

As Introduced

**127th General Assembly
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S. B. No. 139

Senator Mumper

Cosponsors: Senators Niehaus, Jacobson

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A B I L L

To amend sections 3354.16, 3355.12, 3357.16, and 1
4115.04 and to enact sections 153.53 and 3318.101 2
of the Revised Code to permit state institutions 3
of higher education to use either single or 4
multiple prime bidding for public improvement 5
projects; to exempt from the Prevailing Wage Law 6
projects constructed by state institutions of 7
higher education and projects constructed by 8
private, non-profit organizations that receive 9
public moneys to construct those projects; and to 10
prohibit the Ohio School Facilities Commission 11
from approving school district projects that 12
specify the payment of prevailing wages. 13

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3354.16, 3355.12, 3357.16, and 14
4115.04 be amended and sections 153.53 and 3318.101 of the Revised 15
Code be enacted to read as follows: 16

Sec. 153.53. (A) Notwithstanding sections 153.50 to 153.52 of 17
the Revised Code, any institution of higher education, as defined 18
in section 3345.12 of the Revised Code, or its board of trustees 19

or managing authority authorized to contract for the erection, 20
repair, alteration, or rebuilding of a public building, structure, 21
or other improvement and required by law to advertise and receive 22
bids for furnishing materials and doing the work necessary for the 23
improvement, shall do one of the following: 24

(1) Solicit separate and distinct bids for all of the 25
branches or classes of work to be performed and for which 26
materials must be furnished for the improvement; 27

(2) Require that bids be submitted for a single, aggregate 28
contract to cover all the branches or classes of work to be 29
performed and for which materials must be furnished for the 30
improvement; 31

(3) Require that bids be submitted for both of the following: 32

(a) Single, aggregate contracts for at least two but less 33
than all of the branches or classes of work to be performed and 34
for which materials must be furnished for the improvement; 35

(b) Separate and distinct contracts for the remaining 36
branches or classes of work to be performed and for which 37
materials must be furnished for the improvement that are not 38
included in the bids required under division (A)(3)(a) of this 39
section. 40

(B) If an institution of higher education, as described in 41
division (A) of this section, solicits bids pursuant to division 42
(A) of this section, the institution shall award contracts in one 43
of the following manners: 44

(1) Separate and distinct contracts to the lowest responsive 45
and responsible bidders, in accordance with section 9.312 of the 46
Revised Code, for each branch or class of work to be performed and 47
for which materials must be furnished for the improvement; 48

(2) A single aggregate contract to the lowest responsive and 49

responsible bidder, in accordance with section 9.312 of the 50
Revised Code, for all of the classes and branches of work to be 51
performed and for which materials must be furnished for the 52
improvement; 53

(3) Both of the following: 54

(a) Single, aggregate contracts to the lowest responsive and 55
responsible bidders, in accordance with section 9.312 of the 56
Revised Code, for at least two but less than all of the branches 57
or classes of work to be performed and for which materials must be 58
furnished for the improvement; 59

(b) Separate and distinct contracts to the lowest responsive 60
and responsible bidders, in accordance with section 9.312 of the 61
Revised Code, for the remaining branches or classes of work to be 62
performed and for which materials must be furnished for the 63
improvement that are not included in the contracts awarded under 64
division (B)(3)(a) of this section. 65

(C) If an institution of higher education awards one or more 66
single, aggregate contracts pursuant to division (B) of this 67
section, the bidder or bidders to whom a single, aggregate 68
contract was awarded shall award any necessary subcontracts for 69
the improvement to the lowest responsive and responsible bidders 70
using the criteria for determining the lowest responsive and 71
responsible bidder that is described in section 9.312 of the 72
Revised Code. 73

Sec. 3318.101. (A) As used in this section, "prevailing rate" 74
means the prevailing rate of wages determined under sections 75
4115.03 to 4115.16 of the Revised Code. 76

(B) Notwithstanding any guideline, specification, form, 77
resolution, or rule to the contrary that is or has been adopted by 78
the Ohio school facilities commission, the commission shall not 79

enter into any agreement with a city, exempted village, local, or 80
joint vocational school district in relation to a project or 81
segment of a project undertaken by the district under this chapter 82
or approve any contract for labor under such project or segment 83
that requires that mechanics and laborers engaged for that project 84
be paid the prevailing rate. 85

