



## 2002 THRESHOLD LEVELS FOR PREVAILING WAGE ON PUBLIC WORKS

As of January 1, 2002 the threshold that triggers prevailing wages on "new" construction projects is \$62.549. For "reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting," that level is \$18,764.

Every contract for public work shall contain a provision that each worker employed by the contractor or subcontractor, or other person about or upon the public work, must be paid the prevailing rate of wages. A public authority must designate and appoint one of its own employees to serve as the Prevailing Wage Coordinator during the life of the contract for constructing the public improvement.

For further information regarding the responsibilities of a public authority with respect to prevailing wages, contact the Ohio Department of Commerce and refer to Chapter 4115 of the Ohio Revised Code.

## SUPREME COURT STRIKES DOWN MANUFACTURED HOME STATUTES AS UNCONSTITUTIONAL

In *Canton v. State*, 2002-Ohio-2005, voting 6-1, the Supreme Court reinstated a Stark County court decision allowing the city of Canton to prohibit manufactured homes within its limits. Justice Evelyn Lundberg Stratton wrote the court's opinion, which strikes down as unconstitutional portions of a building standards statute regulating manufactured homes.

The court said two sections of the law infringed on the home-rule powers guaranteed municipalities by the Ohio Constitution. The statute as written "attempt[ed] to limit the ability of political subdivisions to zone their communities as they see fit, [striking] at the heart of municipal home rule: the orderly planning of a city," Justice Stratton wrote. Justice Paul E. Pfeifer dissented.

The first offending section of the statute forbade political subdivisions from prohibiting or restricting the location of permanently sited manufactured homes in any area where single-family homes are permitted. The second provided an exception, allowing private landowners to prohibit various structures, including manufactured homes, through the use of deed restrictions.

The statute was obviously at odds with a Canton city ordinance prohibiting manufactured homes within city limits. A statute supersedes a conflicting municipal ordinance if the ordinance is an exercise of the municipality's police power, rather than of local self-government, and if the statute is a general law.

With the opinion, the Supreme Court established a four-prong test for determining if a statute is a general law for the purposes of home-rule analysis. The statute must:

1. Be part of a statewide and comprehensive legislative enactment
2. Apply to all parts of the state alike and operate uniformly throughout the state
3. Set forth police, sanitary, or similar regulations, rather than purport only to grant or limit the legislative power of a municipal corporation to do so, and

4. Prescribe a rule of conduct upon citizens generally.

The legislation stricken today failed the test on all four counts, the court found.

First, the legislation was not part of a statewide and comprehensive legislation enactment because Ohio has no statewide zoning scheme, Justice Stratton explained. "Nor does the state have a comprehensive plan or scheme for the licensing, regulation, or registration of manufactured homes."

Second, the legislation would not apply uniformly throughout Ohio, Justice Stratton said. The built-in exception "provides suburban portions of the state with newer housing developments the opportunity to [prohibit manufactured homes] by incorporating restrictive covenants in their deeds."

"Enterprising developers can use deed restrictions to prohibit placement of manufactured homes...[so] the statute will effectively apply only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions."

Third, the legislation did not set forth any regulations. "In this case, [the legislation], on its face, appears to serve an overriding state interest in providing more affordable housing options across the state. However,...the exception...defeats this purpose."

"As such, [the legislation] merely purports only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary or similar regulations," Justice Stratton explained.

Finally, because the stricken statutory sections applied only to municipal legislative bodies, they did not prescribe a rule of conduct upon citizens generally, Justice Stratton wrote.

**Please note:** The above material is derived from a decision summary prepared by the Communications Office of the Ohio Supreme Court for the general public. They are not to be considered headnotes or syllabi of Supreme Court opinions. Full court opinions from 1992 to the present are available on-line from the Reporter of Decisions.

## SUPREME COURT RULES ON LETTERS TO EDITORS

In *Wampler v. Higgins* (2001), 93 Ohio St.3d 111, the Ohio Supreme court states: "The Ohio Constitution's separate and independent protection for opinions recognized in *Scott v. News-Herald* and reaffirmed in *Vail v. Plain Dealer Publishing Co.*, is not limited in its application to the allegedly defamatory statements made by media defendants. A nonmedia defendant whose allegedly defamatory statements appear in a letter to the editor may invoke the same protection, which may or may not apply depending on the totality of the circumstance."

