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

November 29, 2018

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

1. Commissioner Burns Phillips, Chairman
2. Commissioner Wayburn Crabtree, TDOT Designee
3. Ann McGauran, State Architect
4. Tennessee Department of Treasury
5. R. T. Summers, Industry Representative (telephone)
7. Stephen Wright, Industry Representative
8. Wright Brothers Construction
9. Dan Bailey, Legal Counsel
10. Kim Y. Jefferson, Administrator
11. Lynn Kirby, Board Secretary
12. Jan Caudill, Administrative Assistant
13. Carolyn Sherrod, Administrative Services Manager
14. Kenneth Nealy
15. Kenneth Starwalt (telephone)

AGENDA

I. Call Meeting to Order and Roll Call
II. Introductions and Announcements
III. Adoption of Agenda
IV. Review and Approve November 16, 2018 meeting summary prepared by the Labor Standards Unit
V. Old Business
   *Whether the Prevailing Wage Rates Apply to any Municipality, County or other Political Subdivision
   *Approve Blaster-in-Charge/Blaster Assistant
   *Approve proposed rules
VI. New Business
   *Review and Discuss the Approved 2019 Wage Rates for State Highway Construction Projects
   +Discuss Four (4) Miscalculated Rates
   *Compare and Contrast Surveys that were Previously Excluded
   *Set Rates for 2019 Prevailing Wage for State Highway Construction Projects
VII. Open Discussion Items
   *Proposed Prevailing Wage Commission Meeting Dates for 2019
   +August (15th or 22nd, 10AM or 1:30PM CDT)
   +November (13th or 14th, 20th or 21st, 10AM or 1:30PM CST)
   +Conflict of Interest and Declarations will be Completed at the August 2019 Meeting
VIII. Adjournment

CHAIRMAN PHILLIPS: We'll call this meeting, this prevailing wage commission to order. First, I'll read the announcement.

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 an exit in the building on the Rosa Parks side.

So I think the last time I forgot to go around and introduce everybody, so we'll start with that and everybody just go around and introduce themselves, starting with you, Madam.

THE REPORTER: Cassandra Beiling, Stone & George Court Reporting.


MR. CRABTREE: Wayburn Crabtree. I represent the commissioner of transportation.

MR. WRIGHT: Steve Wright with Wright Brothers Construction Company.

CHAIRMAN PHILLIPS: Burns Phillips, Commissioner of Labor and Workforce Development.

MS. KIRBY: Lynn Kirby. I'm an ASA-3 with WRC.

CHAIRMAN PHILLIPS: Okay. So I think next we need to -- unless there are some corrections, we need a motion to approve the -- adopt the agenda.

MS. MCGAURAN: I'll make such a motion.

CHAIRMAN PHILLIPS: Okay.
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<td><strong>MR. CRABTREE:</strong> Second.</td>
<td><strong>CHAIRMAN PHILLIPS:</strong> Okay.</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> All right. All in favor?</td>
<td>Dan, do you and John have a time set to get together or anything like that?</td>
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<td>(Affirmative response.)</td>
<td><strong>MR. BAILEY:</strong> No.</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> Okay. So moved.</td>
<td><strong>CHAIRMAN PHILLIPS:</strong> Okay. We can certainly do that. It doesn't require a vote or anything like that, does it?</td>
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<td>Review and approve November 16th meeting summary prepared by the Labor Standards Unit. And if there are no corrections --</td>
<td><strong>MS. JEFFERSON:</strong> Well, the only thing I would be concerned about is that we're trying to approve the rules, and that decision is dependent on whether or not we're able to move forward with the rulemaking process.</td>
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<td><strong>MR. WRIGHT:</strong> I would move for acceptance.</td>
<td>I know that Dan had stated the Department's interpretation at the previous meeting, and so if we don't have any opposition with the Department's interpretation, then we probably need to proceed with it.</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> Okay. Second?</td>
<td>If we need to modify the rules in the future, then we certainly have that option. But we really need to move forward with the rulemaking process.</td>
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<td><strong>MS. MCGAURAN:</strong> Second.</td>
<td><strong>CHAIRMAN PHILLIPS:</strong> Yes. And only if there's an opposing view do we need to take a vote on it. So is there an opposing view?</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> So it has been moved that they are accepted. All in favor?</td>
<td><strong>MS. MCGAURAN:</strong> Remind me. Just because there's been a lot of discussion, just to make sure I know what I'm saying.</td>
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<td>(Affirmative response.)</td>
<td><strong>CHAIRMAN PHILLIPS:</strong> Dan, do you want to repeat what our position is?</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> So moved.</td>
<td><strong>MR. BAILEY:</strong> Well, our position is that the prevailing wage act does apply to local road projects that are federally or state funded.</td>
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<td>Old business. So first would be whether the prevailing wages rates apply to any municipality, county, or other political subdivision. Do y'all have any comments?</td>
<td><strong>MS. MCGAURAN:</strong> I'm not opposed to that position.</td>
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<td><strong>MR. CRABTREE:</strong> I would like to defer this discussion until sometime in the future whenever our TDOT general counsel can attend the meeting.</td>
<td><strong>CHAIRMAN PHILLIPS:</strong> Steve?</td>
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<td><strong>MR. WRIGHT:</strong> Oh, I'm not opposed either. If TDOT's position is strong, is it even appropriate for this commission, maybe, to make the recommendation between now and the next time we meet in August, that the general counsels from both divisions get together and wrestle or whatever you would do to see if it's appropriate for us to consider amending the rules next year to a different position. I mean, I would vote with you today, sir.</td>
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<td><strong>MR. BAILEY:</strong> Well, I mean, I understand their position, and, you know, I don't know that meeting together is going to change our position. It's -- I mean, they make their argument, and I understand their argument, and we have ours. And I think we're just kind of at an impasse there.</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> And so our department is the one that's supposed to administer the act, and the commission, you know -- I mean, we take direction from the Prevailing Wage Commission. And so if you think that that interpretation -- that you, as a commission, think that interpretation is in error, you, by majority vote, can tell us that you think it's in error and we should not do it that way.</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> And all of us, I'm assuming, followed the email between John and --</td>
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<td><strong>CHAIRMAN PHILLIPS:</strong> And, you know, certainly -- I agree with Dan's interpretation as well. So we can either say that we're going to move forward or we can take a vote and still move forward.</td>
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| | **MR. CRABTREE:** I don't think I've seen anything, any wording as exactly what you want the rule to say. I mean, I've heard you discuss it, but have you put anything that actually has the wording in it that you want it to
MR. BAILEY: The question is whether certain language that's already in the rules would come out. And it depends on whether or not we applied the Prevailing Wage Act to local road projects.

