

Senator Darling
Senator Olsen
Senator Harsdorf
Senator Leibham
Senator Grothman
Senator Hopper

WORKFORCE DEVELOPMENT

Prevailing Wage

Motion:

Move to make the following modifications to prevailing wage law:

1. *Exemption for Chip/Slurry Seal.* Specify that, in addition to the exemption under current law for chip and slurry work with a projected life span of less than five years, all chip and slurry work performed by towns is exempt from the prevailing wage law, except for work funded through the Town Road Improvement Program under the Local Roads Improvement Program.

2. *Project Thresholds.* Eliminate the current provision specifying that the prevailing wage laws for municipal and state public works projects do not apply to projects for which the estimated cost of completion is below \$25,000. Instead, specify project thresholds of: (a) \$48,000 for single-trade projects; (b) \$234,000 for multiple-trade construction projects conducted by townships or by cities and villages with populations of less than 2,500, provided that the work is contracted with a private contractor; and (c) \$100,000 for all other multiple-trade municipal and state public works projects. Define "single-trade project" as a project in which a single trade accounted for 85% or more of the total labor cost of the project. Define "multiple-trade project" as a project in which no single trade accounted for 85% or more of the total labor cost of the project.

3. *Reporting Requirements.* Repeal the monthly wage reporting requirements for contractors, subcontractors, or contractor's or subcontractor's agents enacted in 2009 Act 28, and the requirement that the Department of Workforce Development (DWD) post the reported information on its Internet site [described in the note below].

4. *Inspection of Records.* Modify the current law provisions requiring DWD to inspect contractor wage records for state and local projects subject to prevailing wage law when requested by individuals to, instead, specify that if another party requests that DWD inspect a contractor's records, the contractor is required to submit records for four weeks of payroll only once per calendar quarter for each project. Require these reports to be available for public inspection. Specify that, once a request is made under this provision, the Department may not approve a request for an inspection of records if made by any other party in the same calendar quarter for that project. Specify that no fee would be charged to any party making such a request. Require that a unique identifier must be included on the report so that the identity of employees listed is in compliance

with state and federal laws governing divulging personal information.

5. *Publicly Funded Private Construction Projects.* Repeal the prevailing wage statutes regarding publicly funded private construction projects, which were adopted in 2009 Act 28 [described in the note below].

6. *Work Performed Without Compensation.* Eliminate the current law exemption from the municipal and state prevailing wage laws for public works projects in which the labor for the project is provided by unpaid volunteers. Instead, specify that the state and municipal prevailing wage laws do not apply to projects for which the governmental unit contracting for the project is not required to compensate any contractor, subcontractor, contractor's or subcontractor's agent, or individual for performing the work.

7. *Exemption for Trucking Activities.* Make the following changes to the current state and local prevailing wage laws governing covered employees:

Under current law, the prevailing wage provisions do not apply to a laborer, worker, mechanic, or truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products unless either of the following applies:

a. The individual is employed to go to the source of mineral aggregate that is to be immediately incorporated into the work, and not stockpiled or further transported by truck, pick up that mineral aggregate, and deliver that mineral aggregate to the site of a covered project by depositing the material substantially in place, directly or through spreaders from the transporting vehicle; or

b. The individual is employed to go to the site of a covered project, pick up excavated material or spoil from the site of the project, and transport that excavated material or spoil away from the site of the project.

This motion would modify the above provisions by: (1) specifying that the individual would not have to be regularly employed in the activities described above in order to be exempt from coverage; (2) specify that prevailing wage law also does not apply to an individual delivering products from a facility that is not dedicated to a project; and (3) amending "a" above to specify that in order to be covered, the individual would have to be employed to go to the source of mineral aggregate and deliver that mineral aggregate to the site of a covered project by depositing the materials directly in final place, from the transporting vehicle or through spreaders from the transporting vehicle.

8. *Statewide Concern; Uniformity.* Provide that the Legislature finds that the enactment of ordinances or other enactments by local governmental units requiring laborers, workers, mechanics, and truck drivers employed on projects of public works or on publicly funded private construction projects (as defined under current law) to be paid the prevailing wage rate and to be paid at least 1.5 times their hourly basic rate of pay for hours worked in excess of the

prevailing hours of labor would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of laws governing municipal prevailing wage and hours and the repeal of laws governing publicly funded private construction projects. Specify that these provisions must be construed as an enactment of statewide concern for the purpose of providing uniform prevailing wage rate and prevailing hours of labor requirements throughout the state.

Prohibit a local governmental unit from enacting and administering an ordinance or other enactment requiring laborers, workers, mechanics, and truck drivers employed on projects of public works or on publicly funded private construction projects to be paid the prevailing wage rate and to be paid at least 1.5 times their hourly basic rate of pay for hours worked in excess of the prevailing hours of labor or any similar ordinance or enactment. Specify that any such ordinance or other enactment that is in effect on the effective date of this provision is void.

9. *Exemption for Residential Projects.* Specify that a project of state or local public works involving the erection, construction, repair, remodeling, or demolition of a residential property containing two dwelling units or less is not subject to prevailing wage law.

