STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
PREVAILING WAGE COMMISSION MEETING
November 16, 2018

AGENDA
I. Call Meeting to Order
II. Introductions and Announcements
III. Adoption of Agenda
IV. Approval of the August 14, 2018 Meeting Minutes
V. Labor Standards Unit’s Report(s)
   * Carolyn Sherrod - Administrative Process
   * Jan Caudill - 2018 Prevailing Wage Survey statistics
   * Kenneth Nealy - Investigative Process
VI. Old Business
   * Clarification of Proposals 6 & 7 tabled from the August 14, 2018 Prevailing Wage Commission meeting as to whether the Prevailing Wage Act has jurisdiction over “any municipality, county, or other political subdivision.”
VII. New Business
   * Calculation of Prevailing Wage Rates for 2019 (25 Classifications)
VIII. Open Discussion Items
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.

CHAIRMAN PHILLIPS: Let’s call this meeting to order. The first thing we'll do is read the "In the event of an emergency."

In the event of an emergency or natural disaster, security personnel will take attendees to a safe place in the building or direct them to exit the building on the Rosa Parks side.

So the first order of business will be the adoption of the agenda. Any corrections?

(No verbal response.)

CHAIRMAN PHILLIPS: If not, motion to approve.

MR. WRIGHT: So moved.

CHAIRMAN PHILLIPS: Moved. Second?

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: All right. Any opposed?

(No verbal response.)

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

CHAIRMAN PHILLIPS: For the record, let’s introduce everyone. We’ll start over here and have Wayburn introduce himself.
everyone. Welcome to our meeting.

CHAIRMAN PHILLIPS: Hi, Carolyn.

MS. SHERROD: Again, I'm Carolyn Sherrod, and I'm the administrative services manager for the Labor Standards Unit. And I'll just give you a brief update as to what has transpired since our meeting in August.

As a unit, we seek ways to improve our procedures and advance our program. One such application for improvement has been the creation of the prevailing wage calculation spreadsheet, which you all have in your notebooks.

In order to improve our calculation process, the survey data is then put into the spreadsheet and calculated electronically. As an added measure, calculations have been performed manually by the administrative staff and reviewed with the assistant commissioner to ensure that the rates are accurate per statute.

In mid-September, our assistant commissioner, Kim Jefferson, signed the implementation plan document for the 2018 prevailing wage survey. This implementation plan listed all necessary Oracle database changes and prevailing wage application changes that were necessary to initiate the survey process for the 2018 year -- or 2019 year. Once the plan is signed, the IT team is authorized to execute the survey process.

During our August meeting, we reported our intent to utilize the Department's MailChimp feature to send reminder notices to employers to encourage their participation in the 2018 survey. The Labor Standards Unit sent the reminder notifications on October 15th, and this is another means of our trying to improve our program and our processes.

The practice proved successful. We received several responses, which included contact update information, requests to be removed from the mailing list, etcetera. And this process is one that we will continue in years to come.

CHAIRMAN PHILLIPS: Very good.