(C) Nothing in this section affects the exemption of school 86
districts and educational service centers from the requirement to 87
pay the prevailing rate prescribed in division (B)(3) of section 88
4115.04 of the Revised Code. 89

Sec. 3354.16. (A) When the board of trustees of a community 90
college district has by resolution determined to let by contract 91
the work of improvements pursuant to the official plan of such 92
district, contracts in amounts exceeding a dollar amount set by 93
the board, which dollar amount shall not exceed fifty thousand 94
dollars, shall be advertised after notices calling for bids have 95
been published once a week for three consecutive weeks, in at 96
least one newspaper of general circulation within the community 97
college district wherein the work is to be done. Subject to 98
section 3354.10 of the Revised Code, the board of trustees of the 99
district may let such contract ~~to the lowest responsive and~~ 100
~~responsible bidder,~~ in accordance with section ~~9.312~~ 153.53 of the 101
Revised Code, who meets the requirements of section 153.54 of the 102
Revised Code. Such contract shall be in writing and shall be 103
accompanied by or shall refer to plans and specifications for the 104
work to be done. Such contract shall be approved by the board of 105
trustees and signed by the president of the board and by the 106
contractor. 107

(B) On the first day of January of every even-numbered year, 108
the chancellor of the board of regents shall adjust the fifty 109
thousand dollar contract limit set forth in division (A) of this 110

section, as adjusted in any previous year pursuant to this 111
division. The chancellor shall adjust the limit according to the 112
average increase or decrease for each of the two years immediately 113
preceding the adjustment as set forth in the United States 114
department of commerce, bureau of the census implicit price 115
deflator for construction, provided that no increase or decrease 116
for any year shall exceed three per cent of the contract limit in 117
existence at the time of the adjustment. Notwithstanding division 118
(A) of this section, the limit adjusted under this division shall 119
be used thereafter in lieu of the limit in division (A) of this 120
section. 121

(C) Before entering into an improvement pursuant to division 122
(A) of this section, the board of trustees of a community college 123
district shall ~~require separate and distinct proposals to be made~~ 124
~~for furnishing materials or doing work on the improvement, or~~ 125
~~both, in the board's discretion, for each separate and distinct~~ 126
~~branch or class of work entering into the improvement. The board~~ 127
~~of trustees also may require a single, combined proposal for the~~ 128
~~entire project for materials or doing work, or both, in the~~ 129
~~board's discretion, that includes each separate and distinct~~ 130
~~branch or class of work entering into the improvement. The board~~ 131
~~of trustees need not solicit separate proposals for a branch or~~ 132
~~class of work for an improvement if the estimate cost for that~~ 133
~~branch or class of work is less than five thousand dollars.~~ 134

~~(D) When more than one branch or class of work is required,~~ 135
~~no contract for the entire job, or for a greater portion thereof~~ 136
~~than is embraced in one such branch or class of work shall be~~ 137
~~awarded, unless the separate bids do not cover all the work and~~ 138
~~materials required or the bids for the whole or for two or more~~ 139
~~kinds of work or materials are lower than the separate bids in the~~ 140
~~aggregate. The board of trustees need not award separate contracts~~ 141
~~for a branch or class of work entering into an improvement if the~~ 142

~~estimated cost for that branch or class of work is less than five~~ 143
~~thousand dollars solicit bids and award improvement contracts in~~ 144
~~accordance with section 153.53 of the Revised Code.~~ 145

Sec. 3355.12. (A) When the managing authority of the 146
university branch district has determined to let by contract the 147
work of improvements, contracts in amounts exceeding a dollar 148
amount set by the managing authority, which dollar amount shall 149
not exceed fifty thousand dollars, shall be advertised after 150
notices calling for bids have been published once a week for three 151
consecutive weeks, in at least one newspaper of general 152
circulation within the university branch district wherein the work 153
is to be done. Such managing authority may let such contract ~~to~~ 154
~~the lowest responsive and responsible bidder,~~ in accordance with 155
section ~~9.312~~ 153.53 of the Revised Code, who meets the 156
requirements of section 153.54 of the Revised Code. Such contract 157
shall be in writing and shall be accompanied by or shall refer to 158
plans and specifications for the work to be done. Such contract 159
shall be approved by the managing authority of the university 160
branch district and signed by the chairperson or vice-chairperson 161
of the managing authority and by the contractor. 162

