

STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PREVAILING WAGE COMMISSION MEETING

November 16, 2018

CASSANDRA M. BEILING, LCR# 371
STONE & GEORGE COURT REPORTING
2020 Fieldstone Parkway
Suite 900 - PMB 234
Franklin, Tennessee 37069
615.221.1089

- 1 APPEARANCES:
- 2 Commissioner Burns Phillips, Chairman
- 3 Commissioner Wayburn Crabtree, TDOT Designee
- 4 Ann McGauran, State Architect
Tennessee Department of Treasury
- 5 R. T. Summers, Industry Representative
Summers-Taylor, Inc. Elizabethton, Tennessee
- 6 Stephen Wright, Industry Representative
Wright Brothers Construction
- 7 Dan Bailey, Legal Counsel
- 8 Kim Y. Jefferson, Assistant Commissioner
- 9 Kenneth Nealy, Director
- 10 Lynn Kirby, Board Secretary
- 11 Jan Caudill, Administrative Assistant
- 12 Carolyn Sherrod, Administrative Services Manager

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AGENDA

- 1 I. Call Meeting to Order
- 2 II. Introductions and Announcements
- 3 III. Adoption of Agenda
- 4 IV. Approval of the August 14, 2018 Meeting Minutes
- 5 V. Labor Standards Unit's Report(s)
* Carolyn Sherrod - Administrative Process
* Jan Caudill - 2018 Prevailing Wage Survey statistics
* Kenneth Nealy - Investigative Process
- 6 VI. Old Business
* Clarification of Proposals 6 & 7 tabled from the August 14, 2018 Prevailing Wage Commission meeting as to whether the Prevailing Wage Commission meeting as to whether the Prevailing Wage Act has jurisdiction over "any municipality, county, or other political subdivision."
- 7 VII. New Business
* Calculation of Prevailing Wage Rates for 2019 (25 Classifications)
- 8 VIII. Open Discussion Items
- 9 IX. Announcement of Next Meeting - The next regularly scheduled meeting of the Prevailing Wage Commission will be held 1:30 p.m. (CDT) on Thursday, November 29, 2018, at the State of Tennessee, Department of Labor and Workforce Development building, located at 220 French Landing Drive, Nashville, Tennessee
- 10 VII. Adjournment

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2 CHAIRMAN PHILLIPS: Let's call this

3 meeting to order. The first thing we'll do is

4 read the "In the event of an emergency."

5 In the event of an emergency or

6 natural disaster, security personnel will take

7 attendees to a safe place in the building or

8 direct them to exit the building on the Rosa Parks

9 side.

10 So the first order of business will

11 be the adoption of the agenda. Any corrections?

12 (No verbal response.)

13 CHAIRMAN PHILLIPS: If not, motion

14 to approve.

15 MR. WRIGHT: So moved.

16 CHAIRMAN PHILLIPS: Moved. Second?

17 MR. CRABTREE: Second.

18 CHAIRMAN PHILLIPS: All right. Any

19 opposed?

20 (No verbal response.)

21 CHAIRMAN PHILLIPS: All in favor?

22 (Affirmative response.)

23 CHAIRMAN PHILLIPS: For the record,

24 let's introduce everyone. We'll start over here

25 and have Wayburn introduce himself.

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1 MR. CRABTREE: I'm Wayburn
 2 Crabtree. I represent the commissioner of
 3 transportation.
 4 MR. SUMMERS: Rab Summers,
 5 Summers-Taylor Incorporated.
 6 MR. WRIGHT: Steve Wright with
 7 Wright Brothers Construction.
 8 CHAIRMAN PHILLIPS: Burns Phillips,
 9 Labor and Workforce Development.
 10 MS. KIRBY: Lynn Kirby, commission
 11 secretary.
 12 MS. JEFFERSON: Kim Jefferson,
 13 Labor and Workforce Development.
 14 MR. BAILEY: Dan Bailey, Department
 15 of Labor legal counsel.
 16 MS. CAUDILL: Jan Caudill, Labor
 17 and Workforce Development.
 18 MR. NEALY: Kenneth Nealy, Labor
 19 and Workforce Development.
 20 MS. SHERROD: Carolyn Sherrod,
 21 Labor and Workforce Development.
 22 MS. XIXIS: Tia Xixis, Department
 23 of Labor and Workforce Development.
 24 MR. STARWALT: Kent Starwalt,
 25 Tennessee Road Builders Association.

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1 MS. BARNETT: Doris Barnett, Labor
 2 and Workforce Development.
 3 MR. LAMBERT: Charles Lambert,
 4 Austin Powder Company.
 5 MS. BRADLEY: Wendy Bradley, Civil
 6 Constructors.
 7 MS. PAIGE: Ebony Paige, Labor and
 8 Workforce Development.
 9 CHAIRMAN PHILLIPS: So now we'll go
 10 to the approval of the August 14th meeting
 11 minutes. Any corrections?
 12 (No verbal response.)
 13 CHAIRMAN PHILLIPS: Motion to
 14 approve?
 15 MR. WRIGHT: So moved.
 16 CHAIRMAN PHILLIPS: Second?
 17 MR. SUMMERS: Second.
 18 CHAIRMAN PHILLIPS: All opposed?
 19 (No verbal response.)
 20 CHAIRMAN PHILLIPS: All in favor?
 21 (Affirmative response.)
 22 CHAIRMAN PHILLIPS: So now we'll
 23 move to our Labor Standards Unit reports. Carolyn
 24 will be first, the administrative process.
 25 MS. SHERROD: Good afternoon,

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1 everyone. Welcome to our meeting.
 2 CHAIRMAN PHILLIPS: Hi, Carolyn.
 3 MS. SHERROD: Again, I'm Carolyn
 4 Sherrod, and I'm the administrative services
 5 manager for the Labor Standards Unit. And I'll
 6 just give you a brief update as to what has
 7 transpired since our meeting in August.
 8 As a unit, we seek ways to improve
 9 our procedures and advance our program. One such
 10 application for improvement has been the creation
 11 of the prevailing wage calculation spreadsheet,
 12 which you-all have in your notebooks.
 13 In order to improve our calculation
 14 process, the survey data is then put into the
 15 spreadsheet and calculated electronically. As an
 16 added measure, calculations have been performed
 17 manually by the administrative staff and reviewed
 18 with the assistant commissioner to ensure that the
 19 rates are accurate per statute.
 20 In mid September, our assistant
 21 commissioner, Kim Jefferson, signed the
 22 implementation plan document for the 2018
 23 prevailing wage survey. This implementation plan
 24 listed all necessary oracle database changes and
 25 prevailing wage application changes that were

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1 necessary to initiate the survey process for the
 2 2018 year -- or 2019 year. Once the plan is
 3 signed, the IT team is authorized to execute the
 4 survey process.
 5 During our August meeting, we
 6 reported our intent to utilize the Department's
 7 MailChimp feature to send reminder notices to
 8 employers to encourage their participation in the
 9 2018 survey. The Labor Standards Unit sent the
 10 reminder notifications on October 15th, and this
 11 is another means of our trying to improve our
 12 program and our processes.
 13 The practice proved successful. We
 14 received several responses, which included contact
 15 update information, requests to be removed from
 16 the mailing list, et cetera. And this process is
 17 one that we will continue in years to come.
 18 CHAIRMAN PHILLIPS: Very good.
 19 MS. SHERROD: One last bit of
 20 information. Since our last meeting on
 21 August 16th, the Labor Standards Unit has received
 22 an additional 28 starting notices and 38
 23 completion notices on construction projects. This
 24 gives us a total of 67 starting notices and 46
 25 completion notices since July 1st, 2018. Thank

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1 you.

2 CHAIRMAN PHILLIPS: Very good.

3 MS. SHERROD: Any questions?

4 CHAIRMAN PHILLIPS: Does anybody
5 have any questions?

6 (No verbal response.)

7 CHAIRMAN PHILLIPS: Great. Thank
8 you, Carolyn. Appreciate it.

9 MS. SHERROD: Thank you.

10 CHAIRMAN PHILLIPS: Next will be
11 the 2018 prevailing wage survey statistics. Jan?

12 MS. CAUDILL: Good afternoon. This
13 year we sent out 722 total surveys; 719 of those
14 were emailed and 43 of those returned invalid, so
15 a total of emails were 676. There were three
16 corporations that did not have emails at all, so
17 we mailed those. And that next line should say
18 plus 43 that were returned, for a total of 46 that
19 were actually mailed out. But no surveys came
20 back that were undeliverable, and no surveys were
21 received beyond the statutory deadline.

22 As far as the number of employees
23 that were nonresponsive, there were 556 compared
24 to 603 from last year. Of the responses we did
25 receive, 67 of them came in through the mail, and

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1 99 were submitted online for a total of 166. Of
2 those, a total of 90 had actual survey responses
3 or projects submitted. That gives us a percentage
4 of total response of 12.5 percent, compared to
5 11.2 percent last year. This year, overall, there
6 were 453 total projects submitted; 328 of those
7 were submitted online and 125 were submitted
8 through the mail or email and entered manually.

9 Of all the classifications, all 25
10 were surveyed. There were none that were new from
11 last year, so the same classifications that were
12 surveyed last year were surveyed this year as
13 well. As far as incomplete or incorrect surveys,
14 we did receive two. Brown Builders, 6 of the 15
15 surveys that were submitted were not state funded.
16 And Summers-Taylor, 9 of the 22 surveys submitted
17 were not state funded. Both of these cases
18 were -- the information was denied prior to the
19 calculation of the prevailing wage rates.

20 There were six classifications where
21 four or fewer responses were received.
22 Number one, bricklayer, there were no responses;
23 Classification 11, iron workers re-enforcing,
24 there were two responses; Classification 12, iron
25 workers structural, there were two responses;

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1 Classification 15, painter or sand blaster, there
2 were no responses; 16, powder person blaster,
3 there were no responses; and Classification Number
4 ~~18~~ sweeping machine or vacuum operator, there was
5 one response.

6 Are there any questions?

7 CHAIRMAN PHILLIPS: Any questions?

8 (No verbal response.)

9 CHAIRMAN PHILLIPS: Very good, Jan.
10 Thank you.

11 And last, Kenneth, investigative
12 process.

13 MR. NEALY: Good afternoon. My
14 report will be a lot shorter than Jan's and
15 Carolyn's. So I'll start, fiscal year '18-'19.
16 July 1st, 2018, we've had four assigned
17 preconstruction meetings. We've attended three
18 and mailed one preconstruction packet.

19 We've conducted one random
20 investigation. The project was closed. And we've
21 had zero wage complaints regarding the prevailing
22 wage thus far.

23 Any questions?

24 (No verbal response.)

25 CHAIRMAN PHILLIPS: Very good.

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1 Thank you, Kenneth.

2 Okay. Now we'll move to old
3 business. First, clarification of Proposal 6 and
4 7, tabled from the August 14th, 2018 prevailing
5 wage commission meeting as to whether Prevailing
6 Wage Act has jurisdiction over any municipality,
7 county, or other political subdivision. Does the
8 prevailing wage rate apply to municipalities and
9 counties?

10 Dan, you're going to address that,
11 correct?

12 MR. BAILEY: Yes, sir.

13 I think probably the best way to do
14 it is with an email where I'd kind of laid out the
15 statute and interpretation of it.

16 As I state in this email, looking at
17 the definitions, the definition of public
18 highway -- and I'm trying to move along quickly
19 here, so the underlying portion is what I'm honing
20 in on -- it means any street/road that is
21 constructed or maintained by the State or any
22 municipality or political subdivision of the
23 State. So that's the definition of a public
24 highway. So according to the Act, any road within
25 Tennessee that is constructed or maintained by the

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1 State or a political subdivision of the State and
2 that road construction or maintenance project
3 receives state or federal funds is a "public
4 highway."

5 The next definition is "state highway
6 construction project." It means any construction
7 project for the purpose of building, rebuilding,
8 locating, relocating, or repairing any. Which we
9 just talked about public highway. It includes --
10 so a state highway construction project is
11 basically anywhere on a public highway. And a
12 public highway includes both state and local road
13 projects.

