

## **Chapter 4115: WAGES AND HOURS ON PUBLIC WORKS**

### **4115.01 [Repealed].**

Effective Date: 10-14-1969

### **4115.02 Maximum consecutive hours for firemen on duty.**

The chief of the fire department of each municipal corporation, township, or fire district employing three or more full-time paid firemen, unless exempt under this section, shall divide the uniform force into not less than two platoons, and where the uniform force is so divided into two platoons the said chief shall keep a platoon of the uniform force on duty twenty-four consecutive hours, after which the platoon serving twenty-four hours shall be allowed to remain off duty for at least twenty-four consecutive hours, except in cases of extraordinary emergency. Each individual member of the platoons in addition to receiving a minimum of twenty-four hours off duty in each period of forty-eight hours shall receive an additional period of twenty-four consecutive hours off duty in each period of eight days so that no individual member shall be on duty more than a total of seventy-two hours in any period of eight days. The chief shall arrange the schedule of working hours to comply with this section. The chief may, however, in cases of sickness, death, or on other necessary occasions, permit the exchange of working hours between members of the department. In each municipal corporation, township, and fire district all employees of the fire department shall be given not less than two weeks' leave of absence annually, with full pay. This section insofar as it relates to off duty periods does not apply to any municipal corporation, township, or fire district that adopts a forty-hour week or to any municipal corporation, township, or fire district which has a three platoon system the members of which work twenty-four consecutive hours immediately followed by forty-eight consecutive hours off duty, but the provisions relating to the two weeks' leave of absence do apply.

"Full-time paid firemen" as used in this section does not include volunteer firemen, or firemen who work part-time.

Effective Date: 11-19-1969

### **4115.03 Wages and hours on public works definitions.**

As used in sections 4115.03 to 4115.16 of the Revised Code:

(A) "Public authority" means 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 said sections apply to expenditures of such institutions made in whole or in part from public funds.

(B) "Construction" means any of the following:

(1) Except as provided in division (B)(3) of this section, any new construction of a public improvement, the total overall project cost of which is fairly estimated to be more than the following amounts and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority:

(a) One hundred twenty-five thousand dollars, beginning on the effective date of this amendment and continuing for one year thereafter;

(b) Two hundred thousand dollars, beginning when the time period described in division (B)(1)(a) of this section expires and continuing for one year thereafter;

(c) Two hundred fifty thousand dollars, beginning when the time period described in division (B)(1)(b) of this section expires.

(2) Except as provided in division (B)(4) of this section, any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement, the total overall project cost of which is fairly estimated to be more than the following amounts and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority:

(a) Thirty-eight thousand dollars, beginning on the effective date of this amendment and continuing for one year thereafter;

(b) Sixty thousand dollars, beginning when the time period described in division (B)(2)(a) of this section expires and continuing for one year thereafter;

(c) Seventy-five thousand dollars, beginning when the time period described in division (B)(2)(b) of this section expires.

(3) Any new construction of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than seventy-eight thousand two hundred fifty-eight dollars adjusted biennially by the director of commerce pursuant to section 4115.034 of the Revised Code and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority;

(4) Any 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, the total overall project cost of which is fairly estimated to be more than twenty-three thousand four hundred forty-seven dollars adjusted biennially by the director of commerce pursuant to section 4115.034 of the Revised code and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.

(C) "Public improvement" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, 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." "Public improvement" does not include an improvement authorized by section 1515.08 of the Revised Code that is constructed pursuant to a contract with a soil and water conservation district, as defined in section 1515.01 of the Revised Code, or performed as a result of a petition filed pursuant to Chapter 6131., 6133., or 6135. of the Revised Code, wherein no less than seventy-five per cent of the project is located on private land and no less than seventy-five per cent of the cost of the improvement is paid for by private property owners pursuant to Chapter 1515., 6131., 6133., or 6135. of the Revised Code.

(D) "Locality" means the county wherein the physical work upon any public improvement is being performed.

(E) "Prevailing wages" means the sum of the following:

(1) The basic hourly rate of pay;

(2) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program;

(3) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing the following fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected:

(a) Medical or hospital care or insurance to provide such;

(b) Pensions on retirement or death or insurance to provide such;

(c) Compensation for injuries or illnesses resulting from occupational activities if it is in addition to that coverage required by Chapters 4121. and 4123. of the Revised Code;

(d) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;

(e) Life insurance;

(f) Disability and sickness insurance;

(g) Accident insurance;

(h) Vacation and holiday pay;

(i) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected;

(j) Other bona fide fringe benefits.

None of the benefits enumerated in division (E)(3) of this section may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any of such benefits.

(F) "Interested party," with respect to a particular contract for construction of a public improvement, means:

- (1) Any person who submits a bid for the purpose of securing the award of the contract ;
- (2) Any person acting as a subcontractor of a person described in division (F)(1) of this section;
- (3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person described in division (F)(1) or (2) of this section and which exists, in whole or in part, for the purpose of negotiating with employers concerning the wages, hours, or terms and conditions of employment of employees;
- (4) Any association having as members any of the persons described in division (F)(1) or (2) of this section.

(G) Except as used in division (A) of this section, "officer" means an individual who has an ownership interest or holds an office of trust, command, or authority in a corporation, business trust, partnership, or association.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 07-01-2000

### **4115.031 Discharge of obligation of contractor or subcontractor.**

The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the director of commerce, insofar as Chapter 4115. of the Revised Code is concerned, may be discharged by the making of payments in cash, by the making of contributions of a type referred to in division (E)(2) of section 4115.03 of the Revised Code or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in division (E)(3) of section 4115.03 of the Revised Code, or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in division (E)(1) plus the rates referred to in divisions (E)(2) and (3) of section 4115.03 of the Revised Code.

In determining the overtime pay to which the laborer or mechanic is entitled under any federal or state law, the person's regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under division (E)(1) of section 4115.03 of the Revised Code, except that where the amount of payments, contributions, or costs incurred with respect to that person exceeds the prevailing wage applicable to the person under Chapter 4115. of the Revised Code, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to the person, the amount of contributions or costs of the types described in divisions (E)(2) and (3) actually incurred with respect to the person, or the amount determined under divisions (E)(2) and (3) of section 4115.03 of the Revised Code but not actually paid, whichever amount is the greater.