MS. SHERROD: One last bit of information. Since our last meeting on August 16th, the Labor Standards Unit has received an additional 28 starting notices and 38 completion notices on construction projects. This gives us a total of 67 starting notices and 46 completion notices since July 1st, 2018. Thank you.
CHAIRMAN PHILLIPS: Very good.
MS. SHERROD: Any questions?
CHAIRMAN PHILLIPS: Does anybody have any questions?
(No verbal response.)
CHAIRMAN PHILLIPS: Next will be the 2018 prevailing wage survey statistics. Jan?
MS. CAUDILL: Good afternoon. This year we sent out 722 total surveys; 719 of those were emailed and 43 of those returned invalid, so a total of emails were 676. There were three corporations that did not have emails at all, so we mailed those. And that next line should say plus 43 that were returned, for a total of 46 that were actually mailed out. But no surveys came back that were undeliverable, and no surveys were received beyond the statutory deadline.
As far as the number of employees that were nonresponsive, there were 556 compared to 603 from last year. Of the responses we did receive, 67 of them came in through the mail, and 99 were submitted online for a total of 166. Of those, a total of 90 had actual survey responses or projects submitted. That gives us a percentage of total response of 12.5 percent, compared to 11.2 percent last year. This year, overall, there were 453 total projects submitted; 328 of those were submitted online and 125 were submitted through the mail or email and entered manually.
Of all the classifications, all 25 were surveyed. There were none that were new from last year, so the same classifications that were surveyed last year were surveyed this year as well. As far as incomplete or incorrect surveys, we did receive two. Brown Builders, 6 of the 15 surveys that were submitted were not state funded. And Summers-Taylor, 9 of the 22 surveys submitted were not state funded. Both of these cases were -- the information was denied prior to the calculation of the prevailing wage rates.
There were six classifications where four or fewer responses were received.
Number one, bricklayer, there were no responses; Classification 11, iron workers re-enforcing, there were two responses; Classification 12, iron workers structural, there were two responses; Classification 15, painter or sand blaster, there were no responses; 16, powder person blaster, there were no responses; and Classification Number one, bricklayer, there were no responses; Classification Number 15, painter or sand blaster, there were two responses; Classification Number 16, powder person blaster, there were two responses; Classification Number 17, sweeping machine or vacuum operator, there was one response.
Are there any questions?
CHAIRMAN PHILLIPS: Any questions? 
(No verbal response.)
CHAIRMAN PHILLIPS: Very good, Jan. Thank you. And last, Kenneth, investigative process.
MR. NEALY: Good afternoon. My report will be a lot shorter than Jan's and Carolyn's. So I'll start, fiscal year '18-'19. July 1st, 2018, we've had four assigned preconstruction meetings. We've attended three and mailed one preconstruction packet.
We've conducted one random investigation. The project was closed. And we've had zero wage complaints regarding the prevailing wage thus far.
Any questions? 
(No verbal response.)
CHAIRMAN PHILLIPS: Very good.
The next definition is: *state highway construction project.* It means any construction project for the purpose of building, rebuilding, locating, relocating, or repairing any. Which we just talked about public highway. It includes -- so a state highway construction project is basically anywhere on a public highway. And a public highway includes both state and local road projects.

The last definition, *state contract,* means any contractual agreement, written or oral, by any person or firm with the performance of work on a state highway construction project. A *state contract* under the Act is basically any agreement for work on a *state highway construction project,* which is any work on a Tennessee, *public highway,* which includes local government road projects that receive state or federal funding.

And I also point out that the

State or a political subdivision of the State and that road construction or maintenance project receives state or federal funds is a *public highway.*

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

There are some of these projects that have a -- because they have some federal funds, they require a prevailing wage. It's in the contract. And, of course, they use the highway construction prevailing wage that we promulgate. I agree with Dan.

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

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

MR. CRABTREE: (No verbal response.)

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

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

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

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

CHAIRMAN PHILLIPS: Any discussion?

Comments?

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

We've always submitted work for Johnson City and the City of Cleveland. You ain't going to get but about half as much today. They quit. But his guy, he never paid but half as much. And I think you -- I think the City of Cleveland gets the value of the skilled workers that you have and it's an unlevel -- it creates an unlevel playing field when public dollars require us to pay a living decent wage for these folks, and then a guy can pay minimum wage and compete with us in a different -- I mean, that's just -- I don't mean that to sound selfish, but I think that everybody that's working in that 300-degree asphalt ought to get paid something other than minimum wage.

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

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

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

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

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

MS. MCGAURAN: (No verbal response.)

MR. CRABTREE: (No verbal response.)

MR. WRIGHT: So I think that's state-funded. And when I go to compete with them and I'm paying my guy by this rate here -- because...
MR. SUMMERS: There were two of the projects that were bridge projects for Eastman Chemical. So they would not be -- they would not have any state or federal funds. All the rest of them were for the city. And it depends on how you get the funds. Gas taxes are collected, and they're sent to the cities and counties, and they use those funds to pave roads and do everything with them.

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

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

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

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

Chairman Phillips: What's the difference -- what's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

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

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

Chairman Phillips: What's the difference -- what's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes.

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

Chairman Phillips: What's the difference -- what's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Well --

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

Chairman Phillips: Should they get together?

MR. SUMMERS: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Well.

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

Chairman Phillips: Should they get together?

MR. SUMMERS: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Well.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.

Chairman Phillips: We're not -- we're not talking about John?

Chairman Phillips: What's the opinion on the prevailing wage doesn't apply. And we still have the same position. I can't speak to it except to say that that's what our general counsel says that the statute says that.

