



HOUSE REPUBLICAN STAFF ANALYSIS

Bill: House File 2421
Committee: Labor
Date: February 24, 2010
Staff: Lon Anderson (1-5184)

Prevailing Wage – Price Fixing for Public Projects

House File 2421 requires a contractor to pay workers the same hourly wage plus fringe benefits for certain public improvements as the contractor would pay workers for a private construction or improvement project. The bill allows the per-hour wage rate to be based on what is normally paid in the area by contractors for similar projects, and to be adjusted on a yearly basis by the department of workforce development.

The bill includes specific criteria, such as cost of the public improvement and the population of the city or county, for the project to qualify for the prevailing wage rate. The wage rates that the workers must be paid shall also include benefits such as medical care, life insurance, overtime pay, and vacation and holiday pay. The bill applies to any public improvement that receives money from a public body and includes most types of public improvements from construction to road maintenance.

Summary of Action

The House Labor Committee **PASSED** the bill on a party-line vote on February 11, 2010.

Section by Section Analysis

Sections 1, 2, 3 & 4 – New Chapter Creates Chapter 91F, the Public Improvement Quality Protection and Safety Act. Gives the Division of Labor Services the responsibility for administering the Chapter and sets forth the six goals of the Act including protecting workers, encouraging training and increase wage and benefits. House File 333 – last year’s prevailing wage bill – only had five goals. HSB 699 adds a sixth goal “recognizing that political subdivisions, because of unique circumstances, may not require prevailing wage.”

Section 5 – Definitions Defines all of the terms in the Chapter, including “prevailing wage rate” and “fringe benefits”. Prevailing wage rate is defined as hourly wage and fringe benefits including overtime, apprentice pay, and holiday pay. Fringe benefits are defined as health insurance (including vision and dental), pensions or annuities on death or retirement, life insurance, disability insurance, and vacation or holiday pay.

Also adds independent contractor language that defines “worker” and when the workers are considered employees of a contractor or subcontractor. Defines “political subdivision” to mean only cities, counties and school districts. In addition, projects under \$100,000 in total cost would not require prevailing wage.

Sections 6 & 7 – Determination of Prevailing Wage The Labor Commissioner shall determine the prevailing wage annually and publish on July 1 the prevailing wage rates for each craft, classification, or type of worker needed to perform work on public improvements. Within 15 days of the posting of the prevailing wage rates, an interested party may object to the rate in writing. Upon receipt of the objection, the Labor Commissioner shall reconsider the rate and affirm or modify the determination. If the Commissioner declines to modify his determination, the interested party will get a hearing before an administrative law judge. The ALJ shall render a decision within 30 days of the conclusion of the hearing and the interested party may proceed to a judicial review. The Attorney General will represent the Labor Commissioner if the review gets to that point.

Section 8 – Payment Required Requires all contractors and subcontractors engaged in a public improvement project pay no less than the current prevailing wage rates and cannot deduct any funds for food, sleeping accommodations, transportation, tools, vehicles or any other thing of any kind or description.

Section 9 – Public Improvement Requirements Requires any public body (which is the state and all political subdivisions) awarding a contract for public improvement to require the payment of prevailing wage rates. The section also details the procedures for writing contracts to contain prevailing wage provisions. Allows cities, counties and schools to opt out of prevailing wage rates by adopting a resolution to do so.

Section 10 – Federal funds The bill does not cover projects that are covered by Davis-Bacon. This includes most 100 percent federally funded programs but does not cover most disaster-related federal programs.

Section 11 – Records Required Requires contractors and subcontractors to make and keep accurate records of all workers employed by the contractors and subcontractors on the public improvement. The records shall include each worker's name, address, telephone number when available, social security number, trade classification, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day. They must keep the records for at least three years.

Section 12 – Powers of Commissioner The Commissioner has the power to investigate and ascertain the wages of workers engaged in a public improvement. Also can administer oaths, take depositions and require by subpoena the attendance and testimony of witnesses and the production of all books, registers, payrolls, and other evidence. Can contract with an auditor to audit the books of a contractor, subcontractor or public body.

Section 13 – Notice of Violations Require the Labor Commissioner to notify the contractor or subcontractor via certified mail if they have violated any of the provisions of the Chapter. The notice shall contain a reference to the specific provisions of the Chapter alleged to have been violated, identify whether the particular public improvement and whether the notice is a first, second or subsequent notice.

Section 14 – Violations – Remedies If the Commissioner determines that a public body has divided a public improvement into more than contract for the purpose of avoiding prevailing wage rates, the commissioner shall issue an order compelling compliance. The contractor or subcontractor shall be liable to the department for 50 percent of the underpayments and additionally liable to the worker for punitive damages in an amount equal to 5 percent of the liability for each month following the date of payment during which underpayments remain unpaid. Contractors and subcontractors would be responsible for punitive damages and attorney fees.

Section 15 – Apprentices Requires that any apprentice employed on a public improvement must be registered with a trade union or contractor group, under the United States Department of Labor's apprentice program.

Section 16 – Unfunded mandates Exempts the Act from 25B.3, which prohibits unfunded mandates.

Section 17 – Emergency Rules Allows the Labor Commissioner to adopt emergency rules to implement the prevailing wage and the rules shall be effective immediately upon filing unless a later date is specified.

Section 18 – Temporary Wages Rates Requires the Labor Commissioner to use Davis-Bacon wage rates until such time as the commissioner determines the appropriate wage rates and fringe benefit rates.

Section 19 – Effective Date The Act takes effect upon enactment.