14 The last definition, "state
15 contract," means any contractual agreement,
16 written or oral, by any person or firm with the
17 performance of work on a state highway
18 construction project."

19 A "state contract" under the Act is
20 basically any agreement for work on a "state
21 highway construction project," which is any work
22 on a Tennessee, "public highway," which includes
23 local government road projects that receive state
24 or federal funding.

25 And I also point out that the

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1 language of TCA 12-4-403, also, is important,
2 given the above definitions. TCA 12-4-403 states,
3 "It is hereby declared to be the policy of this
4 state that the prevailing wage rate be determined
5 by defined standards and that such rate be paid
6 all workers on all state highway construction
7 projects."

8 And then paragraph (b), "Any highway
9 contractor entering into a state contract for the
10 performance of work on state highway construction
11 projects shall pay not less than the prevailing
12 wage rate for all types and classifications of
13 such work as determined by this part.

14 "As noted above, a 'state highway
15 construction project,' is basically any work on a
16 public highway, which by definition includes local
17 road projects that receive state or federal
18 funding."

19 CHAIRMAN PHILLIPS: Any discussion?
20 Comments?

21 MR. SUMMERS: I agree with that,
22 and the -- other than most of the forms that we
23 submitted that were rejected were on all local
24 city and county projects, which they received
25 state funds. And I think they're appropriate.

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1 We've always submitted work for Johnson City and
2 Morristown and Greeneville for the counties.
3 We've always submitted them, and it's always been
4 accepted because they do receive federal funds,
5 state funds.

6 There are some of these projects that
7 have a -- because they have some federal funds,
8 they require a prevailing wage. It's in the
9 contract. And, of course, they use the highway
10 construction prevailing wage that we promulgate.

11 I agree with Dan.

12 MR. WRIGHT: I would point out that
13 I think that's important in that if, you know, we
14 compete for local paving on a, say, City of
15 Cleveland resurfacing project, we also compete
16 with some guys when we go up for that bid process
17 that have never done a state work where Wayburn
18 signed a contract.

19 But the City of Cleveland gets funds
20 through TDOT. Do they not?

21 MR. CRABTREE: (No verbal
22 response.)

23 MR. WRIGHT: So I think that's
24 state-funded. And when I go to compete with them
25 and I'm paying my guy by this rate here -- because

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1 I can't say, "You know what? We're working for
2 the City of Cleveland. You ain't going to get but
3 about half as much today." They quit. But his
4 guy, he never paid but half as much.

5 And I think you -- I think the City
6 of Cleveland gets the value of the skilled workers
7 that you have and it's an unlevel -- it creates an
8 unlevel playing field when public dollars require
9 us to pay a living decent wage for these folks,
10 and then a guy can pay minimum wage and compete
11 with us in a different -- I mean, that's just -- I
12 don't mean that to sound selfish, but I think that
13 everybody that's working in that 300-degree
14 asphalt ought to get paid something other than
15 minimum wage.

16 So I agree with you, I guess is what
17 I'm trying to say.

18 Is that a little too plain, Rab? I'm
19 sorry.

20 MS. MCGAURAN: This -- it did lead
21 me to one question, which is of the surveys that
22 we threw out as --

23 MS. CAUDILL: Not state-funded?

24 MS. MCGAURAN: -- not state-funded,
25 were they federally funded? Did we confirm that

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1 they didn't have any -- that they weren't
2 compliant under these new definitions?

3 MR. SUMMERS: There were two of the
4 projects that were bridge projects for Eastman
5 Chemical. So they would not be -- they would not
6 have any state or federal funds. All the rest of
7 them were for the city. And it depends on how you
8 get the funds. Gas taxes are collected, and
9 they're sent to the cities and counties, and they
10 use those funds to pave roads and do everything
11 with them.

12 CHAIRMAN PHILLIPS: So what was the
13 basis for the denials?

14 MS. CAUDILL: That they were not
15 state-funded.

16 MR. SUMMERS: They were not
17 contracts with the Tennessee Department of
18 Transportation. That was the criteria that I was
19 told was used. These were not contracts with the
20 State Department of Transportation.

21 MR. CRABTREE: And that's TDOT's
22 position, is if it's not a state contract, then
23 the prevailing wage doesn't apply. And we still
24 have the same position. I can't speak to it
25 except to say that that's what our general counsel

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1 tells me. And I don't know if he ever contacted
2 you or not. I gave him your name and number and
3 told him that y'all need to work it out. And if
4 he hasn't, then I apologize, which I'll remind
5 him. But we still think that this conflicts with
6 what the statute says; that is, it has to be, first
7 and foremost, a contract with the state, regardless
8 of the funding.

9 MR. BAILEY: Well, as I said, my
10 legal analysis is in front of you there as to why
11 I think it does apply to local projects that are
12 state or federally funded.

13 CHAIRMAN PHILLIPS: Are you talking
14 about John?

15 MR. CRABTREE: Yes, sir.

16 CHAIRMAN PHILLIPS: Should they get
17 together?

18 MR. BAILEY: Well --

19 MR. CRABTREE: I'll remind him.
20 I'll remind Mr. Reinbold. I sent him the email
21 there with your draft on it and asked him to
22 review it. So I'll speak with him personally and
23 ask him to respond.

24 MR. WRIGHT: So the crux of the
25 matter comes down to whether "state-funded" means

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1 the Department receives funding from the state or
2 federal government. Or --

3 MR. BAILEY: That's a big key, yes,
4 sir.

5 MR. WRIGHT: I mean, that's really
6 what it amounts to. And I would tell you that in
7 my experiences with the federal government, if
8 they touch it --

9 MR. BAILEY: Yes.

10 MR. WRIGHT: Any way they touch it,
11 they think they own it.

12 MR. BAILEY: And I think --

13 MR. WRIGHT: I'm not trying to
14 disagree with you, Wayburn, but I understand why
15 TDOT doesn't want to get involved in county
16 projects, but...

17 MR. CRABTREE: Well, I wouldn't say
18 that TDOT doesn't want to get involved; we don't
19 think that that's what the statute says. And if
20 the statute doesn't say that, then we are not
21 going to do it.

22 Now, if the interpretation is made
23 that it does say that, then we'll certainly abide
24 by that. But at this time, we don't think that
25 the statute says that.

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1 CHAIRMAN PHILLIPS: So what's
2 controlling?

3 MR. BAILEY: Well, as I read --

4 CHAIRMAN PHILLIPS: What
5 interpretation?

6 MR. BAILEY: Well, as I read the
7 statute, the Tennessee Department of Labor and
8 Workforce Development is the one that is
9 authorized to enforce the statute and to
10 administratively make sure that the Prevailing
11 Wage Act is carried out. So I think it boils down
12 to how we interpret it, as this department
13 interprets it, is controlling.

14 CHAIRMAN PHILLIPS: And I agree,
15 too, with this interpretation, but I think that
16 John and Dan should probably get together and
17 just --

18 MR. SUMMERS: You have a whole
19 nother thing that -- we have contracts that are
20 state contracts with the Tennessee Aeronautics
21 Commission. That's a division of the Tennessee
22 Department of Transportation.

23 MR. CRABTREE: Yes.

24 MR. SUMMERS: And what's the
25 difference -- what's the opinion on the prevailing

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1 wage on airport work?

2 MR. CRABTREE: That's not a public
3 highway.

4 MS. MCGAURAN: It's not a street,
5 road, highway, or expressway, bridge --

6 MR. SUMMERS: But there is a
7 prevailing wage in those contracts, and it is this
8 prevailing wage.

9 MR. CRABTREE: I can't speak to
10 that.

11 MR. SUMMERS: We've got several of
12 them. They are.

13 MR. CRABTREE: In my opinion, it
14 shouldn't be, but as long as they request, they
15 request a prevailing wage, and the Department of
16 Labor gives them one, they're going to put it in
17 the contract, because that's what they've always
18 done. And they don't -- that's what they're going
19 to continue to do until somebody tells them to
20 stop. And I've got nothing to do with them.

21 MR. SUMMERS: And all these
22 airports -- the airports definitely have federal
23 funding. It goes to the local level. And federal
24 funding requires a prevailing wage.

25 MS. MCGAURAN: But I believe what

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1 we said in a prior meeting was that they --
2 anybody, any entity, is allowed to use the
3 prevailing wage as a benchmark on their contracts.

4 CHAIRMAN PHILLIPS: Right.

5 MS. MCGAURAN: It's just that this
6 committee doesn't have any oversight, and if those
7 contracts were then subsequently reported, we
8 wouldn't use them in our evaluation of prevailing
9 wages. It's not the fact that -- people can use
10 whatever standard they want in their contracts
11 moving forward that isn't -- you know, that works
12 within their norms of what's doable.

13 I mean, I work with the State of
14 Tennessee Building Commission, and we have a fee
15 formula we use for designers that a lot of other
16 people use as their -- how they determine their
17 designer rates that they pay, because they pay in
18 accordance with the fee schedule that's set by the
19 State. But we have no control and we don't tell
20 them they need to do that, and we -- and if they
21 use it improperly, we don't -- we don't tell them
22 they use it improperly. It's completely under
23 their purview. And I think that would be the same
24 thing.

25 MR. CRABTREE: And that's what we

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1 have told the local agencies, the cities, and the
2 counties that -- or locally managed projects there
3 that -- I think that you're referring to. We
4 don't tell them that they can't use it. We tell
5 them that if they do, that they're doing it on
6 their own, and that the Department of Labor is not
7 going to enforce it if they have a problem, and
8 neither are we.

9 Now, but that opens up another can of
10 worms. What if they want to use a 2015 wage rate,
11 or a 2012? I don't think that's right.

12 MS. MCGAURAN: But they're allowed
13 to use whatever standard they want to use.

14 CHAIRMAN PHILLIPS: Well, yeah.
15 The two parties can contract anything they want.

16 MR. CRABTREE: That can use
17 whatever they want to use, but then we have no
18 consistency in our program.

19 MR. WRIGHT: There's one other
20 aspect that --

21 MS. MCGAURAN: But it's not a part
22 of our program.

23 MR. WRIGHT: -- that I think is
24 maybe being missed here, is that a lot of -- take
25 an airport as a good example. A lot of those

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1 contracts, used to anyway, I haven't even seen
2 any lately -- had the State of Tennessee's
3 prevailing wage rate and the federal prevailing
4 wage rate. And if they have federal dollars in it
5 and the contracting agency doesn't use the state
6 prevailing wage, it could revert back to the
7 federal wage rate, which is probably double what
8 ours is, which could be a cost escalation problem
9 for Nashville Airport Authority or pick your
10 person that -- your entity. So I would say part
11 of the responsibility of this group is also to
12 keep in mind that this is a production device,
13 also, for some of these entities to be sure
14 they're paying a wage that is appropriate to the
15 state of Tennessee, not New York.

16 CHAIRMAN PHILLIPS: So we have two
17 issues. One is we still have a debate on whether
18 it applies to a local road project, and the other
19 is airport projects, correct?

20 MS. MCGAURAN: I think it doesn't
21 apply to airport projects. I felt like we had
22 already resolved that.

23 CHAIRMAN PHILLIPS: I wouldn't
24 either. But it seems to be --

25 MS. MCGAURAN: Now, I appreciate

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1 the fact that it doesn't seem fair in terms of
2 what's happening there, but that's not under the
3 realm of the purview of this committee.

4 CHAIRMAN PHILLIPS: Right.

5 MS. MCGAURAN: And so that needs to
6 be handled elsewhere, I would say, is what has
7 come up in the past. And we all kind of signed
8 off on it.

9 CHAIRMAN PHILLIPS: Right. And
10 there's no action to be taken on this or anything.

11 MS. MCGAURAN: The only concern I
12 have about the definition of the state, of what a
13 public highway is and then how it affects to which
14 projects are included is if those two surveys that
15 were received that we said were not -- that we
16 didn't use, that Labor & Workforce did not use in
17 their evaluation of the prevailing page rates that
18 we're voting on today, should have actually been
19 incorporated into our calculations, then we're
20 actually working off of incorrect information.