MR. CRABTREE: Yes, sir.

Chairman Phillips: Should they get together?

MR. BAILEY: Yes.
wage on airport work?

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

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

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

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

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

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

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

MS. MCGAURAN: But I believe what

Stone & George Court Reporting 615.221.1089

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

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

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

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

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

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

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

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

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

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

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

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

MS. MCGAURAN: Now, I appreciate
the fact that it doesn't seem fair in terms of what's happening there, but that's not under the realm of the purview of this committee.

CHAIRMAN PHILLIPS: Right.

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

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

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

And so that really is the heart of my question going forward, is because the further actions we're going to be taking during this committee meeting are to be voting on those wage rates, and if these two, the Brown Builders and the Summers-Taylors surveys should have been taken into consideration, then our information is inaccurate that we're basing our decision on.

CHAIRMAN PHILLIPS: Yeah, absolutely.

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

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

MS. CAUDILL: It's in the back.

It's in the very back.

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

MS. CAUDILL: The projects that were submitted and then denied is under the last tab. And the question I posed, because both Brown Builders and Mr. Summers, their surveys were marked as being nonstate funded. Now, Mr. Summers' was entered online, so I did just make a phone call to him and we discussed this.

The question I asked was, was there state funds included in these projects; and my answer was no.

MR. CRABTREE: Anybody.

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

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

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

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

MR. CRABTREE: Yes, sir.

MR. BAILEY: No, it shouldn't be.

It should include any state-funded road project, whether it's with TDOT or with the City of Murfreesboro or whoever; all those surveys should be counted.

MR. SUMMERS: If we just survey contracts with the Department of Transportation, we're surveying ourselves. There's not going to
be -- other than a contract from last year, there'll be very, very little difference.

MR. BAILEY: Exactly.

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

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

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

MR. WRIGHT: Fair point.

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

MS. CAUDILL: No.

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

MS. CAUDILL: Now, when I did talk to Brown Builders, I specifically asked for, you know, funding. I didn't mention whether or not they were TDOT projects, or not. But she said there were no state funds at all of any kind, state or federal, in these projects that she had me decline. That's not the same with Mr. Summers, though. I mean, he had some that were actually
good thing. So I believe that's a really good idea. We're going to reach out to those contractors. We have --

MS. CAUDILL: He's calling right now.

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

MS. JEFFERSON: And I would suggest that we also get a writing, get something in writing from them, because we have to, actually -- this has been a source of contention in that our calculations have been incorrect. And we've had to actually justify why our calculations are incorrect, and this was the second finding. So I'm concerned, because I don't want to get a third finding, because I know repeat findings aren't a state funded. Hers were absolutely not, no state funds involved at all of any kind, whether for TDOT or otherwise.

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

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

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

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

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

MR. CRABTREE: Parks.

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

MR. CRABTREE: The question is --

CHAIRMAN PHILLIPS: What do we need clarified, and what do -- you know, what is our opinion about control?

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

MS. JEFFERSON: And I would suggest that we also get a writing, get something in writing from them, because we have to, actually -- this has been a source of contention in that our calculations have been incorrect. And we've had to actually justify why our calculations are incorrect, and this was the second finding. So I'm concerned, because I don't want to get a third finding, because I know repeat findings aren't a
money, the sales tax money or whatever they use. So, I mean, when you say are there any federal or state funds involved, there are everything or there's nothing. It all goes to the same pot.

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

MR. WRIGHT: I understand Kim's point, you know, we've had two findings, and people get real upset about that. I don't get that upset about it. I get upset when things aren't done right, you know, and fair. And that's what we need to try to look at here. And if they don't like the way we do our calculations, I don't care. We need to get to a solution that is fair and right for everybody concerned, if we can.

MR. SUMMERS: I guess I'm saying there would be six projects that we have that are on city streets. Just looking at them, I don't know that including those six is going to make a significant difference in our data. I do think that we need to decide before we send out forms again. And they'll say on the forms that any project for any city, any municipality of any sort, government agency in the state of Tennessee, if you could say, "Send me all your data on this category and this category and this category," to where they could easily figure it out, because for the payroll department to come downstairs, find a day when I'm actually -- ask me whether or not this or this -- it gets to be a "why do we even want to fool with this" kind of thing. And if you look at Wayburn, spending a billion dollars a
directly to cities and counties -- again, I'm more through the gas tax revenues that are dedicated to counties. Much of the revenue they receive for the construction program comes from a state-aid program, which are TDOT dollars flowing to the state side, that the majority of their actual revenue that's flowed to them by formula?

