/www/poverty/publications/pubs-cps.html>.



To understand the actual and unique impact that repealing or weakening prevailing wage laws have on worker incomes and public sector budgets, the statistical method of “regression analysis” is utilized. This statistical technique, a “curve fitting” method, allows researchers to compare labor market outcomes between workers in the two groups of states, taking other individual characteristics into consideration. Statistical analysis also allows researchers to determine if a measured difference is statistically significant or not. A statistically significant finding is an indication of that the relationship may be causal.

Results are reported from a regional analysis of the nine states— Ohio and eight neighboring states— using Heckman regression models and Heckman probit models— and are compared to an advanced national analysis of all states using similar data from 2004 to 2013.⁵⁰ States that had a prevailing wage statute classified as either “strong” or “average” from 2003 through 2016 include Ohio, Michigan, Pennsylvania, and Kentucky. States in the region with a “weak” law or without a prevailing wage law include Maryland, North Carolina, Tennessee, and Virginia. As discussed previously, Indiana and West Virginia are in the strong or average group of states until the month in which their respective repeals became effective.

There are limitations to this statistical approach. First, data from the *Current Population Survey* reports a worker’s state of residence rather than state of employment, so the results may be biased by workers who live in states with a weak or no prevailing wage law but work in states with a strong or average prevailing wage law (e.g., living in Virginia but working on a project in Ohio during the year) and vice-versa. Second, the data is based on household survey responses rather than on administrative payroll reports. There may be more potential for human error in reporting income and government assistance than official payroll records. A recent paper by Professor Bruce Meyer at the University of Chicago and Nikolas Mittag at CERGE, Charles

⁵⁰ See Frank Manzo IV, Alex Lantsberg, and Kevin Duncan, “The Economic, Fiscal, and Social Impacts of State Prevailing Wage Laws: Choosing Between the High Road and the Low Road in the Construction Industry.” Illinois Economic Policy Institute, Smart Cities Prevail, and Colorado State University–Pueblo. Accessed at: <https://illinoisepi.files.wordpress.com/2017/03/pw-national-impact-study-final2-9-16.pdf>.

University has found that the *Current Population Survey* and other household data considerably underreport government transfers of income.⁵¹ Using data from New York, the researchers find that the *Current Population Survey* misses 40% of all Supplemental Nutrition Assistance Program (SNAP) food stamp recipients. The largest instance of underreporting is for single mother households. However, blue-collar construction occupations are male-dominated, so underreporting is a smaller issue for this industry. Nevertheless, all government assistance findings are likely to be *conservative* estimates as a result. The final limitations are those associated with all statistical models, such as lurking and unobservable variables.

Summary Statistics of the CPS-ASEC Data

Table 1 provides summary statistics for all employed blue-collar construction workers in the dataset, by state of employment. Blue-collar construction workers are defined as all workers employed in “construction occupations,” such as construction laborers, operating engineers, electricians, carpenters, plumbers, pipefitters, and painters. These numbers also describe “what is.” For example, without considering any other factors, what is the average wage and salary income of a blue-collar construction worker in a state with a strong or average prevailing wage law compared to the same income in a state with a weak or no law?

The blue-collar construction workforce is better-educated in states with a strong or average law than in states with a weak or no law (Table 1). For blue-collar construction workers in both types of states, white non-Latino workers account for the majority of the workforce and only about 3% of the workforce is female. However, the share of blue-collar construction workers with a college degree or some college-level instruction (which can include apprenticeship training) is 29.9% in states with a strong or average prevailing wage law, compared to just 23.0% in states with a weak or no law. An estimated 30.3% of the blue-collar construction workforce in Ohio has some college experience or a college degree.

Table 1. Information on Blue-Collar Construction Workers in Ohio and Eight Neighboring States, 2003-2016

Summary Statistics	Ohio	Strong/Average PWL (incl. OH)	Weak/No PWL
Observations in labor force (Weighted)	37,543 (6,214,553)	196,131 (27,765,631)	76,636 (12,735,942)
Employed construction worker observations (Weighted)	1,326 (219,155)	7,550 (1,054,188)	3,992 (640,407)
<i>Demographics</i>			
White, non-Latino	88.7%	82.0%	59.5%
Female	3.3%	2.6%	2.7%
High school degree or less	69.7%	70.1%	77.0%
Some college, no degree	19.8%	16.4%	13.1%
College degree	10.5%	13.5%	9.9%
<i>Poverty, Government Assistance, and Taxes</i>			
Real wage and salary income*	\$42,379	\$43,327	\$37,700

⁵¹ See Bruce Meyer and Nikolas Mittag, “Using Linked Survey and Administrative Data to Better Measure Income: Implications for Poverty, Program Effectiveness and Holes in the Safety Net.” National Bureau of Economic Research (NBER), 2015, Working Paper 21676. Accessed at: <http://www.nber.org/papers/w21676>.

THE ECONOMIC, FISCAL, AND SOCIAL EFFECTS OF OHIO’S PREVAILING WAGE LAW

Usual hours worked per week	34.2	35.0	33.9
Included in employer-provided health plan	93.1%	89.8%	85.0%
Has a pension plan at work	47.6%	42.9%	27.0%
Lives below official poverty line	8.1%	7.1%	12.4%
Receives Earned Income Tax Credits (EITC)	12.6%	11.3%	16.4%

Source: *Current Population Survey*, Annual Social and Economic Supplement (2003-2016). *Reported only for those workers with positive earnings.

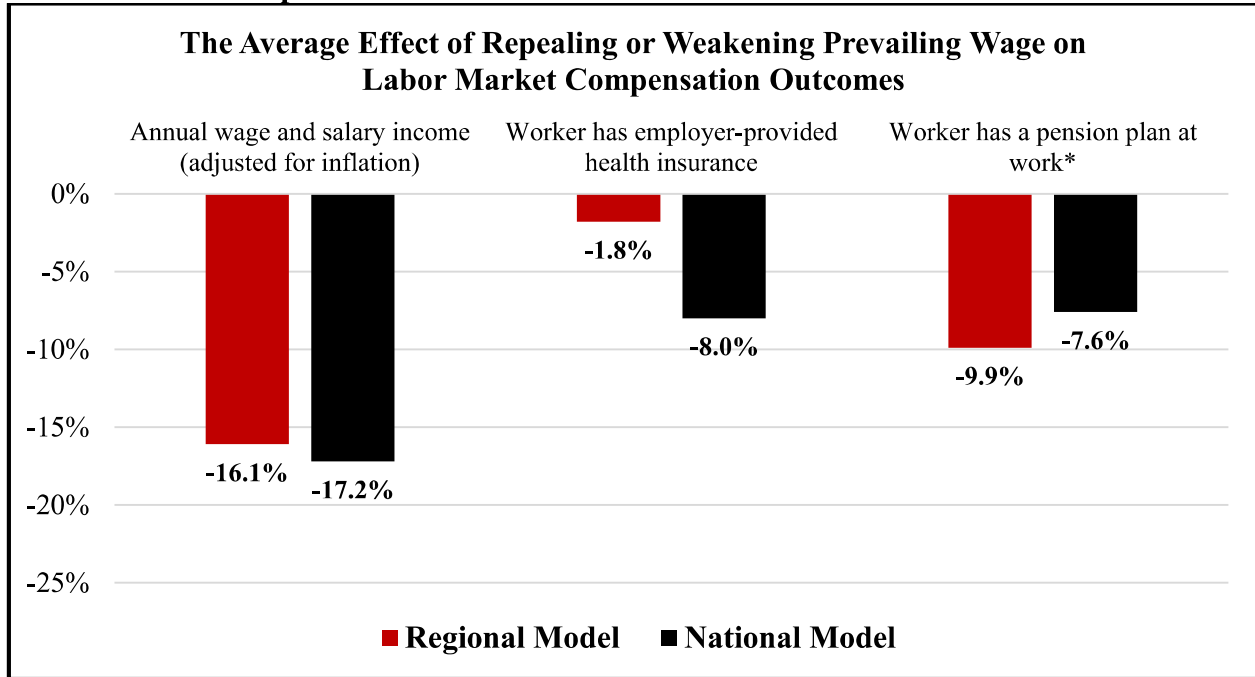
As shown in Table 1, personal economic outcomes contrast sharply between the two groups of states. The average wage and salary income for blue-collar construction workers was \$43,327 in states with a strong or average prevailing wage law in the region, or \$5,627 greater than their counterparts in states with a weak or no law (\$37,700). Isolated from their regional peers in states with a strong or average prevailing wage law, blue-collar construction workers in Ohio also earned \$4,679 more annually (\$42,379) than their counterparts in states with a weak or no law. In the region’s states with an effective prevailing wage law, 89.8% of blue-collar construction workers had health insurance and 42.9% had a pension plan at work. Conversely, in nearby states without an adequate prevailing wage law, only 85.0% of blue-collar construction workers had employer-provided health insurance and just 27.0% had a pension plan at work. The respective figures for Ohio were 93.1% covered by an employer-provided health insurance plan and 47.6% covered by a pension— both significantly better than the outcomes in neighboring states with a weak or no law.

Other data reported in Table 1 indicate that blue-collar construction workers are more likely to be impoverished and require public assistance in states with a weak or no prevailing wage law. Fewer blue-collar construction workers earned an annual income that placed them below the official poverty line (7.1%) and fewer qualified for, and received, Earned Income Tax Credits (11.3%) in the states with strong or average prevailing wage laws than in those without (12.4% and 16.4%, respectively). Once again, when isolated from their strong or average law peers, Ohio fared much better than neighboring states with a weak or no law; in Ohio, 8.1% of the blue-collar construction workforce earns less than the poverty line and 12.6% received Earned Income Tax Credits.

The Cost of Weakening or Repealing Prevailing Wage on Worker Incomes and Employee Benefits

While the summary statistics of Table 1 report “what is,” the remainder of this section investigates “how much” strong or average prevailing wage legislation is uniquely responsible for these outcomes. Determining the causal impact of prevailing wage after netting out the effects of other variables allows us to assess the costs of legislation that would weaken or repeal prevailing wage laws.

Figure 2. The Impact of Repealing or Weakening Prevailing Wage on Labor Market Compensation Outcomes



Source: Authors’ analysis of the *Current Population Survey*, Annual Social and Economic Supplement (2003-2016). For full regression results in .txt format, please contact author Frank Manzo IV at fmanzo@illinoisepi.org. *For the effect on pension coverage in the national model, the results are only significant at $P < |0.10|$.

The effect of strong or average prevailing wage laws in the region appears to be consistent with overall estimates for the rest of the country, as depicted in Figure 2. The average impact of repealing or weakening prevailing wage is to reduce blue-collar construction worker incomes by 16.1% in the region (Figure 2). In addition, gutting strong or average prevailing wage laws lowers the probability that a blue-collar construction worker has employer-provided health insurance by 1.8 percentage points and the probability that he or she has a pension plan at work by 9.9 percentage points. All of these results are statistically significant. The advanced national model by Manzo, Lantsberg, and Duncan finds that the impact of repealing prevailing wage across the country is a 17.2% decrease in wages, an 8.0 percentage-point reduction in health coverage, and a 7.6 percentage-point drop in pension coverage— but the latter is not significant at the traditional 5% confidence level.⁵² Weakening or repealing prevailing wage in Ohio would significantly decrease private health and retirement coverage, forcing blue-collar construction workers who were previously self-sufficient to rely on public insurance programs.

Other academic research that examines the benefits of prevailing wage laws by Professor Waddoups has explored the connection between the lack of employment-based health insurance and the disproportionate uncompensated care costs that accrue to public hospitals and, by

⁵² See Frank Manzo IV, Alex Lantsberg, and Kevin Duncan, “The Economic, Fiscal, and Social Impacts of State Prevailing Wage Laws: Choosing Between the High Road and the Low Road in the Construction Industry.” Illinois Economic Policy Institute, Smart Cities Prevail, and Colorado State University–Pueblo. Accessed at: <https://illinoisepi.files.wordpress.com/2017/03/pw-national-impact-study-final2-9-16.pdf>.

extension, the community.⁵³ In particular, Waddoups’ study documented the particularly low incidence of employment-based health insurance among construction workers and the corresponding disproportionately high incidence of uncompensated care among construction workers at a local public hospital. The findings clearly demonstrate that a large share of uncompensated care is attributable to the construction industry relative to its size, which means that local taxes supporting the hospital are higher than they would otherwise be. To the extent that cross-subsidies from paying patients cover uncompensated care costs, prices of health care—and thus, insurance prices—are higher than they would be without the high levels of uncompensated care.

The Social Cost of Weakening or Repealing Prevailing Wage

Repealing prevailing wage reduces worker earnings and slashes employee benefits, resulting in fewer construction workers in the middle class. Accordingly, these economic realities should tend to increase reliance on government programs—hurting public sector budgets. Table 3 presents results from regional analyses and compares them to national findings by Manzo, Lantsberg, and Duncan.⁵⁴

Results reported in Table 3 indicate that weakening or repealing prevailing wage laws increases the probability that a blue-collar construction worker earns less than the official poverty line and that he or she receives Earned Income Tax Credits (EITC). In the regional models, gutting a strong or average prevailing wage law is found to increase poverty by 7.3 percentage points and EITC reliance by 6.3 percentage points. Though larger, the regional findings are similar to the national estimates. Note that the regional models account for the types of workers who self-select into blue-collar construction occupations, who may otherwise be more likely to fall below the poverty line due to demographic factors or lower levels of educational attainment on average.

Table 3. The Impact of Repealing or Weakening Prevailing Wage on Poverty and Earned Income Tax Credits

Average Effect of Repealing or Weakening a Strong or Average PWL on:	Regional Model	National Model
Worker living below official poverty line	+7.3%	+3.1%
Worker receiving Earned Income Tax Credits (EITC)	+6.3%	0.0%

Source: Authors’ analysis of the *Current Population Survey*, Annual Social and Economic Supplement (2003-2016). For full regression results in .txt format, please contact author Frank Manzo IV at fmanzo@illinoisepi.org.

⁵³ See Jeff Waddoups, “Health Care Subsidies in Construction: Does the Public Sector Subsidize Low Wage Contractors?” Accessed at: http://www.researchgate.net/publication/237102337_Health_Care_Subsidies_in_Construction_Does_the_Public_Sector_Subsidize_Low_Wage_Contractors.

⁵⁴ See Frank Manzo IV, Alex Lantsberg, and Kevin Duncan, “The Economic, Fiscal, and Social Impacts of State Prevailing Wage Laws: Choosing Between the High Road and the Low Road in the Construction Industry.” Illinois Economic Policy Institute, Smart Cities Prevail, and Colorado State University–Pueblo. Accessed at: <https://illinoisepi.files.wordpress.com/2017/03/pw-national-impact-study-final2-9-16.pdf>.

Table 4 aggregates the findings to forecast the number of affected workers if Ohio were to weaken or repeal its strong or average prevailing wage law. Note that, given the finding by Professors Meyer and Mittag that government assistance is actually underreported by the *Current Population Survey* Annual Social and Economic Supplement (ASEC), Table 4 likely provides conservative estimates.⁵⁵ This predictive analysis is also a “static” assessment and assumes that nothing else changes other than the state’s prevailing wage law.

Table 4 applies the regional impacts to Ohio. The top-line figure in Table 4 is the average annual number of blue-collar construction workers in each state from 2003 through 2016. These estimates do not include extraction occupations, which are often grouped with construction workers. The rest of the table incorporates the data to understand how Ohio would be different by gutting its prevailing wage law, reported in percentage values and total worker values.

The data forecast that thousands of Ohio construction workers would require government assistance if the state weakened or repealed its prevailing wage law (Table 4). The average annual income of Ohio’s blue-collar construction workforce would be expected to decline by 16.1%. For over 16,000 workers, the wage cut would be so significant that they would fall below the official poverty line, qualifying them for Supplemental Nutrition Assistance Program (SNAP) government benefits. In addition, approximately 13,800 blue-collar construction workers would newly qualify for Earned Income Tax Credit (EITC) assistance.

Furthermore, thousands of blue-collar construction workers would lose their employer-provided health insurance and pension plan if Ohio were to weaken or repeal its prevailing wage law. About 3,900 blue-collar construction workers would lose their employer-provided health insurance coverage and 21,700 would lose their employer-provided pension plan if Ohio were to gut prevailing wage. By reducing pension and health coverage, repeal of prevailing wage would force thousands of blue-collar construction workers onto public retirement and public health insurance programs, increasing costs to taxpayers.

Table 4. Estimated Social Impact of Repealing or Weakening Prevailing Wages in Ohio

Economic or Public Sector Budget Outcome	Actual (2003-2016)	With Weak or No PWL	Estimated Change
Average workers in construction occupations	219,200	219,200	--
Worker living below official poverty line	8.1%	15.4%	+7.3%
	17,800	33,800	+16,000
Workers receiving Earned Income Tax Credits (EITC)	12.6%	18.9%	+6.3%
	27,600	41,400	+13,800

⁵⁵ See Bruce Meyer and Nikolas Mittag, “Using Linked Survey and Administrative Data to Better Measure Income: Implications for Poverty, Program Effectiveness and Holes in the Safety Net.” National Bureau of Economic Research (NBER), 2015, Working Paper 21676. Accessed at: <http://www.nber.org/papers/w21676>.

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Workers with employer-provided health insurance	93.1%	91.3%	-1.8%
	204,000	200,100	-3,900
Workers with a pension plan at work	47.8%	37.9%	-9.9%
	104,800	83,100	-21,700

Source: Authors' analysis of the *Current Population Survey*, Annual Social and Economic Supplement (2003-2016). All estimates rounded to the nearest hundred.

Prevailing Wage Laws and Military Veterans in the Construction Industry

A recent, first-of-its-kind national study commissioned by VoteVets.org in May 2016, *The Impact of Prevailing Wage Laws on Military Veterans: An Economic and Labor Market Analysis*, finds that veterans in particular are worse off by weakening or repealing prevailing wage laws.⁵⁶ Independent of the authors, this report was peer-reviewed by Abdur Chowdhury, Professor of Economics at Marquette University in February 2017. Chowdhury notes:

*“Their research uses reliable data and is based on sound analytical work. Therefore, their conclusions are robust. They convincingly show that a repeal of state prevailing wage laws would be an economic disaster for veterans.”*⁵⁷

This section applies results from the national study to estimate the impact that weakening or repealing prevailing wage would have on veterans working in Ohio's construction sector.

Veterans are more likely to work in construction than non-veterans (Table 5). Nationally, veterans accounted for 6.9% of all blue-collar construction workers in 2014. In Ohio, veterans made up an even larger share of the construction workforce. Approximately 8.5% of all blue-collar construction workers in Ohio were military veterans, well above the U.S. average. Any given construction worker was 2.5 percentage-points more likely to be a military veteran than another individual in the overall Ohio economy. Note that the difference between the veteran share of the construction workforce relative to the veteran share of all workers is generally higher in states with strong or average prevailing wage laws in the region.

Construction and extraction careers are among the fastest-growing major occupations for workers in Ohio (Table 6). Construction and extraction jobs are the 3rd-fastest growing occupation in the state, offering opportunities for many blue-collar workers—veteran and nonveteran alike. By 2022, construction and extraction occupations will have grown by 16.0%, adding nearly 30,000 new jobs.⁵⁸ This expected growth exceeds projected employment growth in all occupations (8.3%). The U.S. military has responded to these employment projections through the United States Military Apprenticeship Program (USMAP), which now accounts for 21.4% of all registered apprentices in the country.⁵⁹ The typical construction apprenticeship through USMAP requires 8,000 hours of both classroom time and on-the-job training. As the construction industry grows and replaces retiring workers, apprentices from the military will become an increasingly important source of skilled construction labor.

⁵⁶ See Frank Manzo IV, Robert Bruno, and Kevin Duncan, “The Impact of Prevailing Wage Laws on Military Veterans: An Economic and Labor Market Analysis.” Illinois Economic Policy Institute, University of Illinois at Urbana-Champaign, and Colorado State University–Pueblo. Accessed at: http://b.3cdn.net/votevets/62350ae9afd6c4c714_0jm6bsc5b.pdf.

⁵⁷ See Abdur Chowdhury, “The Impact of Repealing Prevailing Wage Laws on Military Veterans,” Marquette University. Accessed at <https://medium.com/@abdur.chowdhury/the-impact-of-repealing-prevailing-wage-laws-on-military-veterans-9c537366304a#t3s1elaw1>.

⁵⁸ See Ohio Department of Job and Family Services, “2022 Ohio Job Outlook: Employment Projections.” Accessed at: http://ohiolmi.com/proj/Projections/Ohio_Job_Outlook_2012-2022.pdf.

⁵⁹ See Frank Manzo IV, Robert Bruno, and Kevin Duncan, “The Impact of Prevailing Wage Laws on Military Veterans: An Economic and Labor Market Analysis.” Illinois Economic Policy Institute, University of Illinois at Urbana-Champaign, and Colorado State University–Pueblo. Accessed at: http://b.3cdn.net/votevets/62350ae9afd6c4c714_0jm6bsc5b.pdf.