There's language in the current rules right now that if we do apply to local road projects needs to come. But if they are applied to local road projects, that language can stay in the rules. So that's what the issue of the rules has been.

MS. MCGAURAN: Can you tell us what section of the rules. I think we have these in front of us.

MR. WRIGHT: Dan or Kim, whomever can answer this, at the end of the day, if we're -- the discussion is between TDOT and the Department of Labor about what does or doesn't apply, from TDOT's world, everything they touch, it obviously applies.

MR. BAILEY: Right.

MR. WRIGHT: I mean, everything that Wayburn estimates, or whatever, and y'all let the contractors know, there's no controversy there. And I can appreciate that TDOT probably doesn't want their DNA on much of anything else other than their own business.

But at the end of day, you know -- and this was kind of what Rab had called me to ask, and so I know he and I are in agreement on it -- I think it's important to be more inclusive, especially not such as it comes to demanding you shall pay this prevailing wage, but there are situations where if you do not include a prevailing wage, that I think it could be dangerous for us, honestly, to adopt John's view. Because if they're, like, a municipal airport or something, there are certain situations that have pure federal funding, that if there's not a state prevailing page, then the federal prevailing wage will come into play, which could have a very significant impact on the cost of projects in some places in the state.

And it might be unique situations and not very often at all, but it could happen. You know, because I've seen, over the years, a lot of books with two prevailing wages. And without the state rate in front of it, the union wage from Washington, D.C. applies. And that's going to double or triple your wage costs and stuff like that. So I think that that is probably not in the overall interest of the taxpayers of Tennessee for us to rule out the ability to have that.

Now, does that or does that not meet with the intention of the legislature labor? I can't speak for them. No idea.

MR. CRABTREE: Our specifications say that when we have two wage rates, the higher of the two will apply. So in your scenario there, we would have to use the higher of the two wage rates anyway if there was one that was higher than the TDOT wage rate. So we're not saving any money.

MR. WRIGHT: This would never happen on a TDOT job.

MR. BAILEY: Right.

MR. WRIGHT: Because I've never seen two wage rates. And the things I'm thinking about, like, you know -- airports are really where I've seen it, or some kind of government federal building let by the City of Nashville, or something like that. It could apply. And quite honestly, I haven't seen it in several years. I don't know that it was in Tennessee. But I have seen that occur. And my point is that if it doesn't affect TDOT negatively, which there's no way anything we do here, I mean, from that perspective, affects TDOT, then I don't see where the harm is to go ahead, just like the Department of Labor represents, in that it could have some positive effects if a municipality needs a wage rate available to use where they can enforce -- you know, they can't call on you to enforce it. We know that. But that could help them there.

And the other thing is that -- and this is the part that I'm kind of speaking for Rab on -- is he thinks that the survey data we get should be more than just TDOT work. You know, we should be able to take the municipal work that, because we need more included data in there than just TDOT's to get a sampling of the market. Because you don't want -- inbred sounds wrong, but that's really what it -- but if you only use TDOT rates, then you have no way of checking it with the rest of the world. And so, you know, to include more rates rather than less in the ability to sample, he thinks is important. And I do agree with him on that.

MS. JEFFERSON: And I agree with
CHAIRMAN PHILLIPS: I think we all agree with that.

MS. JEFFERSON: Yes.

CHAIRMAN PHILLIPS: At least we did at the end of the last meeting.

MS. JEFFERSON: Yes. I agree with that because without those other entities being involved, it's not competitive. And we can't really see what the competitive rates are from, you know, industry -- not really industry, but from, say, municipality to state and so on and so forth. So it's very important to include all of them, not just limit it to one department.

So I agree with that, and Dan and I had talked previously, and I know he made a really good point. He said in the event that we're unable to resolve -- say we do the -- this isn't the acceptable approach. There's always an alternative, a recourse. And that's in state court. We would hope we would be able to resolve it so that no one would appeal. But if someone does appeal, then they do have a recourse and they can go to state court, and state court can actually tell us whether or not our interpretation was correct, or not. We don't want that, but that's an option.

CHAIRMAN PHILLIPS: Well, I sort of agree with Steve. I also agree with your evaluation, Dan, that -- when you spoke to the intent of the legislature. Of course, it's difficult to know what their intent is, the way they write some things. But I think that in your case, I think that's a very valid point. You know, why would they -- you know, why would they include the words, you know, "constructed by any municipality or political subdivision of the state" if that did not intend for that to be in force and effect. So I'm with the department on that.