## E-MAIL AND OHIO'S SUNSHINE LAWS: IT'S THE MESSAGE, NOT THE MEDIUM

In a footnote to *State ex rel. Wilson-Simmons v. Lake County Sheriff's Department* (1998), 82 Ohio St.3d 37, the court said that e-mail between public employees or officials that concerns public functions of the office

would be public records: "In so holding, we reject the sheriff's department's broader assertion that no public office e-mail would ever be public records under R.C. 149.011(G) and 149.43. In other words, sometimes, public office e-mail can document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office. See *Armstrong v. Executive Office of the President* (C.A.D.C. 1996), 321 U.S. App. D.C. 118, 97 F.3d 575 (access to e-mail relating to government activities sought under the FOIA); see, also, *State ex rel. Margolius v. Cleveland* (1992), 62 Ohio St.3d 456, 584 N.E.2d 665, 670, holding that it is unnecessary for an expression to be in a particular medium for it to be a public record."

By the way, the federal Freedom of Information Act (FOIA) does not apply to state agencies or officers: *State ex rel. Findaly Publishing Co. v. Schroeder* (1996), 76 Ohio St.3d 580; Sections 551(1) and 552(f) U.S. Code. Requests for public records are properly filed under Ohio law in Chapter 149, O.R.C.

Since your e-mail may be a public record, disposal is a problem. E-mail should be treated like any other public records. That means your municipal (city or village) records commission must establish a retention schedule that meets approval guidelines set by the State Auditor and the Ohio Historical Society (see [www.ohiohistory.org](http://www.ohiohistory.org)). The Historical Society's web site contains some useful information on managing electronic mail.

#### **ATTORNEY GENERAL OPINION REGARDING TOWNSHIP WEB SITE**

While the Attorney General is not empowered by statute to render legal opinions for municipal officials, the AG's Opinions are of interest because they indicate the direction of interpretations of state law. In Opinion No. 2002-001, the AG opined:

"A board of township trustees is prohibited by R.C. 9.03(C)(1)(e) and (2) from using public funds to support or oppose a candidate for public office, a recall effort, or a levy or bond issue, and from compensating a township employee for time spent on any activity to influence the outcome of an election for any of these purposes. Therefore, a township is prohibited by R.C. 9.03(C)(1)(e) and (2) from compensating township employees or otherwise using public funds to include on its web site a line to the web site of another organization if that organization's web site advocates the support or defeat of a candidate, recall effort, or levy or bond issue."

If your municipal web site has links to other sites, you may want to have your legal counsel review those linked sites to see if your site violates Section 9.03 of the Revised Code.

#### **SOME BILLS OF THE 124<sup>th</sup> GENERAL ASSEMBLY OF INTEREST TO MUNICIPALITIES, AS OF MAY 7, 2002**

##### **SENATE BILLS**

SB 5 ANNEXATION (Wachtmann) Am., En. & Rep. 505, 709, 929 & 5705. Revises the laws governing municipal annexations. The bill is effective October 26, 2001. DUE TO VARIOUS CHALLENGES TO THIS LEGISLATION THE EFFECTIVE DATE OF THE BILL IS STILL UNDETERMINED.

SB 24 SOVEREIGN IMMUNITY EXPANSION (Johnson) Am. 2744. Include as a governmental function under the Political Subdivision Sovereign Immunity Law the operation of a bicycle motorcross, bicycling, skating, skate boarding, or scooter riding facility. The bill is effective October 26, 2001.

SB 107 TORT LAW (Armbruster) Am. 2307. Enacts changes made to the tort law that were enacted by Am.Sub. HB350 of the 121st General Assembly and amended by Sub. HB547 of the 122nd General Assembly and by Sub.HB294 of the 123rd General Assembly. The bill has been signed by the Governor.

SB 108 TORT LAW (Jacobson) Am. & Rep. 109, 163, 1343, 1701, 1707, 1775, 1901, 2101, 2117, 2125, 2305, 2307, 2313, 2315, 2501, 2743, 2744, 3123, 3701, 3722, 4112, 4113, 4171, 4399, 4507, 4513, 4582, 4909, 5111, 5591. Revises tort law and declares an emergency. The bill became effective July 6, 2001.