Table 5. Share of Veterans Employed in the Workforce, by State and Occupation, 2014

State	Veteran Share of All Workers	Veteran Share of Construction Workforce	Difference: 2014
<i>Strong/Average PWL</i>			
Ohio	6.0%	8.5%	+2.5%
Michigan	5.3%	8.4%	+3.1%
Pennsylvania	5.6%	8.2%	+2.6%
Kentucky	6.4%	7.5%	+1.1%
Indiana*	5.8%	8.6%	+2.8%
West Virginia*	6.6%	7.4%	+0.8%
<i>Weak/No PWL</i>			
Maryland	6.9%	8.6%	+1.7%
North Carolina	6.9%	5.6%	-1.3%
Tennessee	7.0%	8.2%	+1.2%
Virginia	9.6%	11.3%	+1.7%
United States	5.8%	6.9%	+1.1%

Source: Authors' application of Frank Manzo IV, Robert Bruno, and Kevin Duncan, "The Impact of Prevailing Wage Laws on Military Veterans: An Economic and Labor Market Analysis," 2016. Study commissioned by VoteVets.org.

*Indiana became a weak/no PWL state in July 2015 and West Virginia became a weak/no PWL state in May 2016.

Table 6. Top 10 Fastest Growing Major Occupations in Ohio, by Growth Rate, 2012-2022

Rank	Fastest-Growing Major Occupations in Ohio	Growth: 2012-2022
<i>OH</i>	<i>Total</i>	8.3%
1	Healthcare support	24.1%
2	Healthcare practitioners and technical	16.8%
3	Construction and extraction	16.0%
4	Computer and mathematical	14.7%
5	Community and social services	13.7%
6	Personal care and service	13.5%
7	Education, training, and library	11.8%
8	Legal	10.8%
9	Cleaning and maintenance	9.6%
10	Business and financial	9.5%

Source: Ohio Department of Job and Family Services, 2022 Ohio Job Outlook: Employment Projections. Figure 14.

Ohio veterans who return home to become blue-collar construction workers and open construction companies have benefited substantially from prevailing wage. Prevailing wage protects local construction standards and ensures that blue-collar construction workers earn livable wages that reflect the markets in the communities where they live. By taking labor costs out of the equation, prevailing wage incentivizes contractors to compete efficiently over other factors— such as worker productivity, materials costs, technological advances and proficiencies, management practices, and profit margins. By preventing governmental units from undercutting privately-negotiated local wages, prevailing wage creates a level playing field for local businesses competing with out-of-area or foreign bidders.

Construction companies are more likely to be owned by veterans than non-construction businesses in Ohio (Table 7). Economic data reveal that 10.9% of all construction firms with paid employees in Ohio are majority-owned by veterans. By contrast, veteran business owners account for 9.8% of all companies throughout the state, a 1.1 percentage-point difference. The higher veteran share in construction means that prevailing wage changes would have disproportionate impacts on veteran contractors.

Veterans in Ohio's construction industry would be negatively affected if the state were to weaken or repeal prevailing wage. Blue-collar construction occupations would become less attractive because the middle-class careers would be converted into low-wage, low-benefit jobs. As discussed previously, gutting prevailing wage would reduce annual incomes by 16.1% in Ohio. Veterans working in construction would not be immune to this pay cut. It is worth noting, however, that the 16.1%-drop in this analysis is slightly above the national VoteVets.org study, which uses other data sources but finds that blue-collar construction workers would see their incomes fall by between 7% and 11%.⁶⁰

Table 7. Veteran-Owned Share of Businesses, Construction vs. All Firms, 2012

Veteran-Owned Share of Businesses	Share: 2012
Construction firms with paid employees	10.9%
All firms with paid employees	9.8%
Difference in veteran share of businesses	+1.1%

Source: Authors' analysis of Census Bureau (2012), 2012 *Survey of Business Owners*.

The cumulative economic impacts of weakening or repealing prevailing wage on military veterans working in construction are presented in Table 8. An estimated 4,100 blue-collar veterans would be expected to separate from their jobs in Ohio's construction occupations if prevailing wage was weakened or repealed, mainly because the occupation no longer provides for well-paying, middle-class careers. Additionally, the total income of all veterans employed in construction jobs would decline by \$275 million in the state and about 3,900 veterans would lose their employer-provided health coverage.

Table 8. Impact of Repealing or Weakening Prevailing Wage on Ohio Veterans

Impact of Repealing or Weakening Prevailing Wage on Ohio Veterans	2014 Value	As a Weak/No PWL State	Total Change
Veterans employed as construction workers	18,600	14,500	-4,100
Total wages and salaries for BCCW veterans	\$789.4 million	\$514.3 million	-\$275.1 million
BCCW veterans without health insurance	15,100	19,000	+3,900

Source: Authors' application of Frank Manzo IV, Robert Bruno, and Kevin Duncan, "The Impact of Prevailing Wage Laws on Military Veterans: An Economic and Labor Market Analysis," 2016. Study commissioned by VoteVets.org.

Non-monetary estimates rounded to the nearest hundred.

There are significant costs to weakening or repealing prevailing wage for Ohio's veterans. Weakening prevailing wage standards reduces the attractiveness of employment in a

⁶⁰ See Frank Manzo IV, Robert Bruno, and Kevin Duncan, "The Impact of Prevailing Wage Laws on Military Veterans: An Economic and Labor Market Analysis." Illinois Economic Policy Institute, University of Illinois at Urbana-Champaign, and Colorado State University-Pueblo. Accessed at: http://b.3cdn.net/votevets/62350ae9afd6c4c714_0jm6bsc5b.pdf.

construction occupation for veteran workers. By cutting the hourly wages of veterans, reducing the number of veterans with employer-provided health insurance, and shrinking the market share of veteran-owned construction companies, gutting prevailing wage would increase burdens on taxpayers and disproportionately harm veteran workers who served their country. Maintaining or strengthening prevailing wage in Ohio, on the other hand, would promote a middle-class, self-sufficient lifestyle for veterans choosing to work in construction.

Prevailing Wage Laws and Training in the Construction Industry

In addition to the fundamental goal of protecting local wage rates from distortions associated with public construction procurement, prevailing wage laws also facilitate worker training in the industry. Construction is distinct from other industries in that the inherent instability of building activity creates strong disincentives for employers and employees to invest in the type of training that leads to a highly skilled, efficient, and safe workforce.

Due to fluctuations in seasons and economic activity, construction is the most unstable sector of the U.S. economy. Much of construction is outdoor activity and as a result, construction employment varies with the season. For example, comparing employment during the four peak summer months to the slowest-four winter months indicates that construction employment decreased by 5.3% in the United States over the 2014-2015 period.⁶¹ This rate outpaced employment fluctuations in other seasonally-sensitive industries: a similar comparison over the same period indicates that employment in the U.S. leisure and hospitality industry and in retail trade fluctuated by 5.2% and 4.3%, respectively.⁶²

The end result of instability in the construction industry is a loose attachment between contractors and their employees. When work is available, contractors take on additional workers, but shed employees when a project is completed, the season comes to an end, or the economy slows. As a consequence, there is little incentive for contractors to incur the expenses associated with training. There is no guarantee that the trained worker will be retained and it is likely that at some point a trained employee may work for a competing contractor. From the worker's perspective, there is also little incentive to incur the costs of training due to intermittent spells of unemployment between building projects, transitions to work in other industries, and seasonal layoffs.⁶³ Economic fluctuations exacerbate the training problem in construction with downturns resulting in fewer jobs for trainable young people followed by a shortage of skilled workers when the economy expands.

The challenges associated with training workers exist alongside the need for a skilled labor force that can build customized projects. Unlike manufacturing where the product and the production process are uniform, the majority of construction "output" is not standardized. Outside of residential construction, the majority of building sites, designs, and logistics vary from project to project. Broadly trained craft workers are needed to adjust to the non-routine aspects of customized construction.

The industry has responded to the mismatch between strong disincentives to train and the need for a skilled, safe, and sustained workforce by creating formal apprenticeship training

⁶¹ These data are for all blue and white collar employees in the industry. The peak months in construction employment are typically June-September across the nation. December-March is marked by the lowest levels of employment. Data obtained from the Quarterly Census of Wages and Employment of the Bureau of Labor Statistics, U.S. Department of Labor. Accessed at: <http://www.bls.gov/cew/>.

⁶² Peak employment in the leisure and hospitality industry typically occur between May and August with the lowest employment between November-February. Peak employment in the retail industry occurs between October and January with low months between February and March. See the Quarterly Census of Employment and Wages. Accessed at: <http://www.bls.gov/cew/>.

⁶³ For a detailed explanation see Philips, Peter, "Dual Worlds: The Two Growth Paths in U.S. Construction," in *Building Chaos: An International Comparison of the Effects of Deregulation on the Construction*, (Peter Philips and Gerhard Bosch, eds.) Routledge Press, London, 2003.

programs. Apprenticeships typically involve a mix of on-the-job training and in-class theoretical education that covers the basic and specialized skills of a particular craft (for carpenters, electricians, and plumbers, etc.).⁶⁴ During the on-the-job component of training, the apprentice earns less than the fully-trained journeyworker.⁶⁵ With this arrangement the cost of training workers is shared between the apprentice and the employers who are sponsoring the training. Accordingly, apprenticeship programs address the disincentives that discourage employers and workers from pursuing training. Upon successful completion of the program, the apprentice becomes a certified journeyworker. The program results in a relatively homogenous skilled workforce in an industry that is otherwise largely free of certifications that reveal worker quality.

The Office of Apprenticeships at the U.S. Department of Labor works in conjunction with approved State Apprenticeship Agencies to set basic standards for formal apprenticeship and prevailing wage work. Within this framework, sponsors have freedom to determine program content, applicant qualifications, and other aspects of the program.⁶⁶ In the “open shop” segment of the construction industry, apprenticeship programs are sponsored by a single contractor or by groups of nonunion employers. These employers unilaterally determine program content, set entry requirements, select apprenticeships, and monitor trainee progress. In the unionized sector, apprenticeship training is jointly determined and managed by unions and signatory contractors.

There are other significant differences between “open shop” and union-sponsored apprenticeship programs. Funding for training in union programs is financed by a “cents per hour” fee that is part of the total wage and benefit package negotiated with signatory contractors. These types of fees are rare in open shop training arrangements where sponsoring contractors pay for the cost of training directly. The important distinction is that, under the union system, the costs of training the next generation of workers is included in the project bid and is paid by the project owner. This is not the case under the “open shop” arrangement.⁶⁷ Also, nonunion training programs such as those offered by the Associated Builders and Contractors are characterized by task driven and modular training with a lower priority placed on the full-scope craft training characteristic of union-sponsored training programs.⁶⁸ Training is obligatory for all construction workers in the unionized sector where the rotation of trainees among different contractors increases exposure to multiple aspects of the trade. On the other hand, formal apprenticeship training is not mandatory in the open shop segment where arrangements to rotate trainees among different contractors are not common.⁶⁹

⁶⁴ On-the-job training ranges between 6,000 to 8,000 hours (3-4 years) with in-class instruction ranging between 430 to 580 hours. See Bilginsoy, Cihan. 2003. “The Hazards of Training: Attrition and Retention in Construction Industry Apprenticeship Programs.” *Industrial and Labor Relations Review*, Vol. 27, Issue 1, pp. 54-67.

⁶⁵ Compensation varies with the program, but usually starts at 50% of the hourly rate for the corresponding journey worker and increases with progression through the training program. See Bilginsoy, Cihan. 2007. “Delivering Skills: Apprenticeship Program Sponsorship and Transition from Training.” *Industrial Relations*, Vol. 46, No. 4, pp. 738-763.

⁶⁶ See “What is Registered Apprenticeship?” ApprenticeshipUSA, Employment and Training Administration, U.S. Department of Labor. Accessed at: <https://www.doleta.gov/OA/apprenticeship.cfm>.

⁶⁷ See Construction Industry Institute. 2007. “Construction Industry Craft Training in the United States and Canada.” Accessed at <http://ps.businesssocialinc.com/media/uploads/abceastflorida/craftstudy.pdf>

⁶⁸ See Associated Builders and Contractors, Inc. “Craft Training & Apprenticeship.” Accessed at: <http://www.abc.org/en-us/educationtraining/crafttrainingapprenticeship.aspx> and See Vincent, Jeff. 2004. “Analysis of Construction Industry Apprenticeship Programs in Indiana.” Accessed at: http://www.faircontracting.org/PDFs/prevaling_wages/AnalysisofApprenticeshipProgramsinIndiana.pdf.

⁶⁹ Cihan Bilginsoy. 2007. “Delivering Skills: Apprenticeship Program Sponsorship and Transition from Training.” *Industrial Relations*, Vol. 46, No. 4, pp. 738-763.

Apprenticeship Training in Ohio: A Comparison of Joint Labor-Management and Nonunion Programs

Apprenticeship programs are either registered with the federal Office of Apprenticeship or are registered with state agencies.⁷⁰ Apprenticeship data for programs registered with the Ohio State Apprenticeship Council were obtained through an open records request. These data contain information on detailed trainee characteristics, enrollment-completion status, and an identification number that can be matched to training programs.⁷¹ This information allows us to examine and compare the outcomes and characteristics of apprentices enrolled in joint labor-management (union) training programs with those in non-joint (nonunion) programs.

The most recent data available from the Ohio State Apprenticeship Council (2016) indicates that, of the 10,550 apprentices registered in construction training programs, approximately 83% (8,730) are enrolled in joint (union) programs. The remaining 17% are enrolled in non-joint, nonunion programs. Furthermore, joint labor-management programs disproportionately train the vast majority of female and minority apprentices. Fully 94% of female apprentices and 88% of minority apprentices are enrolled in union training programs.⁷²

Data collected between 2004 and 2015 are used to examine trends in apprenticeship programs as well as program completion (graduation) rates. These aggregated data are reported in Tables 9 and 10 and indicate that approximately 82% of the registered programs were joint (union) programs and about 18% were nonunion programs. Approximately 79% of apprentices were enrolled in union programs between 2004 and 2015, with the remaining 21% enrolled in nonunion programs. Union programs cover the full-range of trades, from laborers to operating engineers. On the other hand, apprentices completing nonunion programs were heavily concentrated in electrical programs. At least 47% of apprentices completing nonunion programs trained to be electricians compared to 19% of apprentices in union programs. The completion rate in union programs was 29.4%.⁷³ This is 21% greater than the completion rate for nonunion programs. Because of the larger percentage of apprentices in union programs, as well as the higher completion rates of these programs, 83% of graduating apprentices come from union programs.

⁷⁰ See "Office of Apprenticeship Sponsors Website," Employment and Training Administration, U.S. Department of Labor. Accessed at: <https://oa.doleta.gov/>.

⁷¹ Personal information (name, age, address, Social Security number, and wages, etc.) were redacted.

⁷² This information was obtained from an open records request submitted by ACT Ohio. In 2016, there were 461 female apprentices, of which 435 were enrolled in union programs. In the same year, there were 1,968 minority apprentices, with 1,732 enrolled in union programs.

⁷³ The completion rate used here is defined as those who completed apprenticeship programs as a percent of the larger group of trainees who completed and did not complete their apprenticeship programs. This definition of the rate of program completion is consistent with the definition used elsewhere. The Ohio State Apprenticeship Council defines the "completion rate" as the ratio of those who completed training programs to those who exited apprenticeship programs prior to completion. Based on this definition, the completion rate for union programs is 41.6% and 30.1% for nonunion programs, a 27.6% difference. Regardless of the definition, the data indicate that the completion rate for union apprenticeship programs is substantially higher than the rate for nonunion programs.

Table 9. Construction Crafts Apprenticeship Program Completions, Joint Labor-Management (Union) Programs, 2004 to 2015

Joint Labor-Management Apprenticeship Program	Enrollment	Completion Rate
Sheet Metal Workers JATC, Cleveland LU 33	357	32.7%
Carpenters JATC, Northeast Ohio	3,258	22.4%
Electricians JATC, Cleveland	484	45.5%
Roofers & Waterproofers JATC, Cleveland LU 44	196	29.0%
Pipefitters JATC, Cleveland LU 120	190	43.9%
Plumbers JATC, Cleveland LU 55	164	38.1%
Insulation Workers JATC, Cleveland LU 3	90	37.5%
Electricians JATC, Lorain County	112	42.0%
Electricians JATC, Akron	232	44.2%
Plasterers & Cement Masons JATC, Akron LU 109	109	22.5%
Painters & Allied Trades - Sign/Display JAC, DC 6	3	50.0%
Electricians JATC, Cincinnati Area	903	29.5%
Butler County Electrical JATC	262	35.8%
Tile, Marble & Terrazzo JATC, Cincinnati Area	32	23.8%
Painters District Council 6 JATRTF	271	9.4%
Carpenters JATC, Southwest Ohio	1,436	20.7%
Electricians JATC, Portsmouth	131	39.5%
Plumbers, Fitters & MES JATC, LU 392	689	36.7%
Plumbers & Pipefitters JATC, Portsmouth	203	39.3%
The Electrical Trades Center	411	38.8%
Sheet Metal JAC, Columbus	397	29.6%
Electricians JATC, Mansfield	90	32.0%
Insulators JATC, Local 50	158	8.7%
Plumbers & Fitters JAC, Columbus	272	38.9%
Finishing Trades Institute of the Ohio Region	887	22.7%
Northern Ohio Admin District Co of Bricklayers	688	21.5%
Construction Craft Laborers Heavy Highway	1,415	22.6%
Plumbers & Pipefitters JATC, Marietta	163	39.6%
Electricians JATC, Newark	136	29.8%
Carpenters JATC, South Central Ohio District	1,677	21.1%
Ironworkers JATC, Columbus LU 172	342	29.6%
Electricians JATC, Marietta	82	47.3%
Plumbers & Pipefitters JATC, Cambridge	268	40.9%
Sheet Metal Workers JATC, Akron LU 33	228	28.8%
Ironworkers JAC, Canton Area LU 550	363	28.3%
Roofers JATC, Akron-Canton	104	26.7%
Bricklayers JAC, Dayton	69	13.7%
Plumbers & Pipefitters JATC, Dayton	150	32.8%
Roofers JATC, Miami Valley	214	12.1%

Electricians JATC, Dayton	357	39.2%
Ironworkers JAC, Dayton	591	25.2%
Electricians JATC, Lima Area LU 32	118	38.7%
Plumbers & Pipefitters JATC, Lima Area LU 776	136	44.2%
Electricians JATC, Toledo	598	40.0%
Sheet Metal Workers JATC, Toledo Area	128	35.2%
Piping Industry Training Center	315	42.9%
Cement Masons & Plasterers JAC, Toledo Area	118	38.0%
Operating Engineers JATC, Ohio	1,505	34.3%
Cement Masons JATC, Youngstown Area	77	25.8%
Electricians JATC, Youngstown Area	194	42.9%
Ironworkers JATC, Mahoning Valley	286	26.3%
Sheet Metal Workers JATC, Youngstown	67	33.8%
Electrical JATC, Warren	85	41.6%
Totals	21,811	29.4%

Source: Compiled from data supplied by the Ohio State Apprenticeship Council, Ohio Department of Jobs and Family Services. Completion Rate = [# of Program Completers / (# of Program Completers + # of Program Exits)].

Table 10. Construction Crafts Apprenticeship Program Completions, Non-Joint (Nonunion) Programs, 2004 to 2015

Non-Joint (Nonunion) Apprenticeship Program	Enrollment	Completion Rate
Crawford Mechanical Services	54	14.3%
Calgie Electric Co, Ltd	9	37.5%
Associated Builders & Contractors - Northern Ohio Chapter	631	33.2%
Scott Bernholt Electric, Inc	2	50.0%
Cincinnati Electrical Apprenticeship & Training	1,024	22.7%
ABC Inc, Central Ohio	1,057	20.7%
AEC / IEC Central Ohio	915	22.1%
Accurate Electric Construction, Inc	221	20.2%
Claypool Electric	279	19.6%
Gilcrest Electric	9	35.7%
Master Electrical Contractors Association	236	23.5%
ABC Inc, SW Chapter	1,261	22.6%
Totals	5,698	23.2%

Source: Compiled from data supplied by the Ohio State Apprenticeship Council, Ohio Department of Jobs and Family Services. Completion Rate = [# of Program Completers / (# of Program Completers + # of Program Exits)].

The substantial apprenticeship enrollment in union training programs is matched by an equally substantial financial commitment to training by building trade unions and their signatory contractors. Table 11 reports spending by craft on joint labor-management training programs for 2015.⁷⁴ The contributions to training depend on the size of each craft. For example, elevator constructors are a relatively small craft with few members and apprentices. As a consequence, training contributions are relatively low (approximately \$249,000 in 2015). On the other hand,

⁷⁴ These data were submitted by individual crafts to the Ohio Building and Construction Trades Council and provided to the authors upon request.

the International Brotherhood of Electrical Workers is a large trade with high skill requirements and a training budget exceeding \$10 million. Regardless of differences between trades, the overall total training expenditures in 2015 exceeded \$48 million. The joint investment in a strong workforce does not end after training. Additional fringe benefit data reported in Table 11 indicate pension contributions of over \$960 million in 2015 with \$750 million in health and welfare benefits. The overall contribution to fringe benefits and training programs by Ohio's building trades unions and their signatory contractors was approximately \$1.75 billion in 2015.

Table 11. Building Trade Contributions to Apprenticeship Training Programs and to Member Pension and Health & Welfare Benefits in 2015.