MR. WRIGHT: I guess, to answer your original question, I would -- if forced to vote, I would vote in support of Mr. Bailey's position.

CHAIRMAN PHILLIPS: Because I don't think there's going to be any harm between now and -- it can always be revisited, probably to the same end. It can always be revisited. But we do have to move forward now.

MS. MCGAURAN: I would also say that I have -- I know what I'm thinking about, but I have tracked and read and reviewed, and I agree with the Labor's -- and I've read everything that's been submitted by legal counsel for the Department of Transportation, and I understand the basis for that. And I agree with Mr. Bailey's perspective on this. I just do.

MR. BAILEY: You had asked where in the rules. It is at 0800-03-02-.03 under Effective Dates. And the very last sentence, "No contract shall be let by any state agency or by any municipality, county, or other political subdivision for a state highway construction project."

So those words, if the Prevailing Wage Act did not apply, would come out. Where is that? 0800-03-02-.03, Effective Dates.

MS. MCGAURAN: I believe that's, like, four pages from the end.

MR. BAILEY: The pages aren't numbered because I can't submit rules to the Secretary of State's office that way.

MS. JEFFERSON: Commissioner, the red line is on the projector.

CHAIRMAN PHILLIPS: Oh, there we go.

MR. CRABTREE: So what's going to come out?

MS. MCGAURAN: Nothing.

MR. BAILEY: Well, nothing would come out now, but the question that we -- when it was first raised a couple of meetings back as to whether or not it did or did not apply to local road projects, if it was not going to apply, then the words in the rule or by any municipality, county, or other political subdivision would all have come out. But they would stay in now. So that was what generated the whole discussion.

MR. CRABTREE: I would like to have something to take back to my department to see exactly what your proposed wording is.

MS. MCGAURAN: This is the proposed wording.

MR. CRABTREE: Okay. So this is it.

MS. MCGAURAN: This is what the plan is.

MR. CRABTREE: So we're not --
MR. BAILEY: That language is currently in our rules, so we're not changing it. It would only change if the position was --
MR. CRABTREE: Okay. I got it.
MR. BAILEY: Okay.
MR. WRIGHT: And basically, in that argument, should this group decide that Mr. Reinbold's opinion was correct, then we would be changing the rulings rather than leaving them alone --
MR. BAILEY: Correct.
CHAIRMAN PHILLIPS: Correct.
MR. WRIGHT: -- as it affects the point of John's discussion.
MR. CRABTREE: I can't speak for John, but I don't think John looks at it that way.
MR. WRIGHT: I believe him.
MR. CRABTREE: And also, we agree with everything that's been said here concerning the survey. But Mr. Reinbold's reading of the statute does not prohibit -- in his opinion, does not prohibit the inclusion of locally managed projects. They can be included under the current wording of the statute. So we have two issues, I guess.

MR. BAILEY: Now, currently, we are not putting state wage rate in locally managed projects. Are you telling me that we've got to start doing that now?
MR. BAILEY: Yes.
MS. MCGAURAN: Yes.
CHAIRMAN PHILLIPS: Now, you can make a motion to change it and we can vote on it, but...
MS. MCGAURAN: And my position comes down to what the definition is of a state highway construction project. And a state highway project means any construction project for the purpose of building, rebuilding, locating, relocating, or repairing any public highway. And a public highway is defined as any street, road, highway, expressway, bridge, or viaduct, including an adjacent right of way that is constructed or maintained by the State or any municipality or political subdivision of the State that is funded in whole or in part with federal or state highway funds.
CHAIRMAN PHILLIPS: Right.
MR. CRABTREE: That's why we need Mr. Reinbold here --

MS. MCGAURAN: And that's the core.
MR. CRABTREE: -- and not me. But Mr. Reinbold, as I understand it, his reading is that it has to be a contract with the State.
MR. BAILEY: Right. That's his -- and I totally understand it. And I also understand how statutes, the wording of statutes, can be ambiguous at times, and I think this one is. I think the intent was for it to apply to local road projects; however, they didn't make that as clearly as they could have made it with the language of state contracts. I mean, you know, they could have made it much clearer, I agree.
But typically, when there's ambiguity in the statute, a court will interpret the statute so that all the words have meaning. And to say it does not apply to a local road project that is partly funded by the State or federal government, would take those words and render them meaningless.
CHAIRMAN PHILLIPS: It's contrary to the wording of the statute.
MR. BAILEY: Yes.
CHAIRMAN PHILLIPS: And the courts
won't do that. But, Wayburn, I think, right now we're not being asked to vote on this. It's already in the rules.

CHAIRMAN PHILLIPS: Yeah. We're just --

MR. WRIGHT: What you hear is a little bit interpretation, a difference of interpretation of whether or not TDOT should require the use -- I mean, if a county was to be --

CHAIRMAN PHILLIPS: Okay.

MR. CRABTREE: If it's what we call state aid, we don't tell them what to do. Now, if it's one of these --

MS. MCGAURAN: I guess --

MR. BAILEY: That's a good question.

MR. CRABTREE: It depends on what kind of project it is.

MR. WRIGHT: Is an SAI road state aid?

MR. CRABTREE: No.

MR. WRIGHT: Because that comes through you.

MR. CRABTREE: No. No. Under the -- like, the bridge grant program.

MR. WRIGHT: Okay.

MR. CRABTREE: If it's money that comes through NPOs and RPOs and things like that, that TDOT oversees and ensures that whatever they do with it complies with federal regs and our

reg's, we give them the choice. We tell them they don't have to use the state wage rates -- because 99 percent of them have the federal rates anyway. We tell them they don't have to if they want you to use the current ones.