21 And so that really is the heart of my
22 question going forward, is because the further
23 actions we're going to be taking during this
24 committee meeting are to be voting on those wage
25 rates, and if these two, the Brown Builders and

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1 the Summers-Taylor surveys should have been taken
2 into consideration, then our information is
3 inaccurate that we're basing our decision on.

4 CHAIRMAN PHILLIPS: Yeah,
5 absolutely.

6 MS. JEFFERSON: So we would need to
7 have those surveys. We need to take a look at the
8 surveys and possibly contact the contractors to
9 find out whether or not state money is included or
10 federal monies.

11 If we don't have anything in the book
12 to show --

13 MS. CAUDILL: It's in the back.
14 It's in the very back.

15 MS. JEFFERSON: Okay. So let's
16 take a look at that.

17 MS. CAUDILL: The projects that
18 were submitted and then denied is under the last
19 tab. And the question I posed, because both Brown
20 Builders and Mr. Summers, their surveys were
21 marked as being nonstate funded. Now,
22 Mr. Summers' was entered online, so I did just
23 make a phone call to him and we discussed this.
24 The question I asked was, was there state funds
25 included in these projects; and my answer was no.

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1 MR. CRABTREE: But let -- what --

2 MS. MCGAURAN: What constituted --

3 MR. CRABTREE: Okay. Go ahead.

4 MS. MCGAURAN: I was going to say,
5 but what constituted state funding? When they
6 said "state funding," were they referring to there
7 wasn't any funding from TDOT, or there wasn't
8 any -- that's what we -- I don't know.

9 MR. SUMMERS: There was not a
10 contract with the Tennessee Department of
11 Transportation. Anything that didn't have a
12 Tennessee Department of Transportation contract
13 number, they threw out.

14 Three of ours, if we're calling --
15 one of ours was a bridge within -- inside of
16 Eastman Chemical, and two of the others were
17 airport projects. So those three by what we're
18 saying now would not be included.

19 MS. MCGAURAN: Right.

20 MR. SUMMERS: The other six were.
21 Johnson City city streets, Kingsport city
22 streets...

23 MR. CRABTREE: Where does it say
24 that the project has to be a state contract in
25 order to be included in the survey?

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1 MR. BAILEY: What? Are you asking
2 me?

3 MR. CRABTREE: Anybody.

4 MR. BAILEY: I mean, on the form it
5 just says "state funded, yes or no." And I'm not
6 involved with these forms, so, you know, but --

7 MR. CRABTREE: But the prevailing
8 page is the wages that are being paid for workers
9 in these crafts. Now, where do we limit that to
10 state contracts?

11 MR. BAILEY: I'm not sure I
12 understand your question. But what I'm saying
13 is --

14 CHAIRMAN PHILLIPS: You're asking
15 where is it provided or is it provided that the
16 survey can only be to --

17 MR. CRABTREE: Yes, sir.

18 MR. BAILEY: No, it shouldn't be.
19 It should include any state-funded road project,
20 whether it's with TDOT or with the City of
21 Murfreesboro or whoever; all those surveys should
22 be counted.

23 MR. SUMMERS: If we just survey
24 contracts with the Department of Transportation,
25 we're surveying ourselves. There's not going to

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1 be -- other than a contract from last year,
2 there'll be very, very little difference.

3 MR. BAILEY: Exactly.

4 MR. SUMMERS: Unless we survey work
5 that's being done outside the Department of
6 Transportation contracts...

7 MR. WRIGHT: There's no input for
8 the public marketplace to affect it at all.

9 MR. CRABTREE: And that's what a
10 prevailing wage is.

11 MR. WRIGHT: Fair point.

12 MR. CRABTREE: So we don't have
13 anything in your literature there that states that
14 you will only survey state contracts.

15 MS. CAUDILL: No.

16 MR. CRABTREE: Okay. Then I think
17 these should be counted.

18 MS. CAUDILL: Now, when I did talk
19 to Brown Builders, I specifically asked for, you
20 know, funding. I didn't mention whether or not
21 they were TDOT projects, or not. But she said
22 there were no state funds at all of any kind,
23 state or federal, in these projects that she had
24 me decline. That's not the same with Mr. Summers,
25 though. I mean, he had some that were actually

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1 state funded. Hers were absolutely not, no state
2 funds involved at all of any kind, whether for
3 TDOT or otherwise.

4 MR. WRIGHT: I would respectfully
5 say that most people that do payroll in a
6 construction company, if it doesn't say TDOT on
7 it, they'll say it's not state funded. They
8 don't --

9 MS. CAUDILL: I would be more than
10 happy to recall --

11 MR. WRIGHT: They don't understand
12 how the money -- you know, I'm not picking on
13 anybody's payroll people, but my guess is if you
14 go ask ours, they're -- it doesn't say TDOT.

15 MR. CRABTREE: There are other
16 state agencies that build roads besides TDOT,
17 military, for instance.

18 MR. WRIGHT: This all started with
19 the park system.

20 MR. CRABTREE: Parks.

21 CHAIRMAN PHILLIPS: Okay. So where
22 are we, then?

23 MR. CRABTREE: The question is --

24 CHAIRMAN PHILLIPS: What do we need
25 clarified, and what do -- you know, what is our

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1 opinion about control?

2 MS. MCGAURAN: My takeaway would be
3 that the ones that we discounted, based on the
4 information that we've got right now, that we
5 should reach out to the contractors, and if
6 they're unclear, we should reach out to the owners
7 of the project to ask how they funded them, right?
8 Because the owners of the project know what their
9 funding sources are, and they would know whether
10 state dollars were involved and determine
11 whether -- and if there were no state dollars
12 involved, we'd keep them -- continue to be denied.
13 But if there were state or federal dollars
14 involved in the -- as a funding source on the
15 project, then they should be included, and then
16 that would affect our calculations.

17 MS. JEFFERSON: And I would suggest
18 that we also get a writing, get something in
19 writing from them, because we have to, actually --
20 this has been a source of contention in that our
21 calculations have been incorrect. And we've had
22 to actually justify why our calculations are
23 incorrect, and this was the second finding. So
24 I'm concerned, because I don't want to get a third
25 finding, because I know repeat findings aren't a

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1 good thing. So I believe that's a really good
2 idea. We're going to reach out to those
3 contractors. We have --

4 MS. CAUDILL: He's calling right
5 now.

6 MS. JEFFERSON: Well, we have to
7 have a writing. We're going to want to follow up
8 and get it in writing. Because if we're audited,
9 I want them to be able to see what we were
10 provided.

11 CHAIRMAN PHILLIPS: Ann made a good
12 point, but also, you've asked about state
13 auditors. It depends on how they define state
14 dollars.

15 MR. SUMMERS: Well, you take the
16 City of Johnson City, for instance. They get
17 money from TDOT as part of the sharing of the gas
18 tax. Then they have local funds and they put it
19 in a pot, and they do work out of it.

20 CHAIRMAN PHILLIPS: Right.

21 MR. WRIGHT: 3 percent or
22 something. It's a formula.

23 MR. SUMMERS: Yeah. I mean,
24 there's gas tax money that goes into it from TDOT,
25 and local monies, and they have property tax

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1 money, the sales tax money or whatever they use.
 2 So, I mean, when you say are there any federal or
 3 state funds involved, there are everything or
 4 there's nothing. It all goes to the same pot.

5 MR. WRIGHT: I understand Kim's
 6 need to have a clear audit trail on what we do
 7 here. But on a separate issue, I would encourage,
 8 going forward, that we get a definition of what is
 9 publicly funded so that -- honestly, if you could
 10 send it to my payroll people that says if you have
 11 city/county streets, just -- that isn't a city or
 12 government agency and this and this and this, this
 13 is what we're looking for. It would be a whole
 14 lot -- it would be very, very helpful. And then
 15 we can get corrected. Because it's a difficult
 16 data to produce, and I honestly think that's why
 17 we get so few results, is because of the degree --
 18 if you could say, "Send me all your data on this
 19 category and this category and this category," to
 20 where they could easily figure it out, because for
 21 the payroll department to come downstairs, find a
 22 day when I'm actually -- ask me whether or not
 23 this or this -- it gets to be a "why do we even
 24 want to fool with this" kind of thing. And if you
 25 look at Wayburn, spending a billion dollars a

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1 year --

2 Aren't you, roughly?

3 MR. CRABTREE: Trying to.

4 MR. WRIGHT: Trying to -- and
 5 25 percent of that cost is payroll, and we're
 6 getting \$10 million worth of payroll back, that's
 7 a pretty small sampling of what's actually being
 8 spend just by TDOT, I would respectfully submit.

9 CHAIRMAN PHILLIPS: I didn't
 10 realize it was that big a difference.

11 MR. WRIGHT: I'm not too far off,
 12 am I --

13 MR. SUMMERS: Probably not.

14 MR. WRIGHT: -- for the day in/day
 15 out?

16 CHAIRMAN PHILLIPS: I would say
 17 we're not getting an accurate picture. What Rab
 18 said is correct.

19 MR. CRABTREE: If we want to survey
 20 our own projects for -- then there's a lot better
 21 ways of doing it than on a mail-out survey. We
 22 get payroll. And they're now electronic, and...

23 MR. WRIGHT: And it's more than
 24 \$9 million a year, isn't it?

25 MS. MCGAURAN: Of spending?

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1 MR. CRABTREE: I believe I have
 2 access to it. If they're in site manager now, I
 3 have access to them, so we have electronic access
 4 to payrolls for the first time now. So that data
 5 is available.

6 MR. WRIGHT: Well, I didn't mean to
 7 open a whole nother can of worms but --

8 CHAIRMAN PHILLIPS: But really, to
 9 Kim's point, you know, we've had two findings, and
 10 people get real upset about that. I don't get
 11 that upset about it. I get upset when things
 12 aren't done right, you know, and fair. And that's
 13 what we need to try to look at here. And if they
 14 don't like the way we do our calculations, I don't
 15 care. We need to get to a solution that is fair
 16 and right for everybody concerned, if we can.

17 MR. SUMMERS: I don't know that --
 18 there would be six projects that we have that are
 19 on city streets. Just looking at them, I don't
 20 know that including those six is going to make a
 21 significant difference in our data. I do think
 22 that we need to decide before we send out forms
 23 again. And they'll say on the forms that any
 24 project for any city, any municipality of any
 25 sort, government agency in the state of Tennessee,

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1 is allowed to be surveyed. If that's what the
 2 department says, it ought to say so on the form so
 3 everybody can put those -- that data in.

4 MR. BAILEY: If they receive state
 5 or federal funding. Which probably every one of
 6 them do, I understand, but...

7 MS. JEFFERSON: Right. And we can
 8 update our form. We will update our form. We
 9 wanted clarification to basically talk about this
 10 issue before we update it on forms. We basically
 11 updated our forms because we had to add some
 12 categories that we needed. But this specific
 13 issue needed to be discussed at this meeting. So
 14 the form for next year will be updated.

15 MR. SUMMERS: I guess I'm saying
 16 there's been some confusion over these forms of
 17 ours that were rejected. I don't think that,
 18 statistically, it's going to make a lot of
 19 difference. So I'm okay with saying, "This is
 20 where we are right now," and going forward.

21 MS. JEFFERSON: Proceeding with the
 22 amounts that we have. And worst-case scenario, if
 23 we find different, after we go back and take a
 24 look -- I know Jan has asked --

25 MS. CAUDILL: When the surveys come

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1 in, I physically check every one, as far as the
2 rates that they were paying and how it -- the year
3 it was awarded and whether or not they were paying
4 within that year's prevailing wage rate, and yours
5 were all fine. They were all within the range of
6 the prevailing wage the year it was awarded, at or
7 above that rate. So I'm comfortable with his
8 surveys.

9 MS. JEFFERSON: And I do understand
10 what Ann is saying, and I feel the same way,
11 because, like I said, I don't want to have a
12 repeat finding. So that's what I'm concerned
13 about.

14 As long as it's within the range,
15 then we're okay. Maybe we should do it both ways.
16 Maybe we should go ahead and continue with what we
17 have here today and then go back. And if we find
18 that we should have included the others, prepare
19 another spreadsheet just to see how close -- you
20 know, how far apart and how close we are. That
21 way we cover all bases. It doesn't hurt to cover
22 all the bases. So that would be my suggestion.