Craft	Apprenticeships	Pensions*	Health & Welfare
Asbestos Workers	\$584,203	\$19,885,149	\$15,016,283
Boilermakers	\$645,254	\$25,098,825	\$11,765,448
Bricklayers	\$2,000,631	\$76,825,092	\$19,143,923
Carpenters and Millwrights	\$6,030,000	\$137,746,104	\$103,940,509
Elevator Constructors	\$248,740	\$6,201,907	\$5,980,115
Electricians	\$10,563,048	\$151,561,497	\$132,585,048
Iron Workers	\$2,394,867	\$117,128,280	\$53,431,986
Laborers	\$5,253,486	\$172,896,025	\$139,631,690
Operating Engineers	\$9,606,568	\$83,772,252	\$109,057,760
Painters and Glaziers	\$1,557,648	\$26,698,200	\$26,396,335
Plasterers and Cement Masons	\$261,040	\$6,731,272	\$5,228,809
Roofers and Waterproofers	\$67,297	\$1,210,137	\$982,366
Sheet Metal Workers	\$2,640,508	\$36,691,839	\$32,199,583
Plumbers and Pipefitters	\$6,355,027	\$100,272,689	\$79,823,410
Totals	\$48,208,318	\$962,719,269	\$735,183,265
Overall Total	\$1,746,110,852		

Source: Union-level data submitted to the Ohio Building and Construction Trades Council. * Pension includes annuity contributions where applicable.

The data on apprenticeship training and funding is consistent with the preponderance of research indicating the union-sponsored apprenticeship programs are characterized by larger numbers, higher completion rates, and more training resources. For example, Kevin Duncan and Frank Manzo find similar results in an examination of apprenticeship programs in Kentucky between 2008 and 2016.⁷⁵ Fully 80% of apprentices are enrolled in union programs that offer a full-range of training opportunities while nonunion apprentices are concentrated in programs for electricians. The completion rate for union programs in Kentucky is 35% higher than in nonunion programs. Professor Cihan Bilginsoy also finds that apprentices in joint programs are more likely to complete training and receive certification while those who quit open shop programs do so before a substantial build-up of skills.⁷⁶

⁷⁵ See Kevin Duncan and Frank Manzo, "The Economic, Fiscal, and Social Effects of Kentucky's Prevailing Wage Law," December 2016. Accessed at: <https://illinoisepi.files.wordpress.com/2016/12/kentucky-report-duncan-and-manzo-2016-final.pdf>.

⁷⁶ Cihan Bilginsoy. 2007. "Delivering Skills: Apprenticeship Program Sponsorship and Transition from Training." *Industrial Relations*, Vol. 46, No. 4, pp. 738-763.

Recent studies also find that joint labor-management programs finance the vast majority of human capital investment in the construction industry. A 2015 report of apprenticeship programs in Indiana found that union programs were responsible for 94% of annual training expenditures, with the “open shop” segment representing the remaining 6%.⁷⁷ The corresponding figures for Wisconsin were 95% and 5%, respectively.⁷⁸ Similarly, a 2016 study by Manzo and Bruno found that 98% of all active apprentices are enrolled in joint labor-management programs in Illinois. Union programs account for 99% of all privately-funded apprenticeship expenditures in the state, have a significantly lower apprentice-to-program-employee ratio, and return \$11 in economic and tax benefits per dollar invested in Illinois.⁷⁹

Regulatory incentives to encourage training are not extensive in the U.S. construction industry. Prevailing wage laws play an important role in training by providing strong incentives for union and nonunion contractors to employ apprentices on covered projects. For example, under Ohio's prevailing wage law apprentices are paid as indicated by the approved program.⁸⁰ Typically apprentice wage rates are based on a fraction of the corresponding journey rate, starting as low as 40% and increasing with program progress. This wage savings creates a high demand for apprentices that drives skill development for the entire construction industry. With increased demand for apprentices on prevailing wage projects, more resources are expended on training. The result is an increase in the number of skilled workers who are available for work on publicly- and privately-funded construction in Ohio.

It is not surprising that research shows a strong connection between prevailing wage laws and training in the construction industry. For example, Cihan Bilginsoy finds that enrollments are from 6% to 8% higher in states with prevailing wage laws than in states without the wage policy.⁸¹ Bilginsoy also finds that apprentices in states with prevailing wage laws complete their on-the-job and classroom training at a faster rate than apprentices in states without the wage policy. This effect is strongest in states with stronger prevailing wage laws.⁸² It is also not surprising the prevailing wage repeal is associated with a decrease in apprenticeship training. For example, Philips finds that training decreased in Kansas by 38% after the state repealed its prevailing wage law in 1987.⁸³ After repeal in Colorado in 1985, apprenticeship training decreased by 42%.

⁷⁷ Philips, Peter. 2015. “Indiana’s Common Construction Wage Law: and Economic Impact Analysis.” Accessed at: http://www.isbctc.org/Uploads/UploadedFiles/docs/Philips_Indiana_Report_January_2015.pdf.

⁷⁸ Peter Philips. 2015. “Wisconsin’s Prevailing Wage Laws: An Economic Impact Analysis.” Accessed at: http://www.wisconsincontractorcoalition.com/application/files/9914/2889/7832/Wisconsin_Report_April_2015.pdf.

⁷⁹ Frank Manzo IV and Robert Bruno. 2016. “The Impact of Apprenticeship Programs in Illinois: An Analysis of Economic and Social Effects.” Accessed at: https://illinoisepi.files.wordpress.com/2016/08/pcmr-ilepi-impactofapprenticeshipprograms_newcover.pdf.

⁸⁰ For an example, see “Construction Careers,” Construction Education Center of Northwestern Ohio. Accessed at: http://www.nocec.com/apprenticeship_req.php.

⁸¹ Cihan Bilginsoy. 2005. “Wage Regulation and Training: The Impact of State Prevailing Wage Laws on Apprenticeship,” in Hamid Azari-Rad, Peter Philips and Mark J. Prus (eds.) *The Economics of Prevailing Wage Laws*, Aldershot, UK: Ashgate, pp.149-168.

⁸² Armand Thieblot developed a classification system for state prevailing wage laws into weak, average, and strong polices. These are based on the contract value threshold that prevailing wages apply, the level of coverage at the municipal, county, or state level, the types of work/trades excluded, the determination of prevailing wage rates, and other item. See Thieblot, Armand. 1995. *State Prevailing Wage Laws: An Assessment at the Start of 1995*, Associated Building Contractors, Inc., Rosslyn, VA.

⁸³ Philips, Peter. 1998. “Kansas and Prevailing Wage Legislation.” Accessed at: http://www.faircontracting.org/PDFs/prevailing_wages/kansas_prevailing_wage.pdf.

The Economic Impact of Prevailing Wage Laws

The main purpose of a prevailing wage law is to protect local construction labor standards from distortions associated with publicly-funded construction.⁸⁴ Large infusions of government spending into an area, along with a contract award process that favors the lowest bidder, may attract contractors from areas where construction worker wage rates are relatively low. Competition between these out-of-area and local contractors may result in the erosion of local compensation standards. Prevailing wage laws create a level playing field for all contractors by ensuring that public works expenditures maintain and support local area standards.

By protecting local wages, prevailing wage laws also protect work for local contractors and construction workers. The prevailing wage allows local contractors to submit competitive and profitable bids while attracting local workers possessing the skills needed for the project. As a consequence, local contractors have an advantage over competitors from areas where wages are relatively high or low. When local companies and workers are employed on a state-funded project, more project funds remain in the local economy and stimulate additional economic activity. Without adequate prevailing wage protection, more work is completed by out-of-area contractors with more project funds, jobs, income, spending, and economic activity leaking out of the local economy.

Several studies and publicly available data lend support to the notion that prevailing wage laws are associated with more work for local contractors and construction workers. For example, data from the *Economic Census of Construction* indicates that states with weak or no prevailing wage laws have about 2.4% more of the total value of construction completed by contractors from other states compared to states with average or strong wage policies.⁸⁵ This is not just a reduction in state-funded construction, but 2.4% of the value of all private and public construction. An examination of library construction in Santa Clara County, California reveals that 39% of subcontractors employed on prevailing wage projects are county-resident businesses.⁸⁶ The corresponding figure when prevailing wages do not apply is 23%. Since local contractors are three times more likely to use local construction workers, more labor income and spending remains in the county when prevailing wages apply. Another study illustrates how the weakening and eventual repeal of Indiana's prevailing wage law benefited low wage, out-of-state construction workers in Kentucky.⁸⁷ Along the southern border with Kentucky, public works construction employment in Indiana decreased by over 800 jobs after the wage policy was weakened. Along the bordering counties in Kentucky, public works construction employment grew by over 700 jobs over the same period. Average construction wages were about 24% lower

⁸⁴ As an example, see "The Davis-Bacon Act Protecting Wage Equality Since 1931," Wage and Hour Division, U.S. Department of Labor. Accessed at: <http://www.dol.gov/whd/programs/dbra/Survey/conformancefaq.htm>.

⁸⁵ The national average for states with average or strong prevailing wage laws is 93.2% and the average for states with weak or no wage policy is 90.8%. The difference between these averages (2.4%) is statistically significant. Data are obtained from Table 23SG04, Value of Construction Work for Location of Construction Work," 2012 *Economic Census of Construction*, U.S. Census Bureau. Accessed at:

http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_23SG04&prodType=table.

⁸⁶ See the "Economic, Fiscal and Social Impact of Prevailing Wage in San Jose, California." Economic Policy Brief, April 25, 2011. Accessed at: http://wpusa.org/5-13-11%20prevailing_wage_brief.pdf.

⁸⁷ See Frank Manzo, "Weakening Prevailing Wage Hurts Local Contractors and Workers: A Case Study of Southern Indiana." Economic Commentary #40, Midwest Economic Policy Institute, June 15, 2016. Accessed at <https://illinoisepi.files.wordpress.com/2016/06/ilepi-economic-commentary-southern-in-case-study1.pdf>.

in Kentucky, suggesting that weakening the wage policy resulted in greater demand for low wage, out-of-state workers.

The amount of work that is completed by out-of-state contractors depends on presence of prevailing wage laws, the size of a state's construction industry, the size of the industry in neighboring states, and the skills of a state's construction workforce. Ohio has a prevailing wage law. The state is relatively large compared to neighboring states. As a consequence, 93.4% of the total value of construction value is completed by Ohio-resident contractors according to data obtained from the U.S. Census Bureau's *Economic Census of Construction* for 2012.⁸⁸ Because of the relative size of Ohio's construction industry and the state's prevailing wage laws, a small amount of construction value (6.6%) is completed by contractors from other states. Table 12 reports the value of construction work completed by out-of-state contractors for the five neighboring states that do most of the work in Ohio.

Table 12. Top Five States by Value of Construction Work Completed in Ohio

State	Work Completed in Ohio*	Percent of Ohio Construction Value
Indiana	\$628,000,000	1.4%
Michigan	\$599,000,000	1.3%
Kentucky	\$554,000,000	1.2%
Pennsylvania	\$485,000,000	1.1%
Illinois	\$204,000,000	0.4%

Source: *Economic Census of Construction*, 2012. *Adjusted to 2016 dollars.

Contractors from the states of Indiana, Michigan, Kentucky, Pennsylvania, and Illinois represent 5.4% of the 6.6% of value of construction work is completed by contractors from other states. However, if the prevailing wage policy in Ohio is weakened or repealed, contractors can expect increased competition from builders from other states, primarily from the states listed in Table 12.

Why can Ohio contractors expect increased competition from out-of-state contractors with the repeal or weakening of the state's prevailing wage law? Based on the evidence presented in this report, there are two answers to this question. First, repealing or weakening prevailing wage opens state-funded construction to competition from low-wage, out-of-state contractors. Second, repealing or weakening prevailing wage means less work for union contractors and building trades unions that are responsible for the preponderance of worker training in Ohio's construction industry. Less work for these parties means a reduction in training resources and opportunities. With a less-skilled workforce, contractors involved in technologically-demanding work, such as industrial construction, will need to recruit skilled workers from other states.

Ohio's current prevailing wage law is considered to be in the strong or average category.⁸⁹ Based on the data from the *Economic Census of Construction*, further weakening or

⁸⁸ Data are obtained from Table 23SG04, Value of Construction Work for Location of Construction Work," 2012 *Economic Census of Construction*, U.S. Census Bureau. Accessed at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_23SG04&prodType=table .

⁸⁹ In 1995 Armand Thieblot rated state-level prevailing wage laws based on factors including coverage thresholds, type of work excluded/included, and the determination of wage rates, etc. See Thieblot Armand J.1995. "State Prevailing Wage Laws. An

repeal of Ohio's prevailing wage laws would be associated with an additional 2.4% increase in construction work for out-of-state contractors. This would represent approximately \$1.073 billion more in construction value completed by contractors in surrounding states (based on 2016 dollars).⁹⁰ When contractors travel to other states to conduct work, supplies, materials, fuels, and rental equipment are typically purchased in the state where the work is to be completed. According to information from the *Economic Census of Construction*, materials, components, fuels, power, and rental equipment represents 32.4% of overall costs.⁹¹ This indicates that only 32.4% of the \$1.073 billion, or \$348 million in construction value completed by out-of-state contractors, would remain in Ohio. Conversely, the net leakage of construction business and spending associated with prevailing wage repeal would be \$725 million.

The IMPLAN Economic Impact Software

The impact of the loss in construction industry business and spending associated with the repeal of Ohio's prevailing wage law can be measured using the IMPLAN economic impact software. This economic impact analysis is based on the multiplier, or ripple effect, associated with the leakage of construction incomes and spending from Ohio's economy. Specifically, this software is used to estimate the impact of the loss in incomes on state-level economic activity, employment, and tax revenue. IMPLAN (IMPact analysis for PLANning) was originally developed by the U.S. Department of Agriculture to assist the Forest Service with land and resource management planning. The Minnesota IMPLAN Group (MIG) started work on the data-driven model in the mid-1980s at the University of Minnesota. The software was privatized in 1993 and made available for public use. The software contains an input-output model with data available at the zip-code, county, state, and national levels.

Input-output analysis measures the inter-industry relationships within an economy. Specifically, input-output analysis is a means of measuring the market transactions between businesses and between businesses and consumers. This framework allows for the examination of how a change in one sector affects the entire economy. In this way, input-output analysis is able to analyze the economic effects of policy alternatives by measuring the multiplier, or ripple effect, as an initial change in labor income stimulates further changes in transactions between other businesses and households. The results reported in this study are based on industry figures from the 2012 *Economic Census of Construction* and the most recent IMPLAN data for state of Ohio (2014). IMPLAN deflators are used to adjust for changes in prices over time. The results are reported in 2016 dollars. The specific model used here is based on the leakage of \$1.073

Assessment at the Start of 1995. Prepared for Associated Builders and Contractors, Inc. We updated Thieblot's classifications reflective of subsequent policy changes and other research. A description of state-level prevailing wage laws is available at: <http://www.dol.gov/whd/state/dollar2011.htm#1>. A summary of recent state-level prevailing wage characteristics is available at www.cga.ct.gov/2010/rpt/2010-R-0526.htm.

⁹⁰ Data are obtained from Table 23SG04, Value of Construction Work for Location of Construction Work," 2012 *Economic Census of Construction*, U.S. Census Bureau. Accessed at:

http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_23SG04&prodType=table. The 2012 data is adjusted for inflation based on the "Producer Price Index by Commodity for Construction," U.S. Bureau of Labor Statistics. Accessed at: <https://fred.stlouisfed.org/series/WPU80>.

⁹¹ See the 2012 U.S. Census Bureau, *Economic Census of Construction*, Construction: Geographic Area Series: Detailed Statistics for Establishments, accessed at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_23A1&prodType=table.

billion in construction value with the return (addition) of \$348 million in spending as out-of-state contractors make local purchases of materials, components, supplies, fuel, and other items.⁹²

Economic Impact Results

The impact results obtained from IMPLAN are reported in Table 13. The net leakage of \$725 million in construction business and spending results in an overall reduction in economic activity in Ohio of approximately \$1.4 billion. The corresponding employment loss would be about 9,700 jobs. About 5,500 of these jobs would be in the construction industry (direct jobs) with 4,200 jobs lost in other industries that are no longer supported by the spending of in-state construction worker, such as retail, service, and restaurants. The reduction in economic activity would also be associated with an approximate \$45 million decrease in state and local tax revenue. This is a statewide impact that would be experienced each year if the wage policy is repealed.

Table 13. Economic Impact of the Leakage of Construction Business if Ohio’s Prevailing Wage Law is Repealed

Category	Direct Effect	Total Impact
Economic Activity	-\$725 million	-\$1.4 billion
Jobs	-5,500 jobs	-9,700 jobs
State and Local Tax Revenue	-	-\$44.6 million

Source: IMPLAN economic impact software and 2014 data for the state of Ohio.

The total economic impact is the sum of all industry-level impacts. The impacts for selected industries are reported in Table 14. For example, with the leakage in construction business if the prevailing wage law is repealed, revenue in Ohio’s wholesale and retail businesses would decrease by over \$125 million in sales revenue with the loss of about 1,000 jobs. The reduction in economic activity would also depress home values. IMPLAN measures this effect by the loss \$38.7 million in imputed rental value should home owners let their dwellings. Real estate is particularly sensitive to economic activity and repeal would reduce sales revenue in this sector by over \$34 million and reduce employment by about 150 jobs. Repeal would reduce construction employment and with fewer jobs, incomes, and spending, hospitals, doctors’ offices, and restaurants would experience business and employment decreases. As is the case with the results above, these industry-level impacts are statewide impacts that would be experienced each year if the wage policy is repealed. These industry-level impacts reveal the economic development role of prevailing wage laws. By protecting work for local contractors and construction workers, prevailing wages prevent the leakage of construction business spending and increase both sales revenue and employment in industries that are unrelated to the construction industry.

Finally, prevailing wage repeal would represent a strong headwind for an Ohio construction industry that has not yet fully recovered from the Great Recession. Before the

⁹² The leakage of \$1.073 billion is allocated across construction categories according to the distribution of the value of construction in Ohio as reported in the 2012 *Economic Census of Construction*. The distribution of \$348 million across specific Ohio producers of materials, fuels, power, and rental equipment is based on the induced impact of the initial \$1.073 billion leakage impact. IMPLAN’s induced impact identifies that portion of the overall impact that is due to spending changes by suppliers.

economic downturn in 2007, there were 27,566 construction establishments and 238,495 construction workers in Ohio.⁹³ The impact of the economic crisis was much more severe and long-lasting in the construction industry with the decrease in the number of establishments and employment reaching their lowest levels in 2010 and 2014, respectively. Construction employment reached its lowest level during the downturn in 2010, indicating a 29% reduction from the 2007 level. The number of construction establishments reached its lowest level in 2014, with a reduction of 18.5% from the 2007 level. The building industry in Ohio is recovering but employment remains approximately 8.8% below the 2007 level and the number of construction firms is still 17.2% below pre-recession levels. The consequences of repeal would further reduce construction industry employment and the number of establishments in Ohio. Weakening or repealing Ohio's prevailing wage law would open an industry that is still recovering to increased competition from workers and builders from other states.

Table 14. Industry-Level Economic Impacts of the Leakage of Construction Business if Ohio's Prevailing Wage Law is Repealed, Selected Industries

Industry	Revenue/Income Loss (\$)	Employment Loss (Jobs)
Wholesale trade	-\$65.8 million	-285
Retail trade (general, non-store, clothing, gas, etc.)	-\$59.9 million	-671
Imputed rent, owner-occupied dwellings	-\$38.7 million	N/A
Real estate	-\$34.1 million	-149
Hospitals	-\$21.6 million	-148
Restaurants (full and limited service)	-\$16.2 million	-283
Offices of physicians	-\$10.4 million	-66

Source: IMPLAN economic impact software and 2014 data for the state of Ohio.

⁹³ Data obtained from the Quarterly Census of Wages and Employment, Bureau of Labor Statistics, U.S. Department of Labor. Establishment data is based on Q2 to Q2 comparisons with employment based on the month of June for 2007 and 2016. All other comparisons are based on annual figures. Accessed at: <http://www.bls.gov/cew/>.

Conclusions

The preponderance of peer-reviewed research fails to find consistent evidence that prevailing wage laws increase construction costs. Over the past 16 years, 76% of the studies examining the effect of prevailing wage laws on construction costs find no impact, including 82% of the studies focused on public school construction. Using bid data obtained from the Ohio Facilities Construction Commission for over 100 school construction projects between 2013 and 2016, this study provides new statistical analysis that corroborates the consensus view. After considering the engineer's estimate, there is no statistically significant difference between projects paying federal Davis-Bacon wages and those without prevailing wage requirements.

Prevailing wage repeal decreases construction worker income and increases poverty and reliance on public assistance. Repealing or weakening prevailing wage in Ohio would lower blue-collar construction worker incomes by 16%, reduce employer-provided health insurance coverage by 2 percentage points, and decrease employer-provided pension coverage by 10 percentage points. As a result, thousands of blue-collar construction workers would lose their employer-provided health insurance coverage and pension plan if Ohio were to repeal or weaken its prevailing wage law. Additionally, about 16,000 construction workers in Ohio would fall below the official poverty line due to the severity of the wage cut, forcing them onto public insurance programs and increasing costs to taxpayers.

Military veterans employed in construction would be particularly worse off from repealing or weakening prevailing wage. Blue-collar construction occupations would become less attractive to veterans because the middle-class careers would be converted into low-wage, low-benefit jobs. Veterans would not be immune to this pay cut. In fact, weakening or repealing prevailing wage in Ohio would result in 4,100 blue-collar veterans separating from their construction jobs. Additionally, the total income of all veterans employed in construction jobs would decline by \$275 million in the state. Gutting prevailing wage would increase burdens on taxpayers and disproportionately impact veteran workers who served their country.

Prevailing wage laws support training and safety in the construction industry. Ohio's prevailing wage law creates incentives to employ apprentices. The majority of the construction apprentices in Ohio are enrolled in joint labor-management programs. Between 2004 and 2015, fully 79% of construction apprentices were enrolled in union-sponsored training programs. The completion rate is also 21% higher in union-sponsored programs than in non-joint, nonunion programs.

