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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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Prevailing Wage

MEMORANDUM

TO: Democratic House Members
FROM: Representative Robert E. Belfanti, Jr.
Chairman, Labor Relations Committee *REB*
RE: Prevailing Wage

Many of you have received letters from contractors and other businesses concerning the Department of Labor and Industry's proposed regulations on prevailing wage.

As you know, prevailing wage has been an issue that the Republicans have opposed over the years. In past sessions, and in the current one, there have been bills introduced to either repeal or severely restrict prevailing wage. In the last few months it has become apparent that the Republicans see the proposed regulations as a prime opportunity to attack prevailing wage, and to use the issue against Democrats. While I believe the Department's proposed regulations may need some clarification and revision, I hope that House Democrats will not allow the Republicans to succeed in their efforts to weaken or eliminate current prevailing wage law.

With the public comment period now closed, the Department will be reviewing and considering all comments. It is expected that the Department will not submit its final form regulations until some time this fall. At that time, IRRC will have an additional review period (30 days), while the appropriate standing committees will have a 20-day review period to approve, disapprove or take no action on the regulations.

In order to assist you in responding to letters and questions you may receive on prevailing wage, I am providing background information on how prevailing wage currently works as well as an update on the status of the Department's proposed regulations. I have also included a sample letter which you may want to adapt and use as a response to letters on this issue. Please feel free to contact me if you should have any questions, or require additional assistance, after reviewing the information.

Attachments
6/8/93

JUN 10 1993

PREVAILING WAGE BACKGROUND INFORMATION

Even prior to the publication of the Department of Labor and Industry's proposed regulations on prevailing wage, there has been some confusion and misunderstanding on what prevailing wage really is and how it operates. This short Q&A paper is intended to give you a brief overview of how prevailing wage is currently administered.

What is prevailing wage?

The prevailing wage rate is the general prevailing minimum wage rate, as determined by the Department of Labor and Industry, which shall be paid for each craft or classification of all workmen needed to perform a public works contract in the locality in which the public work is performed. The rate is that most often paid in the locality based on data supplied to the Department.

Who must currently pay the prevailing wage rate?

Currently, a public body awarding a contract for any public work for the construction, reconstruction, demolition, alteration and/or repair work other than maintenance work where the estimated cost of the total project exceeds \$25,000 and which requires or involves the employment by any contractor or subcontractor of laborers, mechanics, skilled and semi-skilled laborers and apprentices in the performance of services directly upon the public work project shall pay the prevailing wage rate. Work performed under a rehabilitation or manpower training program is not included. In the current prevailing wage regulations, a public body is defined as the Commonwealth, any of its political subdivisions, any authority created by the General Assembly, and any instrumentality or agency of the Commonwealth.

How is the prevailing wage rate determined?

The Department of Labor and Industry determines the prevailing wage rate by using data sent voluntarily by building trade unions and contracting associations. Prevailing wage rate information is categorized by locality, type of construction and by craft and job classification. A prevailing rate changes as new and more current data is received.

Opponents of prevailing wage have complained that the data used to determine a prevailing wage rate does not accurately reflect actual wage rates for an area. The Department will consider all valid data received, however, many private contractors rarely submit data to the Department for inclusion in the calculation of the prevailing wage rate. The use of voluntarily submitted data has been the Department's practice since inception of the Prevailing Wage Act in the early 1960's.

What is the process in obtaining a prevailing wage rate?

The public body or its representative which proposes to enter into a contract for any public work project shall request from the Department of Labor and Industry, prior to the bidding of the contract, the prevailing wage rate for the contract's particular locality and the type of work to

Prevailing Wage Q&A

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be performed. The prevailing wage rates supplied by the Department shall be the rates used in the public body's bid and shall be the minimum wage rates that must be paid to workmen employed in the performance of the contract. Wage information provided by the Department is good for a period of 120 days. A new request for the prevailing wage rate must be made by the public body or its representative if the contract is not awarded within 120 days from the date the Department issues the initial wage rate for that particular project.

The Prevailing Wage Office can issue rates for any one, or any combination, of three different types of construction: (1) building construction (2) heavy construction and (3) highway construction.

Can a prevailing wage rate be appealed?

Any prospective bidder or his representative, any representative of any group of employers engaged in the type of work the project specifies, any representative of any craft or classification of workmen or the public body may file, with the Department within 10 days after publication and issue, a verified petition to review the prevailing wage rate(s) provided by the Department. A public hearing shall be held within 20 days after the filing of the petition, and the Secretary of Labor and Industry shall then have 10 days to make a determination. The Secretary's decision shall be final unless appealed within 10 days to the Prevailing Wage Appeals Board. The Board is comprised of seven members representing various segments of the contracting community, building and construction unions, and political subdivisions.