And I've got one right now we're fixing to recheck because they didn't do that. They used the 2017 wage rates, and we told them not to. They did it anyway so we're going to let it again.

MR. WRIGHT: I don't think y'all disagree.

MS. MCGAURAN: I think the concern is, is that in their policy when TDOT is giving money or granting money to municipalities, that's, kind of -- to use the expression -- that's the dog they have in this hunt, right? It doesn't have to do with the projects they directly manage at all. They were very clearly included in the statute.

CHAIRMAN PHILLIPS: Right.

MS. MCGAURAN: And it has to do with the requirements that they're putting on those entities that they're giving grants to.

CHAIRMAN PHILLIPS: Yeah, they're receiving funding.

MR. CRABTREE: And that's kind of a technicality there, too, because many times it's not TDOT money; it's federal grant money.

MS. MCGAURAN: But you're -- that your administering on their behalf.

MR. CRABTREE: Well, are we administering or are we just ensuring that they abide by the federal regs?

CHAIRMAN PHILLIPS: You're just making sure -- you're ensuring compliance, is all you're doing.

MS. MCGAURAN: But you're granting, essentially, on behalf of everybody.

MR. CRABTREE: I don't know if we are or not. Same thing with NPOs and RPOs.

That's not our money. That's not TDOT money. That's federal money that's allocated to the states or the counties and municipalities via the NPO or RPO, whichever one it is, so...

MR. WRIGHT: But doesn't this -- the law that we're being asked to enforce today here, it does say federal or state money. So it's kind of an overlap, you know.

MR. CRABTREE: Well, all of those projects have the federal wage rates anyway. So
what we're currently doing on those type projects
is we're giving the municipalities the option of
including the state wage rates and telling them
don't have to, because they're not going to
be enforced if they do.

CHAIRMAN PHILLIPS: But you said
99 percent of them use the federal, right?

MR. WRIGHT: Is the federal the --
MR. CRABTREE: The only ones that
don't that I'm aware of are the multi-multiple
projects where we put benches at bus stops and
to trashcans and stuff like that. That's a hundred
percent state money. So those are few and far
between.

But just about all the rest of them
either have federal grant money or they have some
kind of federal money through the RPOs and NPOs.

Mr. Wright: Just for my curiosity,
on the ones you've seen, do the federal rates in
these projects -- how do they compare to what we
publish?

MR. CRABTREE: They're lower.
MR. WRIGHT: They're lower. Okay.
So if we publish it, the costs are going up, I
mean, if you forced them to use it.

anybody can come.

MS. MCGAURAN: -- if Mr. Reinbold
had a conflict, and that's the reason he's not
here. And I'm not hearing that there's a
definitive understanding that he was asked to come
or he stated an interest in coming but said he
couldn't come because he had something else he had
to be at.

MR. CRABTREE: I don't know.
MS. MCGAURAN: Okay. Would you --
would it make sense to reach out to your office
and ask Mr. Reinbold if he's available to attend
the meeting before the end of it, and then we can
revisit this at the end of this meeting, go
back -- and go forward with the rest of the action
items?

MR. CRABTREE: I'll call him.
MS. JEFFERSON: And worst-case
scenario, we do have a telephone here, so we can
actually call and put him on a conference call.

CHAIRMAN PHILLIPS: We're going to
go into recess.

(REcess observed.)

CHAIRMAN PHILLIPS: So we'll resume
the commission meeting while we're waiting for

MR. CRABTREE: Uh-huh.
MS. MCGAURAN: And you did check to
see --
MR. WRIGHT: Then I'm kind of on
the side of the worker, honestly.
MS. MCGAURAN: And you did check to
see if --
MR. WRIGHT: Are we charged to look
out for the worker, too?

MS. MCGAURAN: -- Mr. Reinbold
could be present at this meeting? He had a
conflict and --

CHAIRMAN PHILLIPS: We're charged
to try to interpret the law.

MS. MCGAURAN: -- there's no way he
could be here?

MR. WRIGHT: I can't say that.

MS. MCGAURAN: So he --
MR. CRABTREE: He wasn't invited.

CHAIRMAN PHILLIPS: Who wasn't
invited?

MS. MCGAURAN: So I said -- I asked
if he --

MR. CRABTREE: I'll call him.

MS. JEFFERSON: And worst-case
scenario, we do have a telephone here, so we can
actually call and put him on a conference call.

CHAIRMAN PHILLIPS: We're going to
go into recess.

(REcess observed.)

CHAIRMAN PHILLIPS: So we'll resume
the commission meeting while we're waiting for

Mr. Reinbold to get in touch with us.

And so we'll take up the next Old
Business item, which is Approve Blaster-in-Charge/
Blaster Assistant. There was the suggestion made
to modify that.

MR. WRIGHT: Did my suggestions
make sense?

MS. MCGAURAN: They did to me.

CHAIRMAN PHILLIPS: Yes.

MR. WRIGHT: Kim?

MS. JEFFERSON: Yes.

MR. WRIGHT: Mr. Bailey, did -- you
know, just a 30-second pitch for that is, I think,
if we're going to put a description there, we
should -- I think we should somewhat be harmonious
with the state blasting laws as they apply
because, as I think I was telling Wayburn before
we started the session, that a blaster that worked
for the gentleman that was here last time, he has
to be a licensed blaster to sign those shop
reports, to lay those out to comply with the law
that requires review, background checks.