Effective Date: 07-01-2000

### **4115.032 [Repealed].**

Repealed by 129th General Assembly File No. 28, HB 153, § 105.01, eff. 9/29/2011.

Effective Date: 07-01-2000

### **4115.033 Subdividing public improvement projects.**

No public authority shall subdivide a public improvement project into component parts or projects, the cost of which is fairly estimated to be less than the threshold levels set forth in division (B) of section 4115.03 of the Revised Code, unless the projects are conceptually separate and unrelated to each other, or encompass independent and unrelated needs of the public authority.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 06-21-1994

### **4115.034 Adjusting threshold levels for public improvement projects.**

On January 1, 1996, and the first day of January of every even-numbered year thereafter, the director of commerce shall adjust the threshold levels for which public improvement projects are subject to sections 4115.03 to 4115.16 of the Revised

Code as set forth in divisions (B)(3) and (4) of section 4115.03 of the Revised Code. The director shall adjust those amounts according to the average increase or decrease for each of the two years immediately preceding the adjustment as set forth in the United States department of commerce, bureau of the census implicit price deflator for construction, provided that no increase or decrease for any year shall exceed three per cent of the threshold level in existence at the time of the adjustment.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 07-01-2000

#### **4115.04 Determination of prevailing wage - exceptions.**

(A)(1) Every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking such construction with its own forces, shall have the director of commerce determine the prevailing rates of wages of mechanics and laborers in accordance with section 4115.05 of the Revised Code for the class of work called for by the public improvement, in the locality where the work is to be performed. Except as provided in division (A)(2) of this section, that schedule of wages shall be attached to and made part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract. A copy of the bidding blank shall be filed with the director before the contract is awarded. A minimum rate of wages for common laborers, on work coming under the jurisdiction of the department of transportation, shall be fixed in each county of the state by the department of transportation, in accordance with section 4115.05 of the Revised Code.

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

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

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

(2) A participant in a work activity, developmental activity, or an alternative work activity under sections 5107.40 to 5107.69 of the Revised Code 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 undertaken by, or under contract for, the board of education of any school district or the governing board of any educational service center;

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

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

(6) Public improvements undertaken by, or under contract for, a port authority as defined in section 4582.01 or 4582.21 of the Revised Code;

(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.

(C) Under no circumstances shall a public authority apply the prevailing wage requirements of this chapter to a public improvement that is exempt under division (B)(3) of this section.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 07-01-2000; 04-27-2005; 2006 HB699 03-29-2007; 04-06-2007

#### **4115.05 Prevailing rate of wage in locality to control contract wage.**

The prevailing rate of wages to be paid for a legal day's work, as prescribed in section 4115.04 of the Revised Code, to laborers, workers, or mechanics upon public works shall not be less at any time during the life of a contract for the public work than the prevailing rate of wages then payable in the same trade or occupation in the locality where such public work is being performed, under collective bargaining agreements or understandings, between employers and bona fide organizations of labor in force at the date the contract for the public work, relating to the trade or occupation, was made, and collective bargaining agreements or understandings successor thereto.

Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be paid not less at any time during the life of a contract for the public work than the prevailing rate of wages then payable for such labor in the locality where the public work is being performed, under or as a result of collective bargaining agreements or understandings between employers and bona fide organizations of labor in force at the date the contract for the public work, requiring the employment of serving laborers, helpers, assistants, or apprentices, was made, and collective bargaining agreements or understandings successor thereto.

Apprentices will be permitted to work only under a bona fide apprenticeship program if such program exists and is registered with the Ohio apprenticeship council.

The allowable ratio of apprentices to skilled workers permitted to work shall not be greater than the ratio allowed the contractor or subcontractor in the collective bargaining agreement or understanding referred to in this section under which the work is being performed. A contractor, subcontractor, or public authority that exceeds the permissible ratio of apprentices to skilled workers by two or fewer apprentices for not more than two days in any thirty-day period shall not be found in violation of this provision with regard to that excess number of apprentices.

For purposes of establishing the prevailing rate of wages, a labor organization that is a party to a collective bargaining agreement, contract, or understanding, including any successor agreement, contract, or understanding, that establishes wages for a trade or occupation typically employed on public improvements shall file with the director of commerce all relevant portions of any such agreement, contract, or understanding to which the labor organization is a party. The filing shall occur within ninety days after the agreement, contract, or understanding is executed, except that the relevant portion of any agreement, contract, or understanding to which a labor organization is a party on the effective date of this amendment shall be filed within ninety days after the effective date of this amendment. The labor organization shall certify under penalty of law that the portion of the agreement, contract, or understanding filed under this section contains, in full, all provisions of the agreement, contract, or understanding concerning wages paid to persons and the apprentice to skilled worker ratio under the agreement, contract, or understanding.

In the event there is no such collective bargaining agreement or understanding in the immediate locality, then the prevailing rates of wages in the nearest locality in which such collective bargaining agreements or understandings are in effect shall be the prevailing rate of wages, in such locality, for the various occupations covered by sections 4115.03 to 4115.16 of the Revised Code.

The prevailing rate of wages to be paid for a legal day's work, to laborers, workers, or mechanics, upon any material to be used in or in connection with a public work, shall be not less than the prevailing rate of wages payable for a day's work in the same trade or occupation in the locality within the state where such public work is being performed and where the material in its final or completed form is to be situated, erected, or used.

Every 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.

No contractor or subcontractor under a contract for a public work shall sublet any of the work covered by such contract unless specifically authorized to do so by the contract.

Where contracts are not awarded or construction undertaken within ninety days from the date of the establishment of the prevailing rate of wages, there shall be a redetermination of the prevailing rate of wages before the contract is awarded. A public authority shall, within seven working days after receiving from the director a notice of a change in the prevailing wage rate, notify all affected contractors and subcontractors with whom the public authority has contracts for a public improvement of the changes and require the contractors to make the necessary adjustments in the prevailing wage rates.