SB 109 BONDING REQUIREMENTS (Nein) En. 9. Prohibits and agent of a public authority, in issuing an invitation for bids or a request for proposals for a contract with the public authority, from requiring that any bond under the contract be furnished by or acquired from a particular surety or other company or a particular agent or broker. The bill has been signed by the Governor and became effective May 16, 2002.

SB 114 PREVAILING WAGE LAW (Wachtmann) Am., En. & Rep. 122, 164, 165, 166, 175, 176, 307, 351, 1551, 1710, 1728, 3383, 3706, 4115, 4116, 4582, 4981, 5122, 5123, 5540, 6117 & 6121. Modifies the Prevailing Wage Law to apply only to public improvements owned by the state and establishes a two-year statute of limitations for actions alleging violations of that law. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

SB 119 PUBLIC RETIREMENT (Austria) Am. & En. 145, 742, 3307, 3309 & 5505. Permits multiple transfers of service credit and contributions between Ohio's state retirement systems. The bill is effective 2/20/02.

SB 128 SMOKING RULES (Wachtmann) Am. 3709. Requires that any orders or rules enacted by a board of health related to the sale or use of cigarettes or other tobacco products be adopted by the legislative authority of a municipal corporation or township before those orders or rules are effective within the boundaries of that political subdivision. The bill is before a Committee Of Conference.

SB 130 CONCEALED WEAPONS (Wachtmann) Am. & En. 1547, 2921, 2923 & 2953. Authorizes county sheriffs to issue licenses to carry concealed handguns to certain persons and creates the offenses of falsification to obtain a concealed handgun license and possessing a revoked or suspended concealed handgun license. The bill has been referred to the Senate Judiciary Criminal Justice Committee.

SB 184 TERRORISM (Spada) To amend sections 2901.01, 2929.04, and 2933.51 and to enact sections 2909.21, 2909.22, 2909.23, 2909.24, and 2909.25 of the Revised Code to create the offenses of terrorism, soliciting or providing support for an act of terrorism, making a terroristic threat, and hindering prosecution of terrorism and to declare an emergency. The bill has passed both Houses and is waiting the Governor's signature.

SB 233 CONDOMINIUM LAW (Spada) Am., En. & Rep. 317, 5301, 5311 & 5721. Revises the Ohio Condominium Law. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

SB 236 DESIGN-BUILD USAGE (Coughlin) Am. & En. 153. Permits public authorities to use design-build firms in the construction of public improvements and establishes a two-phase procedure for selecting those firms. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

SB 247 RETIREMENT BENEFITS (Blessing) Am. 145, 3307 & 3309. Creates in the State Teachers Retirement System, School Employees Retirement System and Public Employees Retirement System the option of receiving retirement benefits as a partial lump sum followed by a

reduced monthly allowance and makes other changes to the law governing STRS. The bill has been referred to Senate Ways & Means Committee.

SB 257 PUBLIC WAYS USE (Mead) Am. & Rep. 4939. Revises statutes governing the use of public ways. The bill has been referred to Senate Ways & Means Committee.

SB 258 FIREFIGHTERS/PUBLIC RECORDS (Austria) Am. & En. 109, 149, 505 & 737. Requires background checks on firefighters and exempts from the Public Records Law specified residential and familial information of a member of a fire department and certain security-related information. The bill has been referred to Senate Judiciary Committee on Civil Justice.

SB 263 VEHICLE SPEED LIMITS (Randy Gardner) En. 4511. Allows a municipal corporation to establish speed limits for golf carts and similar motor vehicles operated on streets or highways within the municipal corporation.

### **HOUSE BILLS**

HB 17 INTOXICATION (Willamowski) Am. 4301. Prohibits a person under 21 years of age from being under the influence of beer or intoxicating liquor in a public or private place. The bill has passed the House and been referred to the Senate.

HB 37 WATER FLUORIDATION (Metzger) Am. 6109. Provides for a special election pertaining to the fluoridation of water to be used by political subdivisions that opted out of the fluoridation requirement as allowed by law in 1969 and 1970 and authorizes municipal corporations that opted out of the requirement to adopt an ordinance requiring fluoridation. The bill has been referred to the House Health & Family Services Committee.

HB 41 MUNICIPAL INVESTMENTS (Sulzer) Am. 731. Permits a municipal corporation to include the treasurer of a city or village, rather than the city director of law or village solicitor, among the officials who may order the investment of moneys in the municipal corporation's treasury. The bill has been referred to the House Local Government & Townships Committee.