By protecting local wage rates, prevailing wage laws protect work for local contractors and construction workers. Prevailing wage repeal would reduce work for Ohio-resident contractors by approximately \$725 million annually. This loss of business would ripple throughout Ohio's economy, reducing overall economic activity by about \$1.4 billion annually. Construction industry employment would fall by about 5,500 jobs. With the loss of these good-paying jobs and their consumer spending, an additional 4,200 jobs in retail and service industries would be lost, bringing the total employment decline with repeal to 9,700 jobs. The decrease in economic activity would also reduce state and local tax revenue by \$45 million.

THE ECONOMIC, FISCAL, AND SOCIAL EFFECTS OF OHIO'S PREVAILING WAGE LAW

The highest-quality research available indicates that repealing or weakening Ohio's prevailing wage law will not result in any savings. Eliminating or reducing prevailing wages will impact taxpayers as more construction workers qualify for public assistance. Undermining current standards will also adversely affect military veterans who are more likely to work and own businesses in the construction industry compared to other industries in Ohio. Apprenticeship training would also decrease. With an effective prevailing wage law, more of Ohio's tax dollars are used to employ Ohio workers at Ohio companies. Repeal, on the other hand, would mean that more of the state's tax dollars will be used to employ contractors and workers from other states.

Appendix

Statistical Analysis of School Construction Costs

This analysis is based on the 110 school construction projects that are discussed in the text. Summary statistics are presented in Appendix Table 1 and indicate that, on average, the real low bid for these projects was approximately \$3.2 million (with an engineer's estimate of about \$3.3 million).⁹⁴ Prevailing wage projects represent 30% of the sample (33 projects). There were an average of 6 bidders for each project, and 15% of the sample consists of contractors with business addresses in states other than Ohio (Indiana, Iowa, Kentucky, Michigan, and Pennsylvania). Work involving asbestos abatement and demolition (or a combination of the two) represents almost half of the total number of projects. Additions and other building construction represent 25% of the projects included in the sample. Projects involving electrical and mechanical work, as well as renovations and site preparation represent 13% and 15%, respectively. Prevailing wage projects were distributed across all of these project types. Five percent of the projects had bids due in 2013. Over 50% of bids were submitted in 2014, with about 20% each in 2015 and 2016.

Regression results are reported in Appendix Table 2.⁹⁵ Model 1 examines the effect of prevailing wage requirements on low bids, holding the number of bidders, state residence of contractors, type of work, and year of the bid date constant. Model 2 includes the log of the real engineer's estimate that is a measure of project size and complexity.⁹⁶ Others report very high coefficients of determination when this variable is included in the estimate of highway bid costs.⁹⁷ In Model 3, the dependent variable is the log of the number of bidders. The effect of prevailing wage requirements on the level of bid competition is controversial, with claims often made in the absence of empirical support. The two peer-reviewed papers that examine this issue find no difference in the level of bid competition between projects that are and are not covered by prevailing wages.⁹⁸

Results for Model 1 indicate that the effect of prevailing wages on the low bid fails to achieve conventional levels of statistical confidence. This result persists in Model 2 when the engineer's estimate is included. The only model reporting a statistically significant prevailing wage effect is Model 3, indicating that projects covered by the policy have approximately 30%

⁹⁴ Adjusted for inflation using the "Producer Price Index by Commodity for Intermediate Demand by Commodity Type: Materials for Construction," U.S. Bureau of Labor Statistics. Accessed at: <https://fred.stlouisfed.org/series/WPSID6121>.

⁹⁵ The estimates have been corrected for heteroskedasticity.

⁹⁶ The construction engineer's or architect's estimate is the projected cost of a project prior to bid announcements and is based on the market unit cost at the location and time for that work. That is, the engineer's estimate is typically independent from the labor cost. Contractors subsequently prepare their bids based on a detailed estimation of the labor, equipment, and material needed to complete the project. Therefore, the engineer's estimate can be used as a benchmark market cost against which we can determine if the requirement of prevailing wage rates impacts the final cost. See D. J. Pratt. 2003. *Fundamentals of Construction Estimating: Second Edition*, Thomson Delmar Learning, Clifton Park, NY.

⁹⁷ See De Silva, Dakshina, Timothy Dunne, and Georgia Kosmopoulou. 2003. An examination of entrant and incumbent bidding in road construction auctions. *The Journal of Industrial Economics*, 21(3): 295-316.

⁹⁸ See Kevin Duncan. 2015. "The Effect of Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations on Highway Maintenance Costs." *Industrial and Labor Relations Review*, Vol. 68, No. 1, pp. 212-237 and Jaewhan Kim, Chang Kuo-Liang, and Peter Philips. 2012. "The Effect of Prevailing Wage Regulations on Contractor Bid Participation and Behavior: A Comparison of Palo Alto, California with Four Nearby Prevailing Wage Municipalities." *Industrial Relations*, 51(4): 874-891.

more bidders.⁹⁹ Other results reported in Appendix Table 2 indicate that the number of bidders has a statistically significant impact of the low bid that is consistent with theory (negative coefficient) when the engineer's estimate is included in Model 2. Significant differences exist between the work classifications included in the table and the default classification (asbestos abatement and demolition). Low bids are not influenced by yearly trends.

In sum, the results reported in Appendix Table 2 (models 1 and 2) are consistent with the overwhelming majority of peer-reviewed research, indicating the absence of statistically significant prevailing wage cost effects. The results from Model 3 are novel, indicating more bidders and higher bid competition on prevailing wage projects.

⁹⁹ The correct interpretation of the percentage change for the coefficient for a dummy variable in a semi-log estimate is given by $(e^{\beta_i}-1)$, or in this case, $e^{0.265}-1=0.30$. See Peter Kennedy. 1981. Estimation with Correctly Interpreted Dummy Variables in Semilogarithmic Equations. *American Economic Review*, 71(4): 801.

Appendix Table 1. Summary Statistics. The Effect of Prevailing Wage Requirements on Construction Costs and Bid Competition in Ohio. Results for State-Sponsored School Construction Covered by the Federal Quality School Construction Program, 2013-2016

Variable	Mean
Low Bid (Real)	\$3,195,622 (5,396,299)
Engineer's Estimate (real)	\$3,313,607 (5,415,458)
Prevailing Wage Projects	0.30 (0.46)
# Bidders	6.08 (2.74)
Out-Of-State Contractors	0.15 (0.36)
Abatement & Demolition Projects	0.47 (0.50)
Additions & Other Building Construction	0.25 (0.43)
Electrical & Mechanical	0.13 (0.33)
Renovation, Site Prep & Other	0.15 (0.36)
2013 Bid	0.05 (0.23)
2014 Bid	0.55 (0.50)
2015 Bid	0.19 (0.39)
2016 Bid	0.20 (0.40)
N=	110

Source: Ohio Facilities Construction Commission. Standard errors in parentheses.

Appendix Table 2. The Effect of Prevailing Wage Requirements on Construction Costs and Bid Competition in Ohio. Regression Results for State-Sponsored School Construction Covered by the Federal Quality School Construction Program, 2013-2016. Dependent Variable = Log of Low Bid (Models 1 & 2), Log of Number of Bidders (Model 3).

	Model 1	Model 2	Model 3
Variable	Coefficient	Coefficient	Coefficient
Prevailing Wage Project	0.057 (0.20)	0.018 (0.04)	0.265** (0.10)
Engineer's Estimate (log)	–	1.020*** (0.02)	0.159*** (0.05)
# Bidders	0.114*** (0.04)	–0.028*** (0.01)	–
Out-Of-State Contractor	–0.487 (0.30)	–0.084 (0.07)	–
Additions & Other Building Construction	4.151*** (0.26)	0.220* (0.09)	–0.903*** (0.19)
Electrical & Mechanical	2.271*** (0.40)	0.264*** (0.07)	–1.035*** (0.19)
Renovation, Site Prep & Other	2.479*** (0.34)	0.201* (0.07)	–0.675*** (0.15)
2014 Bid	0.516 (0.47)	–0.054 (0.07)	–0.128 (0.26)
2015 Bid	0.605 (0.53)	–0.073 (0.09)	–0.099 (0.29)
2016 Bid	–0.077 (0.45)	–0.057 (0.07)	0.122 (0.26)
Constant	10.574*** (0.58)	–0.371 (0.22)	–0.209 (0.60)
N=	110	110	110
F=	71.05	1962.8	8.94
R ² (adj.)=	0.789	0.991	0.384

Source: Ohio Facilities Construction Commission. Standard errors in parentheses. * Statistically significant at the 0.1 level. ** Statistically significant at the 0.05 level. *** Statistically significant at the .01 level.

Appendix C

Repairing Ohio's Prevailing Wage Law (2015)



Repairing Ohio's Prevailing Wage Law

By Tom Lampman

POLICY REPORT

Ohio's "prevailing wage" law artificially inflates labor costs on public works construction projects and is a costly obstacle to economic growth and effective governance. The law should be repealed or reformed to stop special interest groups from lining their pockets at the taxpayers' expense. If the law cannot be repealed, the inaccurate and unfair process used to calculate the "prevailing wage" must be reformed.

When state and local government agencies begin a construction project, Ohio's Department of Commerce first determines the so-called "prevailing wage" for each type of labor that the project will need.¹ Unfortunately, this wage is determined by local union contracts and collective bargaining agreements in the vicinity of the project.² For example, the Department has determined total value of wages and union retirement fund contributions for Franklin County roofers comes to \$39.05 per hour.³ Therefore, any contractor bidding on a project in Franklin County must bid according to the union-dictated wage schedule, even if their workers are not unionized or paid \$39.05 per hour.⁴ This type of artificial wage setting increases public construction costs for taxpayers, and reduces competition and the competitive advantage of non-union employers.

The Prevailing Wage Law Increases Construction Costs

Public works projects like road, school, and public housing construction are paid for with state tax dollars. By inflating the price of labor on these and other government projects, the prevailing wage law drives up construction costs at the taxpayers' expense. When the Ohio Legislative Service Commission examined this issue, it found that exempting Ohio schools from

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- 1 Ohio Rev. Code Ann. §4115.04.
 - 2 Ohio Rev. Code Ann. §4115.05.
 - 3 Ohio Department of Commerce, "Prevailing Wage Rates," Bureau of Wage and Hour Administration, accessed August 1, 2015, <http://198.234.41.198/w3/webwh.nsf/wrview>.
 - 4 Ohio Rev. Code Ann. §4115.03.

the prevailing wage law saved the government \$487.9 million on construction costs over a four-year period.⁵ A study of Michigan’s similar prevailing wage requirements found construction expenses increased by 10-15%.⁶ A comprehensive and detailed study of prevailing wage requirements in California demonstrated that some types of public construction, such as public housing projects, endure cost increases as much as 37%.⁷

These over-inflated costs ultimately burden citizens and taxpayers. Rising construction prices require taxpayers to suffer dramatic tax increases or ballooning budget deficits. In some cases, prevailing wage laws can make construction projects so expensive that state and local leaders decide to forego the projects altogether, depriving communities of needed improvements or facilities. One way or the other, taxpayers must bear the added expense created by this special interest legislation.

Advocates for prevailing wage requirements often claim that the higher costs are merited by higher quality construction.⁸ Such claims are simply unsubstantiated.⁹ Taking public school construction as one example, 91% of Ohio schools exempted from prevailing wage laws reported no difference in construction quality. 6% of schools exempted even reported improved quality in the absence of prevailing wage regulations.¹⁰ Taxpayers and communities should be free to invest in high-quality construction, and to hire contractors and construction crews to meet their needs and budgets. Ohio’s prevailing wage law detracts from this freedom and forces taxpayers to pay for artificially high-priced construction without ensuring a high-quality product.

The Prevailing Wage Law Limits Competition

In setting Ohio’s prevailing wage, the Department of Commerce takes an overly narrow view of wages. By looking only at union wages and collective bargaining agreements, the law overstates the price of labor because union wage rates include funding for expensive union

5 Legislative Service Commission, “The Effects of Exemption of School Construction Projects from Ohio’s Prevailing Wage Law,” Legislative Service Commission, May 20, 2002, <http://www.lsc.ohio.gov/research/srr149.pdf>.

6 Paul Kersey, “The Effects of Michigan’s Prevailing Wage Law,” The Mackinac Center for Public Policy, 2007, <http://www.mackinac.org/archives/2007/s2007-09.pdf>.

7 Sarah Dunn, John M. Quigley, and Larry A. Rosenthal, “The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing,” Sage Journals, October 1, 2005, <http://ilr.sagepub.com/content/59/1/141.full.pdf>.

8 Jason Horwitz, “Illinois’ Prevailing Wage Law and the Cost of Education Construction,” Anderson Economic Group, LLC, June 9, 2014, http://www.andersoneconomicgroup.com/Portals/0/AEG_ABCIL_PrevailingWage_FINAL.pdf.

9 Paul Kersey, “The Effects of Michigan’s Prevailing Wage Law,” The Mackinac Center for Public Policy, August 25, 2007, <http://www.mackinac.org/archives/2007/s2007-09.pdf>.

10 Paul Kersey, “The Effects of Michigan’s Prevailing Wage Law,” The Mackinac Center for Public Policy, August 25, 2007, <http://www.mackinac.org/archives/2007/s2007-09.pdf>.

pension plans.¹¹ For example, the median market wage for a Columbus-area electrician is \$19.31 per hour. The prevailing wage base rate, however, for a Franklin County electrician is \$30.60 per hour, with a total prevailing wage of \$45.69 per hour.¹² The total wage required by law is based on union pay scales and includes union pension fees—neither of which is paid by non-union contractors. By requiring even the non-union firms to bid on projects using union wage rates, the law negates a significant competitive advantage for non-union firms. Contractors paying the median wage for electricians—\$19.31 per hour—cannot use their competitive labor costs (more than 50% lower than the total prevailing wage) to submit lower bids.¹³ (See Appendix 1 below for examples of the differences between prevailing wages and market wages.)

With only 15% of Ohio’s eligible labor force choosing to unionize, the prevailing wage law significantly reduces competition and puts the vast majority of workers and firms at a competitive disadvantage when bidding against the small minority of unionized firms.¹⁴ The law effectively favors the special interests of a few firms at the expense of taxpayers, communities, and the majority of other companies. Accordingly, repeal or reform is sorely needed. Repealing the prevailing wage requirements, of course, would be the preferred solution, but some reform measures present viable alternatives.

The law could be amended, for instance, to require the Department of Commerce to use the broader and more inclusive wage data from the Ohio Department of Jobs and Family Services (ODJFS), rather than relying exclusively on local union contracts. This at least would provide a more complete and accurate picture of the labor market when setting an artificial wage requirement. Such an approach would make non-union firms more competitive and could help increase competition, and also resolve a logistical problem created by the unions’ use of very specific job classifications that non-union contractors seldom use. These classifications, currently required by the prevailing wage requirements, further complicate and confuse the bidding process.¹⁵ ODJFS classifications on-the-other-hand are less specific, making them a better, more widely-accepted baseline. Even with this reform, union contractors could continue classifying labor as they wish, but their granular classifications would not be imposed on the other contractors as part of the bidding process.

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- 11 Jason Horwitz, “Illinois” Prevailing Wage Law and the Cost of Education Construction,” Anderson Economic Group, LLC, June 9, 2014, http://www.andersoneconomicgroup.com/Portals/0/AEG_ABCIL_PrevailingWage_FINAL.pdf.
 - 12 Ohio Department of Commerce, “Prevailing Wage Rates,” Bureau of Wage and Hour Administration, accessed August 1, 2015, <http://198.234.41.198/w3/webwh.nsf/wrview>.
 - 13 Ohio Department of Jobs and Family Services, “Occupational Wages and Employment,” Ohio Department of Jobs and Family Services, June 2014, <http://ohiolmi.com/oes/oes.htm>.
 - 14 Barry Hirsch and David Macpherson, “U.S. Historical Tables: Union Membership, Coverage, Density, and Employment, 1973-2014,” UnionStats.com, accessed April 16, 2015, <http://www.unionstats.com/>.
 - 15 Paul Kersey, “The Effects of Michigan’s Prevailing Wage Law,” The Mackinac Center for Public Policy, August 25, 2007, <http://www.mackinac.org/archives/2007/s2007-09.pdf>.

Conclusion and Recommendations

Repealing the prevailing wage law is the most direct and comprehensive solution to the problems the law creates. House Bill 282, introduced in July 2015, takes this approach. Short of repeal, however, reforms such as allowing localities to opt-out of the law's onerous requirements or correcting the method for base-wage calculation may provide a piecemeal approach to addressing the law's more troubling consequences. Communities with comparatively low union membership, for example, could see substantial savings on public works projects if they were exempt from the law's requirements. Similarly, using a broader-based wage scale to calculate the prevailing wage would decrease labor costs and increase job opportunities for more Ohio workers. In either case, a more competitive and accurate labor market will lower the cost of public works projects and lessen the tax burden endured by all Ohioans.

Tom Lampman is the William and Helen Diehl Fiscal Policy Fellow.

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Appendix 1

Columbus Area Prevailing Wage vs. Market Rates ¹⁶				
Occupation	Prevailing Wage Rates*		Market Rates**	
	Base Hourly Rate (Prevailing Wage)	Total Prevailing Wage Rate	Median Wage	75% Percentile
Boilermaker	35.26	60.05	16.98	28.49
Carpenter***	25.17	38.09	17.90	24.20
Cement Masons & Concrete Finishers***	26.38	42.22	15.65	21.89
Laborers***	25.00	34.89	9.81	12.60
Roofer	25.40	39.05	15.85	20.48
Sheet Metal Worker	27.71	50.89	18.26	23.06
Glazier	24.24	36.07	15.55	18.00
Plumber/Pipefitter	34.23	56.19	21.98	29.29
Millwright	28.63	45.07	16.16	22.43
Electrician (Inside)	30.60	45.69	19.31	23.78
Electrician (Light Commercial)	30.60	45.69	19.31	23.78
*Franklin County				
**Columbus Metropolitan Statistical Area				
***Prevailing wage classifications averaged				

16 Ohio Department of Jobs and Family Services, "Occupational Wages and Employment," Ohio Department of Jobs and Family Services, June 2014, <http://ohiolmi.com/oes/oes.htm>; and Ohio Department of Commerce, "Prevailing Wage Rates," Bureau of Wage and Hour Administration, accessed August 1, 2015, <http://198.234.41.198/w3/webwh.nsf/wrview>.

Appendix D

Ohio Attorney General Opinion 2012-029

September 19, 2012

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park—Second Floor
Mansfield, Ohio 44902

SYLLABUS:

2012-029

1. A county may in accordance with R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75 enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county.
2. A county that enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county is not required to comply with R.C. 153.44, R.C. 153.69, or R.C. 307.86-.92.
3. A prosecuting attorney may require that an agreement in which a board of county commissioners or county engineer authorizes a private company that conducts oil and gas drilling operations or operates a wind farm to improve and repair the county roads it uses at no cost to the county be submitted to his office for review prior to the agreement's execution.
4. A county that enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county is required to comply with R.C. 4115.03-.16 when the total overall project cost to the company is fairly estimated to be more than the amount prescribed in R.C. 4115.03(B)(4).
5. Whether a county may incur civil liability for damages for failing to comply with R.C. 4115.03-.16 is, in part, a question of fact that cannot be determined by means of an Attorney General opinion.



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September 19, 2012

OPINION NO. 2012-029

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park—Second Floor
Mansfield, Ohio 44902

Dear Prosecutor Mayer:

We are in receipt of your request for an opinion regarding the authority of a county to have a private company improve and repair public roads. As explained in your letter, the county is experiencing a significant increase in the number of heavy-duty trucks using county roads. The trucks are used primarily in conjunction with oil and gas drilling operations and wind farms. While the trucks are generally within the weight and size limits prescribed by law, the high volume and heavy weight of the trucks on county roads are of concern to county officials.

The frequent use of these trucks on county roads may necessitate additional improvements and repairs to the roads and require the county to increase the amount of money the county spends to keep the roads safe and in good condition. In order to offset extra costs in this regard, the county would like to enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses.¹

Under the agreement, the company will be required to provide the county with a list of (1) county roads that will be affected by the company's operations and (2) improvements needed to enable those roads to withstand the additional wear caused by the company's vehicles. The company also will be responsible for making the needed improvements and repairing damage to the county roads caused by its trucks. The company may use its own employees or hire one or more independent contractors to improve and repair the county roads it uses.

¹ An example of a model agreement, which is commonly referred to as a road use maintenance agreement or RUMA, requiring a private company that conducts oil and gas drilling operations to improve and repair the county roads it uses has been prepared by the County Engineers Association of Ohio and is available at <http://www.ceao.org>. The model agreement does not refer to a particular statute that a county and private company must follow when entering into the agreement. The model agreement, however, requires the board of county commissioners and county engineer to enter into the agreement on behalf of the county and encourages them to describe the specific duties the company will undertake for the county under the agreement.

The company, rather than the county, will pay for the materials and labor used in, and fees, costs, and expenses arising from, the company's improving and repairing the county roads. In addition, the county is not required to compensate the company for performing roadwork or serving as a general contractor under the agreement.

You question whether a county is authorized to enter into the type of agreement described above. Further, if a county does have such authority, you are concerned about the applicability of the laws governing the payment of prevailing wage rates, competitive bidding, county construction contracts, and political subdivision liability.