If, upon receipt of the relevant portions of a collective bargaining agreement, contract, or understanding, the director determines that the prevailing wage rate has changed in the locality in which an ongoing project is being constructed, any change in that rate shall take effect two weeks after the director receives the relevant portions of the agreement, contract, or understanding showing that the prevailing wage rate has changed.

If the director determines that a contractor or subcontractor has violated sections 4115.03 to 4115.16 of the Revised Code because the public authority has not notified the contractor or subcontractor as required by this section, the public authority is liable for any back wages, fines, damages, court costs, and attorney's fees associated with the enforcement of said sections by the director for the period of time running until the public authority gives the required notice to the contractor or subcontractor.

On the occasion of the first pay date under a contract, the contractor or subcontractor shall furnish each employee not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of labor with individual written notification of the job classification to which the employee is assigned, the prevailing wage determined to be applicable to that classification, separated into the hourly rate of pay and the fringe payments, and the identity of the prevailing wage coordinator appointed by the public authority. The contractor or subcontractor shall furnish the same notification to each affected employee every time the job classification of the employee is changed.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 07-01-2000

#### **4115.06 Contract to contain provision requiring payment of certain wage rate.**

In all cases where any public authority fixes a prevailing rate of wages under section 4115.04 of the Revised Code, 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.

Where a public authority constructs a public improvement with its own forces, such public authority shall pay a rate of wages which shall not be less than the rate of wages fixed as provided in section 4115.04 of the Revised Code, except in those instances provided for in sections 723.52, 5517.02, 5575.01, and 5543.19 of the Revised Code.

Effective Date: 08-25-1976

#### **4115.07 Full payment of wages - records.**

All contractors and subcontractors required by sections 4115.03 to 4115.16 of the Revised Code, and the action of any public authority to pay not less than the prevailing rate of wages shall make full payment of such wages in legal tender, without any deduction for food, sleeping accommodations, transportation, use of small tools, or any other thing of any kind or description. This section does not apply where the employer and employee enter into an agreement in writing at the beginning of any term of employment covering deductions for food, sleeping accommodations, or other similar item, provided such agreement is submitted by the employer to the public authority fixing the rate of wages and is approved by such public authority as fair and reasonable.

All contractors or subcontractors falling within or affected by sections 4115.03 to 4115.16 of the Revised Code, shall keep full and accurate payroll records with respect to wages paid each employee and the number of hours worked by each employee, covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. Such payroll records shall be open to inspection by any authorized representative of the contracting public authority, including the prevailing wage coordinator or the director of commerce at any reasonable time and as often as may be necessary, and such records shall not be destroyed or removed from the state for the period of one year following the completion of the public improvement in connection with which the records are made. There shall be posted in a prominent and accessible place on the site of the work a legible statement of the schedule of wage rates

specified in the contract to the various classifications of laborers, workers, and mechanics employed, said statement to remain posted during the life of each contract.

Each contractor or subcontractor shall file with the contracting public authority upon completion of the public improvement and prior to final payment therefor an affidavit stating that the contractor or subcontractor has fully complied with sections 4115.03 to 4115.16 of the Revised Code.

Effective Date: 07-01-2000

### **4115.071 Prevailing wage coordinator.**

(A) Each contracting public authority that enters into a contract other than a contract for printing, binding, and related services, whose contractor and subcontractors are subject to sections 4115.03 to 4115.16 of the Revised Code shall, no later than ten days before the first payment of wages is payable to any employee of any contractor or subcontractor, designate and appoint one of its own employees to serve as the prevailing wage coordinator during the life of the contract. The duties of the coordinator shall include:

(1) Setting up and maintaining, available for public inspection including inspection by interested parties or affected employees, files of payroll reports and affidavits submitted by contractors and subcontractors pursuant to sections 4115.03 to 4115.16 of the Revised Code;

(2) Ascertaining from each contractor or subcontractor, at the beginning of performance under the contract, the dates during its life when payments of wages to employees are to be made;

(3) Receiving from each contractor or subcontractor, a copy of the contractor's or subcontractor's complete payroll for each date exhibiting for each employee paid any wages, the employee's name, current address, social security number, number of hours worked each day during the pay period and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments, and deductions from the employee's wages;

(4) Establishing and following procedures to monitor the compliance by each contractor and subcontractor with the requirement imposed by this section for timely filing of copies of payroll records;

(5) Receiving from each contractor or subcontractor upon completion of the public improvement and prior to final payment therefor the affidavit required by section 4115.07 of the Revised Code;

(6) Reporting any delinquency in the filing of the certified copy of the payroll and the affidavit to the chief officer of the contracting public authority and the director of commerce.

(B) Any contracting public authority having a permanent employee with the title, powers, and functions described in division (A) of this section for the prevailing wage coordinator need not separately designate and appoint an employee for each public work contract entered into by the contracting public authority.

(C) Every contractor and subcontractor who is subject to sections 4115.03 to 4115.16 of the Revised Code shall, upon beginning performance under the contractor's or subcontractor's contract with any contracting public authority, supply to the prevailing wage coordinator of the contracting public authority a schedule of the dates during the life of the contract with the authority on which the contractor or subcontractor is required to pay wages to employees. The contractor or subcontractor shall also deliver to the prevailing wage coordinator a certified copy of the contractor's or subcontractor's payroll, within two weeks after the initial pay date, and supplemental reports for each month thereafter which shall exhibit for each employee paid any wages, the employee's name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments, and deductions from the employee's wages. If the life of the contract is expected to be no more than four months from the beginning of performance by the contractor or subcontractor, such supplemental reports shall be filed each week after the initial report. The certification of each payroll shall be executed by the contractor, subcontractor, or duly appointed agent thereof and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by the contract.

(D) If it is found that a public authority or prevailing wage coordinator has not complied with this section, the director shall give notice thereof in writing to the public authority or prevailing wage coordinator. Sufficient time shall be allowed for compliance as the director deems necessary. At the expiration of the time prescribed in the notice, the director shall, in writing, inform the attorney general of the fact that notice has been given and that the public authority or prevailing wage coordinator to whom it was directed has not complied with it. On receipt thereof, the attorney general shall bring suit in the

name of the state in the court of common pleas of the county in which the public authority is located, to require the public authority or prevailing wage coordinator to comply with this section.