(B) On the first day of January of every even-numbered year, 163
the chancellor of the board of regents shall adjust the fifty 164
thousand dollar contract limit set forth in division (A) of this 165
section, as adjusted in any previous year pursuant to this 166
division. The chancellor shall adjust the limit according to the 167
average increase or decrease for each of the two years immediately 168
preceding the adjustment as set forth in the United States 169
department of commerce, bureau of the census implicit price 170
deflator for construction, provided that no increase or decrease 171
for any year shall exceed three per cent of the contract limit in 172
existence at the time of the adjustment. Notwithstanding division 173
(A) of this section, the limit adjusted under this division shall 174

be used thereafter in lieu of the limit in division (A) of this section. 175
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(C) Before entering into an improvement pursuant to division (A) of this section, the managing authority of the university branch district shall ~~require separate and distinct proposals to be made for furnishing materials or doing work on the improvement, or both, in the board's discretion, for each separate and distinct branch or class of work entering into the improvement. The managing authority also may require a single, combined proposal for the entire project for materials or doing work, or both, in the board's discretion, that includes each separate and distinct branch or class of work entering into the improvement. The managing authority need not solicit separate proposals for a branch or class of work for an improvement if the estimate cost for that branch or class of work is less than five thousand dollars.~~ 177
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~~(D) When more than one branch or class of work is required, no contract for the entire job, or for a greater portion thereof than is embraced in one such branch or class of work shall be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids in the aggregate. The managing authority need not award separate contracts for a branch or class of work entering into an improvement if the estimated cost for that branch or class of work is less than five thousand dollars solicit bids and award improvement contracts in accordance with section 153.53 of the Revised Code.~~ 191
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Sec. 3357.16. (A) When the board of trustees of a technical college district has by resolution determined to let by contract the work of improvements pursuant to the official plan of such 203
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district, contracts in amounts exceeding a dollar amount set by 206
the board, which dollar amount shall not exceed fifty thousand 207
dollars, shall be advertised after notice calling for bids has 208
been published once a week for three consecutive weeks, in at 209
least one newspaper of general circulation within the technical 210
college district where the work is to be done. The board of 211
trustees of the technical college district may let such contract 212
~~to the lowest responsive and responsible bidder,~~ in accordance 213
with section ~~9.312~~ 153.53 of the Revised Code, who meets the 214
requirements of section 153.54 of the Revised Code. Such contract 215
shall be in writing and shall be accompanied by or shall refer to 216
plans and specifications for the work to be done. Such contract 217
shall be approved by the board of trustees and signed by the 218
president of the board and by the contractor. 219

(B) On the first day of January of every even-numbered year, 220
the chancellor of the board of regents shall adjust the fifty 221
thousand dollar contract limit set forth in division (A) of this 222
section, as adjusted in any previous year pursuant to this 223
division. The chancellor shall adjust the limit according to the 224
average increase or decrease for each of the two years immediately 225
preceding the adjustment as set forth in the United States 226
department of commerce, bureau of the census implicit price 227
deflator for construction, provided that no increase or decrease 228
for any year shall exceed three per cent of the contract limit in 229
existence at the time of the adjustment. Notwithstanding division 230
(A) of this section, the limit adjusted under this division shall 231
be used thereafter in lieu of the limit in division (A) of this 232
section. 233

(C) Before entering into an improvement pursuant to division 234
(A) of this section, the board of trustees of a technical college 235
district shall ~~require separate and distinct proposals to be made~~ 236
~~for furnishing materials or doing work on the improvement, or~~ 237

~~both, in the board's discretion, for each separate and distinct 238
branch or class of work entering into the improvement. The board 239
of trustees also may require a single, combined proposal for the 240
entire project for materials or doing work, or both, in the 241
board's discretion, that includes each separate and distinct 242
branch or class of work entering into the improvement. The board 243
of trustees need not solicit separate proposals for a branch or 244
class of work for an improvement if the estimate cost for that 245
branch or class of work is less than five thousand dollars. 246~~

~~(D) When more than one branch or class of work is required, 247
no contract for the entire job, or for a greater portion thereof 248
than is embraced in one such branch or class of work shall be 249
awarded, unless the separate bids do not cover all the work and 250
materials required or the bids for the whole or for two or more 251
kinds of work or materials are lower than the separate bids in the 252
aggregate. The board of trustees need not award separate contracts 253
for a branch or class of work entering into an improvement if the 254
estimated cost for that branch or class of work is less than five 255
thousand dollars solicit bids and award improvement contracts in 256
accordance with section 153.53 of the Revised Code. 257~~