23 CHAIRMAN PHILLIPS: When is our
24 next meeting?

25 MS. JEFFERSON: The next meeting is

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1 on the 29th. And that means that we would have to
2 provide you--all this information prior to that
3 time, because when we come to the meeting on the
4 29th, we have to -- actually, the rates have to be
5 set on or before December the 1st, because we have
6 to post them on that date. So that means we're
7 going to have to provide you--all this information;
8 you--all will have to review it on your own. We
9 come to the meeting and you--all set the rate based
10 on that information.

11 CHAIRMAN PHILLIPS: Everything good
12 with that?

13 MR. WRIGHT: Okay with me.

14 MS. MCGAURAN: And at that point,
15 we'd only be looking at the ones that are outliers
16 to what we will have approved today --

17 CHAIRMAN PHILLIPS: Right.

18 MS. MCGAURAN: -- or will have
19 reviewed today.

20 MS. JEFFERSON: Yes.

21 MS. MCGAURAN: Okay. That makes
22 sense.

23 CHAIRMAN PHILLIPS: Is that okay
24 with everybody?

25 (Affirmative response.)

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1 CHAIRMAN PHILLIPS: Okay. Good.

2 MS. JEFFERSON: Moving on to
3 Proposal Number 6.

4 CHAIRMAN PHILLIPS: Okay. So now
5 we're done with that one, correct?

6 MS. JEFFERSON: Yes.

7 CHAIRMAN PHILLIPS: Okay. So
8 Proposal Number 6. Ann, that was you, but I
9 understand that's no longer an issue, right?

10 MS. MCGAURAN: I don't believe so.

11 CHAIRMAN PHILLIPS: Okay. So then
12 we'll move to Proposal 7.

13 MS. JEFFERSON: Yes.

14 CHAIRMAN PHILLIPS: And that's Rab.
15 Proposal to define "Highway contractor," "Public
16 highway" and "State construction project."

17 Do you want to discuss that and
18 explain it?

19 MR. SUMMERS: I think that that's
20 what we've been talking about.

21 CHAIRMAN PHILLIPS: It kind of is.

22 MR. SUMMERS: Exactly.

23 CHAIRMAN PHILLIPS: So there's
24 really no more issue there, right?

25 MR. SUMMERS: Correct.

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1 CHAIRMAN PHILLIPS: Correct. Okay.

2 MS. MCGAURAN: Well, we might want
3 to, I think, make them define terms. I think what
4 this was referring to -- so we don't need to make
5 them define terms which would capitalize them?

6 MR. BAILEY: What's that?

7 MS. MCGAURAN: So we might need to
8 make them define terms since they do have
9 definitions.

10 MR. BAILEY: What terms are you
11 referring to?

12 MS. MCGAURAN: Public highway.

13 MR. BAILEY: Those are in the
14 statute and rules.

15 MS. MCGAURAN: Okay. I stand
16 corrected. All right. Thank you.

17 MR. CRABTREE: I would like to ask
18 a question about the definition here of public
19 highway. Just reading this, you read down to
20 the -- where the underlining ends, Number 4,
21 that's pretty clear.

22 "...that is constructed or maintained
23 by the state or any municipality or political
24 subdivision of the state." Then it says, "and
25 that is funded in whole or in part with federal or

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1 state highway funds."

2 That "and" in there, I think,
3 excludes a whole class of roadways, public
4 roadways which are county roads or city streets
5 that are not funded, federal or state highway
6 funded. Am I reading that wrong?

7 MR. BAILEY: No. I totally agree
8 with that. That's two requirements.

9 MR. CRABTREE: Is that the
10 intention, to exclude those from the public
11 highway?

12 MR. BAILEY: If it's a city or
13 county road and it does not receive state or
14 federal funds, it does not come under this
15 definition.

16 MR. CRABTREE: Okay.

17 MS. MCGAURAN: So it's the funding
18 source that really comes back to the question.

19 MR. SUMMERS: Well, to be sure I
20 understand, this is -- is this referring to the
21 projects that we are required to place a
22 prevailing wage in, or is this referring to any
23 project that -- if it did not have federal or
24 state funds in it, would that mean we cannot
25 survey it? It would mean we can't require a

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1 prevailing wage to be put in it. But does that
2 prevent us from surveying it? Or is that the same
3 thing?

4 MR. BAILEY: On the question of
5 surveying it, I would have to kind of look at
6 that. I don't know that it would restrict us from
7 surveying it, but it certainly wouldn't -- a city
8 or a county road project that doesn't receive
9 state and federal funds would not have to pay the
10 prevailing wage.

11 MR. SUMMERS: Correct.

12 MR. BAILEY: Now, whether or not
13 those projects are surveyed, I don't know that
14 anything restricts us from the survey.

15 MR. SUMMERS: I mean, isn't what we
16 survey the determination of this commission? If
17 we say we want to get all the information that we
18 can and we want to survey any project done by any
19 city/county to get all the information that we
20 can, do we have the right to say that?

21 MR. BAILEY: Well, let me see what
22 the rules say.

23 CHAIRMAN PHILLIPS: Because
24 otherwise, you're getting a distorted --

25 MR. WRIGHT: You're getting an

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1 inbred view of it.

2 CHAIRMAN PHILLIPS: Uh-huh.

3 MR. WRIGHT: I don't think that's
4 an appropriate term to use in this meeting.

5 CHAIRMAN PHILLIPS: No.
6 You're not getting the whole picture.

7 MR. WRIGHT: Can I phone a friend?

8 CHAIRMAN PHILLIPS: Only one.

9 MR. WRIGHT: Okay.
10 Kent, in the lobbying and the
11 calculations that went into the Improve Act, I
12 know you--all did a lot of study and there was a
13 lot of conversations with your counterparts that
14 represent the state and local municipalities. In
15 general, how reliant, in your opinion, are they on
16 TDOT's -- or the State of Tennessee cash flow
17 that's flowed to them by formula?

18 MR. STARWALT: The -- at least, I
19 know on the county side, more so maybe on the city
20 side, that the majority of their actual
21 construction program comes from a state-aid
22 program, which are TDOT dollars flowing to the
23 counties. Much of the revenue they receive
24 through the gas tax revenues that are dedicated
25 directly to cities and counties -- again, I'm more

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1 familiar with the counties -- pays for the
2 administration of their program. The state aid
3 portions primarily -- obviously, the state aid
4 portion is the majority of the program together
5 with the TDOT funds is what is actually -- are
6 actual highway projects.

7 MS. MCGAURAN: Can you clarify who
8 that was speaking for the record?

9 MR. STARWALT: Kent Starwalt with
10 the Tennessee Road Builders Association.

11 MR. WRIGHT: So it's safe to say
12 that virtually any resurfacing work done by a
13 county government, most likely a city, in this
14 state, there's going to be some co-mingling of
15 State of Tennessee funds.

16 MR. STARWALT: Absolutely.

17 MR. WRIGHT: That was all I was
18 really was asking.

19 MS. BRADLEY: May I make a comment?

20 MR. WRIGHT: Sure.

21 MS. BRADLEY: I'm Wendy Bradley
22 with Civil Constructors. And I've been with them
23 for 20 years, and I actually did payroll and
24 trained my payroll administrator.

25 And from a contractor's standpoint,

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1 any time we're doing municipal, state, anything
2 that even has the possibility of having any kind
3 of funding in it, we use scale. Lots of times our
4 people make hire in scale anyway, but we use
5 scale, the TDOT scale.

6 MR. CRABTREE: Which one?

7 MS. BRADLEY: We use the current
8 one for the year that it was bid in. So if it was
9 bid in 2018 but we didn't start it until 2019, we
10 used the '18 scale, if it was bid and awarded to
11 us in that -- the year that it was awarded to us
12 in is the business scale that we use.

13 And, I mean, I've been there 20 years
14 and it's -- over 20 years, and we've done it that
15 way for 20 years. Just saying...

16 CHAIRMAN PHILLIPS: Dan?

17 MR. BAILEY: In trying to respond
18 to Mr. Summers, I think the statute covers it. In
19 12-4-405, it says, "For purposes of this part, the
20 prevailing wage rate shall be determined as
21 follows: Paragraph 1, "Every highway contractor,
22 as herein defined, in the state of Tennessee,
23 shall have the right to certify, on contracts
24 entered into, to the commission, on or before
25 October 31 in each year that a determination is to

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1 be made, the following:"

2 So go back to what is a highway
3 contractor for purposes of this act, under
4 12-4-402(2). "'Highway contractor' means any
5 contractor, subcontractor, person, firm, or
6 corporation engaged in a state construction
7 project for the purpose of building, rebuilding,
8 locating, relocating, or repairing any public
9 highway."

10 So I think ones that are contractors
11 that are on projects that are not state or
12 federally funded by the wording of the statute
13 would have to be excluded.

14 MR. SUMMERS: Okay. I didn't hear
15 it that way. Okay.

16 CHAIRMAN PHILLIPS: Any comments?

17 MR. WRIGHT: So do you think, for
18 clarity, we need to define what is funded?

19 CHAIRMAN PHILLIPS: I think there
20 are several things we need to define.

21 MR. WRIGHT: I mean, what are the
22 things that we really need to clear up, as Ms. Kim
23 said, before next year?

24 MR. BAILEY: The information would
25 have to be that if you have any highway project

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1 that was either -- whether it be with a contractor
2 with TDOT, Department of Military, city or county
3 that received state or federal funding, then those
4 projects are subject to the survey. And that
5 would be it.

6 MR. WRIGHT: So that's basically
7 any public entity?

8 MS. JEFFERSON: Yes.

9 MR. BAILEY: Yes.

10 MR. WRIGHT: So if you can go to
11 jail for lying to them, you need to report it.

12 CHAIRMAN PHILLIPS: Yeah.

13 Okay. So where are we? We've gone
14 off in about four different directions here.

15 MR. WRIGHT: I think we need either
16 to put that on the next page of this.

17 CHAIRMAN PHILLIPS: Okay. But it
18 seems to me like -- and you guys are the experts,
19 because you're in it -- but it seems to me like
20 there are just too many things that are not
21 defined as they should be. There's too much
22 wiggle room out there. Because I know in other
23 things within other departments -- I mean, in
24 other divisions, and we take surveys, and the
25 definitions that are the part of the law, they

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1 still leave too much room for interpretation. And
2 sometimes we don't feel like we get an accurate
3 response because they can interpret it the way
4 they want to. And I think that creates a lot of
5 problems for a department like this that is
6 involved in a lot of different wage and regulation
7 issues. So it seems like at some point in time
8 this commission needs to revisit that, the
9 definitions or however that would be done. Does
10 that make any sense?

11 MS. JEFFERSON: Yes.

12 MS. MCGAURAN: I would agree.

13 MR. BAILEY: It would have to be
14 done legislatively.

15 CHAIRMAN PHILLIPS: Yeah. But, I
16 mean, we'd have to -- somebody would have to put
17 together --

18 MR. WRIGHT: Well, I think if we
19 could just clarify and agree among ourselves what
20 the definitions are. Does anybody see if they
21 need to be changed statutorily?

22 MR. CRABTREE: I think they have to
23 be.

24 CHAIRMAN PHILLIPS: I think they
25 will eventually.

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1 MR. CRABTREE: This body has
2 statutory authority.

3 MR. WRIGHT: No, I mean --

4 CHAIRMAN PHILLIPS: But to move
5 forward at this point from where we are, I think
6 we're good right now.

7 MR. WRIGHT: I'm just saying we can
8 probably operate within the rules -- the laws
9 we've been given if we can interpret what they
10 say.

11 MR. BAILEY: Well, true. But now,
12 for Mr. Summers' point about surveying any highway
13 contractor, whether it's a state or federally
14 funded project, I think that would have to be
15 legislatively changed in order for that to be
16 permitted, given the definitions that are
17 currently in our statute.