Effective Date: 07-01-2000

#### **4115.08 Failure to ascertain prevailing rates of wages.**

No 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 section 4115.04 of the Revised Code.

Effective Date: 07-01-2000

#### **4115.09 Awarding of contract without ascertaining prevailing rates of wages.**

No member of a public board, commission, or other public authority authorized to contract for or construct with its own forces a public improvement, shall vote for the award of any contract for the construction of such improvement, or vote for the disbursement of any funds on account of the construction of such public improvement, unless such public authority has first had the director of commerce determine the prevailing rates of wages of mechanics and laborers for the class of work called for by such public improvement in the locality where the work is to be performed, as provided in section 4115.04 of the Revised Code.

Effective Date: 07-01-2000

#### **4115.10 Prohibitions.**

(A) No person, firm, corporation, or public authority that constructs a public improvement with its own forces, the total overall project cost of which is fairly estimated to be more than the amounts set forth in division (B) of section 4115.03 of the Revised Code, adjusted biennially by the director of commerce pursuant to section 4115.034 of the Revised Code, as appropriate, shall violate the wage provisions of sections 4115.03 to 4115.16 of the Revised Code, or suffer, permit, or require any employee to work for less than the rate of wages so fixed, or violate the provisions of section 4115.07 of the Revised Code. Any employee upon any public improvement, except an employee to whom or on behalf of whom restitution is made pursuant to division (C) of section 4115.13 of the Revised Code, who is paid less than the fixed rate of wages applicable thereto may recover from such person, firm, corporation, or public authority that constructs a public improvement with its own forces the difference between the fixed rate of wages and the amount paid to the employee and in addition thereto a sum equal to twenty-five per cent of that difference. The person, firm, corporation, or public authority who fails to pay the rate of wages so fixed also shall pay a penalty to the director of seventy-five per cent of the difference between the fixed rate of wages and the amount paid to the employees on the public improvement. The director shall deposit all moneys received from penalties paid to the director pursuant to this section into the labor operating fund. The director shall use the fund for the enforcement of sections 4115.03 to 4115.16 of the Revised Code. The employee may file suit for recovery within ninety days of the director's determination of a violation of sections 4115.03 to 4115.16 of the Revised Code or is barred from further action under this division. Where the employee prevails in a suit, the employer shall pay the costs and reasonable attorney's fees allowed by the court.

(B) Any employee upon any public improvement who is paid less than the prevailing rate of wages applicable thereto may file a complaint in writing with the director upon a form furnished by the director. The complaint shall include documented evidence to demonstrate that the employee was paid less than the prevailing wage in violation of this chapter. Upon receipt of a properly completed written complaint of any employee paid less than the prevailing rate of wages applicable, the director shall take an assignment of a claim in trust for the assigning employee and bring any legal action necessary to collect the claim. The employer shall pay the costs and reasonable attorney's fees allowed by the court if the employer is found in violation of sections 4115.03 to 4115.16 of the Revised Code.

(C) If after investigation pursuant to section 4115.13 of the Revised Code, the director determines there is a violation of sections 4115.03 to 4115.16 of the Revised Code and a period of sixty days has elapsed from the date of the determination, and if:

- (1) No employee has brought suit pursuant to division (A) of this section;
- (2) No employee has requested that the director take an assignment of a wage claim pursuant to division (B) of this section.



The director shall bring any legal action necessary to collect any amounts owed to employees and the director. The director shall pay over to the affected employees the amounts collected to which the affected employees are entitled under division (A) of this section. In any action in which the director prevails, the employer shall pay the costs and reasonable attorney's fees allowed by the court.

(D) Where persons are employed and their rate of wages has been determined as provided in section 4115.04 of the Revised Code, no person, either for self or any other person, shall request, demand, or receive, either before or after the person is engaged, that the person so engaged pay back, return, donate, contribute, or give any part or all of the person's wages, salary, or thing of value, to any person, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent the procuring or retaining of employment, and no person shall, directly or indirectly, aid, request, or authorize any other person to violate this section. This division does not apply to any agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.

(E) The director shall enforce sections 4115.03 to 4115.16 of the Revised Code.

(F) For the purpose of supplementing existing resources and to assist in enforcing division (E) of this section, the director may contract with a person registered as a public accountant under Chapter 4701. of the Revised Code to conduct an audit of a person, firm, corporation, or public authority.

(G) No contractor or subcontractor shall be responsible for the payment of the penalties provided in division (A) of this section resulting from a violation of sections 4115.03 to 4115.16 of the Revised Code by its subcontractor, provided that the contractor or subcontractor has made a good faith effort to ensure that its subcontractor complied with the requirements of sections 4115.03 to 4115.16 of the Revised Code.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01. See act for effective dates.

Effective Date: 09-26-2003

#### **4115.101 Prevailing wage custodial fund.**

There is hereby created the prevailing wage custodial fund, which shall be in the custody of the treasurer of state but shall not be part of the state treasury. The director of commerce shall deposit to the fund all money paid by employers to the director that are held in trust for employees to whom prevailing wages are due and owing. The director shall make disbursements from the fund in accordance with this chapter to employees affected by violations of this chapter. If the director determines that any funds in the prevailing wage custodial fund are not returnable to employees as required under this section, then the director shall certify to the treasurer of state the amount of the funds that are not returnable. Upon the receipt of a certification from the director in accordance with this section, the treasurer of state shall transfer the certified amount of the funds from the prevailing wage custodial fund to the labor operating fund.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 6/30/2011.

Effective Date: 07-01-2000

#### **4115.11 Paying wages in full in cash.**

Employers who have not established a plan, by a labor agreement or otherwise, for the provision of wages as defined in division (E)(2) of section 4115.03 of the Revised Code shall pay the prevailing rates of wages in full in cash.

Effective Date: 11-03-1965

#### **4115.12 Administrative rules for contractors and subcontractors.**

In order to facilitate the administration of sections 4115.03 to 4115.16 of the Revised Code, and to achieve the purposes of those sections, the director of commerce may adopt reasonable rules, not inconsistent with those sections, for contractors and subcontractors engaged in the construction, prosecution, completion, or repair of a public improvement financed in whole or in part by any public authority.