According to the Department, very few appeals of prevailing wage rate determinations have been filed over the years.

What responsibilities does a contractor or subcontractor have once awarded a prevailing wage project?

Each contractor or subcontractor awarded a contract subject to prevailing wage shall ensure that all workmen are paid the prevailing wage rate specified in the contract. In addition, the contractor and all subcontractors shall maintain accurate records reflecting the names, crafts and/or classifications, number of hours worked each day and the actual hourly wage rate paid for each workmen employed in connection with the public work. These records shall be open and available for inspection during reasonable hours to the public body awarding the contract and the authorized representatives of the Secretary of Labor and Industry.

Each contractor or subcontractor shall also submit to the Department of Labor and Industry a weekly statement, under oath, certifying that all workmen have been paid wages in accordance with the contract. A final statement shall also be submitted at the conclusion of the contract.

PROPOSED PREVAILING WAGE REGULATIONS (#12-32)

In March, the Department of Labor and Industry published, in accordance with the Independent Regulatory Review Act, proposed regulations (#12-32) pertaining to prevailing wage. According to the Department, the proposed regulations seek to clarify existing law and regulations. It is the Department's contention that since enactment of the Prevailing Wage Act in 1961, "enforcement experience and litigation under the Act have demonstrated a need for additional and more comprehensive regulations."

With receipt of the proposed regulations, the House Labor Relations Committee held an informational meeting with officials of the Department of Labor and Industry on April 14. A subsequent request by the Republican members of the committee to hold public hearings was refused given the fact that the informational meeting had been held to discuss the issue and that the public comment period on the proposed regulations was extended by the Department for an additional 30 days.

In compliance with the regulatory review process, IRRC now has 30 days (June 25) and the standing committees 20 days (June 15), to submit comments to the Department on the proposed regulations. In addition to reviewing any comments made by IRRC and the standing committees, the Department will review comments submitted during the public comment period and make any appropriate changes to the regulations prior to submitting them in final form. Following the Department's submission of the regulations in final form, IRCC will have a 30-day review period, and the standing committees will have a 20-day review period to approve, disapprove or take no action on the regulations. It is anticipated that the final form regulations will not be submitted by the Department until sometime this fall.

Much of the controversy with this issue has revolved around suggestions by the Republicans and industry and trade associations that the proposed regulations significantly expand prevailing wage's coverage to projects and workmen not originally intended to be covered under the law. Representatives of the Department have indicated that it is not their intention to expand the scope and coverage of projects and workmen to be covered by prevailing wage. The Department asserts that the proposed regulations seek to incorporate current practice and interpretation of prevailing wage law. It is clear, however, that the wording of the regulations may be a contributing factor to the concerns raised by opponents of the regulations. I expect that as the Department reviews the comments received, the concerns will be taken seriously into consideration and, where appropriate, clarifications made.

SAMPLE RESPONSE TO PREVAILING WAGE LETTERS

XXXXXXX
XXXXXXX
XXXXXXX

Dear XXXXX,

Thank you for your letter expressing concern with the Department of Labor and Industry's recently proposed prevailing wage regulations (#12-32).

The public comment period, as required under the state's regulatory review law, for the proposed regulations expired on May 26th. The Independent Regulatory Review Commission (IRRC) now has 30 days (June 25), and the appropriate standing committees 20 days (June 15), to submit comments to the Department. The Department will then take time to review those comments along with all others received during the public comment period and make appropriate changes. It is unlikely that the Department will submit the regulations in final form until some time this fall. However, once that is done, IRRC and the appropriate standing committees of the General Assembly will have an opportunity to review the revised regulations prior to implementation.

Representatives of the Department have indicated that it is not their intention, through promulgation of the regulations, to expand the scope and coverage of projects and workmen to be covered by the Prevailing Wage Act. The Department asserts that the proposed regulations seek to incorporate current practice and interpretation of prevailing wage law. However, it is quite apparent from the amount of correspondence received on this issue that the Department will need to closely review and, where appropriate, revise the regulations to ensure the wording of the proposed regulations does not expand the current scope and coverage of prevailing wage.

I appreciate you keeping me apprised of your interest and concern with this issue. Please do not hesitate to contact me in the future if I can be of assistance to you.

Sincerely,

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