All of this is tightened up since
911. They make a true effort to keep up with it
more so than they did. And to the extent of the
blaster, the -- what did we call it? -- assistant
blaster --
MR. BAILEY: It's blaster assistant.
MR. WRIGHT: The blaster assistant,
I'm sorry. Then, you know, that really equates to
a helper or a handler, rather, under the federal
blasting laws in the Tennessee definitions,
because that's a person that assists a blaster.
The blaster takes responsibility and these otherolks assist them, and it is -- I think it's a
crime for the blaster or the person in charge,
which, like, in our company is me, you know, that
signs on the ATF license to allow somebody that is
not an approved handler to even be involved with
the blast itself.
So, you know, for us to approve a
position that doesn't require them to meet the
standards of the federal law and the state law, to
me, is a mistake, I guess.
MR. BAILEY: So just so I'm clear,
first of all, on the blaster-in-charge position, I
think you were questioning whether or not words
"and assist" should stay in.
MR. WRIGHT: Well, that's -- I
started off there, and then I went off on this
whole other tangent.
MR. BAILEY: Okay. So is the
wording of "Blaster-in-Charge" okay?
MR. WRIGHT: Yes.
MR. BAILEY: Okay. So --
MR. WRIGHT: Actually, I would
change it to what the State of Tennessee calls it,
the "Blaster." I would make that title match. If
I just had carte blanche, it would be to make the
titles match the same thing as they do on this
Tennessee --
MS. MCGAURAN: 68-105-102.
MR. WRIGHT: Yeah. It would be the
same as 68-105-102, paragraph 6, Blaster.
MR. BAILEY: Okay. So you're
saying to just call it "Blaster" --
MR. WRIGHT: Blaster.
MR. BAILEY: -- and use this
definition.
MR. WRIGHT: And use this
definition out of the law.
MR. BAILEY: Okay. All right. And
then for the --
MR. WRIGHT: And then for the
assistant would be a -- you know, the law calls it a "Handler," I believe.
MS. JEFFERSON: It does.
MR. BAILEY: Well, there's two
different classifications that Mr. Crabtree was
pointing out, kind of apply.
MR. WRIGHT: Yes, sir. And the
handler was the one that we were putting under
skilled labor; is that correct?
MS. MCGAURAN: Yes.
MR. WRIGHT: So whatever
subparagraph, if you would do 10 -- 68-105-102
paragraph 15 for what is called a handler.
MR. BAILEY: Well, okay. He was
kind of combining that with -- handler with
limited blaster.
 weren't you kind of combining those
two?
MR. CRABTREE: Yes, sir. It looks
like you're kind of losing a -- not a worker, but
somebody to do that work under the blaster-in-
charge if all you have is a handler, because all
he can do is just handle.
MR. WRIGHT: What about the
in our rules?

MR. WRIGHT: It is called assistant blaster.

MR. BAILEY: Oh, it's at 18, paragraph iii, in the red-line version -- well, either version, actually.

MR. WRIGHT: Wayburn, respectfully, I would tell you that the limited blaster is designed for the guy that's going to go -- is a thing that you can apply for that you do not have to take all the tests to understand the sophistication of blasting because you're going to just go blow a stump out. You can only hold five pounds. And see that won't load one hole in one shot. It's just irrelevant to what anybody does in the construction industry, if that makes any sense. You can blow one --

MR. CRABTREE: Yeah. My simplistic reading of this was that a handler could only handle explosives. He couldn't load the holes or much less fire them, but if you're understanding that he can, then --

MR. WRIGHT: The handler should not fire them. The law is specific that the blaster has to do that. The guy that's signing the -- you know, you have to fill out a shot report with every blast, and the guy that signs that report has got to be like the --

MR. CRABTREE: So the handler can load them.

MR. WRIGHT: The handler can do anything he tells them to except sign that report, and really shouldn't push that button.

MS. MCGAURAN: Can I ask a question as we look at the terms? So in the definitions, there seems to be a blaster defined in -- I'm looking at 68-105-102 of TCA. A blaster seems to be defined as somebody who has to be registered, has the registration to fire a detonated explosive.

A limited blaster is somebody who has the knowledge and, again, has a registration to fire but only within certain set limits.

MR. WRIGHT: Five pounds.

MS. MCGAURAN: Yeah, five pounds. Is there another person on the blasting team that's kind of a subset of that?

MR. WRIGHT: Yeah. Look up to Number 15.

MS. MCGAURAN: 15, the handler.

Okay.

MR. WRIGHT: The handler. See, what the gentleman was asking for, he's got a blaster-in-charge, and he's -- but what he didn't want to have to do is take -- his company was telling him that anybody they sent out there, which I bet you they may very well be blasters, but he -- they were making them pay the blaster rate for everything instead of taking the skilled labor that was just help that day.

And a handler, you know, one of the huge challenges -- I think it's odd this morning they were in the office redoing our federal blasting license for one of the companies. So I was listening to all this. I went, uh, shoot me. But to touch the explosives, you have to -- ATF has to have your name on a list. If the ATF comes out and inspects you while you're loading a blast and you're holding a stick of dynamite, I'm in violation of the law.

And so by definition, it doesn't matter what we tell them, as far as skilled labor. They really need to be qualified to be a handler to be of any practical assistance to the blaster.

MR. WRIGHT: Yes, ma'am.

MS. MCGAURAN: And you're
suggesting that under 18(iii), Blaster Assistant be changed to the word Handler.

MR. BAILEY: No.