Sec. 4115.04. (A)(1) Every public authority authorized to 258
contract for or construct with its own forces a public 259
improvement, before advertising for bids or undertaking such 260
construction with its own forces, shall have the director of 261
commerce determine the prevailing rates of wages of mechanics and 262
laborers in accordance with section 4115.05 of the Revised Code 263
for the class of work called for by the public improvement, in the 264
locality where the work is to be performed. Except as provided in 265
division (A)(2) of this section, that schedule of wages shall be 266
attached to and made part of the specifications for the work, and 267
shall be printed on the bidding blanks where the work is done by 268
contract. A copy of the bidding blank shall be filed with the 269

director before the contract is awarded. A minimum rate of wages 270
for common laborers, on work coming under the jurisdiction of the 271
department of transportation, shall be fixed in each county of the 272
state by the department of transportation, in accordance with 273
section 4115.05 of the Revised Code. 274

(2) In the case of contracts that are administered by the 275
department of natural resources, the director of natural resources 276
or the director's designee shall include language in the contracts 277
requiring wage rate determinations and updates to be obtained 278
directly from the department of commerce through electronic or 279
other means as appropriate. Contracts that include this 280
requirement are exempt from the requirements established in 281
division (A)(1) of this section that involve attaching the 282
schedule of wages to the specifications for the work, making the 283
schedule part of those specifications, and printing the schedule 284
on the bidding blanks where the work is done by contract. 285

(B) Sections 4115.03 to 4115.16 of the Revised Code do not 286
apply to: 287

(1) Public improvements in any case where the federal 288
government or any of its agencies furnishes by loan or grant all 289
or any part of the funds used in constructing such improvements, 290
provided that the federal government or any of its agencies 291
prescribes predetermined minimum wages to be paid to mechanics and 292
laborers employed in the construction of such improvements; 293

(2) A participant in a work activity, developmental activity, 294
or an alternative work activity under sections 5107.40 to 5107.69 295
of the Revised Code when a public authority directly uses the 296
labor of the participant to construct a public improvement if the 297
participant is not engaged in paid employment or subsidized 298
employment pursuant to the activity; 299

(3) Public improvements undertaken by, or under contract for, 300

the board of education of any school district or the governing 301
board of any educational service center; 302

(4) Public improvements undertaken by, or under contract for, 303
a county hospital operated pursuant to Chapter 339. of the Revised 304
Code or a municipal hospital operated pursuant to Chapter 749. of 305
the Revised Code if none of the funds used in constructing the 306
improvements are the proceeds of bonds or other obligations that 307
are secured by the full faith and credit of the state, a county, a 308
township, or a municipal corporation and none of the funds used in 309
constructing the improvements, including funds used to repay any 310
amounts borrowed to construct the improvements, are funds that 311
have been appropriated for that purpose by the state, a board of 312
county commissioners, a township, or a municipal corporation from 313
funds generated by the levy of a tax, provided that a county 314
hospital or municipal hospital may elect to apply sections 4115.03 315
to 4115.16 of the Revised Code to a public improvement undertaken 316
by, or under contract for, the hospital; 317

(5) Any project described in divisions (D)(1)(a) to (D)(1)(e) 318
of section 176.05 of the Revised Code; 319

(6) Public improvements constructed by an institution of 320
higher education, as defined in section 3345.12 of the Revised 321
Code; 322

(7) Improvements constructed by private, non-profit 323
organizations exempt from federal income taxation pursuant to 324
divisions (a) and (c)(3) of section 501 of the Internal Revenue 325
Code, 26 U.S.C. 501, that receive public moneys to construct those 326
improvements. 327

Section 2. That existing sections 3354.16, 3355.12, 3357.16, 328
and 4115.04 of the Revised Code are hereby repealed. 329

Section 3. Section 4115.04 of the Revised Code is presented 330

in this act as a composite of the section as amended by both Sub. 331
H.B. 443 and Am. Sub. H.B. 699 of the 126th General Assembly. The 332
General Assembly, applying the principle stated in division (B) of 333
section 1.52 of the Revised Code that amendments are to be 334
harmonized if reasonably capable of simultaneous operation, finds 335
that the composite is the resulting version of the section in 336
effect prior to the effective date of the section as presented in 337
this act. 338