Effective Date: 07-01-2000

**4115.13 Investigations - determinations.**

(A) Upon the director's own motion or within five days of the filing of a properly completed complaint under section 4115.10 or 4115.16 of the Revised Code, the director of commerce, or a representative designated by the director, shall investigate any alleged violation of sections 4115.03 to 4115.16 of the Revised Code.

(B) At the conclusion of the investigation, the director or a designated representative shall make a determination as to whether the alleged violation was committed. If the director or designated representative determines that the alleged violation was an intentional violation, the director or designated representative shall give written notice by certified mail of that determination to the contractor, subcontractor, or officer of the contractor or subcontractor which also shall state that the contractor, subcontractor, or officer of the contractor or subcontractor may file with the director an appeal of the determination within thirty days after the date the notice was received. If the contractor, subcontractor, or officer of the contractor or subcontractor timely appeals the determination, within sixty days of the filing of the appeal, the director or designated representative shall schedule the appeal for a hearing. If the contractor, subcontractor, or officer of the contractor or subcontractor fails to timely appeal the determination, the director or designated representative shall adopt the determination as a finding of fact for purposes of division (D) of this section. The director or designated representative, in the performance of any duty or execution of any power prescribed by sections 4115.03 to 4115.16 of the Revised Code, may hold hearings, and such hearings shall be held within the county in which the violation of sections 4115.03 to 4115.16 of the Revised Code is alleged to have been committed, or in Franklin county, whichever county the person alleged to have committed the violation chooses. For the purpose of the hearing, the director may designate a hearing examiner who shall, after notice to all interested parties, conduct a hearing and make findings of fact and recommendations to the director. The director shall make a decision, which shall be sent to the affected parties. The director or designated representative may make decisions, based upon findings of fact, as are found necessary to enforce sections 4115.03 to 4115.16 of the Revised Code.

(C) If any underpayment by a contractor or subcontractor was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, the director or designated representative may make a decision ordering the employer to make restitution to the employees, or on their behalf, the plans, funds, or programs for any type of fringe benefits described in the applicable wage determination. In accordance with the finding of the director that any underpayment was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, employers who make restitution are not subject to any further proceedings pursuant to sections 4115.03 to 4115.16 of the Revised Code.

If a contractor's or subcontractor's underpayment to an employee is less than one thousand dollars, the contractor or subcontractor is not subject to any further proceedings under sections 4115.03 to 4115.16 of the Revised Code for that underpayment if the contractor or subcontractor makes full restitution to the affected employee.

(D) If the director or designated representative makes a decision, based upon findings of fact, that a contractor, subcontractor, or officer of a contractor or subcontractor has intentionally violated sections 4115.03 to 4115.16 of the Revised Code, the contractor, subcontractor, or officer of a contractor or subcontractor is prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement or from performing any work on the same as provided in section 4115.133 of the Revised Code. A contractor, subcontractor, or officer of a contractor or subcontractor may appeal the decision, within sixty days after the decision, to the court of common pleas of the county in which the first hearing involving the violation was heard. If the contractor, subcontractor, or officer of a contractor or subcontractor does not timely appeal the determination of the director or designated representative under division (B) of this section, the contractor, subcontractor, or officer of a contractor or subcontractor may appeal the findings of fact, within sixty days after the determinations are adopted as findings of fact, to the court of common pleas within the county in which the violation of sections 4115.03 to 4115.16 of the Revised Code is alleged to have been committed or in Franklin county, whichever county the person alleged to have committed the violation chooses.

(E) No appeal to the court from the decision of the director may be had by the contractor or subcontractor unless the contractor or subcontractor files a bond with the court in the amount of the restitution, conditioned upon payment should the decision of the director be upheld.

(F) No statement of a contractor, subcontractor, or officer of a contractor or subcontractor and no determination, recommendation, or finding of fact issued under this section is admissible as evidence in a criminal action brought under this chapter against the contractor, subcontractor, or officer of a contractor or subcontractor.

(G) In determining whether a contractor, subcontractor, or officer of a contractor or subcontractor intentionally violated sections 4115.03 to 4115.16 of the Revised Code, the director may consider as evidence either of the following:

(1) The fact that the director, prior to the commission of the violation under consideration, issued notification to the contractor, subcontractor, or officer of a contractor or subcontractor of the same or a similar violation, provided that the commission of the same or a similar violation of sections 4115.03 to 4115.16 of the Revised Code at a subsequent time does not create a presumption that the subsequent violation was intentional;

(2) The fact that, prior to the commission of the violation, the contractor, subcontractor, or officer of a contractor or subcontractor used reasonable efforts to ascertain the correct interpretation of sections 4115.03 to 4115.16 of the Revised Code from the director or 4115.04 or 4115.131 of the Revised Code, provided that a violation is presumed not to be intentional where a contractor, subcontractor, or officer of a contractor or subcontractor complies with a decision the director or designated representative issues pursuant to a request made under section 4115.131 of the Revised Code.

(H) As used in this section, "intentional violation" means a willful, knowing, or deliberate failure to comply with any provision of sections 4115.03 to 4115.16 of the Revised Code, and includes, but is not limited to, the following actions when conducted in the manner described in this division:

(1) An intentional failure to submit reports as required under division (C) of section 4115.071 of the Revised Code or knowingly submitting false or erroneous reports;

(2) An intentional misclassification of employees for the purpose of reducing wages;

(3) An intentional misclassification of employees as independent contractors or as apprentices;

(4) An intentional failure to pay the prevailing wage;

(5) An intentional failure to comply with the allowable ratio of apprentices to skilled workers as required under section 4115.05 of the Revised Code and by rules adopted by the director pursuant to section 4115.12 of the Revised Code;

(6) Intentionally allowing an officer of a contractor or subcontractor who is known to be prohibited from contracting directly or indirectly with a public authority for the construction of a public improvement or from performing any work on the same pursuant to section 4115.133 of the Revised Code to perform work on a public improvement.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 07-01-2000

### **4115.131 Contract disputes.**

In the event of a specific contract dispute concerning a prevailing wage determination, a proper wage classification, or a novel or unusual situation pertaining to sections 4115.03 to 4115.16 of the Revised Code, the director of commerce may, upon request by a public authority or by a person having a contract with a public authority, cause to be made such investigation and hearing as the director deems necessary and render a decision embodying the director's findings and conclusions. Unless finally reversed on appeal to the courts, the decision of the director shall form the basis for decision of any complaint on the same facts filed pursuant to sections 4115.03 to 4115.16 of the Revised Code.

