Associated Builders and Contractors, NH/VT Chapter
Testimony on Prevailing Wage
General Housing and Military Affairs Committee
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The below comments are prepared in response to the State of Vermont considering the use of the federal prevailing wage and benefit survey results or union collective bargaining agreements as the source for prevailing wage and benefits to be used on all state funded capital construction projects. Currently, state-funded capital contracts in Vermont worth more than $100,000 require that construction workers be paid the state's prevailing wage, which is an hourly wage rate that does not factor fringe benefits into its calculations. The current Vermont prevailing wage is calculated by the Department of Labor's Economic and Labor Market Information Division. An "Occupational Employment and Wage Survey" is issued every six months. The survey process, which is issued to a sample of employers, receives a return of approximately 90%. The survey covers wages only, not fringe benefits.

State Prevailing Wage Laws

Generally, state prevailing wage laws were first enacted in 1931, following passage of the Federal Davis Bacon Act (DBA) for federally funded projects. State prevailing wage laws vary in monetary thresholds, who is covered, how the rates are determined, whether fringe benefits are included and other issues. Nine states never enacted a prevailing wage law, ten states have repealed their prevailing wage laws and others are considering repeal. The Federal Davis Bacon act of 1931, named for sponsors Congressman Robert Bacon of New York and Senator James Davis of Pennsylvania, was enacted to help protect local workers during the Great Depression. President Hoover saw DBA as a method to counteract wage rates that were falling during the Great Depression. The timing was important in that DBA prevailing wages were applied to the vast number of public works construction projects undertaken during the New Deal. Regardless of the initial intent or impact of the DBA, current wage and benefit practices and several laws that have been enacted since 1931 bring to question the purpose of prevailing wage laws today.

The Federal Prevailing Wage and Benefit Survey Process

The US Department of Labor prevailing wage and benefit determination process involves four steps: (1) planning and scheduling of surveys, (2) conducting the surveys, (3) clarifying and analyzing the respondent's data and (4) issuing the wage determinations. Problems contributing to inaccurate prevailing wage and benefit estimates begin early in the process and continue throughout all four steps. Many contractors are surprised to understand the survey process and the regulations for conducting the surveys. The survey form is supposed to be sent to contractors and subcontractors along with a letter requesting information on any projects in the county being surveyed (surveys are done by county and for types of construction, i.e. building, highway, heavy). Letters announcing the survey and a copy of the survey should also be sent to contractor trade associations and building trade unions to inform them of the survey and solicit their support in encouraging survey responses. Contractors who do not respond to the initial request should be sent a second request. Those who do not respond to the second inquiry are to be contacted by phone. Needless to say, the above described process is not utilized in existing federal prevailing wage survey processes. In fact it is hard to determine who receives any survey request let alone a second request or a follow up phone call.

The survey forms are equally troubling. The forms include questions about the contractor, subcontractor, project, type of construction and hourly wage and benefits paid to workers in specific classifications. The design of the survey places a heavy burden on survey participants. It is often difficult to classify workers performing multiple tasks into one classification and it is not uncommon to have entire classifications missing from the list of classifications in the resulting prevailing wage determination. The survey requires employers to report hourly wages and hourly fringe benefits, yet fringe benefits are rarely quoted, reported or paid on an hourly basis. The survey request employers to break out the hourly fringe benefits into different components (such as vacation and holiday) making the task even more burdensome. Employers that already record their employee wages and benefits in the format required by the survey have less of a compliance burden and are more likely to respond. Of the entities that are surveyed, union contactors and non-union contractors, union contractors have the least compliance burden due to the breakdown of contributions in their collective bargaining agreements. The unions also have the added advantage of the common wage and benefit information for all their signatory employers and the ability of the union representative completing the forms for all the signatory contactors being surveyed.

With many contractors not receiving survey forms, the difficulty for most Vermont contactors to comply with the survey design (over 95% of VT contractors are not signatory to union agreements – see attached report) and with union contractors dominating the survey responses, it is likely that the resulting prevailing wages and benefits are strongly biased to be inconsistent with what is truly prevailing. Many Vermont contractors will not bid or will inflate their bids to perform prevailing wage projects because of their increased administrative cost and because the government mandated wage and benefits disrupt the company existing wage and benefit structure. It is important to understand, any difference between the true hourly total fringe amount being contributed to an employee's benefit programs and the total of the fringe amount in the determination must be added to the hourly wage and paid to the employee.

<u>It's Not the Wage; the Fringe Benefit Amount Is Most Troubling. Is It the Prevailing Fringe?</u>
If the state wants to be involved in determining fringe benefit amounts that employers contribute to their employees, it is imperative that the determination is accurate and truly reflective of what is in practice. The attached current Federal wage and benefit determination for Essex, Lamoille and Orange County provides a clear example of a discrepancy. Please note the difference in fringe amounts between the classifications where the federal determinations are directly from the union collective bargaining agreements and the classifications where determinations are from data that is compiled from the average of all survey responses. It is very clear that there is a significant difference between fringe benefit amounts included in collective bargaining agreements and what Vermont employers are providing their employees. The union collective bargaining fringe amount is not the prevailing fringe contribution being made by Vermont employers. Signatory employers subject to the collective bargaining agreements are paying the total fringe amount in the union determinations and it would be interesting to understand what is being funded but should all Vermont contractors performing state funded projects be subjected to the abnormally high fringe amount? As previously mentioned any difference between the true hourly total fringe amount being contributed to an employee's benefit programs and the total of the fringe amount in the determination must be added to the hourly wage and paid to the employee. So, now the employee is receiving an inflated wage amount.

Establishing prevailing wage and benefits utilizing the federal survey process or union collective bargaining agreements would result in pure and perfect inflation. There would be no added value to the state and it will not improve productivity or performance of state funded projects.