18 MS. MCGAURAN: Does our statute
19 also define that we survey construction companies
20 specifically?

21 MR. BAILEY: No. It's pretty
22 broad. It says any -- it says highway contractor.
23 It means any contractor, subcontractor, person,
24 firm, or corporation engaged in a state
25 construction project for the purpose of building,

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1 rebuilding, locating, relocating, or repairing any
2 public highway.

3 MS. MCGAURAN: But I guess the
4 reason I'm asking is can we -- could the
5 Department of Transportation pull out of their
6 system their prevailing wage rates as they get in
7 their pay applications, and could we use that as
8 part of our survey information? And what I'm
9 hearing you say is no, we can't get it from them.
10 Even though what they have in their system was
11 reported by the contractors working on their
12 projects, I was just thinking a broader field for
13 future surveys.

14 MR. BAILEY: Right. Well,
15 according to the current statute, I would say no.

16 CHAIRMAN PHILLIPS: So we can't use
17 the wage information he has? We cannot?

18 MS. MCGAURAN: That's what Dan was
19 just confirming, that we can't get it. Even
20 though it's reported to TDOT, we can't get it from
21 TDOT. We have to get it from the construction --
22 because our body of information would be much
23 broader.

24 MR. CRABTREE: It has to be in a
25 survey.

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1 CHAIRMAN PHILLIPS: Okay. But for
2 now, we're good in moving forward to get through
3 this, right?

4 MR. BAILEY: I would just like to
5 point out, those gray areas keep us lawyers busy.

6 CHAIRMAN PHILLIPS: That's right.
7 That's exactly right. But it is difficult to come
8 up with -- there's just too many open-ended
9 definitions, not just here but throughout state
10 government that cause problems, so...

11 MR. WRIGHT: It's hard to write a
12 rule when you're the lowest common denominator.

13 CHAIRMAN PHILLIPS: It is. It is.
14 But you've got to go with the 80/20 rule at least,
15 so...

16 Okay. So we'll move on, then, to new
17 business, calculation of prevailing wage rates.
18 And that would be in the -- you should have that
19 in your booklet.

20 So Kim, are we going to go over each
21 one of these?

22 MS. JEFFERSON: Yes.
23 Do you--all have calculators?
24 (Affirmative response.)

25 MS. JEFFERSON: While Jan is

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1 actually getting ready -- Jan is going to go over
2 the first nine rates for us, and she's going to do
3 the calculation. That way all of us are on the
4 same page and we'll know exactly what the staff
5 did in calculating these rates.

6 CHAIRMAN PHILLIPS: Okay.

7 MS. JEFFERSON: While she's getting
8 prepared, we provided you a copy of the prevailing
9 wage calculation spreadsheet. And this is for the
10 final rates for 2019. And this is just a proposed
11 document. If you take a look under the first
12 column, "Classification," you'll see that we have
13 all 25 classifications listed. If you take a look
14 under Column B, you'll see the craft number; under
15 C, you'll see the number of responses that were
16 received; under D, the survey rate; E, the current
17 rate, prevailing wage rate; F, that's the
18 percentage of change from current rate to survey
19 rate; G and H represent the range.

20 So whatever the proposed rate is
21 calculated, keep in mind that we have to ensure
22 the proposed rate is within that particular range.
23 And that's H and I. Under J, you have your state
24 average. And you have, all the way down to N,
25 you'll see where the proposed prevailing wage rate

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1 is listed.

2 And so we're going to start with
3 "Bricklayer."

4 Jan, are you ready?

5 MS. CAUDILL: Yes.

6 MS. JEFFERSON: Let's start with
7 bricklayer, Number 1.

8 MS. CAUDILL: Okay. Classification
9 Number 1, bricklayer, you'll see we had no
10 responses, and therefore, there is no survey rate.
11 The current rate shown is \$15.47, but because
12 there is no survey rate to compare and it is less
13 than four responses, the prevailing wage rule,
14 800-3-2-.087 would come in with five. And that
15 states that wherein four or fewer survey responses
16 are received, these responses may be excluded from
17 establishing the rates. Where the data is
18 excluded, the commission may continue the rate in
19 existence at the time of the survey, or adjust it
20 pursuant to the law.

21 And what we have recommended is the
22 current rate at 15.47.

23 MR. CRABTREE: Excuse me. I have a
24 comment on that. I might as well say it now. I
25 notice here that there are only two crafts that

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1 have actually decreased based on the survey. That
2 is 21 and 14. And for both of those crafts, we
3 are proposing to increase the rate by the state
4 average, even though the survey showed that it was
5 less than last year.

6 Now, is that consistent with leaving
7 the rate the same just because we didn't get a
8 response?

9 MS. CAUDILL: Well, the reason
10 those rates came in on the negative side of the
11 current rate is, as I said earlier, I checked the
12 surveys as they came in, and if the project was
13 awarded in a year prior to this year -- many of
14 the surveys within those two classifications were
15 awarded in 2014, '15, and '16. So when they
16 submitted their rates that were in place at that
17 time and then you average them against the current
18 rate, it is going to give you a negative number.
19 We didn't have enough surveys that were actually
20 awarded this year to offset those that were
21 awarded in prior years. So that's why that's a
22 negative number.

23 MS. MCGAURAN: But let me see if I
24 can restate what's being said, though, is
25 obviously in those cases where you have a negative

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1 rate, you're still recommending an increase. So
2 on those rates where you didn't get any responses,
3 should we not be recommending an increase versus
4 status quo?

5 MR. CRABTREE: Yes. Thank you.

6 MS. JEFFERSON: And what --

7 MR. CRABTREE: I think we should.

8 MS. JEFFERSON: And what we can do
9 once we get to those rates -- we're just proposing
10 the rates --

11 MS. MCGAURAN: No. That's why it
12 affects this one. So the question is should the
13 bricklayer rate remain static, or should it have a
14 percent change.

15 MS. JEFFERSON: Okay. And that's
16 up to you-all. If you-all want to propose
17 something different from 15.47, please do so.
18 This was just a starting -- this is just a
19 proposal for you-all.

20 MR. CRABTREE: Well, I would move
21 that we increase this craft, the bricklayer, by
22 the same percentage that we increase the others,
23 which is the state average.

24 MS. JEFFERSON: Okay. And the only
25 thing that I ask you to consider -- I believe we

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1 gave you a copy of the law, and it gives two
2 options for increase. We can either use the
3 current prevailing wage rate, or use the --

4 MS. CAUDILL: Adjusted pursuant to
5 the law.

6 MS. JEFFERSON: Right. Is that
7 what you're suggesting?

8 MR. CRABTREE: Plus or minus
9 6 percent.

10 MS. JEFFERSON: As long as it's
11 within the range.

12 CHAIRMAN PHILLIPS: And 4.69
13 percent falls within that range, so...

14 MS. JEFFERSON: Great. That's what
15 we're trying to get to.

16 MR. CRABTREE: So that's what I
17 would suggest, is that we increase that the same
18 as we are increasing the others that are less
19 than, where the survey is less than the current
20 rate.

21 MS. MCGAURAN: So are --

22 MR. CRABTREE: It just doesn't look
23 like we're treating it fairly, to me.

24 MS. JEFFERSON: Well, is that
25 between the range? Would the range, H and I,

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1 change?

2 MS. CAUDILL: Well, because you
3 don't have a range because you had no survey.
4 That was my question. When the law says that you
5 can adjust the survey rate plus or minus, you
6 know, 6 percent of your current rate when you have
7 zero as a starting point, you're never going to
8 get a high and a low range based on what the law
9 allows. So you won't have a range, because
10 there's no survey rate.

11 MS. JEFFERSON: So in other words,
12 we have two options. We're going back to the two
13 options, if you can read that again. We either
14 use the current rate or we calculate based on --

15 MS. CAUDILL: On the law. Which it
16 states that the commission, if it ascertains that
17 current economic conditions warrant, can adjust
18 the final wage determination as developed by the
19 documentation certified to the commission by
20 adding to or subtracting from the determination a
21 percentage factor of not more than 6 percent based
22 on the previous year's prevailing wage rates,
23 which "previous year" meaning this current year,
24 because we're working on next year's. But you
25 have nothing to add or subtract it to if you don't

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1 have a determination in the first place.

2 MS. JEFFERSON: But doesn't it say
3 6 percent of the current rate? That just means we
4 can't exceed 6 percent. If they decide to
5 increase it --

6 MR. CRABTREE: I think the
7 determination is that it didn't change. The
8 determination is that it's the same as last year.

9 MS. CAUDILL: Okay. So it would be
10 the same, then, and you could add or **subtract** 6
11 percent.

12 CHAIRMAN PHILLIPS: Yeah, up to
13 6 percent.

14 MS. JEFFERSON: Yes.

15 MS. CAUDILL: Okay.

16 MS. MCGAURAN: And so I think your
17 motion is, is that the bricklayer rate be \$16.20?

18 MR. CRABTREE: Whatever it works
19 out to be, yes.

20 MS. JEFFERSON: Right. And that's
21 Column L?

22 MS. MCGAURAN: Yes.

23 MS. JEFFERSON: Column L. So that
24 would be the first rate.

25 MR. WRIGHT: I would second your

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1 motion.

2 CHAIRMAN PHILLIPS: All in favor?
3 (Affirmative response.)

4 MS. CAUDILL: Okay. Classification
5 Number 2, which is the carpenter or leadsperson,
6 the survey rate came in at \$20.04. The current
7 rate is \$19.01. 6 percent of that is \$1.14. If
8 you add \$1.14 to the survey rate, you get a high
9 limit of \$21.18 and a low limit of \$18.90 when
10 that figure is subtracted. We propose a new rate
11 of \$19.90 for 2019.

12 MR. SUMMERS: So moved.

13 MR. CRABTREE: Second.

14 CHAIRMAN PHILLIPS: All opposed?
15 (No verbal response.)

16 CHAIRMAN PHILLIPS: All in favor?
17 (Affirmative response.)

18 MR. SUMMERS: If we can maybe move
19 on. There's only three -- I think you've done an
20 excellent job, especially on some of the ones
21 that, like -- 8 and 9, which went up a substantial
22 amount, you stayed within our range. We've
23 lowered them 6 percent. I think it's been
24 excellent.

25 There are only three classifications

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1 that I would think about changing. One of them is
2 Class 13, mechanic, Class 1, which only went up
3 1.72 percent. And we're proposing to up to the
4 state average, and we've got a lot of data.

5 Another one is Number 14, mechanic
6 light duty. It went down, and you used a full
7 6 percent to get it up to 3 percent increase. And
8 the other one is truck driver, three or four
9 axles, and it went down 1.2 percent with a lot of
10 data. And the proposal is to make it go up
11 4.7 percent.

12 Where we have a lot of data and
13 things have gone down, do we override the data and
14 say, "Well, everyone gets the state average, even
15 though we have substantial data that it went
16 down"?

17 MR. CRABTREE: But the reason that
18 it went down is, like Ms. Caudill said, is because
19 they are reporting projects that were let in '13,
20 '14, '15 when the rate was much less than it is.

21 MS. CAUDILL: I had one come in for
22 2011. The bulk of the older ones came in from
23 '15, '16, '17, was the majority of the older
24 surveys.

25 MR. SUMMERS: I just think it's

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1 just sort of arbitrary, when we have good data, to
2 say everybody goes up the same amount.

3 MR. WRIGHT: Is there a way to
4 weight it somehow, going by -- and I am not
5 talking about doing it today, but in the
6 advancement of this really cool spreadsheet, is
7 there a way to give us -- to answer -- to address
8 what Rab and Wayburn and you are all talking
9 about? It would be kind of cool to know how much
10 of this really is all data, of the 82 responses.
11 You know, if they were categorized by a percentage
12 of the years, then we could tell whether it was
13 really, you know, one big job that was six years
14 old and is still working on a lower sale versus
15 really -- versus something else. Does that make
16 sense? When you're -- I know you wake up with
17 ways of -- thinking how to do this better or more
18 interestingly.