Effective Date: 07-01-2000

### **4115.132 Director of commerce - investigatory powers.**

In any investigation undertaken by the director of commerce pursuant to sections 4115.03 to 4115.16 of the Revised Code, the director, a designated representative, or hearing examiner may administer oaths, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents, records, and testimony relating to and relevant to the violation under investigation. In case of contumacy, failure, or refusal of any person, contractor, or subcontractor to obey the order, any court of common pleas having jurisdiction of the person, contractor, or subcontractor, upon application of the director or representative designated by the director shall have jurisdiction to issue to the person, contractor, or subcontractor an order requiring the person, contractor, or subcontractor to appear before the director or a representative designated by the director, to produce evidence as is ordered, and to give testimony relating to the matter under investigation or in question. Any failure to obey an order of the court may be punished by the court as a contempt thereof.

Effective Date: 07-01-2000

### **4115.133 Filing list of convicted contractors, subcontractors, and officers of contractors and subcontractors.**

(A) The director of commerce shall file with the secretary of state a list of contractors, subcontractors, and officers of contractors and subcontractors who have been prosecuted and convicted for violations of or have been found to have intentionally violated sections 4115.03 to 4115.16 of the Revised Code. The director shall not include on the list a contractor, subcontractor, or officer of a contractor or subcontractor until the expiration of any applicable appeal period relative to the finding, or if appealed, until the date of the final judgment of a court.

(B) Each contractor, subcontractor, or officer of a contractor or subcontractor who has been prosecuted and convicted for violations of or is found to have intentionally violated sections 4115.03 to 4115.16 of the Revised Code is prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement or from performing any work on the same as a contractor, subcontractor, or officer of a contractor or subcontractor for a period of one year from the date of the expiration of the applicable period for filing an appeal, or if appealed, from the date of the final judgment of a court. If the contractor, subcontractor, or officer of a contractor or subcontractor is found to have intentionally violated sections 4115.03 to 4115.16 of the Revised Code another time within five years after the date specified under division (B) of this section, the contractor, subcontractor, or officer of a contractor or subcontractor is prohibited from so contracting or performing work for a period of three years from the date of the expiration of the applicable period for filing an appeal, or if appealed, from the date of the final judgment of a court.

(C) No public authority shall award a contract for a public improvement to any contractor, subcontractor, or officer of a contractor or subcontractor during the time that the contractor's, subcontractor's, or officer's name appears on such list. The filing of the notice of conviction or of the finding with the secretary of state constitutes notice to all public authorities.

Effective Date: 07-01-2000

### **4115.14 Written notice of noncompliance.**

If it is found that a person, public authority, or prevailing wage coordinator has not complied with sections 4115.03 to 4115.16 of the Revised Code, the director of commerce shall give notice thereof in writing to such person or public authority pursuant to section 4115.15 of the Revised Code. Sufficient time shall be allowed for compliance therewith as the director deems necessary not to exceed thirty days from the date of notice.

At the expiration of the time prescribed in such notice, the director shall in writing inform the attorney general of the fact that such notice has been given and that the person, public authority, or prevailing wage coordinator to whom it was directed has not complied with such notice. On receipt thereof, the attorney general shall bring suit in the name of the state in the court of common pleas of the county in which such person, public authority, or prevailing wage coordinator is located to enjoin the awarding of such contract for a public improvement or if the contract has already been awarded to enjoin further work under the contract until the requirements of such notice are complied with.

The court may issue a temporary restraining order without notice to the defendant in such action. Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the director to the defendant was not unreasonable or arbitrary, it shall issue an order enjoining the defendant from awarding such contract for a public improvement or continuing work under the contract until the notice is complied with.

Such injunctions shall continue operative until the court is satisfied that the requirements of such notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power invested in it in other similar cases.

Both the plaintiff and defendant in such action have the same rights of appeal as are provided by law in other injunction cases.

Effective Date: 07-01-2000

### **4115.15 Notice to halt work.**

Where an investigation by the director of commerce reveals that a contractor or subcontractor has failed to pay the prevailing rate of wages, the contracting public authority or the director may, upon written notice to the contractor or

subcontractor and the sureties of the contractor or subcontractor, and after hearing held pursuant to section 4115.13 of the Revised Code, order work halted on the part of the contract for which less than the prevailing rate of wages has been paid, until the defaulting contractor has filed with the director a bond in an amount of such penal sum as the director shall set, conditioned upon payment of the prevailing rate of wages.

Effective Date: 07-01-2000

#### **4115.16 Filing complaint.**

(A) An interested party may file a complaint with the director of commerce alleging a specific violation of sections 4115.03 to 4115.16 of the Revised Code by a specific contractor or subcontractor. The complaint shall be in writing on a form furnished by the director and shall include sufficient evidence to justify the complaint. The director, upon receipt of a properly completed complaint, shall investigate pursuant to section 4115.13 of the Revised Code. The director shall not investigate any complaint filed under this section that fails to allege a specific violation or that lacks sufficient evidence to justify the complaint. If the director determines that no violation has occurred or that the violation was not intentional, the interested party may appeal the decision to the court of common pleas of the county where the violation is alleged to have occurred.

(B) Except as otherwise provided in this section, the director or the designated representative shall conclude the investigation conducted under section 4115.13 of the Revised Code and make a determination not later than one hundred twenty days after the complaint is filed. The director or the designated representative may take additional time, of up to ninety days, to conclude the investigation and make a determination if the parties to the complaint are given notice of the extension before the initial one-hundred-twenty-day period expires. The director or the designated representative may take more time than that which is provided in this section to conclude the investigation and make a determination if the director, or the designated representative, and all parties to the complaint agree to a different time frame.