HB 114 ESTATE TAXATION (Latta) Am., En. & Rep. 5709 & 5731. Phases out the basic estate tax by 2006 and thereafter retaining only the tax that picks up the maximum federal credit for state estate taxes. The bill has been referred to the House Ways & Means Committee.

HB 120 GOVERNMENT PURCHASES (Raga) Am. & En. 9, 125, 307, 505 & 717. Permits the Department of Administrative Services and political subdivisions to purchase supplies or services through a competitive reverse auction process via the Internet and makes changes in the notice required when the Department purchases supplies or services by competitive selection. The bill is effective October 26, 2001.

HB 129 COUNTY TAX BUDGET (Webster) Am. 5705. Permits a county budget commission to waive the requirement that a taxing authority adopt a tax budget for a subdivision or taxing unit. The bill is effective June 3, 2002.

HB 143 RESIDENCY REQUIREMENT (Young) Am. & En. 9, 505, 733 & 737. Specifies that state law does not require a municipal corporation fire chief or village fire prevention officer to be a resident or elector of the municipal corporation, does not require a township fire chief or fire prevention officer to be a resident of the township, and does not require a township fire district fire chief, joint fire district fire chief, or fire and ambulance district fire chief to be a resident of the township fire district, joint fire district, or fire and ambulance district. The bill has passed both Houses and becomes effective January 25, 2002.

HB 152 RESIDENCY REQUIREMENT (Ford) Am. & En. 733 & 737. Prohibits a municipal corporation from requiring any police or fire officer or

employee to reside within the municipal corporation. The bill has been referred to the House Local Government and Townships Committee.

HB 157 PENSION BENEFITS (Schuring) Am. 145, 742, 3307, 3309 & 5505. Provides that the annual cost of living increase paid to retired members and beneficiaries of Ohio's state retirement systems will be three percent. The bill's effective date is February 1, 2002.

HB 191 MUNICIPAL TAXES (Schaffer) En. 718. Requires municipal corporations with more than \$100 million in annual income tax collections to pay a portion of a nonresident individual's municipal income tax liability to the township or municipal corporation where the individual resides. The bill has been referred to the House Ways & Means Committee.

HB 240 MUNICIPAL TAX DEDUCTIONS (Cirelli) To amend sections 718.01 and 5747.01 of the Revised Code to allow a municipal income tax deduction for amounts paid by individuals in federal and state income taxes and a state income tax deduction for amounts paid by individuals in federal income taxes, and to amend the version of section 718.01 of the Revised Code that is scheduled to take effect on January 1, 2002, to continue the provisions of this act on and after that effective date. The bill has been referred to the House Ways & Means Committee.

HB 245 VILLAGE OFFICES (Evans) En. 733. Permits the offices of village clerk and treasurer to be combined into an appointed office of village fiscal officer and permits the appointed office to be subsequently abolished and replaced by the elected office of village clerk-treasurer. The bill's effective date is February 1, 2002.

HB 258 RESIDENCY REQUIREMENTS (Flowers) Am. & En. 3 & 733. Prohibits certain political subdivisions from requiring their employees, and municipal corporations from requiring police or fire officers, to reside within any specific area of this state. The bill has been referred to the House Local Government and Townships Committee.

HB 298 POLICE & FIRE BENEFITS (Ford) Am. 742. Provides monthly pension benefits for remarried surviving spouses of former members of local police or firemen's pension funds established under former Chapter 741 of the Revised Code. The bill has been referred to the House Retirement & Aging Committee.

HB 329 LOCAL GOVERNMENT FUNDS (Blasdel) Am. 5705 & 5747. Allows local government funds under certain circumstances to be distributed among subdivisions under an alternative apportionment scheme without the approval of the largest municipal corporation in the county. The bill has passed the General Assembly and is awaiting the Governor's signature.

HB 365 GOVERNMENT FISCAL WATCH (Setzer) Am. 118. Authorizes the Auditor of State to declare a fiscal watch when the projected fiscal year-end deficit of a municipal corporation, county, or township exceeds one-twelfth of its general fund revenue from the preceding fiscal year. The bill has been signed by the Governor, it is effective May 30, 2002.

HB 386 FINANCIAL SERVICE REGULATION (Blasdel) En. 1. States the intent of the General Assembly on the relationship of state and local laws regarding the regulation of loans and other forms of credit. The bill has been signed by the Governor and became effective May 24, 2002.