19 It's just something that could go
20 far -- it would be nice to see some data on how
21 much of it really is -- what years that the
22 projects were --

23 MS. CAUDILL: If I'm understanding
24 what you're asking, your question is could I go
25 into or could we go into each classification and

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1 give a percentage. For example, on Number 14, we
2 had 12 responses. And you would like me to -- you
3 would like to know -- you know, 15 percent of them
4 were from this year, and this percentage of them
5 was from this year and this year. That would be
6 doable.

7 MR. WRIGHT: Wait. Because I think
8 I heard you say you already checked them.

9 MS. CAUDILL: Yeah, I checked all
10 of them when they came in, especially if they came
11 in under the current rate. That was the first
12 thing I checked them against was the current rate.
13 And if they were coming in underneath that, I had
14 printed out all the prevailing wage rates back to
15 2014 and checked what year they say that it was
16 awarded and then made sure that they were at or
17 above those rates.

18 CHAIRMAN PHILLIPS: Rab, you were
19 kind of asking if the rate is based on the
20 response.

21 MR. SUMMERS: Well, the only
22 thing -- the only one that I think is really an
23 issue is probably 21, which is truck driver. And
24 the proposal of 16.88 is within, like, 6 percent.
25 So it's within the law.

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1 But I just think that that's just too
2 big a jump when you've got good data that
3 suggested that a rate is pretty high anyway.

4 MS. MCGAURAN: So --

5 MR. SUMMERS: I mean, I would
6 propose that one go up, like, 3 percent like some
7 of the others. Since it went down --

8 MS. CAUDILL: I think --

9 MS. MCGAURAN: Well, potentially,
10 instead of jumping around -- and I know it might
11 seem arduous to go line item by line item, but I
12 think that it will actually go very smoothly. And
13 I think that's what you're trying to say, is that
14 you would like to blanketly approve all of the
15 other ones. But just to make sure that we cover
16 it, we should probably do each line item, even if
17 they go really fast.

18 CHAIRMAN PHILLIPS: Yeah. And I
19 think that's certainly something that Kim and her
20 team would prefer as well.

21 MR. WRIGHT: I would move to accept
22 crafts 3 through 10 as presented.

23 MR. SUMMERS: Second.

24 CHAIRMAN PHILLIPS: So your motion
25 was to exclude --

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1 MR. WRIGHT: To approve --

2 CHAIRMAN PHILLIPS: Oh, approve.

3 MR. WRIGHT: -- 3 through 10 as
4 presented, because they've all got data. And then
5 the iron worker one will fall into the same
6 argument that Wayburn had earlier.

7 I'm just trying to make up for lost
8 time.

9 CHAIRMAN PHILLIPS: This is
10 important. So you made the motion and somebody --
11 or I mean, seconded it.

12 All opposed?

13 (No verbal response.)

14 CHAIRMAN PHILLIPS: All in favor?

15 (Affirmative response.)

16 CHAIRMAN PHILLIPS: What others do
17 we need to look at individually?

18 (No verbal response.)

19 CHAIRMAN PHILLIPS: Okay. Going
20 forward.

21 Ann?

22 MS. MCGAURAN: I think we're on 11.

23 CHAIRMAN PHILLIPS: Yes. Okay.

24 MR. NEALY: Classification on Craft
25 Number 11, ironworkers reinforcing, the current

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1 prevailing wage rate is \$17.67. Multiply that by
2 6 percent, and you get \$1.06. The survey rate is
3 \$18.11. If you add \$1.06, you get \$19.17. If you
4 subtract \$1.06, you'll get \$17.05.

5 The new proposed prevailing wage rate
6 is \$17.67. And that is the craft that had four or
7 fewer responses.

8 CHAIRMAN PHILLIPS: Any questions?

9 MS. MCGAURAN: Based on past
10 information, the motion would be to make that
11 proposed new prevailing wage rate \$18.50.

12 MR. CRABTREE: Second.

13 CHAIRMAN PHILLIPS: All opposed?

14 (No verbal response.)

15 CHAIRMAN PHILLIPS: All in favor?

16 (Affirmative response.)

17 CHAIRMAN PHILLIPS: I guess that's
18 consistent with the one we did before.

19 MS. MCGAURAN: Right. And with
20 that same in mind for wage rate Number 12,
21 ironworkers, I would make a motion that we accept
22 the \$19.19 wage for that.

23 MR. CRABTREE: Second.

24 MS. CAUDILL: Okay. Now, if you're
25 going to do -- this is where the auditors are

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1 going to probably say something, because according
2 to the law, our range, we're going to look like
3 we're coming in way under.

4 MS. JEFFERSON: Which one are we
5 on? I'm sorry.

6 MS. CAUDILL: We're on Number 12.

7 CHAIRMAN PHILLIPS: Number 12 now.

8 MS. JEFFERSON: And what did you
9 propose? I missed the rate.

10 MS. CAUDILL: \$19.19.

11 MS. JEFFERSON: Right. We can't
12 propose that. It has to be at least \$28.72, but
13 it can't be higher than \$30 --

14 MR. SUMMERS: We don't have to
15 consider the survey. There is no survey if
16 there's only two responses. There is no survey.

17 MS. JEFFERSON: Oh, okay. Okay,
18 for that one. I'm sorry. For that one, that's
19 the one where we listed the last year, to be
20 consistent. We used the current rate?

21 MS. CAUDILL: Yes.

22 MS. JEFFERSON: Okay. So yeah,
23 you're correct.

24 CHAIRMAN PHILLIPS: It would be the
25 same as the previous two.

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1 MS. JEFFERSON: Yes. Just like
2 Number 1, right?

3 CHAIRMAN PHILLIPS: Yes.

4 MS. CAUDILL: Okay.

5 MS. MCGAURAN: And what we're
6 saying is we think it should go up at least
7 something and not stay static, because we are
8 seeing an increase.

9 MS. JEFFERSON: Okay. Sounds good.

10 MR. SUMMERS: Can I make a
11 suggestion for your auditors? In the first -- in
12 the bricklayers, you said the survey rate was
13 zero. I think for these two, you ought to change
14 your spreadsheet to say the survey rate is zero --

15 MS. JEFFERSON: Zero, yes.

16 MR. SUMMERS: -- so you don't look
17 like you're out of compliance.

18 MS. JEFFERSON: Exactly. Because
19 that's going to cause a finding if we don't change
20 that.

21 CHAIRMAN PHILLIPS: Good catch,
22 Rab.

23 MS. JEFFERSON: Thank you.

24 CHAIRMAN PHILLIPS: Ann, you made a
25 motion about this?

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1 MS. MCGAURAN: I made a motion to
2 accept \$19.19, and that was seconded, but we had
3 some discussion.

4 CHAIRMAN PHILLIPS: All right. All
5 opposed?

6 (No verbal response.)

7 CHAIRMAN PHILLIPS: All in favor?

8 (Affirmative response.)

9 MR. NEALY: Craft Number 13,
10 mechanic Class II heavy duty. The current
11 prevailing wage rate is \$23.29. If you multiply
12 that by 6 percent, you get \$1.40. The survey rate
13 was \$23.69. If you add \$1.40, you'll get **\$25.09**.
14 If you subtract \$1.40, you'll get \$22.29. **The new**
15 **proposed prevailing wage rate is \$24.38.**

16 MS. MCGAURAN: I make a motion to
17 accept the recommendation.

18 CHAIRMAN PHILLIPS: Second?

19 MR. WRIGHT: Second.

20 CHAIRMAN PHILLIPS: All in favor?
21 (Affirmative response.)

22 CHAIRMAN PHILLIPS: Unanimous.
23 We'll skip the "opposed."

24 MR. NEALY: Craft Number 14,
25 mechanic Class II light duty, the current

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1 prevailing wage rate is \$20.91. You multiply that
2 by 6 percent, you'll get \$1.25. The survey rate
3 is \$20.29. If you add that \$20.29 and you had
4 \$1.25, you'll get \$21.54. If you subtract \$1.25,
5 you'll get \$19.04. The new proposed prevailing
6 wage rate is \$21.54.

7 CHAIRMAN PHILLIPS: Any discussion?

8 MR. CRABTREE: I move to accept
9 \$21.54.

10 CHAIRMAN PHILLIPS: Second?

11 MR. WRIGHT: Second.

12 CHAIRMAN PHILLIPS: All in favor?
13 (Affirmative response.)

14 MR. NEALY: All right. So Craft
15 Number 15, painter/sandblaster, the current
16 prevailing wage rate is \$28.60. If you multiply
17 that by 6 percent, you get \$1.72. We had zero
18 responses, so the survey rate is zero dollars and
19 zero cents. And with this, I propose the
20 prevailing wage rate is \$28.60 as a craft with
21 four or fewer responses.

22 MR. CRABTREE: I move to change
23 that to \$29.94.

24 CHAIRMAN PHILLIPS: Second?

25 What was that, \$29 and what?

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1 MS. CAUDILL: \$29.94.

2 CHAIRMAN PHILLIPS: 0.94. Okay.

3 MR. CRABTREE: That would be plus
4 4.69 percent.

5 CHAIRMAN PHILLIPS: Right.

6 All in favor?

7 (Affirmative response.)

8 MS. JEFFERSON: Should that be
9 changed -- the H and I be changed to zero?

10 CHAIRMAN PHILLIPS: I would think
11 so.

12 MS. MCGAURAN: Actually, I think if
13 where the ones where you receive less than four
14 survey rates, if in the survey rate you change
15 that to N/A, then it should invalidate the fields
16 that we shouldn't really be looking at.

17 CHAIRMAN PHILLIPS: Yeah, that's
18 better.

19 MS. MCGAURAN: For future -- I
20 mean, I mean, I think we can do it here, but for
21 the record, I think you should make all of those,
22 where they're less than four, N/A.

23 CHAIRMAN PHILLIPS: Yes.

24 MS. JEFFERSON: Okay. Sure.

25 MR. NEALY: Craft Number 16, powder

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1 person blaster. The current prevailing wage rate
2 is \$21.46. Multiply that by 6 percent and you get
3 1.29. We had zero responses, so the survey rate
4 is zero dollars and zero cents.

5 Our new proposed prevailing wage rate
6 is \$21.46. And this was also a craft that had
7 four or fewer responses.

8 MS. MCGAURAN: I make a motion that
9 the rate be \$22.47.

10 MR. CRABTREE: Second.

11 MR. BAILEY: Just so the record is
12 clear, that's an increase of 4.69 percent?

13 MS. MCGAURAN: Yes.

14 MR. WRIGHT: Didn't you want to
15 speak on this?

16 MS. MCGAURAN: So we're at the
17 point where a motion has been made and it's been
18 seconded, so discussion.

19 CHAIRMAN PHILLIPS: Yes,
20 discussion.

21 Yes, sir, Mr. Lambert?

22 MR. LAMBERT: I'm not here about
23 the wage rates.

24 CHAIRMAN PHILLIPS: Oh, okay.

25 MR. LAMBERT: I'll let you--

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1 determine that, on the wage rates. What I'm here
2 for is the classification under what we do. So I
3 was just asking for...

4 MS. MCGAURAN: Okay. So it's not
5 relevant to what we're doing right now.

6 MS. CAUDILL: He has a question
7 about the classification and the duties within
8 that blaster.

9 CHAIRMAN PHILLIPS: So --

10 MS. MCGAURAN: That will be part of
11 the New Business, then, right?

12 CHAIRMAN PHILLIPS: Yeah, that will
13 be new business.

14 MR. WRIGHT: I call for the
15 question.

16 CHAIRMAN PHILLIPS: So he'll speak
17 later. Okay. So 17.

18 MS. MCGAURAN: We didn't vote.

19 CHAIRMAN PHILLIPS: We didn't vote.
20 I'm sorry. All in favor?

21 (Affirmative response.)

22 MR. NEALY: Craft Number 17,
23 skilled labor. The current prevailing wage rate
24 is \$16.57. Multiply that by 6 percent and you'll
25 get \$0.99. The survey rate was \$17.68. If you

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1 add \$0.99, you'll get \$18.67. If you subtract
 2 \$0.99, you'll get \$16.69. The proposed new
 3 prevailing wage rate is \$17.35.