MR. CRABTREE: Is that the TDOT's -- or the State of Tennessee cash flow generally, how reliant, in your opinion, are they on the state highway funds.
any time we're doing municipal, state, anything
that even has the possibility of having any kind
of funding in it, we use scale. Lots of times our
people make hire in scale anyway, but we use
scale, the TDOT scale.

MR. CRABTREE: Which one?

MS. BRADLEY: We use the current
one for the year that it was bid in. So if it was
bid in 2018 but we didn't start it until 2019, we
used the '18 scale, if it was bid and awarded to
us in that -- the year that it was awarded to us
in is the business scale that we use.
And, I mean, I've been there 20 years
and it's -- over 20 years, and we've done it that
way for 20 years. Just saying...

CHAIRMAN PHILLIPS: Dan?

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

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

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

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

CHAIRMAN PHILLIPS: Any comments?

MR. WRIGHT: I think they have to
need to be changed statutorily?

CHAIRMAN PHILLIPS: Yeah. But, I
think it that way. Okay.

MR. WRIGHT: It would have to be
for clarity, we need to define what is funded?

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

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

MR. BAILEY: The information would
have to be that if you have any highway project
that was either -- whether it be with a contractor
with TDOT, Department of Military, city or county
that received state or federal funding, then those
projects are subject to the survey. And that
would be it.

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

MS. JEFFERSON: Yes.

MR. BAILEY: Yes.

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

CHAIRMAN PHILLIPS: Yeah.

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

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

CHAIRMAN PHILLIPS: Okay. But it
seems to me like -- and you guys are the experts,
because you're in it -- but it seems to me like
there are just too many things that are not
defined as they should be. There's too much
wiggle room out there. Because I know in other
things within other departments -- I mean, in
other divisions, and we take surveys, and the
definitions that are the part of the law, they
still leave too much room for interpretation. And
sometimes we don't feel like we get an accurate
response because they can interpret it the way
they want to. And I think that creates a lot of
problems for a department like this that is
involved in a lot of different wage and regulation
issues. So it seems like at some point in time
this commission needs to revisit that, the
definitions or however that would be done. Does
that make any sense?

MS. JEFFERSON: Yes.

MS. MCGAURAN: I would agree.

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

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

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

MR. CRABTREE: I think they have to
be.

CHAIRMAN PHILLIPS: I think they
will eventually.
construction project for the purpose of building, rebuilding, locating, relocating, or repairing any public highway.

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

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

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

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

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

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

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

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

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

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

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

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

MS. JEFFERSON: Yes.

Do you all have calculators?

(Affirmative response.)

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

CHAIRMAN PHILLIPS: Okay.