Based on the information provided to us, your questions may be summarized as follows:

1. May a county enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county?
2. If a county may enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county, must the company comply with R.C. 153.44, R.C. 153.69, R.C. 307.86-92, and R.C. 4115.03-.16?²
3. If a county may enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair county roads it uses at no cost to the county, is the county civilly liable for damages when the company fails to comply with R.C. 153.44, R.C. 153.69, R.C. 307.86-92, or R.C. 4115.03-.16?

I. Duty of a County to Improve and Repair County Roads

The General Assembly has addressed the improvement and repair of public highways in a wide variety of statutes located throughout the Revised Code, rather than in a single comprehensive statute. As one Attorney General has observed, the statutory scheme governing the improvement and repair of public highways in Ohio "is complex and confusing." 1988 Op. Att'y Gen. No. 88-036 at 2-

² In your letter you ask whether a private company that conducts oil and gas drilling operations or operates a wind farm is "bound to comply with the sections of law in [R.C. Chapters] 153, 307, and 4115" when the company and a county enter into an agreement to have the company improve and repair county roads it uses. These three chapters set forth nearly three hundred statutes. It is impossible for us by means of a formal opinion to address the applicability of all the numerous provisions of law set forth in R.C. Chapters 153, 307, and 4115. Thus, we will limit our analysis to the statutory sections within R.C. Chapters 153, 307, and 4115 that are of particular concern to you—R.C. 153.44, R.C. 153.69, R.C. 307.86-92, and R.C. 4115.03-.16.

175. It is therefore necessary for us to examine numerous statutes to determine whether a county has authority to enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county.

R.C. 5535.01 classifies Ohio's public highways as state, county, and township roads.³ *See generally* R.C. 505.82(D) (undicated roads are not part of the state, county, or township road systems). State roads are the roads and highways on the state highway system, R.C. 5535.01(A), and county roads are those "roads which are or may be established as a part of the county system of roads as provided in [R.C. 5541.01-.03], which shall be known as the county highway system," R.C. 5535.01(B). All public highways other than state or county roads are township roads. R.C. 5535.01(C).

Further, as explained in 2006 Op. Att'y Gen. No. 2006-051 at 2-490, although they are not mentioned in R.C. 5535.01, county and township roads located within municipal corporations are generally classified as streets. "Municipal streets thus form another class of public highways." 2006 Op. Att'y Gen. No. 2006-051 at 2-490.

Pursuant to R.C. 5535.08(A), "[t]he state, county, and township shall each maintain its roads, as designated in [R.C. 5535.01]." *See* R.C. 5501.11(A)(1); R.C. 5501.31; R.C. 5535.01; R.C. 5571.02; 2006 Op. Att'y Gen. No. 2006-051 at 2-490 and 2-491. Municipal streets, as a general rule, are improved and repaired by municipal corporations. *See* Ohio Const. art. XVIII, § 3; R.C. 715.19; R.C. 717.01(P); R.C. 723.01; 2006 Op. Att'y Gen. No. 2006-051 at 2-491.

Your questions concern the improvement and repair of county roads by a private company. For that reason, we will not address in this opinion the improvement and repair of municipal streets or state or township roads by a private company.

Responsibility for the improvement and repair of county roads is vested in the board of county commissioners and the county engineer. *See* R.C. 315.08; R.C. 315.13; R.C. 5535.01(B); R.C. 5543.01; R.C. 5543.09; R.C. 5549.01; R.C. 5553.02; R.C. 5555.02; R.C. 5555.07; R.C. 5555.94; R.C. 5559.02; R.C. 5559.15; R.C. 5591.02; R.C. 5591.21; R.C. 5591.23. The board or county engineer may improve or repair a county road by using county employees or paying a private company to perform the roadwork. *See, e.g.*, R.C. 9.334; R.C. 153.693; R.C. 5543.19; R.C. 5543.22; R.C. 5549.01; R.C. 5555.022; R.C. 5555.61; R.C. 5555.69; R.C. 5557.06. In addition, a board of county commissioners may enter into an agreement with, or receive assistance from, the state or another political subdivision when improving or repairing a county road. *See, e.g.*, R.C. 9.482; R.C. 164.01-.16; R.C. 303.37(B); R.C. 307.15; R.C. 5501.11(A)(4); R.C. 5517.04; R.C. 5535.08; R.C. 5535.15;

³ For purposes of R.C. 5535.01, as well as other statutes in R.C. Title 55, the term "road" is defined to include "all appurtenances to the road ..., including but not limited to, bridges, viaducts, grade separations, culverts, lighting, signalization, and approaches on or to such road." R.C. 5501.01(C).

R.C. 5555.43; R.C. 5557.09. A private entity may also contribute money toward or assume the cost of, and be responsible to the county for, improving or repairing a county road. *See, e.g.*, R.C. 1509.06; R.C. 1514.024; R.C. 3734.35(C); R.C. 4513.34(D); R.C. 5501.53; R.C. 5545.01; R.C. 5545.08; R.C. 5561.12(B); R.C. 5561.16; R.C. 5591.03; R.C. 5727.75(F)(4).

II. Authority of a County to Have a Private Company Improve and Repair the County Roads it Uses

Your first question asks whether a county may enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county. The issue presented by your question is novel and unique. Traditionally, when a county intends to have a private company improve and repair county roads, the county and company enter into an agreement and the county pays the private company for the roadwork. *See, e.g.*, R.C. 9.334; R.C. 153.693; R.C. 5543.19; R.C. 5545.03; R.C. 5555.022; R.C. 5557.06. Prior to entering into the agreement, the county identifies the specific improvements and repairs that must be made to the county roads. Also, during the term of the agreement, the county determines whether any additional improvements and repairs are to be made to the county roads.

In contrast, your situation involves a private company paying for improvements and repairs to county roads it uses. Before entering into the agreement, the company, rather than the county, determines what improvements and repairs must be made to the county roads in order to accommodate the trucks of the company. After entering into the agreement, the company performs the roadwork and assumes responsibility for determining whether additional improvements and repairs are necessary. If additional roadwork is needed, the company performs it and pays for it. Roadwork undertaken by the company will be overseen and subject to approval by the county and performed in accordance with the specific terms and conditions of the agreement.

Although your particular situation involves an unusual approach to performing county roadwork, it still involves having the county enter into an agreement to have a private company improve and repair county roads. Consequently, your situation is not materially different from any other situation in which a county seeks to enter into an agreement with a private company to have the company improve and repair county roads.

As pointed out above, several statutes authorize a county to enter into an agreement with a private company to have the company improve and repair county roads. These statutes are R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5543.19, R.C. 5545.03, R.C. 5555.022, R.C. 5557.06, and R.C. 5727.75. Two of these statutes, R.C. 5543.19 and R.C. 5545.03, do not, however, apply to the situation you have presented to us.

R.C. 5543.19 authorizes a county to improve and repair county roads by force account.⁴ Under this statute, “a county engineer may, as the general contractor of a force account project, acquire material and equipment pursuant to contract, and may subcontract part of the work undertaken by force account, so long as the contracts for material and equipment and the subcontracts are let in compliance with R.C. 307.86-.92.” 2008 Op. Att’y Gen. No. 2008-007 (syllabus, paragraph 3).

R.C. 5543.19 does not apply to your situation because the agreement described in your letter does not contemplate having the county engineer perform the roadwork or serve as general contractor of a force account project. Instead, under the agreement, the private company, rather than the county, will (1) perform the work or (2) serve as a general contractor and hire one or more independent contractors to perform the roadwork. R.C. 5543.19 thus does not authorize a county to enter into the agreement described in your letter.

The other statute, R.C. 5545.03, provides that, “[a]fter adopting plans, specifications, and estimates for a proposed road improvement the commission provided for in [R.C. 5545.01] shall invite bids for construction and award the contracts therefor.”⁵ The commission referred to in R.C. 5545.03 is formed when a “person, firm, partnership, corporation, or association desires to contribute a fund for the purpose of assisting in the improvement of” a county road. R.C. 5545.01. In your particular situation, the private company will not contribute money to establish a fund to improve and repair county roads. As no fund described in R.C. 5545.01 will be created, no commission will be formed to award the contract to the private company. Accordingly, R.C. 5545.03 does not provide authority for a county to enter into the agreement proposed in your letter.

Unlike R.C. 5543.19 and R.C. 5545.03, the following statutes do appear to authorize a county to enter into the type of agreement envisioned by your letter: R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, and R.C. 5727.75. The first statute, R.C. 9.334, authorizes a county, as a public authority, *see* R.C. 9.33(F)(1), to contract for construction management services with a construction manager at risk. For purposes of R.C. 9.334, construction management services include planning, coordinating, managing, directing, and constructing all phases of a project to improve and repair a public building, structure, or other improvement. *See* R.C. 9.33(B)-(D).

County roads are public improvements for purposes of R.C. 9.334. *See* 1980 Op. Att’y Gen. No. 80-051 at 2-208 n.1; *see also* R.C. 9.31-311. Thus, if a private company that conducts oil and gas drilling operations or operates a wind farm is deemed to be a “construction manager at risk,” as defined in R.C. 9.33(B)(1), a county may in accordance with R.C. 9.334 enter into a contract with the

⁴ For purposes of R.C. 5543.19, “force account” means “that the county engineer will act as contractor, using labor employed by the engineer using material and equipment either owned by the county or leased or purchased in compliance with [R.C. 307.86-.92] and excludes subcontracting any part of such work unless done pursuant to [R.C. 307.86-.92].” R.C. 5543.19(C).

⁵ The commission referred to in R.C. 5545.03 consists of suitable and competent freeholders of the county and the board of county commissioners. R.C. 5545.01.

company to have the company improve and repair the county roads it uses at no cost to the county. *See generally* R.C. 9.33(B)(1) (as used in R.C. 9.33-.335, a “construction manager at risk” is a “person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement and who provides the public authority a guaranteed maximum price as determined in [R.C. 9.334]”).

A county, as a public authority for purposes of R.C. 153.65-.73, *see* R.C. 153.65(A)(1), also is authorized to enter into a contract with a design-build firm for design-build services. R.C. 153.693. The term “design-build firm,” as used in R.C. 153.65-.73, includes a private company that is capable of providing services that form an integrated delivery system for which a person is responsible to a public authority for the design and construction, demolition, alteration, repair, or reconstruction of a public improvement. R.C. 153.65(F)-(G).

Under a design-build contract, a private company may design and improve or repair public improvements. *See* R.C. 153.65(E)-(G). For purposes of R.C. Chapter 153, the term “public improvement” includes county roads. *See* 1980 Op. Att’y Gen. No. 80-051 at 2-208 n.1 Hence, a county may in accordance with R.C. 153.693 enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county.

The next statute providing authority for the type of agreement described in your letter is R.C. 5555.022(A), which states:

A board of county commissioners, by resolution adopted by a majority vote and acting without regard to or the necessity for a petition, may find that the public convenience and welfare require the improvement of any public road or roads, or parts of any public road or roads, identified in that resolution in a manner provided in [R.C. 5555.06] and may fix the route and termini of the improvement.

R.C. 5555.06 sets forth the procedures a board of county commissioners must follow when improving and repairing county roads under R.C. 5555.022. *See generally* 1988 Op. Att’y Gen. No. 88-039 at 2-191 and 2-192 (repairs constitute “road improvements” as that term is used in R.C. 5555.06).

In addition, the following provision of law applies:

The improvement and the proceedings for its construction and financing, including a contract for the construction, may include, consistent with the other provisions of this section and notwithstanding any provisions of this chapter to the contrary, any road or roads or parts of any road or roads, and the provisions of [R.C. 5555.61-.69] relating to contracts for the construction of an improvement shall be construed accordingly and shall be controlling to the extent applicable.

R.C. 5555.022(C)(1). Hence, pursuant to R.C. 5555.022, a county may enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county. *See generally* 1987 Op. Att’y Gen. No. 87-070 at 2-444 (“[o]nce plans and specifications for the county road improvement are selected in accordance with R.C. 5555.06 and .07, and the county commissioners have decided to proceed with the improvement, a contract may be let in accordance with R.C. 5555.61”). *See generally also* R.C. 5555.61 (“[a]fter the board of county commissioners decides to proceed with the improvement, it shall do so in accordance with [R.C. 307.86-.92]. No contract for any improvement shall be awarded at a price more than ten per cent in excess of the estimated cost”).

The fourth statute authorizing the type of agreement proposed in your letter is R.C. 5557.06. Under this statute, when a board of county commissioners intends to improve or repair a county road that extends into or through a municipal corporation, the board “shall receive bids and let the contract for improving such portion of [the] road as lies within the municipal corporation, in connection with the remainder of a proposed road improvement or separately, as the board determines.” *See generally* R.C. 5557.02 (authorizing a board of county commissioners to “construct a proposed road improvement into, within, or through a municipal corporation, when the consent of the legislative authority of such municipal corporation has been first obtained”); R.C. 5557.08 (a “board of county commissioners may repair that portion of a county road extending into or through a municipal corporation, or a part of a county road and a municipal corporation’s streets extending into or through a municipal corporation and forming a continuous road improvement, when the consent of the legislative authority of said municipal corporation has been first obtained”). R.C. 5557.06 thus authorizes a county to enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county.

Additional authority for a county to enter into an agreement with a private company that operates a wind farm to have the company improve and repair the county roads it uses is set forth in R.C. 5727.75. This statute exempts from taxation the tangible personal property of a qualified energy project using renewable energy resources. A wind farm may qualify as an energy project using renewable energy resources for purposes of R.C. 5727.75. *See* R.C. 5727.01(N)(1); R.C. 5727.01(P); R.C. 5727.75(A)(1)-(2).

In order for a private company that operates a wind farm to qualify for the tax exemption, the company must apply for certification of the wind farm as a qualified energy project. *See* R.C. 5727.75(E)(1); 2 Ohio Admin. Code 122:23-1-03. When applying for such certification, a private company that is the owner or a lessee pursuant to a sale and leaseback transaction of a qualified energy project is required to do the following:

For energy projects with a nameplate capacity of five megawatts or greater, repair all roads, bridges, and culverts affected by construction as reasonably required to restore them to their preconstruction condition, as determined by the county engineer in consultation with the local jurisdiction responsible for the roads, bridges, and culverts.... The energy facility owner or lessee and the county engineer may enter

into an agreement regarding specific transportation plans, reinforcements, modifications, use and repair of roads, financial security to be provided, and any other relevant issue.

R.C. 5727.75(F)(4); *see also* rule 122:23-1-03(F) (“[i]n addition to the documentation described in paragraphs (D) and (E) of this rule, an application for certification for an energy project with a nameplate capacity of five megawatts or greater must satisfy the following requirements to be considered for certification by the director [of development]: ... The director receives from the applicant a certificate of the county engineer for each county in which any part of the energy project is located to the effect that the applicant has complied with, or has entered into an agreement with the county to comply with, the provisions of division (F)(4) of [R.C. 5727.75] regarding the repair, rebuilding, and reinforcement of roads, bridges, and culverts”); rule 122:23-1-03(G)(4) (“[t]he director [of development] may issue a conditional certification for an application that does not include the certificate(s) of the county engineer(s) and related agreement(s) as described in paragraph (F)(2) of this rule. The applicant must submit to the director the certificate(s) and agreement(s) described in paragraph (F)(2) of this rule so that they are received at the Columbus office of the department of development not later than the close of business on the earlier of (a) the date which is ninety days after the date of the conditional certification or (b) the date the energy project is placed in service”).

An applicant for certification of a wind farm as a qualified energy project with a nameplate capacity of five megawatts or greater thus must make arrangements with the county engineer to improve and repair the roads affected by the wind farm’s construction. And, pursuant to R.C. 5727.75, the applicant may satisfy this requirement by entering into an agreement with the county engineer to improve and repair the roads affected by the wind farm’s construction. Hence, a county may in accordance with R.C. 5727.75 enter into an agreement with a private company that operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county.

Finally, the Governor recently signed Am. Sub. S.B. 315, 129th Gen. A. (2012) (eff. June 11, 2012, with most sections effective on Sept. 10, 2012). This Act amends R.C. 1509.06 as it pertains to the information that an applicant for a permit to drill a horizontal well⁶ must supply to the Chief of the Division of Oil and Gas Resources Management.⁷ R.C. 1509.06(A)(11)(a) requires such an applicant to provide a “description by name or number of the county, township, and municipal corporation roads, streets, and highways that the applicant anticipates will be used for access to and egress from the well site.” The applicant also must include (1) “a copy of an agreement concerning maintenance and safe use of the roads, streets, and highways ... entered into on reasonable terms with the public official that has the legal authority to enter into such maintenance and use agreements for each county, township, and municipal corporation, as applicable, in which any such road, street, or highway is

⁶ As used in R.C. Chapter 1509, a “horizontal well” is “a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.” R.C. 1509.01(GG).

⁷ R.C. 1509.06, as amended by Am. Sub. S.B. 315, became effective on September 10, 2012.

located” or (2) an affidavit attesting that the applicant attempted in good faith to enter into such an agreement, but was unable to do so. R.C. 1509.06(A)(11)(b).

Pursuant to R.C. 1509.06, a county and an applicant for a permit to drill a horizontal well may enter into an agreement to have the applicant improve and repair the county roads it uses. The agreement is entered into on behalf of the county by the public official who has the legal authority to enter into road maintenance and use agreements for the county.

As a general matter, except in limited situations, a board of county commissioners is conferred by statute with the authority to enter into road maintenance and use agreements for the county. *See, e.g.,* R.C. 9.482; R.C. 303.37; R.C. 307.15; R.C. 5535.08; R.C. 5555.022; R.C. 5555.43; R.C. 5555.61; R.C. 5555.69; R.C. 5557.06; R.C. 5557.09. *See generally* *Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909 (C.P. Fulton County 1965) (“[i]t is the province of the board of county commissioners to make contracts for the county, and no other officer can bind the county by contract, unless by reason of some express provision of law”). *But see, e.g.,* R.C. 5543.19; R.C. 5545.03; R.C. 5727.75(F)(4). Accordingly, R.C. 1509.06 authorizes a board of county commissioners to enter into an agreement with a private company that applies for a permit to drill a horizontal well to have the company improve and repair the county roads it uses at no cost to the county.

Therefore, in response to your first question, a county may in accordance with R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75 enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county.⁸

III. Applicability of R.C. 153.44, R.C. 153.69, R.C. 307.86-92, and R.C. 4115.03-16

Your second question asks, if a county may enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county, must the company comply with R.C. 153.44, R.C. 153.69, R.C. 307.86-92, and R.C. 4115.03-16. At the county government level, the Attorney General may advise “the prosecuting attorneys of the several counties respecting their duties in all complaints, suits, and controversies in which the state is, or may be a party.” R.C. 109.14. Pursuant to R.C. 309.09(A), a prosecuting attorney is the legal adviser of the board of county commissioners and all other county officers and boards. A prosecuting attorney does not, however, have a duty or the

⁸ When a county enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county pursuant to R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75, the county must comply with the requirements and procedures set forth in any applicable statutes. *See* 2004 Op. Att’y Gen. No. 2004-031 at 2-276 (“[i]n exercising its authority to enter into a contract, each public official or entity must comply with all applicable statutory provisions. A determination of which statutes apply to each contract must be made on a case-by-case basis”).

authority to determine the legal obligations of a private company that conducts oil and gas drilling operations or operates a wind farm. *See* 2002 Op. Att’y Gen. No. 2002-017 at 2-98 n.2; 1983 Op. Att’y Gen. No. 83-037 at 2-142. As a prosecuting attorney may only advise county officers of their statutory obligations, we must limit our analysis of your second question to whether the county must comply with R.C. 153.44, R.C. 153.69, R.C. 307.86-92, and R.C. 4115.03-.16.

A. Compliance with R.C. 307.86-92: Competitive Bidding of Purchases of Goods or Services

We will first consider R.C. 307.86-92, which provide procedures for accepting bids for specified goods or defined services. Unless otherwise excepted by law, a county or contracting authority is required to obtain through competitive bidding “[a]nything to be ... constructed, including, but not limited to, any ... improvement, maintenance, [or] repair..., *by or on behalf of the county or contracting authority, as defined in [R.C. 307.92], at a cost in excess of [25,000] dollars.*”⁹ R.C. 307.86 (emphasis added).

R.C. 307.92 defines “contracting authority,” for purposes of R.C. 307.86-91, as “any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof.” As stated earlier, a board of county commissioners or county engineer may in accordance with R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75 enter into a contract for or on behalf of the county to have a private company improve and repair county roads. For that reason, a board of county commissioners and a county engineer are included within the term “contracting authority,” as defined in R.C. 307.92, and each is required to competitively bid a project that requires a county road to be improved and repaired “at a *cost* in excess of [25,000] dollars.” R.C. 307.86 (emphasis added).

While the term “cost” is not defined for purposes of R.C. 307.86, this term is commonly understood to mean “[t]he amount paid or charged for something; price or expenditure.” *Black’s Law Dictionary* 397 (9th ed. 2009). When, pursuant to R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75, a board of county commissioners or county engineer enters into an agreement for or on behalf of the county with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county, the county is not required to pay the company any money for the roadwork. Nor is the county charged by the company for the roadwork. In other words, the roadwork undertaken by the private company is done at no cost for purposes of R.C. 307.86 since the county is not required to pay any money for the roadwork.

⁹ Various exceptions to the competitive bidding requirements of R.C. 307.86-92 appear in R.C. 307.86 and elsewhere in the Revised Code. None of these exceptions, however, applies to a county’s agreement with a private company to have the company improve and repair the county roads it uses.