4 CHAIRMAN PHILLIPS: Do I have a
 5 motion?

6 MS. MCGAURAN: I make a motion to
 7 accept \$17.35.

8 MR. CRABTREE: Second.

9 CHAIRMAN PHILLIPS: All in favor?
 10 (Affirmative response.)

11 CHAIRMAN PHILLIPS: Craft 18?

12 MS. SHERROD: We'll start here with
 13 the survey instrument operator. That's 18,
 14 Craft 18. All right. If you look at the
 15 calculation sheet, the current rate is \$21.95. If
 16 you multiply that by the 6 percent, on the high
 17 end, it will give you \$1.32. If you add the \$1.32
 18 to the survey rate of \$25, on the high end, you
 19 will get \$26.32. If you subtract, you will get
 20 \$23.68. And our proposed prevailing wage rate is
 21 \$23.68 for that craft.

22 CHAIRMAN PHILLIPS: Any discussion?

23 MS. MCGAURAN: I make a motion that
 24 we accept \$23.68.

25 CHAIRMAN PHILLIPS: Second?

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1 MR. CRABTREE: Second.

2 CHAIRMAN PHILLIPS: All in favor?
 3 (Affirmative response.)

4 MS. SHERROD: Sweeping machine,
 5 vacuum, operator, Craft Number 19. The current
 6 rate is \$16.89 multiplied by the 6 percent gives
 7 you \$1.01. If you add that to the survey rate of
 8 \$17.32, it would give you \$18.33. Subtracting
 9 that will give you \$16.31.

10 This was one of the crafts where we
 11 only had one response, so -- which was four or
 12 fewer responses. And it could have been excluded
 13 so we decided to use the current rate, which is
 14 \$16.89.

15 MR. CRABTREE: I move we change
 16 that to \$17.68, which is 4.69 percent greater than
 17 the current rate.

18 MR. WRIGHT: Second.

19 CHAIRMAN PHILLIPS: All in favor?
 20 (Affirmative response.)

21 MS. SHERROD: Truck driver, two
 22 axles, Craft 20. The current rate is \$16.66
 23 multiplied by the 6 percent and added to the
 24 survey rate of \$17.11 will give \$18.11 on the high
 25 end. Subtracting will give you \$16.11. Our

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1 proposed rate is \$17.44 --

2 CHAIRMAN PHILLIPS: Discussion?

3 MS. SHERROD: -- which is within
 4 the range.

5 MS. MCGAURAN: I make a motion to
 6 accept \$17.44.

7 CHAIRMAN PHILLIPS: Second?

8 MR. CRABTREE: Second.

9 CHAIRMAN PHILLIPS: All in favor?
 10 (Affirmative response.)

11 MS. SHERROD: Okay. Truck driver,
 12 3/4 axles, Craft Number 21. The current rate is
 13 \$16.12. 6 percent multiplied will give you \$0.97.
 14 If you add that to the survey rate of \$15.94, it
 15 will give you \$16.91. Subtracting will give you
 16 \$14.97. Our proposed rate is \$16.88, which is
 17 within the range.

18 MR. SUMMERS: Just out of
 19 curiosity, why did you pick \$16.88? It's
 20 4.71 percent. We're going up 4.69. It just seems
 21 to be sort of arbitrary.

22 MS. CAUDILL: It's just the way
 23 it's rounded.

24 MS. SHERROD: Rounded, uh-huh.

25 MS. CAUDILL: It was marked up the

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1 same as all the rest of them. It's just the way
 2 it rounds. If it's tenths of a cent one way or
 3 the other, it won't make that much difference.

4 MS. JEFFERSON: Would you like to
 5 propose a different rate, Mr. Summers?

6 MR. SUMMERS: This is the only one
 7 that gives me a little heartburn since we had data
 8 that it went down, and we're basically taking it
 9 up a full 6 percent from the survey rate, just
 10 about.

11 MS. JEFFERSON: So a rate can be
 12 proposed that's between \$16.91 and \$14.97.

13 MS. MCGAURAN: So I can make a
 14 motion that it stay at the current rate of \$16.12.
 15 Because that would be within your range, right?

16 MS. JEFFERSON: Yes.

17 MR. SUMMERS: I would propose a
 18 3 percent increase over the current rate, which
 19 would be \$16.60. I don't think we need to go
 20 negative on it. But I don't think we need to go
 21 all the way up to the 4.7 percent. So at \$16.60,
 22 according to this big calculator here, it would be
 23 a 3 percent raise. Which if you take into account
 24 it went down 1.2, it's in the range that we're
 25 talking about.

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1 CHAIRMAN PHILLIPS: So are you
2 making a motion?

3 MR. SUMMERS: Yes, sir. The rate
4 of \$16.60.

5 MR. WRIGHT: Two motions.

6 MS. MCGAURAN: I'll take out my
7 motion.

8 MR. WRIGHT: I will second the
9 motion.

10 CHAIRMAN PHILLIPS: All in favor?
11 (Affirmative response.)

12 MS. SHERROD: Truck driver, 5 or
13 more axles, Craft 22. The current rate is \$17.83
14 multiplied by 6 percent will give you \$1.07 added
15 to the survey rate of \$19.02 will give you \$20.09.
16 Subtracted from that will give you \$17.95. Our
17 proposed rate is \$18.67.

18 MR. CRABTREE: I move we accept
19 \$18.67.

20 MR. SUMMERS: Second.

21 CHAIRMAN PHILLIPS: All in favor?
22 (Affirmative response.)

23 MS. SHERROD: Unskilled laborer,
24 Craft 23. The current rate is \$14.22 multiplied
25 by the 6 percent will give you \$0.85. If you add

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1 that to the survey rate of \$14.78, you will get
2 \$15.63. Subtracting will give you \$13.93.

3 Our proposed rate for that craft
4 would be \$14.89.

5 MR. CRABTREE: I move we accept
6 \$14.89.

7 CHAIRMAN PHILLIPS: Second?
8 MR. WRIGHT: Second.

9 CHAIRMAN PHILLIPS: All in favor?
10 (Affirmative response.)

11 MS. SHERROD: Worksite traffic
12 coordinator, Craft 24. The current rate is \$18.32
13 multiplied by the 6 percent will give you \$1.10.
14 Add that to the survey rate of \$19.57 will give
15 you \$20.67. Subtracting will give you \$18.47.
16 Our proposed rate for that craft is \$19.18, which
17 is within the range.

18 MR. CRABTREE: I move we accept
19 \$19.18.

20 MR. WRIGHT: Second.

21 CHAIRMAN PHILLIPS: All in favor?
22 (Affirmative response.)

23 MS. SHERROD: And the last craft,
24 the crane operator, 25, the current rate is \$22.18
25 multiplied by 6 percent will give you \$1.33. You

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1 add that to the survey rate of \$22.34, you get
2 \$23.67. Subtracting will give you \$21.01.

3 Our proposed rate for that craft is
4 \$23.22, which falls within the range.

5 MR. CRABTREE: I move we accept
6 \$23.22.

7 MS. MCGAURAN: Second.

8 CHAIRMAN PHILLIPS: All in favor?
9 (Affirmative response.)

10 MS. MCGAURAN: Do we need a motion
11 to say that staff will look at the surveys that
12 were excluded and bring back any outliers to the
13 next meeting for consideration of the --

14 CHAIRMAN PHILLIPS: Yeah. We
15 probably need to make a motion.

16 MS. MCGAURAN: I make such motion.

17 MR. WRIGHT: Second.

18 CHAIRMAN PHILLIPS: All in favor?
19 (Affirmative response.)

20 MR. WRIGHT: Just out of curiosity,
21 as long as they fall -- as we're still within the
22 6 percent guidelines, the only reason we'd have to
23 change it would be because it became obvious that
24 maybe we should or...

25 MS. MCGAURAN: I think that they

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1 should probably make everybody aware of any time
2 the survey rate changes when they add, potentially
3 add additional surveys to it so that people -- we
4 could say whether it's still appropriate.

5 CHAIRMAN PHILLIPS: Yes. Very
6 good.

7 MS. CAUDILL: Mr. Summers, are we
8 adding all of yours back in, then, or did you say
9 there were two that you knew were not?

10 MR. SUMMERS: There are three that
11 should not be added in.

12 MS. CAUDILL: Okay.

13 MR. SUMMERS: And I will highlight
14 them for you.

15 MS. CAUDILL: Okay.

16 MR. BAILEY: Commissioner, before
17 we move on, on the proposed rules, I know those
18 have been distributed to y'all and the changes
19 that were discussed at the last meeting have all
20 been incorporated in there. But on the rule form,
21 when I submit it, if it's a board or a commission,
22 I have to state the date and when it was voted on
23 by the commission or approved, and with each
24 commissioner's name and whether they voted to
25 approve it or reject. So I don't think that's

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1 ever officially been done.

2 And if you-all are -- if the changes
3 were all made to your satisfaction and you don't
4 see anything else that needs to be done to the
5 rules, I'd just ask that that vote be taken so I
6 can officially put that on the proposal form and
7 submit it.

8 CHAIRMAN PHILLIPS: So we need a
9 motion to approve proposed rule changes, correct?

10 MR. SUMMERS: Is this the time that
11 we should clarify definitions at all, or you don't
12 think that's appropriate?

13 MR. BAILEY: Well, if you think
14 anything else needs clarified, then you don't need
15 to take that vote until you feel like everything
16 is changed the way the commissioner feels like it
17 needs to be changed. I'm in no hurry about
18 getting it.

19 MR. SUMMERS: If you're not in a
20 hurry, if you can send out what the rule is. I've
21 probably seen it before, but send it out in an
22 email.

23 MS. JEFFERSON: Actually, it's on
24 your --

25 CHAIRMAN PHILLIPS: It's in your

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1 packet. It's got the red-line version versus
2 the -- yeah.

3 MS. MCGAURAN: Where?

4 MR. BAILEY: I believe it was --

5 MS. JEFFERSON: It's on your
6 invitation to the meeting today. If you go back
7 and take a look at that, it has the red-line
8 version.

9 MR. SUMMERS: That's in the email.

10 MR. BAILEY: That was in the email,
11 yes, sir. And we've got another meeting coming up
12 pretty soon, so --

13 CHAIRMAN PHILLIPS: So on the 29th
14 we need to look at it.

15 MR. BAILEY: Sure. I just want to
16 make sure that -- because I cannot proceed until
17 that's done.

18 MR. SUMMERS: We'll meet in two
19 weeks.

20 CHAIRMAN PHILLIPS: So you should
21 have them.

22 MR. WRIGHT: I promise to read it
23 by then.

24 MR. SUMMERS: I promise to read it
25 by then.

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1 MS. MCGAURAN: My apologies. I
2 didn't look for it because I didn't see it on the
3 agenda.

4 CHAIRMAN PHILLIPS: So we'll do
5 that, then, Dan. Is that all right?

6 MR. BAILEY: That'll be fine.

7 CHAIRMAN PHILLIPS: Now, the next
8 is Open Discussion. And I guess that is when
9 Mr. Lambert gets to speak about his questions or
10 comments. So can we recognize Mr. Lambert to
11 speak?

12 MR. BAILEY: If you would, state
13 your name and who you're with for the record,
14 please.

15 MR. LAMBERT: Charles Lambert,
16 Austin Powder Company.

17 A few weeks ago, or about a month
18 ago, we had -- we were working on a state job,
19 prevailing wage job, and it came to my attention
20 that, I guess, how we were classifying individuals
21 on that job was probably not correct.

22 When we send a crew out to do the
23 explosive work, we send a blaster in charge,
24 because somebody has to be in charge of that crew;
25 we send a crew, which may be other blasters or it

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1 could be another driver to assist in this.

2 Now, all of these guys are trained.
3 Plus we send the driver who brings the explosives
4 out. His job is to take care of that truck, take
5 care of the inventory and the products that's on
6 that truck, and to assist the blaster in charge at
7 that point.

8 Could you pull that up?

9 MS. CAUDILL: It's Number 17 in the
10 rules. I can't open it on the system.

11 MR. LAMBERT: On this particular
12 job, we had a driver, we had two other people
13 assisting the blaster in charge. That's what we
14 call it, blaster in charge. All of our guys are
15 trained. All of our blasters are trained and can
16 be in charge, but only one person has to be in
17 charge of that job that day, because two people
18 cannot make the decisions. Or two people don't
19 need to be dealing with the superintendent of the
20 job that day, only one.