If the director has not ruled on the merits of the complaint within the time provided under this section the interested party may file a complaint in the court of common pleas of the county in which the violation is alleged to have occurred. The complaint may make the contracting public authority a party to the action, but not the director. Contemporaneous with service of the complaint, the interested party shall deliver a copy of the complaint to the director. Upon receipt thereof, the director shall cease investigating or otherwise acting upon the complaint filed pursuant to division (A) of this section. The court in which the complaint is filed pursuant to this division shall hear and decide the case, and upon finding that a violation has occurred, shall make such orders as will prevent further violation and afford to injured persons the relief specified under sections 4115.03 to 4115.16 of the Revised Code. The court's finding that a violation has occurred shall have the same consequences as a like determination by the director. The court may order the director to take such action as will prevent further violation and afford to injured persons the remedies specified under sections 4115.03 to 4115.16 of the Revised Code. Upon receipt of any order of the court pursuant to this section, the director shall undertake enforcement action without further investigation or hearings.

(C) The director shall make available to the parties to any appeal or action pursuant to this section all files, documents, affidavits, or other information in the director's possession that pertain to the matter. The rules generally applicable to civil actions in the courts of this state shall govern all appeals or actions under this section. Any determination of a court under this section is subject to appellate review.

(D) Where, pursuant to this section, a court finds a violation of sections 4115.03 to 4115.16 of the Revised Code, the court shall award attorney fees and court costs to the prevailing party. In the event the court finds that no violation has occurred, the court may award court costs and fees to the prevailing party, other than to the director or the public authority, where the court finds the action brought was unreasonable or without foundation, even though not brought in subjective bad faith.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Effective Date: 07-01-2000

#### **4115.21 Time for filing complaint.**

A person who files a complaint with the director of commerce alleging a violation of sections 4115.03 to 4115.16 of the Revised Code shall file the complaint within two years after the completion of the public improvement upon which the violation is alleged to have occurred or be barred from further administrative action under this chapter.

Effective Date: 09-26-2003

**4115.31 Products and services of persons with severe disabilities definitions.**

As used in sections 4115.31 to 4115.35 of the Revised Code:

(A) "Person with a severe disability" means an individual or class of individuals with a physical disability, including visual impairment, or mental disability, according to criteria established by the state committee for the purchase of products and services provided by persons with severe disabilities.

(B) "Qualified nonprofit agency for persons with severe disabilities" means an agency:

(1) Organized under the laws of the United States or this state, operated in the interest of persons with severe disabilities, and no part of the net income of which inures to the benefit of any shareholder or other individual;

(2) Which is certified as a sheltered workshop, where applicable, by the wage and hour division of the United States department of labor;

(3) Which complies with the applicable occupational health and safety standards required by the laws of the United States or of this state;

(4) Which in the manufacture of products and in the provision of services, whether or not procured under sections 4115.31 to 4115.35 of the Revised Code, employs, during the fiscal year of commodity production or service provision, persons with severe disabilities at a quota not less than seventy-five per cent of the total man hours of direct labor on all production, whether or not government-related.

(C) "Direct labor" includes all work required for preparation, processing, and packing, but not supervision, administration, inspection, and shipping.

(D) "Political subdivision" means a county, township, village, school district, or special purpose district.

(E) "Instrumentality of the state" means any board, commission, authority, public corporation, college, university, or other educational institution, or any other entity supported in whole or in part by funds appropriated by the general assembly.

(F) "Central nonprofit agency" means an agency approved under section 4115.35 of the Revised Code by qualified nonprofit agencies for persons with severe disabilities and the state committee for the purchase of products and services provided by persons with severe disabilities to facilitate the distribution of orders among qualified nonprofit agencies.

(G) "Fair market price" means the price verified under section 4115.33 of the Revised Code by the state committee for the purchase of products and services provided by persons with severe disabilities for all products and site-specific services on the procurement list published under that section.

(H) "Procurement list" means the list of products and site-specific services that state agencies, political subdivisions, and instrumentalities of the state shall procure under sections 4115.31 to 4115.35 of the Revised Code.

Effective Date: 10-29-1995

**4115.32 State committee for purchase of products and services of persons with severe disabilities.**

(A) Subject to section 4115.36 of the Revised Code, there is hereby created the state committee for the purchase of products and services provided by persons with severe disabilities. The committee shall be composed ex officio of the following persons, or their designees:

(1) The directors of administrative services, mental health, developmental disabilities, transportation, natural resources, and commerce;

(2) The administrators of the rehabilitation services commission and the bureau of workers' compensation;

(3) The secretary of state;

(4) One representative of a purchasing department of a political subdivision who is designated by the governor.

The governor shall appoint two representatives of a qualified nonprofit agency for persons with severe disabilities, and a person with a severe disability to the committee.

(B) Within thirty days after September 29, 1995, the governor shall appoint the representatives of a qualified nonprofit agency for persons with severe disabilities to the committee for a term ending August 31, 1996. Thereafter, terms for such representatives are for three years, each term ending on the same day of the same month of the year as did the term that it succeeds. Each committee member shall serve from the date of the member's appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall serve as a member for the remainder of that term. A member shall serve subsequent to the expiration of the member's term and shall continue to serve until the member's successor takes office.

(C) Members of the committee shall serve without compensation. Except as otherwise provided in divisions (C)(1) and (2) of this section, members shall be reimbursed for actual and necessary expenses, including travel expenses, incurred while away from their homes or regular places of business and incurred while performing services for the committee.

(1) The members listed in divisions (A)(1) to (3) of this section, or their designees, shall not be reimbursed for any expenses.

(2) No member of the committee who is entitled to receive reimbursement for the performance of services for the committee from another agency or entity shall receive reimbursement from the committee.

(D) The committee shall elect from among its members a chairperson. The committee may request from any agency of the state, political subdivision, or instrumentality of the state any information necessary to enable it to carry out the intent of sections 4115.31 to 4115.35 of the Revised Code. Upon request of the committee, the agency, subdivision, or instrumentality shall furnish the information to the chairperson of the committee.

(E) The committee shall not later than one hundred eighty days following the close of each fiscal year transmit to the governor, the general assembly, and each qualified nonprofit agency for persons with severe disabilities a report that includes the names of the committee members serving during the preceding fiscal year, the dates of committee meetings in that year, and any recommendations for changes in sections 4115.31 to 4115.35 of the Revised Code that the committee determines are necessary.