The roadwork undertaken by a private company under R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75 thus will not require the county to expend more than 25,000 dollars. As a result, R.C. 307.86 and the other provisions of R.C. 307.87-.92 relating to competitive bidding do not apply when a county enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county. See *Danis Clarkco Landfill Co. v. Clark County Solid Waste Mgmt. Dist.*, 73 Ohio St. 3d 590, 601, 653 N.E.2d 646 (1995) (R.C. 307.86 does not apply when a private company assumes the entire cost of a waste disposal facility used by county residents and a county solid waste management district contractually agrees to designate the facility as the place where all solid waste and recyclable materials generated in the district are to be transported. In such a situation, “[t]he anticipated contract quite simply did not involve *any* monetary cost to the public or expenditure of public funds by the District. As then in effect, R.C. 307.86 applied only to contracts ‘at a cost in excess of ten thousand dollars,’ and the court of appeals correctly held that the proposed contracts contemplated by the [request for proposals] process did not fall within the scope of the statute”). *But cf. U.S. Corr. Corp. v. Ohio Dep’t of Indus. Relations*, 73 Ohio St. 3d 210, 652 N.E.2d 766 (1995).¹⁰

In addition, the private company is not established or designated by law as a part of county government or as an agent of the county or a county entity or official. The company is separate and distinct from the county. The company also will not be empowered under the agreement to act as an agent or agency of, or enter into contracts for or on behalf of, the county or any county official or entity in order to perform the roadwork contemplated under the agreement. See generally *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029, 1031, 1992 Fla. LEXIS 274 (Fla. 1992) (a private corporation does not act “‘on behalf of’ a public agency merely by entering into a contract to provide professional services to the agency”). The private company thus will not have any authority to contract for or on behalf of the county or a county entity or official and is not a “contracting authority,” as defined in R.C. 307.92, for purposes of the competitive bidding statutes set forth in R.C. 307.86-.92. Accordingly, a county that enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county is not required to comply with R.C. 307.86-.92.

¹⁰ In *U.S. Corr. Corp. v. Ohio Dep’t of Indus. Relations*, 73 Ohio St. 3d 210, 652 N.E.2d 766 (1995), the Ohio Supreme Court held that a county must comply with R.C. 307.86 when contracting for a lease pursuant to R.C. 307.022. The contract considered by the court required the county to enter into a lease for a term of years for a county correctional facility with a private company whereby the company would privately fund renovations to convert a former hardware building into a correctional facility. Although the company was to directly fund the renovation, public funds were to be expended under the terms of the lease, thus indirectly funding the renovation. *U.S. Corr. Corp. v. Ohio Dep’t of Indus. Relations*, therefore, is factually distinguishable from the type of agreement described in your letter since the agreement does not obligate the county to expend any public money.

B. Compliance with R.C. 153.44: Review of Contract by Prosecuting Attorney

The next statute with which you are concerned is R.C. 153.44. This statute provides that, “[b]efore work is done or material is furnished, all contracts that exceed [1,000] dollars in amount shall be submitted by the board of county commissioners to the prosecuting attorney of the county. If found by him to be in accordance with [R.C. 153.01-.60], and his certificate to that effect is indorsed thereon, such contracts shall have full effect, otherwise they shall be void.”

A previous Attorney General opinion determined that R.C. 153.44 applies to “contracts falling within the scope of [R.C. 153.01-.60].” 1954 Op. Att’y Gen. No. 3743, p. 207 (syllabus, paragraph 2); *see* 2005 Op. Att’y Gen. No. 2005-007 at 2-76. R.C. 153.01-.60 set forth procedures for the construction of county buildings, bridges, roads, and other public improvements.¹¹ *See* R.C. 153.12(A); R.C. 153.21; R.C. 153.32; 2005 Op. Att’y Gen. No. 2005-029 at 2-299 n.2; 1980 Op. Att’y Gen. No. 80-051; *see also* 2005 Op. Att’y Gen. No. 2005-007 at 2-76 (R.C. 153.44 requires a prosecuting attorney “to provide certification of compliance with the substantive requirements set forth in R.C. 153.01 to R.C. 153.60”). R.C. 153.44 thus applies to a county contract for the improvement and repair of county roads when the amount of the contract exceeds 1,000 dollars.

In your particular situation, the county is not paying the private company money for improving and repairing the county roads it uses. This means that the amount paid by the county under the agreement for the roadwork is zero and the county is not required to comply with R.C. 153.44.

While the cost to the private company to improve and repair county roads will probably exceed 1,000 dollars, this fact is immaterial when determining whether the amount of the agreement exceeds 1,000 dollars, as required by R.C. 153.44. R.C. 153.44 is part of a statutory scheme governing the manner in which a county awards a contract for the construction of a public improvement and pays the private company that is awarded and performs the work under the contract. As part of the process of awarding the contract, a county must accept bids for the work to be done or use another type of competitive selection process. *See* R.C. 153.12; R.C. 153.26; R.C. 153.32; R.C. 153.50; R.C. 153.54; R.C. 153.69; R.C. 153.693; *see also* 2004 Op. Att’y Gen. No. 2004-014 at 2-112 (“[t]he general understanding of awarding a contract, thus, is that it requires a formal competitive process for considering bids or proposals, selecting the offer that best serves the needs of the public body, and entering into a written contract with the person making that offer”). *See generally Black’s Law Dictionary* 183 (9th ed. 2009) (a “bid” is “[a] submitted price at which one will perform work or supply goods”). Also, at the times named in the contract, the county makes payments to the private company performing the work. *See* R.C. 153.13; R.C. 153.14; R.C. 153.56; *see also* R.C. 153.49 (“[t]he county treasurer shall pay the warrants drawn for materials and labor furnished on county

¹¹ The term “public improvement” is not statutorily defined for purposes of R.C. Chapter 153. 1980 Op. Att’y Gen. No. 80-051 at 2-208 n.1, however, stated that the term “has been defined to include buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works and all other structures constructed by the state or a political subdivision of the state.”

contracts pursuant to estimates prepared under [R.C. 153.14], place them on file and keep a register of the names of the persons to whom they are paid”).

Reading R.C. 153.44 in conjunction with the other provisions of R.C. Chapter 153 pertaining to the award of, and payments made under, a county contract for the construction of a public improvement, it follows that R.C. 153.44 applies only to a county contract for the improvement and repair of county roads when the county awards the roadwork through a competitive selection process and is required to pay more than 1,000 dollars under the contract. *See generally D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶20 (statutes relating to the same subject matter must be read together in an attempt to “arrive at a reasonable construction giving the proper force and effect, if possible, to each statute”); 2004 Op. Att’y Gen. No. 2004-014 at 2-112 (“[c]onstrued in accordance with common usage, a contract is ‘awarded’ when a written agreement is executed pursuant to a formal competitive contracting procedure that may include competitive bidding, requests for proposals, or invitations to bid. Under this construction, the word ‘award’ may not reasonably be applied to situations in which a contract for goods, services, or construction is exempted from competitive contracting procedures. Rather, the same factors that exempt a particular contract or type of contract from competitive contracting procedures operate also to exempt the contract from the provisions of R.C. 9.24” (citations omitted)). As the county is not awarding the agreement through a competitive selection process and paying more than 1,000 dollars to have a private company improve and repair county roads under the agreement, the county is not required to comply with R.C. 153.44 when entering into such an agreement under R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75.

Although R.C. 153.44 does not expressly apply, a prosecuting attorney may nonetheless require a board of county commissioners or county engineer to submit to him for review an agreement that authorizes a private company to improve and repair the county roads it uses at no cost to the county. As stated in note 8 above, county officials must comply with all applicable statutory provisions when entering into an agreement for roadwork. Further, the prosecuting attorney, as legal counsel for the board of county commissioners and county engineer, *see* R.C. 309.09(A), may establish a policy or procedures for reviewing an agreement pertaining to road construction for compliance with applicable statutory provisions.

As determined in 2005 Op. Att’y Gen. No. 2005-007 at 2-77, “[a]part from statutes providing expressly for approval as to form, the county prosecutor’s general duties to provide legal counsel and services to county officers and boards clearly permit the prosecutor to establish a policy or procedure for reviewing county contracts and approving them as to form.” *See* 2000 Op. Att’y Gen. No. 2000-008 at 2-41 (“[i]n the absence of ... statutory mandates, ... the nature and extent of advice the prosecuting attorney renders to county officers and entities under R.C. 309.09(A) is a matter to be determined by the prosecuting attorney in a reasonable exercise of discretion”); *see also* 2004 Op. Att’y Gen. No. 2004-032 at 2-294 (a prosecuting attorney may exercise reasonable discretion in determining the manner of performing his duties). Accordingly, we conclude further that a prosecuting attorney may require that an agreement in which a board of county commissioners or county engineer authorizes a private company that conducts oil and gas drilling operations or operates

a wind farm to improve and repair the county roads it uses at no cost to the county be submitted to his office for review prior to the agreement's execution.

C. Compliance with R.C. 153.69: Professional Design Services

You also are concerned about the applicability of R.C. 153.69. This statute authorizes a public authority to contract for professional design services, which are “services within the scope of practice of an architect or landscape architect registered under [R.C. Chapter 4703] or a professional engineer or surveyor registered under [R.C. Chapter 4733],” R.C. 153.65(C). As a public authority for purposes of R.C. 153.65-.73, *see* R.C. 153.65(A)(1), a county must follow R.C. 153.69 when planning to enter into a contract for professional design services.

Under a professional design services contract, a private company may plan and design county roads for a county. *See* R.C. 4703.30(B) (the “practice of landscape architecture” means the planning and designing of projects); R.C. 4733.01(D) (the “practice of engineering” means the “consultation, investigation, evaluation, planning, design, or inspection of construction or operation for the purpose of assuring compliance with drawings or specifications in connection with any public or privately owned public utilities, structures, buildings, machines, equipment, processes, works, or projects”); R.C. 4733.01(F) (the “practice of surveying” means (1) determining the area of any portion of the earth’s surface, the lengths and directions of the bounding lines, and the contour of the surface and (2) accurately delineating the whole on paper); *Merriam-Webster’s Collegiate Dictionary* 65 (11th ed. 2005) (an “architect” is a “person who designs and guides a plan or undertaking”). *See generally* note 11, *supra* (a road is a public improvement for purposes of R.C. Chapter 153). The contract does not, however, impart authority to the company to make the improvements or repairs to the roads set forth in the plans and designs. *Compare* R.C. 153.65(C) (“professional design services,” as used in R.C. 153.65-.73, relate to the planning and design of a public improvement), *with* R.C. 153.65(G) (“design-build services,” as used in R.C. 153.65-.73, “means services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement”). In other words, R.C. 153.69 applies when a county enters into a “professional design services contract,” as that term is used in R.C. 153.69, to have a private company plan and design county roads, but not make the improvements or repairs to the roads set forth in the plans and designs.

As explained above, R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, and R.C. 5727.75 authorize a county to enter into an agreement with a private company to have the company improve and repair the county roads it uses. While such an agreement may entail aspects of planning and designing with regard to the improving and repairing of county roads, the agreement is not a “professional design services contract,” as that term is used in R.C. 153.69, since the company also will make the improvements and repairs to the county roads set forth in the plans and designs. Therefore, a county that enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county is not required to comply with R.C. 153.69.

D. Compliance with R.C. 4115.03-.16: Payment of Prevailing Wage Rates

The final set of statutes to be considered is R.C. 4115.03-.16, Ohio's prevailing-wage laws. These statutes set forth the obligations of a public authority in regard to the prevailing wage rate when taking bids and contracting for the construction of a public improvement.¹² R.C. 4115.04(A)(1) states, in part, that "[e]very public authority authorized to contract for ... a public improvement, before advertising for bids ..., shall have the director of commerce determine the prevailing rates of wages of mechanics and laborers in accordance with [R.C. 4115.05] for the class of work called for by the public improvement, in the locality where the work is to be performed." *See also* R.C. 4115.08 ("[n]o public official, authorized to contract for or construct with the official's own forces a public improvement, shall fail, before advertising for bids or undertaking such construction, with those forces, to have the director of commerce 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, as provided in [R.C. 4115.04]").

In addition, R.C. 4115.06 provides that, if a public authority fixes a prevailing rate of wages under R.C. 4115.04, and the work is done by contract, "the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate of wages which shall not be less than the rate of wages so fixed. The successful bidder and all his subcontractors shall comply strictly with the wage provisions of the contract." *See also* R.C. 4115.05 ("[e]very contract for a public work shall contain a provision that each laborer, worker, or mechanic, employed by such contractor, subcontractor, or other person about or upon such public work, shall be paid the prevailing rate of wages provided in this section"). Pursuant to these statutes, a public authority must comply with the prevailing-wage provisions of R.C. 4115.03-.16 when entering into a contract to have a private company construct a public improvement.

A "public authority," as used in R.C. 4115.03-.16, is "any political subdivision of the state[] authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor." R.C. 4115.03(A). The term "political subdivision" is not defined for purposes of R.C. 4115.03-.16, nor is there a single definition of the term applicable throughout the Revised Code. *See* 1992 Op. Att'y Gen. No. 92-061 at 2-254 (overruled on other grounds by 2007 Op. Att'y Gen. No. 2007-012 (syllabus, paragraph 4)) ("[t]he term 'political subdivision' is used in various contexts throughout the Revised Code and is given various definitions. It is possible for an entity to be a political subdivision for one purpose and not for another"). When no statutory definition is provided for the term "political subdivision," it is appropriate to use the common, ordinary meaning of the term. *See* R.C. 1.42.

A "political subdivision" is "a limited geographical area of the State, within which a public agency is authorized to exercise some governmental function." 1972 Op. Att'y Gen. No. 72-035 at 2-135; *accord* 2004 Op. Att'y Gen. No. 2004-014 at 2-115. This definition includes a variety of public

¹² Exceptions to Ohio's prevailing-wage law are set forth in R.C. 4115.04(B). None of these exceptions apply to the situation you have presented to us.

entities, including counties. See *W. Pennsylvania Nat'l Bank v. Ross*, 345 F.2d 525, 526 (6th Cir. 1965); *Schaffer v. Bd. of Trustees of the Franklin County Veterans Mem'l*, 171 Ohio St. 228, 230-31, 168 N.E.2d 547 (1960); 2005 Op. Att'y Gen. No. 2005-015 at 2-149. As a political subdivision, a county is a "public authority," as defined in R.C. 4115.03(A), which is required to comply with R.C. 4115.03-.16 when it enters into a contract for the construction of a public improvement.

As used in R.C. 4115.03-.16, the term "construction" includes, among other things, "[a]ny reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement that involves roads ... and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than [23,447] dollars adjusted biennially by the director of commerce pursuant to [R.C. 4115.034] and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority." R.C. 4115.03(B)(4). The term "construction," as defined in R.C. 4115.03(B), thus includes the improvement and repair of county roads by a private company when the overall project cost exceeds the amount prescribed in R.C. 4115.03(B)(4). This means that a county must comply with Ohio's prevailing-wage laws if the project is a "public improvement," as defined in R.C. 4115.03(C), when the county enters into an agreement with a private company to have the company improve and repair county roads pursuant to R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75, and estimates the cost of the total overall project to be more than the amount prescribed in R.C. 4115.03(B)(4). See *U.S. Corr. Corp. v. Ohio Dep't of Indus. Relations*, 73 Ohio St. 3d at 218 (Ohio's prevailing-wage law applies to "all construction projects that are 'public improvements'"); *Episcopal Ret. Homes, Inc. v. Ohio Dep't of Indus. Relations*, 61 Ohio St. 3d 366, 369, 575 N.E.2d 134 (1991) (same as the previous parenthetical).

A "public improvement" for purposes of R.C. 4115.03-.16 includes a road or other structure or work constructed by any political subdivision of the state or by any person who, pursuant to a contract with a public authority, constructs a structure for a public authority of a political subdivision of the state. R.C. 4115.03(C). Ohio courts have examined the definition of "public improvement" set forth in R.C. 4115.03(C) for purposes of determining the applicability of Ohio's prevailing-wage laws and stated:

As applicable here, to satisfy the first sentence of R.C. 4115.03(C), the project must be constructed "pursuant to a contract with a public authority" and "for a public authority." A project is constructed pursuant to a contract with a public authority when the contract is the "animating force" for the construction. To be constructed for a public authority, "the public authority [must] receive the benefit of the construction, either through maintaining a possessory or property interest in the completed project or through the use of public funds in the construction of the project." (Citations omitted.)

Zurz v. 770 West Broad AGA, LLC, 192 Ohio App. 3d 521, 2011-Ohio-832, 949 N.E.2d 595, ¶10 (Franklin County) (quoting *Episcopal*, 61 Ohio St. 3d at 370); see *U.S. Corr. Corp. v. Ohio Dep't of Indus. Relations*, 73 Ohio St. 3d at 218-19; see also *Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa County Improvement Corp.*, 122 Ohio St. 3d 283, 2009-Ohio-2957, 910 N.E.2d

1025, ¶15. The term “public improvement,” as defined in R.C. 4115.03(C), thus includes a construction project constructed by a private company (1) pursuant to a contract with a county and (2) for a county.

When a private company enters into an agreement with a county to improve and repair county roads pursuant to R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75, the agreement is the “animating force” for the improvement and repair. The terms of the agreement require the company to perform the roadwork. Absent the agreement, the company would be under no obligation to improve and repair the county roads it uses. The agreement thus authorizes the company to perform the roadwork under the direction of the county. Accordingly, the roadwork performed by the company under the agreement is done pursuant to a contract with the county.

The county also benefits from the roadwork even though no public money is used. After the company completes the roadwork, the county will retain an easement in the land on which the county roads are situated. *See Ziegler v. Ohio Water Serv.*, 18 Ohio St. 2d 101, 247 N.E.2d 728 (1969); *Ohio Bell Tel. Co. v. Watson*, 112 Ohio St. 385, 147 N.E. 907 (1925); *Sandy v. Rataiczak*, 2008-Ohio-6212, 2008 Ohio App. LEXIS 5192, ¶12 (Noble County); *Dibella v. Village of Ontario*, 4 Ohio Misc. 120, 122, 212 N.E.2d 679 (C.P. Richland County 1965); 2002 Op. Att’y Gen. No. 2002-009 at 2-50 and 2-51. An easement is a property interest that allows the owner of the easement a limited use of the land in which the interest exists. *See Sunshine Diversified Inv. III, LLC v. Chuck*, 2012-Ohio-492, 2012 Ohio App. LEXIS 426, ¶20 (Cuyahoga County); *Gateway Park, LLC v. Ferrous Realty Limited*, 2008-Ohio-6161, 2008 Ohio App. LEXIS 5156, ¶27 (Cuyahoga County); *City of Canton v. Adelman*, Case No. 97CA00390, 1998 Ohio App. LEXIS 3099, at **6-7 (Stark County June 15, 1998). By maintaining a property interest in the county roads after the company completes the roadwork, the county has benefitted from the roadwork and, as such, the roadwork is done for the county. *See* 1987 Op. Att’y Gen. No. 87-028; *see also* 1987 Op. Att’y Gen. No. 87-007 at 2-35 (“construction that inures to the benefit of a public authority would also appear to be for a public authority”).

The improvement and repair of county roads by a private company under the agreement described in your letter thus is done pursuant to a contract with a county and for a county, and is a “public improvement,” as defined in R.C. 4115.03(C). Accordingly, a county that enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county is required to comply with R.C. 4115.03-.16 when the total overall project cost to the company is fairly estimated to be more than the amount prescribed in R.C. 4115.03(B)(4).¹³

¹³ The Ohio Supreme Court’s holding in *Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa County Improvement Corp.*, 122 Ohio St. 3d 283, 2009-Ohio-2957, 910 N.E.2d 1025, may suggest that Ohio’s prevailing-wage law, R.C. 4115.03-.16, applies only when public moneys are expended. However, as deftly explained in *Zurz v. 770 West Broad AGA, LLC*, 192 Ohio App. 3d 521, 2011-Ohio-832, 949 N.E.2d 595, ¶¶19-24 (Franklin County), the Ohio Supreme Court did not

IV. County Liability: Failure to Comply with Prevailing Wage Rate Laws

Your third question asks, if a county may enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county, whether the county is civilly liable for damages when the company fails to comply with R.C. 153.44, R.C. 153.69, R.C. 307.86-.92, or R.C. 4115.03-.16. As explained above, this opinion does not consider whether a private company must comply with R.C. 153.44, R.C. 153.69, R.C. 307.86-.92, or R.C. 4115.03-.16 when entering into such an agreement with a county. And, so we will not consider whether a county is civilly liable for damages if a company fails to comply with R.C. 153.44, R.C. 153.69, R.C. 307.86-.92, or R.C. 4115.03-.16.

We have, however, determined that Ohio's prevailing-wage laws are implicated when the county enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county. For this reason, we will generally discuss civil liability.

As explained at the beginning of this opinion, you have presented us with an unusual situation. Under the agreement between the county and private company, no county employees will be used to perform the roadwork and the county will not be required to pay compensation to the company. Thus,

address whether the use of public money is a necessary prerequisite when determining whether R.C. 4115.03-.16 apply.