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

So whatever the proposed rate is calculated, keep in mind that we have to ensure the proposed rate is within that particular range. And that's H and I. Under J, you have your state average. And you have, all the way down to N, you'll see where the proposed prevailing wage rate...
is listed.
And so we're going to start with "Bricklayer."
Jan, are you ready?
MS. CAUDILL: Yes.
MS. JEFFERSON: Let's start with bricklayer, Number 1.
MS. CAUDILL: Okay. Classification Number 1, bricklayer, you'll see we had no responses, and therefore, there is no survey rate. The current rate shown is $15.47, but because there is no survey rate to compare and it is less than four responses, the prevailing wage rule, 800-3-2-.087 would come in with five. And that states that wherein four or fewer survey responses are received, these responses may be excluded from establishing the rates. Where the data is excluded, the commission may continue the rate in existence at the time of the survey, or adjust it pursuant to the law.
And what we have recommended is the current rate at 15.47.
MR. CRABTREE: Excuse me. I have a comment on that. I might as well say it now. I notice here that there are only two crafts that
---
rate, you're still recommending an increase. So on those rates where you didn't get any responses, should we not be recommending an increase versus status quo?
MR. CRABTREE: Yes. Thank you.
MS. JEFFERSON: And what --
MR. CRABTREE: I think we should.
MS. JEFFERSON: And what we can do once we get to those rates -- we're just proposing the rates --
MS. MCGAURAN: No. That's why it affects this one. So the question is should the bricklayer rate remain static, or should it have a percent change.
MS. JEFFERSON: Okay. And that's up to you-all. If you-all want to propose something different from 15.47, please do so. This was just a starting -- this is just a proposal for you-all.
MR. CRABTREE: Well, I would move that we increase this craft, the bricklayer, by the same percentage that we increase the others, which is the state average.
MS. JEFFERSON: Okay. And the only thing that I ask you to consider -- I believe we
---
have actually decreased based on the survey. That is 21 and 14. And for both of those crafts, we are proposing to increase the rate by the state average, even though the survey showed that it was less than last year.
Now, is that consistent with leaving the rate the same just because we didn't get a response?
MS. CAUDILL: Well, the reason those rates came in on the negative side of the current rate is, as I said earlier, I checked the surveys as they came in, and if the project was awarded in a year prior to this year -- many of the surveys within those two classifications were awarded in 2014, '15, and '16. So when they submitted their rates that were in place at that time and then you average them against the current rate, it is going to give you a negative number.
We didn't have enough surveys that were actually awarded this year to offset those that were awarded in prior years. So that's why that's a negative number.
MS. MCGAURAN: But let me see if I can restate what's being said, though, is obviously in those cases where you have a negative
have a determination in the first place.

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

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

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

CHAIRMAN PHILLIPS: Yeah, up to 6 percent.

MS. JEFFERSON: Yes.

MS. CAUDILL: Okay.

MS. MCGAURAN: And so I think your motion is, is that the bricklayer rate be $16.20? Whatever it works out to be, yes.

MR. CRABTREE: Right. And that's Column L?

MS. MCGAURAN: Yes.

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

MR. WRIGHT: I would second your motion.

CHAIRMAN PHILLIPS: All in favor?

(Ms. Caudill.)

(No verbal response.)

CHAIRMAN PHILLIPS: All opposed?

(Ms. Caudill.)

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: All opposed?

(Ms. Caudill.)

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: All in favor?

(Ms. Caudill.)

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

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

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

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

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

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

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

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

MS. CAUDILL: If I'm understanding what you're asking, your question is could I go into or could we go into each classification and give a percentage. For example, on Number 14, we had 12 responses. And you would like me to -- you would like to know -- you know, 15 percent of them were from this year, and this percentage of them was from this year and this year. That would be doable.

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

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

CHAIRMAN PHILLIPS: So your motion is to exclude --

MR. WRIGHT: To approve --

CHAIRMAN PHILLIPS: Oh, approve.

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

I'm just trying to make up for lost time. CHAIRMAN PHILLIPS: This is important. So you made the motion and somebody -- or I mean, seconded it.

All opposed?

[No verbal response.]

CHAIRMAN PHILLIPS: All in favor?

[Affirmative response.]

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

[No verbal response.]

CHAIRMAN PHILLIPS: Okay. Going forward.

Ann?

MS. MCGAURAN: I think we're on it.

CHAIRMAN PHILLIPS: Okay.

MR. NEALY: Classification on Craft Number 11, ironworkers reinforcing, the current
The prevailing wage rate is $17.67. Multiply that by 6 percent, and you get $1.06. The survey rate is $18.11. If you add $1.06, you get $19.17. If you subtract $1.06, you'll get $17.05.

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

CHAIRMAN PHILLIPS: Any questions?

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

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: All opposed?

(No verbal response.)

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

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

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

MR. CRABTREE: Second.

MS. CAUDILL: Okay. Now, if you're going to do -- this is where the auditors are going to probably say something, because according to the law, our range, we're going to look like we're coming in way under.

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

MS. CAUDILL: We're on Number 12.

CHAIRMAN PHILLIPS: Number 12 now.

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

MS. CAUDILL: $19.19.

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

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

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

MS. CAUDILL: Yes.

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

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

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

CHAIRMAN PHILLIPS: Yes.

MS. CAUDILL: Okay.

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

MS. JEFFERSON: Okay. Sounds good.

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

MS. JEFFERSON: Zero, yes.

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

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

CHAIRMAN PHILLIPS: Good catch, Rab.

MS. JEFFERSON: Thank you.

