

PREVAILING WAGE ADVISORY COMMITTEE

Meeting Minutes

Thursday, February 8, 2007

Labor & Industries Building
350 Winter St. NE, Room 260
Salem, OR 97301-3878

Members Present

Jessica Adamson
Daniel Bonham
Sonny Chickering
John Killin
Norm Malbin
Shawn Miller
Patrick O'Brien
Pete Savage
Bob Shiprack

Members Absent

Mark Holliday
John Mohlis

Staff Present

Dan Gardner
Christie Hammond
Lois Banahene
Susan Wooley
Mike Kern

Commissioner Dan Gardner called the meeting to order at 1:30 PM.

Introduction of New Committee Member

Commissioner Gardner introduced and welcomed new committee member Sonny Chickering, a County Engineer for Lane County, who Mr. Gardner said replaced former Association of Oregon Counties committee member Daniel Boldt.

Mr. Chickering said he had many years of public contracting experience, and that he was responsible for Lane County's road contracts.

Mr. Gardner noted that he had requested additional committee member nominations from the Association of Oregon Redevelopment Agencies (AORA) to replace former committee member Karen Williams, as well as from the League of Oregon Cities.

Minutes of Last Meeting of January 11, 2007

The committee unanimously approved the draft minutes of the January 11, 2007 meeting with the clarification on page six in the second paragraph of "Proposed Legislation" that committee member Shawn Miller's intent regarding HB 2021 was to make public agencies liable for unpaid wages if the public agency fails to reference the applicable state and federal wage rate publication on projects subject to both the state PWR law and federal Davis-Bacon Act.

Proposed Legislation

Bob Shiprack briefly summarized the provisions of HB 2557 which would exempt certain public/private projects and privately-owned affordable housing projects from the Prevailing Wage Rate law. Mr. Shiprack said that the legislation was very similar to California's PWR law exempting affordable housing.

Mr. Shiprack explained that the exemption in the bill for certain public/private projects was drafted in response to legislators' requests for a legislative solution to the issue of how and when the PWR law applies to these types of projects, which the current law does not adequately address.

Mr. Shiprack said that he had worked with the Association of Oregon Community Development Organizations (AOCDO) and the Community Development Network (CDN) in developing the language for the affordable housing exemption, and consensus had been reached regarding the language in the bill. Mr. Shiprack noted that the federal prevailing wage rate law could still apply to residential projects that are exempted under state law.

Jessica Adamson asked whether the intent of the bill was to require that *all* of the conditions relating to a public/private project in the bill be met in order to qualify for the exemption under the law, in which case, she said, AGC (Associated General Contractors) would support the bill. Ms. Adamson said she wasn't sure whether or not AGC would support the bill if all of the conditions were not required to be met. Shawn Miller and John Killin agreed with Ms. Adamson on behalf of their clients.

Commissioner Gardner explained that the purpose of the bill was to reach a compromise between parties regarding coverage of public/private projects under the law and said that Oregon was unlike other states with PWR laws in which coverage is determined solely on the basis of public funds being used on the project.

Mr. Shiprack agreed to contact Legislative Counsel in order to clarify the intent of the exemption for public/private projects. Mr. Shiprack said he believed that it was not intended that all the criteria must be met in order for the exemption to apply and that the \$750,000 public fund amount was intended to "stand alone."

Norman Malbin posed an example of construction of a privately-owned strip mall scenario with public agency occupancy as a project which the law should clearly address.

Daniel Bonham questioned the proposed exclusion of tax credits and abatements in the definition of "funds of a public agency" in the bill, saying he believed such credits and abatements translated into cost savings to developers at public expense and should be considered public funds. Commissioner Gardner responded that BOLI had never considered these to be public funds in the past and the language in the bill simply codified the agency's interpretation.

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Commissioner Gardner concluded the discussion of the bill by saying there clearly needed to be additional deliberation regarding the public/private project exemption.

Norman Malbin asked whether there was consensus on the part of the committee members regarding the exemption in the bill for affordable housing. The members expressed general agreement with this part of the bill.

At Commissioner Gardner's request, Wage and Hour Division Administrator Christie Hammond presented a budget analysis of PWR revenues and expenditures beginning with the 1997-99 biennium, with revenue and expenditure projections through 2007-2009. Ms. Hammond advised the committee members that without an increase in contractor fees, the agency projected that a negative cash balance would occur sometime during the 2009-2011 biennium. Several fee increase scenarios were presented to the committee showing how revenues could be increased to address this projected shortfall. Commissioner Gardner said that he was recommending that the minimum fee assessed be increased from \$100 to \$250 and the maximum fee amount be increased from \$5,000 to \$7,500 in order to generate additional revenue.

Mr. Gardner indicated that he expected legal issues and expenses relating to PWR enforcement to decrease and that the fee increases may only be needed on a temporary basis in order to build an adequate reserve. Mr. Gardner said he would suggest that legislation be drafted sunsetting the fee increases after four years.

Shawn Miller expressed concern about reserves generated by fee increases being used by the legislature for purposes other than the PWR law. Mr. Gardner said he shared this concern, which was why he was recommending a sunset clause in the legislation in order to avoid generating surplus revenue. Mr. Gardner asked for the committee's support for the fee increase and invited members to share any additional concerns they had.

Patrick O'Brien suggested that the agency needs to better inform contractors about how the fees are spent. Commissioner Gardner agreed to provide additional information and details relating to PWR fund expenditures.

Mr. Gardner also announced that he had attended a meeting with AGC representatives earlier that day and it had been suggested that the law be amended to require public agencies to pay the PWR fee, rather than contractors. Shawn Miller and John Killin both expressed support for this proposal.

Sonny Chickering stated his concern about this concept resulting in additional administrative costs to public agencies and said he would discuss it with AOC representatives later in the month.

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Shawn Miller said that HB 2021, which had been filed at his request, had had a hearing where concerns relating to PWR-related litigation expenses were expressed by public agencies. Jessica Adamson said she understood that there would be a proposed amendment to the bill in which BOLI would be liable for attorney fees in PWR cases it loses, but she didn't expect the amendment to be adopted.

In response to questions raised regarding public agency liability under HB 2021, Mr. Miller said he intended for public agencies to be liable for any wages due (including fringe benefits and liquidated damages) as the result of a public agency failing to provide the correct wage rates on a project subject to both state and federal prevailing wage rate laws. Mr. Miller agreed to work with BOLI staff and Legislative Counsel to ensure the bill accurately reflects this intent.

Jessica Adamson reported that she and others were working on a bill to correct inadvertent results in the application of the PWR law made by SB 477 last session. Ms. Adamson also said that the bill would codify a public agency's authority to reference the applicable wage rates in its specifications (rather than require the rates to be physically included).

The committee briefly reviewed HB 2264 which exempts the State Board of Education, Department of Education and Superintendent of Public Instruction from certain provisions of the Public Contracting Code, not including the PWR law.

Commissioner Gardner asked whether there were additional legislative concepts to be discussed.

Norman Malbin asked whether there would be support by the committee for legislation providing labor organizations with legal standing to file liens on behalf of its individual members in order to recover unpaid wages owed. Patrick O'Brien expressed concern about this concept, citing additional liabilities to general contractors.

Next Meeting

Commissioner Gardner suggested that the next advisory committee meeting be held in one month to review and discuss relevant legislation. The committee members agreed and the next meeting was scheduled for Thursday, March 8, 2007 at 1:30 pm in Room 260 of the Labor and Industries Building in Salem.

The meeting was adjourned at approximately 3:00 PM.