Instead, the court in *Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa County Improvement Corp.* specifically addressed the following issue: “where a public authority ... spends public funds, must the expenditure be made on a ‘public improvement’ to require compliance with the prevailing wage law.” *Zurz v. 770 West Broad AGA, LLC*, 192 Ohio App. 3d at ¶21. As the court in *Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa County Improvement Corp.* did not specifically consider whether the use of public money is a necessary prerequisite when determining whether R.C. 4115.03-.16 apply, the case may not be interpreted as precluding the application of R.C. 4115.03-.16 when no public money is used. *See Zurz v. 770 West Broad AGA, LLC*, 192 Ohio App. 3d at ¶24 (“*Northwestern* does not effectively add a requirement to the statutory framework for determining whether a construction project is subject to prevailing-wage law, i.e., that a construction project need not only qualify as a ‘public improvement,’ but must also be publicly funded. In the context of its facts, *Northwestern* is not inconsistent with *Episcopal Retirement Homes and U.S. Corr. Corp.* The *Northwestern* court’s holding, that despite the expenditure of public funds by a public authority, prevailing-wage law applies only if the expenditure is made on a ‘public improvement,’ is consistent with the Supreme Court’s statements in *Episcopal Retirement Homes*, 61 Ohio St. 3d at 369, 575 N.E.2d 134, and *U.S. Corr. Corp.*, 73 Ohio St. 3d at 218, 652 N.E.2d 766, that prevailing-wage law applies to ‘all construction projects that are ‘public improvements.’” Absent any indication to limit or overrule *Episcopal Retirement Homes* and *U.S. Corr. Corp.*, and in light of the court’s reliance on those cases, we read *Northwestern* consistently with those cases and conclude that the lack of public funds does not preclude the application of prevailing-wage law here”).

the private company, rather than the county, is the employer of the persons who perform the roadwork under the agreement.

This is an important fact when determining liability under Ohio's prevailing-wage laws since it is the responsibility of an employer to pay his employees the prevailing rate of wages on a public improvement project. See R.C. 4115.05; R.C. 4115.06; *Ohio Asphalt Paving, Inc. v. Ohio Dep't of Indus. Relations*, 63 Ohio St. 3d 512, 516-17, 589 N.E.2d 35 (1992). Also, it remains, in part, a factual question whether a court would find a county civilly liable for damages when a private company, as an employer, fails to pay prevailing wage rates on a public improvement project.¹⁴ See 2006 Op. Att'y Gen. No. 2006-028 at 2-249 and 2-250; 2005 Op. Att'y Gen. No. 2005-002 at 2-12; 2004 Op. Att'y Gen. No. 2004-022 at 2-186 and 2-187; 2003 Op. Att'y Gen. No. 2003-037 at 2-311; 2000 Op. Att'y Gen. No. 2000-021 at 2-136. See generally *Ohio Asphalt Paving, Inc. v. Ohio Dep't of Indus. Relations*, 63 Ohio St. 3d at 517 (in order for an employer to maintain a cause of action in contribution against a public authority, "the facts underlying a particular public improvement contract [must] indicate culpability on the part of the public authority for failing to comply with the prevailing wage provisions"). Finally, as this is a case of first impression in Ohio, we "cannot definitively predict the approach that the courts may take in deciding whether or not to impose ... liability in any particular case, as that is a matter solely for the judiciary." 2009 Op. Att'y Gen. No. 2009-033 at 2-229; see 2003 Op. Att'y Gen. No. 2003-037 at 2-311 ("[q]uestions of liability are decided by the courts, in particular contexts and with consideration of specific facts"); 2000 Op. Att'y Gen. No. 2000-021 at 2-136 ("[q]uestions of liability are resolved by the courts and cannot be determined by means of an opinion of the Attorney General"). Consequently, whether a county may incur civil liability for damages for failing to comply with R.C. 4115.03-.16 is, in part, a question of fact that cannot be determined by means of an Attorney General opinion.

V. Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county may in accordance with R.C. 9.334, R.C. 153.693, R.C. 1509.06, R.C. 5555.022, R.C. 5557.06, or R.C. 5727.75 enter into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county.
2. A county that enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company

¹⁴ When considering whether a county is civilly liable for damages when a private company fails to pay prevailing wage rates on a public improvement project, the terms of the agreement must be considered. In your particular situation, it is significant to note that the agreement expressly requires the private company, rather than the county, to compensate the employees who work on the project.

improve and repair the county roads it uses at no cost to the county is not required to comply with R.C. 153.44, R.C. 153.69, or R.C. 307.86-92.

3. A prosecuting attorney may require that an agreement in which a board of county commissioners or county engineer authorizes a private company that conducts oil and gas drilling operations or operates a wind farm to improve and repair the county roads it uses at no cost to the county be submitted to his office for review prior to the agreement's execution.
4. A county that enters into an agreement with a private company that conducts oil and gas drilling operations or operates a wind farm to have the company improve and repair the county roads it uses at no cost to the county is required to comply with R.C. 4115.03-.16 when the total overall project cost to the company is fairly estimated to be more than the amount prescribed in R.C. 4115.03(B)(4).
5. Whether a county may incur civil liability for damages for failing to comply with R.C. 4115.03-.16 is, in part, a question of fact that cannot be determined by means of an Attorney General opinion.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with a long, sweeping underline.

MICHAEL DEWINE
Ohio Attorney General

Appendix E

Zurz v. 770 West Broad AGA, L.L.C., 2011-Ohio-832 (Ohio 10th Dist. Ct. App. 2011)

[Cite as *Zurz v. 770 W. Broad AGA, L.L.C.*, 192 Ohio App.3d 521, 2011-Ohio-832.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Zurz, Dir., et al.,	:	
	:	No. 10AP-154
Appellants,	:	(C.P.C. No. 09CVH-09-13412)
v.	:	
	:	(REGULAR CALENDAR)
770 West Broad AGA, L.L.C., et al.,	:	
Appellees.	:	

D E C I S I O N

Rendered on February 24, 2011

Michael DeWine, Attorney General, and Lindsay M. Sestile and Aaron W. Johnston, Assistant Attorneys General, for appellants.

Thompson Hine L.L.P., Michael W. Currie, and Gabe J. Roehrenbeck; and Kooperman Law Offices, L.L.C., and Brian T. Kooperman, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, Judge.

{¶ 1} Plaintiffs-appellants, the Ohio Department of Commerce and its director, Kimberly Zurz (collectively, "DOC"), appeal from the Franklin County Court of Common Pleas' entry of summary judgment in favor of defendants-appellees, 770 West Broad

AGA, L.L.C. ("AGA"), Leed Construction, Ltd., Anchor Realty Construction, Inc., Jason Gunsorek, and Megan Gunsorek Burkholder (collectively, "appellees"), on DOC's claim for violations of Ohio's prevailing-wage laws. We reverse.

{¶ 2} Effective January 15, 2008, AGA, an Ohio limited-liability company, and the state of Ohio, acting through the Department of Administrative Services ("DAS"), entered into a lease, pursuant to which AGA leased real property located at 770 West Broad Street, in Columbus ("the property"), to the state for use by the Department of Rehabilitation and Correction ("DRC"). Under the lease, AGA agreed to construct and pay for specified improvements to the property (the "project"). Section XI(C) of the lease required AGA to comply with *applicable* provisions of R.C. Chapter 4115 and Ohio Adm.Code 4101:9-4 relating to payment of prevailing wage. No public funds were spent on the project.

{¶ 3} DOC commenced this action against appellees in September 2009, alleging prevailing-wage violations, relating to the project. Appellees moved for summary judgment, arguing that Ohio's prevailing-wage law is facially unconstitutional and that, alternatively, prevailing-wage law did not apply to the project. The trial court refused to address appellees' constitutional challenge but granted appellees' motion, concluding that prevailing-wage law was inapplicable because no public funds were spent on the project.

{¶ 4} DOC has filed a timely notice of appeal and asserts the following assignment of error:

The trial court erred in finding that improvements made to a property leased to the state of Ohio, to be occupied by a state agency, are not subject to prevailing wage law, R.C. 4115.03 et seq.

{¶ 5} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary-judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711.

{¶ 6} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the nonmoving party. *Murphy v.*

Reynoldsburg (1992), 65 Ohio St.3d 356, 358-359, quoting *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶ 7} The crux of this case is whether Ohio's prevailing-wage law applies to the project. "Ohio's prevailing wage law applies to all construction projects that are 'public improvements,' as defined in R.C. 4115.03(C)." *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369; *U.S. Corr. Corp. v. Ohio Dept. of Indus. Relations* (1995), 73 Ohio St.3d 210, 218; see also *Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa Cty. Improvement Corp.*, 122 Ohio St.3d 283, 2009-Ohio-2957, ¶ 15, citing *Episcopal Retirement Homes*; R.C. 4115.10(A) ("No person, firm, corporation, or public authority that constructs a public improvement with its own forces * * * shall violate the wage provisions of sections 4115.03 to 4115.16 of the Revised Code").

{¶ 8} Despite the Supreme Court of Ohio's clear statement of the law in *Episcopal Retirement Homes* and *U.S. Corr. Corp.*, the trial court held that "in order for Ohio's prevailing wage law to apply to a project, it must be a public improvement *and* it must be paid for with public funds." (Emphasis sic.) The trial court relied exclusively on the *Northwestern* syllabus to conclude that Ohio's prevailing-wage law did not apply, because no public funds were spent on the project. Before turning to *Northwestern*, however, we will first review the applicable statutory language and prior Supreme Court precedent regarding the applicability of prevailing-wage law.

{¶ 9} The trial court correctly acknowledged that prevailing-wage law applies only to a project that is a "public improvement." R.C. 4115.03(C) defines "public improvement," as follows:

"Public improvement" includes all buildings * * * and all other structures or works constructed by a public authority of the state or any political subdivision thereof or by any person who, pursuant to a contract with a public authority, constructs any structure for a public authority of the state or a political subdivision thereof. When a public authority rents or leases a newly constructed structure within six months after completion of such construction, all work performed on such structure to suit it for occupancy by a public authority is a "public improvement."

On appeal, DOC contends that the project qualifies as a "public improvement" under both sentences of R.C. 4115.03(C), thereby mandating compliance with prevailing-wage law. More specifically, DOC contends that the project qualifies as a "public improvement" for two reasons: (1) it was completed pursuant to a contract with DRC for DRC's use and (2) DRC leased the structure within six months after work was performed to suit DRC.

{¶ 10} The Supreme Court of Ohio has provided guidance on applying the statutory definition of "public improvement" for purposes of determining the applicability of prevailing-wage law. See *Episcopal Retirement Homes*, 61 Ohio St.3d 366; *U.S. Corr. Corp.*, 73 Ohio St.3d 210. As applicable here, to satisfy the first sentence of R.C. 4115.03(C), the project must be constructed "pursuant to a contract with a public authority" and "for a public authority." See *Episcopal Retirement Homes* at 369. A project is constructed pursuant to a contract with a public authority when the contract is the "animating force" for the construction. *Id.* To be constructed for a public authority, "the public authority [must] receive the benefit of the construction, either through

maintaining a possessory or property interest in the completed project or through the use of public funds in the construction of the project." *Id.* at 370.

{¶ 11} The Supreme Court applied the statutory definition of "public improvement" in *U.S. Corr. Corp.* There, United States Corrections Corporation ("USCC"), a private company, entered into a Lease and Correctional Housing Services Agreement (the "agreement") with Hamilton County, Ohio. The agreement provided that USCC would renovate the Kruse Hardware Building in Cincinnati for use as a minimum-security correctional institution and would lease the completed facility to the county for a specified term. USCC directly contracted and paid for renovations to meet the terms of the agreement. The Supreme Court ultimately concluded that the renovations fit within both definitions of "public improvement" in R.C. 4115.03(C) and were, therefore, subject to Ohio's prevailing-wage requirements.

{¶ 12} The Supreme Court first applied the test utilized in *Episcopal Retirement Homes*, 61 Ohio St.3d 366. The court determined, 73 Ohio St.3d at 219, that the agreement was the "animating force" behind the renovation because USCC renovated the building to comply with the agreement's terms, which outlined specifications for the renovation, a timeline for completion, and a schedule of occupancy. Accordingly, the court concluded that the renovated facility was constructed pursuant to a contract with a public authority. The court further determined that the county's possessory interest in the completed facility, pursuant to the terms of the agreement, indicated that the correctional facility was constructed for a public authority. Thus, the court concluded

that the renovation project fit squarely within the definition of "public improvement" in the first sentence of R.C. 4115.03(C).

{¶ 13} The Supreme Court then considered whether the renovation also satisfied the second sentence of R.C. 4115.03(C), which provides that when a public authority leases a newly constructed structure within six months after completion of construction, all work performed to suit the structure for occupancy by a public authority is a "public improvement." The appellees argued that the second sentence was inapplicable because the lease agreement was executed *before* construction was completed. The court rejected this argument because, although the parties' agreement predated construction, the county was undisputedly to lease the building within six months after completion of the renovation and, in fact, took occupancy upon completion. The court also rejected the appellees' argument that the building was not a "newly constructed structure," based on former R.C. 4115.03(B), which defined "construction" as "'any construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decorating, of any public improvement.'" *U.S. Corr. Corp.* at 220, quoting 137 Ohio Laws, Part II, 3851. Because the statutory definition of "construction" equally encompassed construction and reconstruction, the court concluded that "newly constructed structure" encompassed a newly *reconstructed* structure, and that the renovation, therefore, constituted a "public improvement" under the second sentence of R.C. 4115.03(C). *U.S. Corr. Corp.* at 220.

{¶ 14} The facts of this case closely parallel those in *U.S. Corr. Corp.* As in that case, a lease between a private entity and a public authority required the private entity

to complete renovations to the leased premises to make them amenable to a specified use by the public authority.¹ In both cases, the renovations were completed pursuant to duties created by the lease, and the private entity was responsible for the costs of the renovations, without the use of public funds. The leases in both cases were executed prior to construction of the renovations, with the public authority to have a possessory property interest in the renovated facility and to take possession of the premises upon completion. Despite these striking similarities, the trial court did not cite *U.S. Corr. Corp.* in its decision. Under the rationale of that case, however, we conclude that the project here was a "public improvement."

{¶ 15} With respect to the definition of "public improvement" in the first sentence of R.C. 4115.03(C), the project here is indistinguishable from the project at issue in *U.S. Corr. Corp.* The lease was the animating force behind the renovation project, as AGA renovated the premises to meet its obligations under the lease. Accordingly, as in *U.S. Corr. Corp.*, the project was constructed pursuant to a contract with a public authority. Further, because DRC, a public authority, had a possessory interest in the renovated premises under the lease, the project was constructed for a public authority. Hence, the project was a "public improvement" under the first sentence of R.C. 4115.03(C) and the test applied in *U.S. Corr. Corp.*; we need not address appellants' arguments under the second sentence.

{¶ 16} Appellees argue, however, that DOC has waived any argument that the project constituted a "public improvement" under the first sentence of R.C. 4115.03(C). We disagree. In its complaint, DOC broadly alleged that the project "is a public

¹ It is undisputed that both DAS and DRC are "public authorities," as defined in R.C. 4115.03(A).

improvement as defined by R.C. 4115.03(C), and is subject to Ohio's Prevailing Wage Law." Thus, DOC's complaint does not limit it to arguing that the project was a "public improvement" under the second sentence of R.C. 4115.03(C). Additionally, appellees did not address the question whether the project was a "public improvement" or dispute its status as a "public improvement" in their motion for summary judgment but instead argued that the absence of any expenditure of public funds on the project precluded application of prevailing-wage law. They argued, based solely on *Northwestern*, 122 Ohio St.3d 283, 2009-Ohio-2957, that prevailing-wage law did not apply, "[b]ecause the State did not spend a single penny to renovate the Project." DOC did not file a cross-motion for summary judgment and was, therefore, not required to demonstrate that the project was a "public improvement," but only that the lack of public funding did not preclude application of prevailing-wage law. Moreover, the trial court's decision is premised on its conclusion that, absent an expenditure of public funds, prevailing-wage law did not apply, regardless of whether the project was a "public improvement."²

{¶ 17} We now turn to *Northwestern*, upon which appellees rely and upon which the trial court based its decision. The *Northwestern* syllabus states, as follows:

The prevailing-wage law applies only when a public authority, including an institution, spends public funds to construct a "public improvement," which by definition must be constructed by a public authority or must benefit a public authority. (R.C. 4115.03, construed.)

Based on that language, the trial court stated that before Ohio's prevailing-wage law will apply, not only must a construction project qualify as a "public improvement" but, additionally, public funds must be expended on the project. Appellees argue that the

² The trial court stated: "It does not matter what supposed tract in relation to R.C. 4115.03(C) a project is on; no public funds, no prevailing wage."

trial court appropriately applied the specific language of the *Northwestern* syllabus, which states the law of that case. DOC, on the other hand, argues that the trial court erred by failing to read *Northwestern* in its entirety and in the context of earlier Supreme Court precedent regarding prevailing-wage law.

{¶ 18} Former Rep.R. 1(B) stated, "The syllabus of a Supreme Court opinion states the controlling point or points of law decided in and necessarily arising from the facts of the specific case before the Court for adjudication." Effective May 1, 2002, however, Rep.R. 1(B) was amended to read, "The law stated in a Supreme Court opinion is contained within its syllabus (if one is provided), and its text, including footnotes." Rep.R. 1(C) now reads, "A syllabus * * * is not the controlling statement of the points of law decided, but is merely a research and indexing aid." Moreover, even prior to the amendment to Rep.R. 1, "[t]he syllabus of a Supreme Court opinion [was] not to be construed as being broader than the facts of that specific case warrant." *State v. McDermott* (1995), 72 Ohio St.3d 570, 574. Thus, this court must read the *Northwestern* syllabus along with, and in the context of, the text of the Supreme Court's opinion. Reading *Northwestern* in the context of its facts and in the context of prior Ohio Supreme Court jurisprudence regarding prevailing-wage law, *Northwestern* does not represent the significant shift suggested by appellees and accepted by the trial court, nor does it add to the statutory requirements for the application of Ohio's prevailing-wage law.

{¶ 19} Before delving into the facts of *Northwestern*, 122 Ohio St.3d 283, 2009-Ohio-2957, we first recognize that nothing in R.C. 4115.03(C) requires an expenditure

of public funds for a project to qualify as a "public improvement." In fact, construing the first sentence of R.C. 4115.03(C), the Supreme Court held that a project may be said to be "for a public authority" if the public authority receives the benefit of the construction, "either through maintaining a possessory or property interest in the completed project or through the use of public funds in the construction of the project." (Emphasis added.) *Episcopal Retirement Homes*, 61 Ohio St.3d at 370. Thus, the use of public funds is not a necessary prerequisite for a construction project to qualify as a "public improvement." Indeed, had R.C. 4115.03(C) required an expenditure of public funds, the court's analysis in *Episcopal Retirement Homes* and *U.S. Corr. Corp.* would have been unnecessary because neither case involved a project paid for with public funds.

{¶ 20} In *Northwestern*, Fellhauer Mechanical Systems, Inc. ("Fellhauer"), a private contractor and retailer, purchased real property, the building standing thereon, and office equipment, after which it renovated a portion of the building. To finance the purchase and renovation, Fellhauer obtained private funding as well as public funding from "institution[s] supported in whole or in part by public funds."³ Fellhauer used both public and private funds to finance the purchase of the real property, building, and office equipment, but used only private funds to finance the renovation. A state taxpayer and the Northwestern Ohio Building & Construction Trades Council ("Northwestern") filed an action for injunctive relief to compel compliance with the prevailing-wage law in connection with the public funds disbursed to Fellhauer.

³ R.C. 4115.03(A) defines "public authority" as "any officer, board, or commission of the state, or any political subdivision of the state, authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any institution supported in whole or in part by public funds and [R.C. 4115.03 to 4115.16] apply to expenditures of such institutions made in whole or in part from public funds."

{¶ 21} After the trial court and the court of appeals held that the Fellhauer project was not subject to Ohio's prevailing-wage law, the Supreme Court of Ohio accepted a discretionary appeal on four propositions of law, one of which stated, "Expenditures of an institution supported in part by public funds trigger prevailing wage applicability under R.C. 4115.03(A) as a matter of law." *Id.* at ¶ 13. At ¶ 1, the Supreme Court concisely stated the issue before it, as well as its holding, as follows:

We are asked to determine whether the mere expenditure of public funds by an institution, defined as a public authority in R.C. 4115.03(A) triggers the prevailing-wage requirement set forth in R.C. 4115.03 et seq. We hold that the wage requirement is triggered only when an R.C. 4115.03(A) institution spends public funds to construct a public improvement, which by definition must be constructed by a public authority or must benefit a public authority. Because the public funds herein were not spent on construction of a public improvement, we affirm the judgment * * * that the prevailing-wage law does not apply.

Thus, the specific issue before the Supreme Court was the following: where a public authority (specifically, in that case, an institution) spends public funds, must the expenditure be made on a "public improvement" to require compliance with the prevailing-wage law?

{¶ 22} The Supreme Court reiterated its prior holdings that prevailing-wage law applies to construction projects that are "public improvements." *Id.* at ¶ 15, citing *Episcopal Retirement Homes*, 61 Ohio St.3d at 369, 575 N.E.2d 134. The court rejected Northwestern's argument that an institution, as defined in R.C. 4115.03(A), is distinguishable from other public authorities, such that "once such an institution expends public funds, the prevailing-wage requirement applies automatically, regardless of whether the project * * * involves actual construction of a 'public improvement' as

defined in R.C. 4115.03(C), which is normally required to trigger payment of prevailing wage." *Id.* at ¶ 17. The court reasoned that Northwestern's argument "would unjustifiably expand the scope of prevailing wage law to include projects that are not public improvements, that are not constructed by a public authority, or that do not benefit a public authority." *Id.* at ¶ 19. At ¶ 20, the court stated as follows:

Accordingly, we hold that the prevailing-wage law applies only when a public authority, including an institution, spends public funds to construct a "public improvement," which by definition must be constructed by a public authority or must benefit a public authority. See *Episcopal Retirement [Homes]* at 369 (a project must be constructed "for a public authority" in order for the prevailing-wage statutes to apply); Ohio Adm.Code 4101:9-4-02(BB)(1) and (2) (defining "public improvement" as a structure "[c]onstructed" by or for a public authority).