21 So we had an extra blaster out there;
22 we had an extra driver out there; and we had some
23 laborers on that job that we have classified as
24 laborers. So when it came time to, I guess, turn
25 in the prevailing wage, which goes into our

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1 payroll department in Cleveland, made sure -- and
 2 then they have a guideline to by, which is the
 3 same one that's here -- my problem was, we had --
 4 our laborers fell under -- were listed as an
 5 unskilled labor in here. And then everyone else
 6 that was helping the blaster was listed as a
 7 skilled laborer at that time.

8 My statement to the clerk, who was
 9 filling out the paperwork, was, "We have no one on
 10 that job that's unskilled. So when I read -- so I
 11 pulled this up and we looked at it. And if you
 12 read it, it's "powder person" means one who
 13 supervises and assists in locating, loading, and
 14 firing the blast.

15 I have a problem with it -- well,
 16 there's two things in this classification, powder
 17 person. Powder goes back to the days of black
 18 powder. That's why powder is in Austin Powder.
 19 Austin, when they first started out, made black
 20 powder. That was the explosives that was used on
 21 road jobs and everywhere else at that time, or in
 22 ammunition.

23 That's all changed. There's not any
 24 black powder being used anymore, so I think that
 25 ought to come out of that. Actually, it should

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1 be -- I'm thinking that the way should be listed
 2 would be blaster in charge, because you have to
 3 have that person there. And then the other ones
 4 that fall under him would be a blaster assistant
 5 or blaster helper, however you would want to word
 6 that. But there should be two different
 7 classifications there. But if you look at this,
 8 the way this describes everything, everybody on
 9 that job that's in that loading process should
 10 fall under powder person/blaster at that point in
 11 time.

12 CHAIRMAN PHILLIPS: Comments?

13 MR. LAMBERT: There's no hierarchy
 14 there, is what I'm saying.

15 MR. WRIGHT: I beg to differ with
 16 you. At the time that I lobbied Rab 20 years ago
 17 to put this in --

18 MR. SUMMERS: Excuse me, 5 years
 19 ago. Go ahead.

20 MR. WRIGHT: -- there was nothing
 21 but labor, skilled and unskilled. And we tried --
 22 and I don't think either one of us really made the
 23 rule, the definition, up. But the intent the day
 24 that this was created was the guy that laid out
 25 the caps, held the powder pole, and signed the

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1 blast report be the blaster. And anybody else was
 2 considered helpers and subservient to him.

3 Now, to me, for the prevailing wage
 4 determination, there's a difference in how you
 5 categorize them within your company and how
 6 they're turned in for the prevailing wage.
 7 Although, you know, many people are listed as
 8 skilled laborers that are capable of doing other
 9 things, but for how they fall onto this particular
 10 thing, I would encourage you to submit everybody
 11 else as a skilled laborer for the purpose of the
 12 prevailing wage, even though they might be
 13 considered an apprentice blaster or something
 14 else. And if you think it's appropriate, while
 15 we're doing the modifications, we can include
 16 skilled labor to include whatever definitions you
 17 think are appropriate. This is just my
 18 suggestion. I'm not saying it should be the rule.

19 MR. LAMBERT: That would help.

20 MR. WRIGHT: But to include
 21 whatever classifications you think are appropriate
 22 to be incorporated under skilled, and then the
 23 dude in charge or the person in charge, that is
 24 the one that's taking the legal responsibility for
 25 the blast, the intention was for that to be the

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1 powder -- the blaster. Which -- and I agree
 2 powder person is an inappropriate title -- or the
 3 blaster in charge, as you called it.

4 So I don't know what that does --

5 MR. LAMBERT: Well, I mean, that
 6 explains it. But if you were just looking at it
 7 with what our guys do, our guy is out there doing
 8 the same thing of everything that was listed here.
 9 So if you would add that under the skilled labor,
 10 I mean, that would simplify a lot of things.

11 I know if our payroll department is
 12 having problems with it, other people have to
 13 somewhere.

14 MS. CAUDILL: How would you want
 15 that worded under skilled labor?

16 MR. LAMBERT: What do you think? I
 17 mean, you've been in this business a long time,
 18 too. Blaster assistant or --

19 MR. WRIGHT: I would -- terminology
 20 varies.

21 MR. LAMBERT: Yeah.

22 MR. WRIGHT: To me, that's why I
 23 would just always call them skilled laborers.
 24 Because they're carrying bags and pouring, and the
 25 guy says stop or not. Or, you know, to me, even

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1 the truck driver that's running the pump truck
 2 would be a skilled laborer when he's up there on
 3 the shot, because he's doing what the one
 4 signing -- the one that's testifying that it's
 5 legal and appropriate and loaded within the
 6 guidelines and like he turns in on the report.
 7 You know, everybody is subservient to him.

8 So I don't know, but we could maybe
 9 create a category under skilled laborer that is --
 10 I don't know what to say -- a powder helper,
 11 blasting support staff. I mean, what would you
 12 call it?

13 MR. LAMBERT: That would probably
 14 be the easiest way of putting it. If you put
 15 "blaster support staff," then everyone else that's
 16 on there at that time would fall under that.

17 MR. WRIGHT: And then the one
 18 that's actually taking the legal responsibility
 19 for the blast should be the -- you know, I'm happy
 20 to propose however you choose to rewrite it.

21 MR. LAMBERT: Yeah, I would
 22 probably reword that to blaster in charge.
 23 Because basically, that's -- that's the way the
 24 industry looks at it.

25 MR. WRIGHT: So we're making a

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1 proposal to change -- what number was it?

2 MR. LAMBERT: 17.

3 MR. WRIGHT: 17 -- the title
 4 from --

5 MS. MCGAURAN: No, 16.

6 MS. CAUDILL: Classification 16.

7 MR. LAMBERT: Oh, right.

8 MS. MCGAURAN: We're changing
 9 Classification 16 to blaster in charge instead of
 10 powder person blaster.

11 MR. BAILEY: Now, in the rules, it
 12 is at 0800-03-02-.01, paragraph 17.

13 MR. WRIGHT: That's what I'm --

14 MR. BAILEY: Yeah. That's, quote,
 15 "powder person," parentheses, "blaster," end
 16 quote.

17 MR. WRIGHT: What did -- Charles,
 18 what did you say, blaster in charge?

19 MR. LAMBERT: Yeah, blaster in
 20 charge.

21 MR. WRIGHT: Okay. So we delete
 22 powder person, and put blaster in charge, and does
 23 any of the rest of this stuff need to be cleaned
 24 up while we're --

25 MR. LAMBERT: And then -- yeah.

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1 The other ones -- everyone else on there would
 2 just fall under the skilled labor at that point.

3 MR. WRIGHT: Okay. So could we
 4 create a subcategory under skilled labor which is
 5 Number 18 on the -- or it's the next item. And it
 6 looks like it goes all the way through
 7 paragraph xii, so...

8 MS. MCGAURAN: And so we want to
 9 include blaster support staff under that item.

10 MR. WRIGHT: And how would you
 11 quickly define that, people that assist the
 12 blaster in preparing the shot --

13 MR. LAMBERT: Yeah, that would be
 14 assisting the blaster. And then -- probably
 15 assisting the blaster and then everything that
 16 fell under the blaster here would probably fall in
 17 there -- refer back to it.

18 MS. CAUDILL: It would move over --

19 MR. SUMMERS: Dan, can we change
 20 what we call -- on your new proposed rule, we can
 21 change what the name of the category is?

22 MR. BAILEY: Well, yeah, you can
 23 certainly rename powder person, parentheses,
 24 blaster, to blaster in charge.

25 Now, for the blaster assistant that

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1 would come under skilled laborer, you were saying,
 2 basically, anyone that assists the blaster in
 3 charge. That person would not supervise, so
 4 basically, everything that's in the definition of,
 5 currently, what's called powder person, other than
 6 supervising, would be something that the blaster
 7 assistant would actually be assisting and doing.
 8 So we could word it that way. And that would be
 9 a new skilled laborer position if you--all so
 10 moved.

11 MR. WRIGHT: I would make that
 12 motion just like you said it.

13 CHAIRMAN PHILLIPS: Just add that
 14 to Number 13?

15 MR. BAILEY: Yes, sir.

16 MR. SUMMERS: Second.

17 CHAIRMAN PHILLIPS: All in favor.
 18 (Affirmative response.)

19 MR. WRIGHT: Is that what you were
 20 looking for?

21 MR. LAMBERT: Yeah, that's great.
 22 That works great.

23 MR. WRIGHT: That should clarify
 24 it.

25 MS. MCGAURAN: And if we could have

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1 those rules updated, and then when we approve the
2 rules, it will incorporate this.

3 CHAIRMAN PHILLIPS: I'm sorry, Ann.
4 What did you say?

5 MS. MCGAURAN: I said we can
6 approve it, and then the rules, if staff would
7 distribute revised rules, a red-line copy like
8 they have in the appointment, incorporating this
9 change, then when we cover that in our next
10 meeting, we can take care of all of this.

11 MR. WRIGHT: That means I can look
12 for the new email, right?

13 MS. MCGAURAN: Right.

14 MR. BAILEY: There was a question
15 about whether powder person was set out in the
16 statute. But the premise of that paragraph says,
17 "For purposes of determining the prevailing wage
18 rate for workers employed by highway contractors,
19 the commission may issue classifications of crafts
20 of workers, including, but not limited to. So
21 that's the avenue. They can do what they're
22 doing. Just wanted to make sure.

23 MS. MCGAURAN: If not, we can also
24 keep powder person blaster and in the parentheses
25 say blaster in charge, which is something we've

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1 done elsewhere as well.

2 MR. BAILEY: Sure.

3 CHAIRMAN PHILLIPS: Are we done --
4 are we ready for the announcement of the next
5 meeting?

6 MS. JEFFERSON: Yes.

7 CHAIRMAN PHILLIPS: So the next
8 meeting, regularly scheduled meeting, will be at
9 1:30 on Thursday, November 29th here at this
10 location. Everybody good with that?

11 (Affirmative response.)

12 CHAIRMAN PHILLIPS: Okay. And
13 before we get a motion to adjourn, I would like to
14 say that Kim and her folks have worked really hard
15 on all this. It's a very -- it's a lot more
16 complicated and difficult than you can imagine.
17 And you--all have done a tremendous job. I love
18 this spreadsheet and how you put it together, so
19 my compliments on all the hard work y'all have
20 done. It's certainly helped me understand it
21 better.

22 MR. SUMMERS: Well, I'll second.
23 The spreadsheet is -- and that is wonderful
24 information for anyone that follows on.

25 CHAIRMAN PHILLIPS: That's right.

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1 MR. SUMMERS: Don't lose that
2 spreadsheet.

3 CHAIRMAN PHILLIPS: That's right,
4 Rab.

5 MR. WRIGHT: The spreadsheet needs
6 to be property of the wage --

7 CHAIRMAN PHILLIPS: That's right.
8 That's right. So thank you, all of y'all for
9 doing such a good job. Appreciate you all.

10 Motion to adjourn?

11 MR. WRIGHT: So moved.

12 MS. MCGAURAN: Second.

13 CHAIRMAN PHILLIPS: All in favor?
14 (Affirmative response.)

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1 C E R T I F I C A T E

2 STATE OF TENNESSEE)

3 COUNTY OF WILLIAMSON)

4
5
6 I, Cassandra M. Beiling, a Notary Public
7 in the State of Tennessee, do hereby certify:

8
9 That the within is a true and accurate
10 transcript of the Prevailing Wage Commission
11 Meeting taken on the 16th day of November, 2018.

12
13 I further certify that I am not related to
14 any of the parties to this action, by blood or
15 marriage, and that I am in no way interested in
16 the outcome of this matter.

17
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 26th day of December, 2018.

20
21
22
23 -----
24 Cassandra M. Beiling, LCR# 371
25 Notary Public State at Large
My commission expires: 3/15/2020

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