MR. WRIGHT: Well, that would be my suggestion, but it doesn't --

MS. MCGAURAN: That it be changed to Handler and that the Handler definition --

MR. WRIGHT: Or if you say that -- it says meets the requirements of handler under --

MR. BAILEY: Yeah. I thought --

MR. WRIGHT: That's what I wrote.

MR. BAILEY: Yeah. I thought we were just going to use the definition of handler but still call it Blaster Assistant.

MR. WRIGHT: It doesn't matter to me.

MS. MCGAURAN: Well, we need to ask -- we need to include something that says it meets the requirement of handler.

MR. WRIGHT: It would be much clearer to the lady that's fixing the payroll that was here last time if we get the word "Handler" in there somewhere so they'll -- because the people interpreting from the office side of it, "Handler" means something to my payroll people. "Blasting Assistant" means nothing.

MR. WRIGHT: If I get to pick, do "Handler."

MR. BAILEY: Change it to Handler?

MR. WRIGHT: Yes.

MR. BAILEY: Okay.

MR. WRIGHT: Then we'll be straight up where you can just mail them this piece of paper with it when they don't know what to do.

CHAIRMAN PHILLIPS: He has to make a motion of that, does he not?

MR. WRIGHT: Yeah. Please consider that a motion, that last 30 minutes.

CHAIRMAN PHILLIPS: Okay.

MS. MCGAURAN: I'll second that motion.

CHAIRMAN PHILLIPS: Okay. So we have a motion. Do we have any more discussion before we vote?

MS. MCGAURAN: And the motion includes to --

CHAIRMAN PHILLIPS: Do you want to repeat your motion?

MS. MCGAURAN: Well, I just want to make sure. The motion says that we're going to change what currently says "Blaster-in-Charge" to be "Blaster." And we're going to change what currently says "Assistant" -- "Blaster Assistant" to "Handler." And we're going to change the definitions of those two terms to match what is in 68-105-102 chapter definitions.

CHAIRMAN PHILLIPS: Yes.

MS. MCGAURAN: And that's the motion.

MR. WRIGHT: Yes, ma'am.

MS. MCGAURAN: Okay.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

CHAIRMAN PHILLIPS: Motion carries. Did you get all that?

THE REPORTER: Yes.

MS. MCGAURAN: Thank you for your work on that.

MR. WRIGHT: You're welcome.

CHAIRMAN PHILLIPS: Okay. The next order of Old Business is approval of proposed rules. Do we have a motion to approve?
MR. BAILEY: Well --
MS. MCGAURAN: We're going to wait.
CHAIRMAN PHILLIPS: We're going to wait --
MR. BAILEY: We can't really do that until we --
CHAIRMAN PHILLIPS: Because of John, right?
MS. MCGAURAN: Yes.
CHAIRMAN PHILLIPS: All right. So next would be review and discuss the approved 2019 prevailing wage rates for state highway construction projects. But am I of the understanding that this is no longer an issue to discuss four miscalculated rates?
MS. JEFFERSON: Actually, right. Discussion of those four miscalculated rates, that's a nonissue because the auditors actually reviewed those four for us, and they determined that the Commission's interpretation was correct.
CHAIRMAN PHILLIPS: Okay.
MR. WRIGHT: That's cool.
MS. MCGAURAN: That's cool. We're a good bunch.
MR. WRIGHT: And it's also nice that the auditors say that.
MS. JEFFERSON: Yes. Yes.
CHAIRMAN PHILLIPS: Okay. So then next would be compare and contrast surveys that were previously excluded.
Which rates would the Commission prefer to approve? I think you've got two spreadsheets, do we not?
MS. MCGAURAN: Yes.
CHAIRMAN PHILLIPS: And so you've got 2 and 3 at the top. It says Prevailing Wage Calculation Spreadsheet 2 of 3, Commission-approved rates. And then you've got the rates of the new spreadsheet that includes surveys previously excluded, which would be page 3 of 3 at the top. It says at the top Prevailing Wage Calculation Spreadsheet page 2 of 3.
MS. MCGAURAN: Is this something you provided or something I printed?
CHAIRMAN PHILLIPS: You've got it.
MS. CAUDILL: It's in your book already. Because you left your book at the last meeting.
MS. MCGAURAN: That's what I'm trying to figure out. Okay.
CHAIRMAN PHILLIPS: And so the question is which rates would the Commission prefer to approve of these two sets.
MR. CRABTREE: Well, my preference would be to approve 3 of 3, if it means that's where we're giving those who did not have a sufficient number of responses the same raise as we were giving everybody else.
CHAIRMAN PHILLIPS: Right. Because that doesn't -- that would include those previously excluded, so yes, right?
MS. JEFFERSON: Yes.
CHAIRMAN PHILLIPS: Okay. Are you making a motion?
MR. CRABTREE: I move that we approve spreadsheet 3 of 3.
CHAIRMAN PHILLIPS: Okay. Any other discussion? Second on that?
MR. WRIGHT: Second.
CHAIRMAN PHILLIPS: Any other discussion?
MS. MCGAURAN: Just let me review it just a -- just give me a pause.
MR. WRIGHT: Yeah, I need to read it.
Which ones were the codes that were in question, please, Kim?
MS. JEFFERSON: The ones in red.
The ones in red except for the last two.
MS. CAUDILL: Except Number 11.
MS. JEFFERSON: 11 and -- there was one more, because there were six total.
MR. WRIGHT: Let me ask this differently. Did anything change between 2 and 3?
MS. CAUDILL: What changed was when we added back in -- when we had denied nine of Mr. Summers’ surveys, he resubmitted eight of those. So that threw the state average and -- it threw the whole thing off. But it went from 4.69 down to 4.38, so really all the numbers changed.
But the ones in question are still the current rate plus or minus the 6 percent.
MR. WRIGHT: Okay. So they're all in compliance.
MS. CAUDILL: Yes.
MR. WRIGHT: But it changed the amount of -- it raised last year's survey up
enough that we lowered what we're actually raising. Is that what I heard you say?