{¶ 23} The Supreme Court then proceeded to apply the standards for requiring prevailing-wage compliance to the facts in *Northwestern*, 122 Ohio St.3d 283, 2009-Ohio-2957, and concluded that the Fellhauer project was not a "public improvement" because the project was not to be constructed by or for a public authority but was, instead, intended for Fellhauer alone. *Id.* at ¶ 22-23. The question before the court was not whether public funds must be spent to implicate prevailing-wage requirements but whether, when public funds are expended, the project must still be a "public improvement" to require compliance with prevailing wage law. The court concluded that the Fellhauer project was not subject to prevailing-wage laws, because none of the public funds at issue there were spent to finance any actual construction of a public improvement. *Id.* at ¶ 24.

{¶ 24} According to appellees and the trial court, *Northwestern* broadly holds that a public improvement is not subject to prevailing-wage law unless public funds are

spent on construction. Such a broad reading of *Northwestern* represents a vast departure from the Supreme Court's analysis in *Episcopal Retirement Homes* and *U.S. Corr. Corp.*, both of which the Supreme Court favorably cited in *Northwestern*. Contrary to appellees' suggestion, *Northwestern* does not effectively add a requirement to the statutory framework for determining whether a construction project is subject to prevailing-wage law, i.e., that a construction project need not only qualify as a "public improvement," but must also be publicly funded. In the context of its facts, *Northwestern* is not inconsistent with *Episcopal Retirement Homes* and *U.S. Corr. Corp.* The *Northwestern* court's holding that despite the expenditure of public funds by a public authority, prevailing-wage law applies only if the expenditure is made on a "public improvement," is consistent with the Supreme Court's statements in *Episcopal Retirement Homes*, 61 Ohio St.3d at 369, and *U.S. Corr. Corp.*, 73 Ohio St.3d at 218, that prevailing-wage law applies to "all construction projects that are 'public improvements.'" Absent any indication to limit or overrule *Episcopal Retirement Homes* and *U.S. Corr. Corp.*, and in light of the court's reliance on those cases, we read *Northwestern* consistently with those cases and conclude that the lack of public funds does not preclude the application of prevailing-wage law here. In holding otherwise, the trial court erred.

{¶ 25} For these reasons, we conclude that the trial court erred in granting summary judgment in favor of appellees based on the absence of public funds spent on the project. We expressly decline, however, to address appellees' additional arguments regarding the constitutionality of Ohio's prevailing-wage statutes and/or alleged

noncompliance with statutory duties by DAS or DOC, relating to prevailing wage. The trial court has not considered and decided those issues, and we will not determine them in the first instance on appeal. For these reasons, we sustain DOC's assignment of error to the extent supported by this decision. Accordingly, we reverse the judgment of the Franklin County Court of Common Pleas and remand this matter for further proceedings consistent with this decision and the law.

Judgment reversed
and cause remanded.

BRYANT, P.J., and CONNOR, J., concur.

Appendix F

Prevailing Wage Contractor Responsibilities Form



PREVAILING WAGE CONTRACTOR RESPONSIBILITIES

This is a summary of prevailing wage contractors' responsibilities. For more detailed information please refer to Chapter 4115 of the Ohio Revised Code

General Information

Ohio's prevailing wage laws apply to all public improvements financed in whole or in part by public funds when the total overall project cost is fairly estimated to be more than \$250,000 for new construction or \$75,000 for reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting.

Ohio's prevailing wage laws apply to all public improvements financed in whole or in part by public funds when the total overall project cost is fairly estimated to be more than \$91,150 for new construction that involves roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction or \$27,309 for reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement that involves roads, streets, alleys, sewers, ditches and other works connected to road or bridge construction.

- a) Thresholds are to be adjusted biennially by the Administrator of Ohio Department of Commerce, Division of Industrial Compliance and Labor, Bureau of Wage and Hour Administration
- b) Biennial adjustments to threshold levels are made according to the Price Deflator for Construction Index, United States Department of Commerce, Bureau of the Census*, but may not increase or decrease more than 3% for any year

Penalties for violation

Violators are to be assessed the wages owed, plus a penalty of 100% of the wages owed.

Intentional Violations

If an intentional violation is determined to have occurred, the contractor is prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement. Intentional violation means "a willful, knowing, or deliberate disregard for any provision" of the prevailing wage law and includes but is not limited to the following actions:

- Intentional failure to submit payroll reports as required, or knowingly submitting false or erroneous reports.
- Intentional misclassification of employees for the purpose of reducing wages.
- Intentional misclassification of employees as independent contractors or as apprentices.
- Intentional failure to pay the prevailing wage.
- Intentional failure to comply with the allowable ratio of apprentices to skilled workers as required by the regulations established by Ohio Department of Commerce, Division of Industrial Compliance and Labor, Bureau of Wage and Hour Administration.
- Intentionally employing an officer, of a contractor or subcontractor, that is known to be prohibited from contracting, directly or indirectly, with a public authority.

Responsibilities

- A. Pay the prevailing rate of wages as shown in the wage rate schedules issued by the Ohio Department of Commerce, Division of Industrial Compliance and Labor, Bureau of Wage and Hour Administration, for the classification of work being performed.
 1. Wage rate schedules include all modifications, corrections, escalations, or reductions to wage rates issued for the project.

2. Overtime must be paid at time and one-half the employee's base hourly rate. Fringe benefits are paid at straight time rate for all hours including overtime.
 3. Prevailing wages must be paid in full without any deduction for food, lodging, transportation, use of tools, etc.; unless, the employee has voluntarily consented to these deductions in writing. The public authority and the Director of Ohio Department of Commerce, Division of Industrial Compliance and Labor, Bureau of Wage and Hour Administration - must approve these deductions as fair and reasonable. Consent and approval must be obtained before starting the project.
- B. Use of Apprentices and Helpers cannot exceed the ratios permitted in the wage rate schedules.
1. Apprentices must be registered with the U.S. Department of Labor Bureau of Apprenticeship and Training.
 2. Contractors must provide the Prevailing Wage Coordinator a copy of the Apprenticeship Agreement for each apprentice on the project.
- C. Keep full and accurate payroll records available for inspection by any authorized representative of the Ohio Department of Commerce, Division of Industrial Compliance, and Labor, Bureau of Wage and Hour Administration or the contracting public authority, including the Prevailing Wage Coordinator. Records should include but are not limited to:
1. Time cards, time sheets, daily work records, etc.
 2. Payroll ledger/journals and canceled checks/check register.
 3. Fringe benefit records must include program, address, account number, & canceled checks.
 4. Records made in connection with the public improvement must not be removed from the State for one year following the completion of the project.
 5. Out-of-State Corporations must submit to the Ohio Secretary of State the full name and address of their Statutory Agent in Ohio.
- D. Prevailing Wage Rate Schedule must be posted on the job site where it is accessible to all employees.
- E. Prior to submitting the initial payroll report, supply the Prevailing Wage Coordinator with your project dates to schedule reporting of your payrolls.
- F. Supply the Prevailing Wage Coordinator a list of all subcontractors including the name, address, and telephone number for each.
1. **Contractors are responsible for their subcontractors' compliance with requirements of Chapter 4115 of the Ohio Revised Code.**
- G. Before employees start work on the project, supply them with written notification of their job classification, prevailing wage rate, fringe benefit amounts, and the name of the Prevailing Wage Coordinator for the project. A copy of the completed signed notification should be submitted to Prevailing Wage Coordinator.
- H. Supply all subcontractors with the Prevailing Wage Rates and changes.
- I. Submit certified payrolls within two (2) weeks after the initial pay period. Payrolls must include the following information:
1. Employees' names, addresses, and social security numbers.
 - (a) Corporate officers/owners/partners and any salaried personnel who do physical work on the project are considered employees. All rate and reporting requirements are applicable to these individuals.
 2. Employees' work classification.
 - (a) Be specific about the laborers and/or operators (Group)
 - (b) For all apprentices, show level/year and percent of journeyman's rate
 3. Hours worked on the project for each employee.

- (a) The number of hours worked in each day and the total number of hours worked each week.
 - 4. Hourly rate for each employee.
 - (a) The minimum rate paid must be the wage rate for the appropriate classification. The Department's Wage Rate Schedule sets this rate.
 - (b) All overtime worked is to be paid at time and one-half for all hours worked more than forty (40) per week.
 - 5. Where fringes are paid into a bona fide plan instead of cash, list each benefit and amount per hour paid to program for each employee.
 - (a) When the amount contributed to the fringe benefit plan and the total number of hours worked by the employee on all projects for the year are documented, the hourly amount is calculated by dividing the total contribution of the employer by the total number of hours worked by the employee.
 - (b) When the amount contributed to the fringe benefit is documented but not the total hours worked, the hourly amount is calculated by **dividing the total yearly contribution by 2080**.
 - 6. Gross amount earned on all projects during the pay period.
 - 7. Total deductions from employee's wages.
 - 8. Net amount paid.
- J. The reports shall be certified by the contractor, subcontractor, or duly appointed agent stating that the payroll is correct and complete; and that the wage rates shown are not less than those required by the O.R.C. 4115.
- K. Provide a Final Affidavit to the Prevailing Wage Coordinator upon the completion of the project.

Appendix G

Minimum Wage Complaint Form



Department of Commerce

Division of Industrial Compliance

John R. Kasich, Governor
Jacqueline T. Williams, Director

Instructions for Filing a Minimum Wage Complaint

There is no cost in having a valid complaint investigated by our office. Please be advised, we cannot provide legal advice or act as your attorney. Also, please note, this office is only able to pursue minimum wage for the hours that are found to be unpaid. You also have the option of pursuing your complaint privately or you may wish to contact an attorney. However, you cannot pursue your complaint through both processes at the same time.

After reviewing the guidelines below, if you believe that your situation falls within our investigatory limitations, you may file a complaint with our office.

The Bureau of Wage and Hour Administration investigates complaints involving the following:

- Minimum wage not being paid,
- Overtime not being paid,
- Unauthorized deductions, and
- Last paychecks being held.

We cannot collect wages owed for the any of the following reasons:

- Vacation pay,
- Sick leave,
- Holidays, or
- Other employment benefits promised to you.

In addition, we cannot investigate a complaint if you believe you were improperly terminated or if your employer did not properly withhold taxes, social security, etc.

In order to file a complaint, please follow these steps:

1. Fill in the form completely using black or blue ink. Please print legibly.
2. Provide copies, NOT originals, of the following; pay stubs, time sheets and any other records that will help prove your claim.
3. Use a separate sheet of paper to explain your situation, if needed.
4. Please have your signature notarized.
5. If you wish to remain anonymous, please indicate that by selecting the correct boxes on the form. Please note, you will remain anonymous until such time that wages are to be paid.
6. Submit the completed complaint form and your records to:

Division of Industrial Compliance
Bureau of Wage and Hour Administration,
6606 Tussing Road
Reynoldsburg, OH 43068

Please note, a complaint will be rejected if it does not contain complete and sufficient information. A complaint may also be rejected depending on your employment status (i.e. an exempt employee).

Bureau of Wage and Hour Administration
6606 Tussing Road
PO Box 4009
Reynoldsburg, OH 43068-9009 U.S.A.

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Department of Commerce

Division of Industrial Compliance

John R. Kasich, Governor
Jacqueline T. Williams, Director

MINIMUM WAGE COMPLAINT

Current Status With this Employer: Present employee of business? <input type="checkbox"/> Yes <input type="checkbox"/> No Former employee of business? <input type="checkbox"/> Yes <input type="checkbox"/> No Reason for filing complaint: <input type="checkbox"/> Minimum wage not paid <input type="checkbox"/> Overtime not paid <input type="checkbox"/> Unpaid wages <input type="checkbox"/> Last pay not received <input type="checkbox"/> Other (Explain in comments section below)	DO NOT WRITE IN THIS AREA	
	Case # _____	
	Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Rejected <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Denied <input type="checkbox"/> Yes <input type="checkbox"/> No	
County _____	Investigator _____	
Comments: _____ _____		

INCOMPLETE FORMS WILL BE RETURNED

EMPLOYER INFORMATION		Name _____			
Telephone _____		Address _____			
Email/Website _____		City _____	State _____	Zip _____	County _____
Type of Business _____		Number of Employees <input type="checkbox"/> 0-5 <input type="checkbox"/> 10 - 25 <input type="checkbox"/> 50 - 75 <input type="checkbox"/> 100 Plus			
Owner's name _____		Supervisor's name and title _____			
Is the business still operating? <input type="checkbox"/> Yes <input type="checkbox"/> No Business is _____ Over / _____ Under \$500,000. per year		Has the business filed bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No			
COMPLAINANT/EMPLOYEE INFORMATION Employees should include copies of pay stubs, time cards, or any other documents that will assist in our investigation		Name _____			
Telephone _____		Address _____			
Other telephone numbers where you can be reached: _____		City _____	State _____	Zip _____	County _____
Email _____		<input type="checkbox"/> Yes, I authorize the use of my name <input type="checkbox"/> No, I do not authorize the use of my name			
Are you over 18 years old? <input type="checkbox"/> Yes <input type="checkbox"/> No	How long did you work there? From ____/____/____ To ____/____/____	What position did you hold? _____			
WAGE PAYMENTS		Are any part of these wages for?			
<input type="checkbox"/> Hourly? Amount _____	<input type="checkbox"/> Weekly?	Bonus _____		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Salary? Amount _____	<input type="checkbox"/> Bi-weekly?	Commission _____		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Overtime? Amount _____	<input type="checkbox"/> Monthly?	Vacation/Holiday Pay/Sick Leave		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Were tips received? <input type="checkbox"/> Yes <input type="checkbox"/> No		Do you owe your employer for advances, loans, merchandise, etc.		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, was at least \$30 in tips reported each week? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, amount owed: \$ _____			
Were you employed:		Did employer keep time records?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
In outside sales? <input type="checkbox"/> Yes <input type="checkbox"/> No		Were you paid in cash?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
In a managerial/supervisory position? <input type="checkbox"/> Yes <input type="checkbox"/> No		Did employer keep wage records?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
By a governmental agency? <input type="checkbox"/> Yes <input type="checkbox"/> No		Do you have your own record of hours worked?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
In a professional position? <input type="checkbox"/> Yes <input type="checkbox"/> No					
In interstate commerce? <input type="checkbox"/> Yes <input type="checkbox"/> No					
HOW MUCH ARE YOU OWED? \$ _____					
TIME PERIOD From ____/____/____ To ____/____/____					

NUMBER OF HOURS WAGES CLAIMED FOR _____	Were deductions for taxes, etc. withheld? <input type="checkbox"/>Yes <input type="checkbox"/>No If yes, were amounts listed on pay stubs? <input type="checkbox"/>Yes <input type="checkbox"/>No
---	--

ADDITIONAL COMMENTS:

Please Attach Additional Sheets If Necessary

ATTACH ANY INFORMATION TO SUBSTANTIATE YOUR CLAIM. UNSUBSTANTIATED CLAIMS MAY BE RETURNED.

SPECIAL NOTICE

I _____, on this day _____

Do

Do Not

Assign to the Ohio Department of Commerce all rights, title, and interest to my claim for wages against _____.

(Employer)

In assigning these rights, I am aware that I must submit written notice of any change in my representational status.

- Yes, I authorize the use of my name
- No, I do not authorize the use of my name

Signature date

SIGNATURE & NOTARY

Affiant is further informed that Section 2921.13 of the Ohio Revised Code provides a penalty of a misdemeanor of the first degree and that prosecution will be pursued of those persons who “knowingly swear or affirm the truth of a false statement when... the statement is sworn or affirmed before a notary public...”

Sworn to before me and subscribed by the said:

Complaints will be returned if not complete & signed

I hereby certify that this is a true statement to the best of my knowledge and belief.

Signature date

In my presence this _____ day of _____ 20____

Notary Public

Return to:

Ohio Department of Commerce
 Division of Industrial Compliance
 Bureau of Wage & Hour Administration
 6606 Tussing Road, P.O. Box 4009
 Reynoldsburg, OH 43068 - 9009
 614-644-2239 Fax 614-644-8639



(Revised 9/30/11)

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*** INCOMPLETE FORMS WILL BE RETURNED ***

Appendix H

***UW Minimum Wage Study: Impacts of
Seattle's Landmark Ordinance Vary, Are
Positive for Experienced Workers (10/22/18)***

UW MINIMUM WAGE STUDY: IMPACTS OF SEATTLE’S LANDMARK ORDINANCE VARY, ARE POSITIVE FOR EXPERIENCED WORKERS

Ekaterina Jardim, Mark C. Long, Robert Plotnick,
Emma van Inwegen, Jacob Vigdor, and Hilary Wething

October 22, 2018

While Seattle’s Low-Wage Labor Market Opportunities Declined Overall as Minimum Wages Rose, Many Low-Wage Workers Earned More as a Result of the Wage Increase

- Most analyses of the minimum wage, including this team’s prior work, focus on the “average” impact of the policy. In reality, minimum wage increases may have very different effects on different workers. For policymakers wrestling with the implications of raising the minimum wage, it is important to understand who benefits and who is harmed as a result of the increased minimum, and by how much.
- Jardim et al. (2018a) reported that Seattle’s second minimum wage increase to \$13 in 2016 reduced hours worked in low-wage jobs by 6-7 percent, while hourly wages in such jobs increased by 3 percent. The net effect was to decrease the total amount paid to low-wage workers in Seattle. This doesn’t necessarily imply that all workers lost income, however.
- The Minimum Wage Study’s new working paper, Jardim et al. (2018b), sheds light on the experiences of over 14,000 people working Seattle’s lowest paid jobs in early 2015.

Most Experienced Half of Workers See Gains

- We evaluate the impact of the minimum wage on individual worker earnings and other labor market outcomes by following, over time, a specific group of low-wage workers: those *already employed in Seattle earning less than the new minimum wage before it increased*.
- For this group Seattle’s ordinance raised average hourly wages up to \$1.54 six quarters after the initial minimum wage increase, decreased hours worked by about 30 minutes per week, resulting in an average earnings gain of \$156 per quarter (\$12 per week).
- The effects differ significantly by worker experience (see figure). Workers with above median experience saw their earnings increase by an average of \$251 per quarter (\$19 per week). Less experienced workers saw little to no average change.



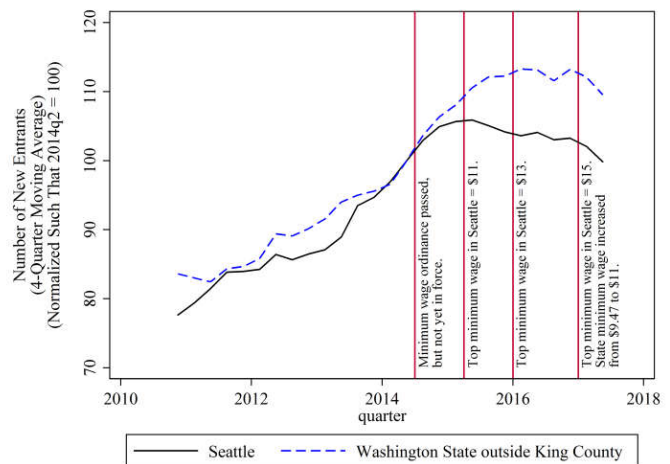
Workers More Likely to Remain With Baseline Employer, Reducing Turnover in Low-Wage Seattle Jobs

- A higher minimum wage increases incentives for employers to retain workers who have become productive at their jobs rather than hiring and training new workers. Higher wages may also increase incentives for workers to continue working for their current employer.
- In the six quarters following the introduction of the initial minimum wage increase to \$11 in 2015, turnover rates declined by 8%. Reduced turnover may help explain an additional result: the number of new workers entering Seattle’s low wage labor market has declined.

Fewer New Entrants in the Labor Market

- To understand how the minimum wage increases affected people just starting off in Seattle’s low-wage labor market, we compared the number of new workers entering Seattle’s job market to the number of new workers entering job markets across Washington State (outside of King County) from 2011 through 2017.
- As shown in the figure on the right, Seattle’s rate of growth of new entrants was comparable to the rest of Washington’s through 2014.
- Just as the new minimum wage ordinance began to be enforced in 2015, the pace of growth in new workers entering Seattle’s job market stalled and lagged behind the rest of the state thereafter.

Fewer New Entrants in the Labor Market
Workers entering Seattle and WA who earn <\$15/hour



What’s Next for The Minimum Wage Study?

- The results from Jardim et al. (2018b) illuminate how raising the minimum wage affects different groups of workers based on observed work experience. However, the impact of the minimum wage may vary by other characteristics such as age or gender.
- The UW Minimum Wage Study team is in the process of acquiring additional administrative datasets that will allow us to examine demographic differences in the effects of Seattle’s minimum wage ordinance and on additional outcomes including public program participation.

References

Jardim*, E., M.C. Long, R. Plotnick, E. van Inwegen, J. Vigdor, and H. Wething (2018a). "Minimum Wage Increases, Wages, and Low-Wage Employment: Evidence from Seattle", *National Bureau of Economic Research Working Paper No. 23532* (revised).
 _____ (2018b). "Minimum Wage Increases and Individual Employment Trajectories", *National Bureau of Economic Research Working Paper No. 25812*.

*Ekaterina Jardim worked on these papers prior to joining Amazon.