CHAIRMAN PHILLIPS: Ann, you made a motion about this?
prevailing wage rate is $20.91. You multiply that by 6 percent, you'll get $1.25. The survey rate is $20.29. If you add that $20.29 and you had $1.25, you'll get $21.54. If you subtract $1.25, you'll get $20.29. The new proposed prevailing wage rate is $21.54.

CHAIRMAN PHILLIPS: Any discussion?

MR. CRABTREE: I move to accept $21.54.

CHAIRMAN PHILLIPS: Second?

MR. WRIGHT: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

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

MR. CRABTREE: I move to change that to $29.94.

CHAIRMAN PHILLIPS: Second?

What was that, $29 and what?

MS. CAUDILL: $29.94.

CHAIRMAN PHILLIPS: 0.94. Okay.

MR. CRABTREE: That would be plus 4.69 percent.

CHAIRMAN PHILLIPS: Right.

All in favor?

(Affirmative response.)

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

CHAIRMAN PHILLIPS: I would think so.

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

CHAIRMAN PHILLIPS: Yeah, that's better.

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

CHAIRMAN PHILLIPS: Yes.

MS. JEFFERSON: Okay. Sure.

MR. NEALY: Craft Number 16, powder blaster. The current prevailing wage rate is $21.46. Multiply that by 6 percent and you get $1.29. We had zero responses, so the survey rate is zero dollars and zero cents.

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

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

MR. CRABTREE: Second.

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

MS. MCGAURAN: Yes.

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

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

CHAIRMAN PHILLIPS: Yes, discussion.

Yes, sir, Mr. Lambert?

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

CHAIRMAN PHILLIPS: Oh, okay.

MR. LAMBERT: I'll let you-all determine that, on the wage rates. What I'm here for is the classification under what we do. So I was just asking for...

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

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

CHAIRMAN PHILLIPS: So --

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

CHAIRMAN PHILLIPS: Yeah, that will be new business.

MR. WRIGHT: I call for the question.

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

MS. MCGAURAN: We didn't vote.

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

(Affirmative response.)

Mr. Bailey?

MR. BAILEY: Craft Number 17, skilled labor. The current prevailing wage rate is $16.57. Multiply that by 6 percent and you'll get $0.99. The survey rate was $17.68. If you
MR. CRABTREE: Second.
CHAIRMAN PHILLIPS: All in favor?

MR. WRIGHT: Second.
CHAIRMAN PHILLIPS: All in favor?

CHAIRMAN PHILLIPS: Second?

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.

CHAIRMAN PHILLIPS: Second.
CHAIRMAN PHILLIPS: So are you making a motion?

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

MR. WRIGHT: Two motions.

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

MR. WRIGHT: I will second the motion.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

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

MR. CRABTREE: I move we accept $18.67.

MR. SUMMERS: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

MS. SHERROD: Unskilled laborer, Craft 23. The current rate is $14.22 multiplied by the 6 percent will give you $0.85. If you add that to the survey rate of $14.78, you will get $15.63. Subtracting will give you $13.93. Our proposed rate for that craft would be $14.89.

MR. CRABTREE: I move we accept $14.89.

CHAIRMAN PHILLIPS: Second?

MR. WRIGHT: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

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

MR. CRABTREE: I move we accept $19.18.

MR. WRIGHT: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

MS. SHERROD: And the last craft, the crane operator, 25, the current rate is $22.18 multiplied by 6 percent will give you $1.33. You add that to the survey rate of $22.34, you get $23.67. Subtracting will give you $21.01. Our proposed rate for that craft is $23.22, which falls within the range.

MR. CRABTREE: I move we accept $23.22.

MR. SUMMERS: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

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

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

MS. MCGAURAN: I make such motion.

MR. WRIGHT: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

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

MS. MCGAURAN: I think that they should probably make everybody aware of any time the survey rate changes when they add, potentially add additional surveys to it so that people -- we could say whether it's still appropriate.

CHAIRMAN PHILLIPS: Yes. Very good.

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

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

MS. CAUDILL: Okay.

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

MS. CAUDILL: Okay.