(F) The director of administrative services shall designate a subordinate to act as executive director of the committee and shall furnish other staff and clerical assistance, office space, and supplies required by the committee.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 07-01-2000; 06-30-2005

### **4115.33 State committee - powers and duties.**

(A) The state committee for the purchase of products and services provided by persons with severe disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Determine which products manufactured and site-specific services provided by persons with severe disabilities and offered for sale to state agencies, political subdivisions, or instrumentalities of the state are suitable for procurement;

(2) Verify the fair market prices of the products and services described in division (A)(1) of this section. The fair market prices shall not recover any profit. The committee periodically shall revise the fair market prices in accordance with changing market conditions.

(3) Establish, maintain, and publish a list of all the products and site-specific services described in division (A)(1) of this section. The committee periodically shall revise this procurement list as products or services are added to or removed from the products and services described in division (A)(1) of this section. The committee also shall make available the procurement list and revisions of it, on request, to all purchasing officers of state agencies, political subdivisions, and instrumentalities of the state.

(4) Establish criteria for determining what constitutes a substantial handicap to employment that prevents persons with severe disabilities from currently engaging in normal competitive employment. In establishing the criteria, the committee shall consult with appropriate entities of government and take into account the views of nongovernmental entities representing persons with severe disabilities. The committee shall further give weight of the criteria established by the federal committee for purchase from people who are blind or severely disabled, pursuant to the "Javits-Wagner-O'Day Act," 52 Stat. 1196 (1938), 41 U.S.C.A. 46, as amended.

(5) Certify all qualified nonprofit agencies that meet the requirements of division (B) of section 4115.31 of the Revised Code. When a qualified nonprofit agency is certified by the committee, its products and services that the committee determines are suitable for procurement by state agencies, political subdivisions, and instrumentalities of the state shall be placed on the procurement list established under division (A)(3) of this section.

(6) Establish procedures for the operation of each central nonprofit agency approved under section 4115.35 of the Revised Code.

(B) The committee may adopt rules in accordance with Chapter 119. of the Revised Code that do either or both of the following:

(1) Establish pilot programs to improve the administration of sections 4115.31 to 4115.35 of the Revised Code;

(2) Establish a fee structure for each central nonprofit agency approved under section 4115.35 of the Revised Code.

The committee also may adopt any other rule under Chapter 119. of the Revised Code necessary for the effective and efficient administration of sections 4115.31 to 4115.35 of the Revised Code.

(C) The committee may conduct a study and evaluation of its activities under sections 4115.31 to 4115.35 of the Revised Code for the purpose of assuring effective and efficient administration of its duties and responsibilities under those sections. The committee also may study, on its own or in conjunction with public or private entities, problems related to the employment of persons with severe disabilities and the development or adaptation of production methods that would enable a greater utilization of persons with severe disabilities.

Effective Date: 10-29-1995

#### **4115.34 Procurement lists.**

(A) Except as provided in section 4115.36 of the Revised Code, if any state agency, political subdivision, or instrumentality of the state intends to procure any product or service, it shall determine whether the product or service is on the procurement list published pursuant to section 4115.33 of the Revised Code; and it shall, in accordance with rules of the state committee for the purchase of products and services provided by persons with severe disabilities, procure such product or service at the fair market price established by the committee from a qualified nonprofit agency for persons with severe disabilities, if the product or service is on the procurement list and is available within the period required by that agency, subdivision, or instrumentality, notwithstanding any law requiring the purchase of products and services on a competitive bid basis. Sections 4115.31 to 4115.35 of the Revised Code do not apply if the products or services are available for procurement from any state agency, political subdivision, or instrumentality of the state and procurement from such agency, subdivision, or instrumentality is required under any law in effect on August 13, 1976.

(B) The committee and any state agency, political subdivision, or instrumentality of the state may enter into contractual agreements, cooperative working relationships, or other arrangements determined necessary for effective coordination and efficient realization of the objectives of sections 4115.31 to 4115.35 of the Revised Code and any other law requiring procurement of products or services from any state agency, political subdivision, or instrumentality of the state.

(C) Notwithstanding any other section of the Revised Code, or any appropriations act, that may require a state agency, political subdivision, or instrumentality of the state to purchase supplies, services, or materials by means of a competitive bid procedure, state agencies, political subdivisions, or instrumentalities of the state need not utilize the required bidding procedures if the supplies, services, or materials are to be purchased from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code.

Effective Date: 10-29-1995; 06-30-2005

#### **4115.35 Approval and audits of central nonprofit agencies.**

(A) Qualified nonprofit agencies for persons with severe disabilities and the state committee for the purchase of products and services provided by persons with severe disabilities shall approve, through a mutually developed process, and pursuant to rules the committee adopts in accordance with Chapter 119. of the Revised Code, one or more central nonprofit agencies to carry out the intent of sections 4115.31 to 4115.35 of the Revised Code. Each approved central nonprofit agency shall operate in accordance with rules adopted by the committee under division (A)(6) of section 4115.33 of the Revised Code



and develop an approved catalogue of products and services that can be supplied by the qualified nonprofit agencies to be purchased by state agencies, political subdivisions, or instrumentalities of the state.

(B) The auditor of state shall audit each central nonprofit agency approved under division (A) of this section at least annually.

Effective Date: 10-29-1995

#### **4115.36 Sunset provision for RC sections 4115.31 to 4115.35.**

Sections 4115.31 to 4115.35 of the Revised Code have no effect after the director of administrative services abolishes the state committee for the purchase of products and services provided by persons with severe disabilities. Upon abolishment of the committee, sections 125.60 to 125.6012 of the Revised Code shall govern the procurement of products and services provided by persons with work-limiting disabilities from qualified nonprofit agencies.

Effective Date: 06-30-2005

#### **4115.99 Penalty.**

(A) Whoever violates section 4115.08 or 4115.09 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars.

(B) Whoever violates division (C) of section 4115.071, section 4115.10, or 4115.11 of the Revised Code is guilty of a misdemeanor of the second degree for a first offense; for each subsequent offense such person is guilty of a misdemeanor of the first degree.

Effective Date: 08-25-1976