MS. CAUDILL: Yes. I mean, for example, like, on Number 2, you had originally approved on 2 of 3, 19.90.

MR. WRIGHT: Yes.

MS. CAUDILL: And the difference in the survey after those eight were added back in, it went to 1984. And that's what's shown on 3 of 3 on classification Number 2. So it was pennies.

MR. WRIGHT: Everything is within pennies of where it was.

MS. CAUDILL: Yes.

MR. WRIGHT: Except 11.

MR. CRABTREE: I thought our plan there last time was to raise the ones that did not have sufficient responses by the same amount. I notice here we've got them at 6 percent instead of the average.

MS. JEFFERSON: Actually, what we did in the worksheet 3 of 3, we took a look at the same formula you-all used to come to the same calculations and the approved worksheet from the last meeting. And we basically used the same calculation that you-all used. Whatever you -- if you used the average, then we use the state average. If you used the current rate, we just basically modeled what you-all did from 1 to 25 in the second spreadsheet.

MS. MCGAURAN: Once the calculations changed, you just picked the same categories we had picked.

MS. JEFFERSON: Exactly. And if you want to take a look at one of them to kind of compare it, you can do that. We can take a look at -- which one would you-all like to look at?

MR. CRABTREE: Number 1.

MR. NEALY: All right. The same one?

MS. MCGAURAN: Well, actually, on the bricklayer, what we approved last time was the equivalent of the current prevailing wage rate plus the state average.

MR. CRABTREE: Yes.

MS. MCGAURAN: So we --

MR. WRIGHT: Which was $16.20.

MS. MCGAURAN: Which would have been $16.40 under this category, $15.47.

MS. JEFFERSON: Ann, if you'll take a look at Column Q on 2 of 3, that's what we recorded, $16.20 as the amount approved by the commission.

MS. MCGAURAN: Right. But $16.20 on our prior spreadsheet aligned with what was on Column L, which was our current prevailing wage rate plus the state average, which would be the same, I think, as Column M.

MR. CRABTREE: Which would be $16.20 on this time versus last time, but you did. But I think it would be the equivalent of Column M, which is the current prevailing wage rate plus the state average.

MR. CRABTREE: Which would be...
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1. $16.15.
2. MS. CAUDILL: $16.15.
3. MR. CRABTREE: $16.15 if you add
4. 0.68 to $15.47, it would be $16.15.
5. MS. MCGAURAN: Why would it be
6. $16.15 and not $16.40?
7. MR. CRABTREE: If we add the
8. current -- if we add the average --
9. MR. WRIGHT: If you look at
10. L & M --
11. MR. CRABTREE: -- in K would be
12. 0.68. So if we would add 0.68 to the current
13. rate, it would be $16.15.
14. MR. WRIGHT: The last -- without
15. the addition --
16. MS. CAUDILL: You can use the state
17. average if you want. It will still fall within
18. the proper range.
19. MR. CRABTREE: Well, that's what I
20. thought we were doing last time. We were raising
21. the ones without -- with insufficient responses by
22. the same amount that we were raising all the
23. others, not by more.
24. MS. MCGAURAN: When I look at my
25. spreadsheet from last time, it appears that in

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1. every case, we raised it by the current prevailing
2. wage rate plus the state average or more. We
3. never at any point went below the current
4. prevailing wage rate plus the state average.
5. MR. CRABTREE: Yes, that's right.
6. MR. WRIGHT: I think that's right.
7. And the state average changed with the addition of
8. Rab's stuff. So the state average in 3 of 3 is
9. 4.38 percent, and it was 4.69 percent before that.
10. MS. MCGAURAN: Right.
11. MR. CRABTREE: And 4.38 percent is
12. 0.68, which added to the current rate of $15.47,
13. if I've done my arithmetic right, would be $16.15,
15. MS. JEFFERSON: Okay. And if
16. you'll --
17. MS. MCGAURAN: Why not $16.40?
18. MR. CRABTREE: What would be the
19. basis for giving them a larger raise just because
20. we didn't have sufficient records, more than we
21. gave the ones that we did have sufficient records?
22. MS. MCGAURAN: So what you're
23. saying, though, is that the math on this
24. spreadsheet is wrong.

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1. MR. CRABTREE: No.
2. MS. MCGAURAN: Yes. That's what
3. you just said.
4. MR. CRABTREE: Well, okay.
5. MS. JEFFERSON: On which one?
6. MS. MCGAURAN: They're talking
7. about bricklayer, and he's looking at 3 of 3, and
8. he's saying that when you -- that the actual
9. number for the current prevailing wage rate plus
10. the state average should be $16.15.
11. MR. CRABTREE: That's what I'm
12. saying.
13. MS. JEFFERSON: Instead of the
14. $19.43.
15. MS. MCGAURAN: No. Instead of
16. $16.40.
17. MR. CRABTREE: $16.40 would be the
18. top of the range, which would be 6 percent and
19. not --
20. MS. JEFFERSON: Okay. Right. And
21. you-all are free to -- this is just what we
22. proposed. When we tried to actually model what
23. you-all had done the last time, if we did
24. miscalculate, then that's fine, and we didn't
25. provide the number you want to provide, now