HB 403 UNIFORM BUILDING CODE (Kilbane) Am. & En. 3703 & 3781. Establishes a statewide uniform building code and two advisory committees to assist the Board of Building Standards in developing and interpreting the Ohio building code. The bill has been referred to the House Commerce & Labor Committee.

HB 410 TOWNSHIP EXPENDITURES (Wolpert) En. 505.

Permits a township to appropriate general fund moneys to certain municipal corporations for specific public purposes. The bill has been referred to the House Finance & Financial Institutions Committee.

**HB 454 LOCAL GOVERNMENT SPENDING (Coates) Am. 5705.**

Raises the threshold amount below which the fiscal officer of a political subdivisions can approve expenditures made without a certificate of available funds. The bill has been referred to the House Local Government & Townships Committee.

**HB 468 OPEN RECORDS (Trakas) To amend section 149.43 and to enact section 3781.51 of the Revised Code to exempt private single-family dwelling architectural plans in the possession of a public agency from disclosure as a public record with exceptions. The bill has been referred to the House State Government Committee.**

**HB 482 ELECTRONIC GOVERNMENT (Buehrer) Am. & En. 1306.** Adopts the "Electronic Government Services Act" to prohibit a government agency from providing duplicative or competing electronic commerce services with the private sector unless the government agency complies with procedures established by the act. The bill has been referred to the House State Government Committee.

**HB 501 MOBILITY DEVICES (Husted) Am. & En. 4511.** Exempts electric personal assistive mobility devices from the definition of "vehicle" in the traffic laws and to permit their operation on sidewalks, bikeways, and public streets and highways, subject to certain restrictions. The bill has passed out of the House State Government Committee.

**HB 505 CONDOMINIUM LAW (Salerno)** Revises the Ohio Condominium Law. The bill has been referred to the House Housing & Urban Revitalization Subcommittee.

**HB 518 COUNTY LODGING TAX (Schmidt)** Authorizes boards of county commissioners of certain counties to levy an additional excise tax on lodging. The bill has been referred to the House State Government

**HB 562 PARKING VIOLATIONS (Williams) Am. 4521.** Permits a local authority to consider for purposes of the Local Noncriminal Parking Law a fine of up to \$500 for a violation of an ordinance, resolution, or regulation that regulates the standing or parking of a vehicle in a disability parking space and provides that if a person fails to pay a fine for such a violation and the fine exceeds \$100 that person may not be permitted to register a motor vehicle in that person's name. The bill has been referred to the House Transportation & Public Safety Committee.

## **2002 SCHEDULE OF MEETINGS**

### **June 4**

3-Hour General & DUI: Mayor's Court Updates  
Embassy Suites, Dublin

### **June 5 -7**

Mayors Association of Ohio Annual Conference  
Embassy Suites, Dublin

### **June 14 - 18**

US Conference of Mayors  
Madison, Wisconsin

### **June 16 - 19**

GFOA  
Denver, Colorado

### **July 24 - 26**

OML Income Tax Seminar  
Embassy Suites, Dublin

### **July 11 - 12**

Ohio Municipal Attorneys Association Law Institute  
Holiday Inn Worthington

### **August 10**

Municipal Leadership Training Module V - Workshops 1 & 2  
Ramada Plaza Hotel, Columbus

### **September 11 - 13**

GFOA  
Cleveland, Ohio

### **September 29 - October 2**

ICMA  
Philadelphia, Pennsylvania

### **October 2 - 4**

OML Annual Conference  
Hyatt Regency Hotel, Columbus

### **October 4**

Municipal Leadership Training Module VI - Leadership Skills & Team Building  
Hyatt Regency Hotel, Columbus

### **October 11**

Ohio Municipal Attorneys Association Fall Seminar  
Doubletree Guest Suites, Sharonville

### **October 25**

3-Hour General Mayor's Court Update - a.m.  
3-Hour DUI Mayors Court Update - p.m.  
Ramada Plaza, Columbus

### **November 15**

3-Hour General Mayor's Court Update a.m.  
3-Hour DUI Mayors Court Update - p.m.  
Ramada Plaza, Columbus

Information regarding meetings of the Ohio Municipal League and its cooperating associations is available on the OML's web site ([www.omunileague.org](http://www.omunileague.org)) or by calling the OML at 1-800-561-3597.