MR. BAILEY: Commissioner, before we move on, on the proposed rules, I know those have been distributed to y'all and the changes that were discussed at the last meeting have all been incorporated in there. But on the rule form, when I submit it, if it's a board or a commission, I have to state the date and when it was voted on by the commission or approved, and with each commissioner's name and whether they voted to approve it or reject. So I don't think that's...
ever officially been done.
And if you-all are -- if the changes
were all made to your satisfaction and you don't
see anything else that needs to be done to the
rules, I'd just ask that that vote be taken so I
can officially put that on the proposal form and
submit it.

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

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

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

MR. SUMMERS: If you're not in a
hurry, if you can send out what the rule is. I've
probably seen it before, but send it out in an
e-mail.

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

CHAIRMAN PHILLIPS: It's in your

---

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

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

MR. BAILEY: That'll be fine.

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

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

MR. LAMBERT: Charles Lambert,
Austin Powder Company.

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

When we send a crew out to do the
explosive work, we send a blaster in charge,
because somebody has to be in charge of that crew;
we send a crew, which may be other blasters or it
could be another driver to assist in this.

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

Could you pull that up?

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

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

So we had an extra blaster out there;
we had an extra driver out there; and we had some
laborers on that job that we have classified as
laborers. So when it came time to, I guess, turn
in the prevailing wage, which goes into our
payroll department in Cleveland, made sure -- and
then they have a guideline to by, which is the
same one that's here -- my problem was, we had --
our laborers fall under -- were listed as an
unskilled labor in here. And then everyone else
that was helping the blaster was listed as a
skilled laborer at that time.

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

I have a problem with it -- well,
there's two things in this classification, powder
person. Powder goes back to the days of black
color. That's why powder is in Austin Powder.

Austin, when they first started out, made black
powder. That was the explosives that was used on
road jobs and everywhere else at that time, or in
ammunition.

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

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

CHAIRMAN PHILLIPS: Comments?

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

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

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

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

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

Now, to me, for the prevailing wage
determination, there's a difference in how you
categorize them within your company and how
they're turned in for the prevailing wage.

Although, you know, many people are listed as
skilled laborers that are capable of doing other
tings, but for how they fall onto this particular
thing, I would encourage you to submit everybody
else as a skilled laborer for the purpose of the
prevailing wage, even though they might be
considered an apprentice blaster or something
else. And if you think it's appropriate, while
we're doing the modifications, we can include
skilled labor to include whatever definitions you
think are appropriate. This is just my
suggestion. I'm not saying it should be the rule.

MR. LAMBERT: That would help.

MR. WRIGHT: But to include
whatever classifications you think are appropriate
to be incorporated under skilled, and then the
dude in charge or the person in charge, that is
the one that's taking the legal responsibility for
the blast, the intention was for that to be the
the truck driver that's running the pump truck
would be a skilled laborer when he's up there on
the shot, because he's doing what the one
signing -- the one that's testifying that it's
legal and appropriate and loaded within the
guidelines and like he turns in on the report.

You know, everybody is subservient to him.

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

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

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

MR. LAMBERT: Yeah, I would
probably word that to blaster in charge.

Because basically, that's -- that's the way the
industry looks at it.

MR. WRIGHT: So we're making a
those rules updated, and then when we approve the rules, it will incorporate this.

CHAIRMAN PHILLIPS: I'm sorry, Ann.

What did you say?

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

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

MS. MCGAURAN: Right.

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

MS. MCGAURAN: If not, we can also keep powder person blaster and in the parentheses say blaster in charge, which is something we've done elsewhere as well.

MR. BAILEY: Sure.

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

MS. JEFFERSON: Yes.

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

(Affirmative response.)

CHAIRMAN PHILLIPS: Okay. And before we get a motion to adjourn I would like to say that Kim and her folks have worked really hard on all this. It's a very -- it's a lot more complicated and difficult than you can imagine.

And you-all have done a tremendous job. I love this spreadsheet and how you put it together, so my compliments on all the hard work y'all have done. It's certainly helped me understand it better.

MR. SUMMERS: Well, I'll second.

The spreadsheet is -- and that is wonderful information for anyone that follows on.

CHAIRMAN PHILLIPS: That's right.

MR. WRIGHT: Don't lose that spreadsheet.

CHAIRMAN PHILLIPS: That's right, Rab.

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

CHAIRMAN PHILLIPS: That's right.

That's right. So thank you, all of y'all for doing such a good job. Appreciate you all.

Motion to adjourn?

MR. WRIGHT: So moved.

MS. MCGAURAN: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)