10. *Exemption for Residential Development.* Provide an exemption for any residential development from laws governing municipal prevailing wage and hour scales. Define "residential development" to mean any development where 90% of the approved lots contain or will contain a dwelling. Define "dwelling" to mean any building that contains one or two dwelling units. Specify that the determination of whether a development is a residential development is determined at the time the development was approved by the applicable government authority. Specify that this exemption would apply to any work that is paid for by a developer and then dedicated over to a municipality, including work performed on a road, street, bridge, sanitary sewer, or water main project.

11. *Night Shift Differential and Holiday Pay.* Modify current law regarding certification of prevailing wage rates for highway projects to require that DWD must, in addition to the current prevailing wage rates, include Sunday pay, holiday pay, and shift differential, with the exception of height pay, pay for work with particular products, and supervisory pay, provided for in the collective bargaining agreement or a successor agreement.

12. *Prevailing Wage Survey.* Specify that governmental units are exempt and precluded from filing a prevailing wage survey if the governmental unit performs any construction work

13. *Effective Date.* Specify that these provisions would become first effective January 1, 2012.

Note:

Reporting and Inspection of Contractor Records. Under current law, if a contractor, subcontractor, or agent of a contractor or subcontractor performs work on a project that is subject to

the prevailing wage laws, the contractor, subcontractor, or agent must submit to DWD in an electronic format a certified record of hours worked by, and wages paid to, its employees who worked on the project in that preceding month. However, if all persons employed by the contractor, subcontractor, or agent who are performing work on a covered project are covered under a collective bargaining agreement and the wage rates for those persons are not less than the prevailing wage rate, the contractor, subcontractor, or agent must submit to DWD in an electronic format a copy of all collective bargaining agreements that are pertinent to the project of public works by no later than the end of the first week of the first month in which the contractor, subcontractor, or agent performs work on the project of public works.

DWD must post on its Internet site all certified records and collective bargaining agreements submitted under the above provisions, except that DWD may not post the name of or any other personally identifiable information relating to any employee of a contractor, subcontractor, or agent that submits the information to the Department.

Also, under current law, if requested by any person, DWD must inspect the payroll records of any contractor, subcontractor, or agent performing work on a project that is covered by the prevailing wage law to ensure compliance. In the case of a request made by a person performing covered work, if DWD finds that the contractor, subcontractor, or agent subject to the inspection is in compliance and that the request is frivolous, the Department must charge the person making the request the actual cost of the inspection. In the case of a request made by a person not performing covered work, if DWD finds that the contractor, subcontractor, or agent subject to the inspection is in compliance and that the request is frivolous, the Department must charge the person making the request \$250 or the actual cost of the inspection, whichever is greater.

The motion would repeal the monthly reporting requirement and create new inspection provisions, as described above.

Publicly Funded Private Construction Projects. 2009 Act 28 created the state prevailing wage law for publicly funded private construction projects, which is similar to prevailing wage laws for municipal and state public works projects. These provisions generally apply to any owner or developer of real property who enters into a contract for the erection, construction, remodeling, repairing, or demolition of any publicly funded private construction project. "Publicly funded private construction project" means a construction project in which the developer, investor, or owner of the project receives direct financial assistance from a local governmental unit for the erection, construction, repair, remodeling, or demolition, including any alteration, painting, decorating, or grading, of a private facility, including land, a building, or other infrastructure. A "publicly funded private construction project" does not include a project involving any of the following:

- a. Residential property, if the project is supported by affordable housing grants, home improvement grants, or grants from a local housing trust fund.
- b. A residential property containing four dwelling units or less.

c. A residential property that contains retail, office, or commercial components, if the project is intended to increase the supply of affordable housing in the community.

"Direct financial assistance" is defined as moneys, in the form of a grant or other arrangement or included as part of a contract or cooperative agreement, or any other arrangement, including a redevelopment agreement under the municipal blight elimination and slum clearance law, economic development agreement contract for a project under the tax increment finance law, or assistance provided under the municipal business improvement district law, that a local governmental unit directly provides or otherwise makes available to assist in the erection, construction, repair, remodeling, or demolition of a private facility. The Act 28 provisions do not apply to projects that receive less than \$1 million in direct financial assistance from local units of government.

The motion would delete these provisions.

M# 498

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|-----------|--------------|---|---|
| VOS | X | N | A |
| MEYER | X | N | A |
| LEMAHIEU | X | N | A |
| NYGREN | X | N | A |
| STRACHOTA | X | N | A |
| KLEEFISCH | X | N | A |
| GRIGSBY | Y | N | A |
| SHILLING | X | N | A |

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|-----------|--------------|---|---|
| 1 DARLING | X | N | A |
| 2 ZOLSEN | X | N | A |
| HARSDORFF | X | N | A |
| LEIBHAM | X | N | A |
| GROTHMAN | X | N | A |
| HOPPER | X | N | A |
| TAYLOR | Y | N | A |
| JAUCH | X | N | A |

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