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1. you-all can let us know. You can inform us which
2. rate you want to approve. And as long as it's
3. within that range, we're okay with it. You just
4. give us the number that you want.
5. MS. MCGAURAN: Okay.
6. MR. CRABTREE: That's what I
7. thought we were doing. We were raising them all
8. the same, including the ones with insufficient
9. responses.
10. MS. MCGAURAN: So we're not going
11. to actually be able to approve any of these
12. spreadsheets as it looks right now. We're going
13. to have to go through each one of these line items
14. and make sure that we've got the correct numbers.
15. MR. CRABTREE: Just the ones with
16. insufficient responses.
17. MS. MCGAURAN: Right. Just the
18. ones that are colored with red.
19. CHAIRMAN PHILLIPS: Yeah, just
20. those.
21. MS. MCGAURAN: Not the ones that
22. are colored with yellow in spreadsheet 3 of 3,
23. right?
24. MS. JEFFERSON: Right. So you only
25. have six of those.
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|---|---|
| 1 | MS. MCGAURAN: Okay. |
| 2 | MS. JEFFERSON: So we can go through all six of those. |
| 3 | MS. MCGAURAN: Okay. I understand now. |
| 4 | MS. JEFFERSON: So just to be clear, what is the amount that you-all want to actually use for bricklayer? Which amount would that be? |
| 5 | MR. CRABTREE: $16.15 by my calculations. |
| 6 | MS. JEFFERSON: So in taking a look at that amount, is that within the range? |
| 7 | MS. CAUDILL: Yes. |
| 8 | MS. JEFFERSON: Okay. Great. All right. Okay. The next one is the Iron Workers Reinforcing. |
| 9 | MS. CAUDILL: If you take the current prevailing wage rate for classification Number 11 is $17.67. I multiplied it by the state average, which is 4.38 percent, and my answer was $18.44. |
| 10 | MR. WRIGHT: Yeah. What's happened on this spreadsheet is when it was filled out, they picked the 6 percent. |
| 11 | MS. JEFFERSON: We just did 6 percent. We didn't go back and take a look at the lower percentage. |
| 12 | MR. WRIGHT: Okay. We'll just fix that. |

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|---|---|
| 1 | calculate that? |
| 2 | MS. CAUDILL: I'm coming up with $18.44. |
| 3 | MS. JEFFERSON: Could you calculate that on the record so we can see how you got the $18.44? |
| 4 | MS. CAUDILL: Well, I took -- the current prevailing wage rate for classification Number 11 is $17.67. I multiplied it by the state average, which is 4.38 percent, and my answer was $18.44. |
| 5 | MS. MCGAURAN: Yes. |
| 6 | MS. JEFFERSON: That's what we got, $18.44. And we just said -- I mean, what we're looking at is we're looking at if you take the current prevailing wage rate and you add Column K to it, what do you end up with? |
| 7 | MS. JEFFERSON: Right. Okay. |
| 8 | MR. WRIGHT: Yeah. What's happened on this spreadsheet is when it was filled out, they picked the 6 percent. |
| 9 | MS. JEFFERSON: We just did 6 percent. We didn't go back and take a look at the lower percentage. |
| 10 | MR. WRIGHT: Okay. We'll just fix that. |

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|---|---|
| 1 | Ms. Kim, I'm getting texts from Rab asking how he joins the conference call. Can I tell him we'll just let him know when Mr. Reinbold gets here? |
| 2 | MS. MCGAURAN: He's here. |
| 3 | MR. WRIGHT: Oh, hi. |
| 4 | CHAIRMAN PHILLIPS: Hi, John. |
| 5 | MS. JEFFERSON: Do you-all want to finish with these six? |
| 6 | CHAIRMAN PHILLIPS: Yes, let's do this. |
| 7 | MS. JEFFERSON: All right. And so the next one is Ironworkers Reinforcing. |
| 8 | MS. CAUDILL: Okay. Take $18.33, which is the current rate, and add 0.80 to that. It's $19.13. |
| 9 | MS. JEFFERSON: Is that within the range? |
| 11 | MS. CAUDILL: Yes. |
| 12 | MS. JEFFERSON: All right. The next one is Painter/Sandblaster. |
| 13 | MS. CAUDILL: Take the current rate of $18.60 and add $1.25 -- |
| 14 | MS. MCGAURAN: No. |
| 15 | Painters/Sandblaster -- |
| 16 | MS. CAUDILL: Oh, am I on the wrong one? |
| 17 | MS. MCGAURAN: Yeah. |
| 18 | MS. CAUDILL: $28.60 -- |
| 19 | MS. MCGAURAN: Right. |
| 20 | MS. CAUDILL: -- and add to it $1.25, you get $29.85. |
| 21 | MS. MCGAURAN: That what I got. |
| 22 | MS. JEFFERSON: Okay. Is that within the range? |
| 23 | MS. CAUDILL: Yes. |
| 24 | MS. JEFFERSON: The next one is Powder Person/Blaster. |
| 25 | MS. CAUDILL: Okay. The current rate is $21.46, adding 0.94. $22.40. |

| Page 57 |
|---|---|
| 1 | next one is Painter/Sandblaster. |
| 2 | MS. CAUDILL: Take the current rate of $18.60 and add $1.25 -- |
| 3 | MS. MCGAURAN: No. |
| 4 | Painters/Sandblaster -- |
| 5 | MS. CAUDILL: Oh, am I on the wrong one? |
| 6 | MS. MCGAURAN: Yeah. |
| 7 | MS. CAUDILL: $28.60 -- |
| 8 | MS. MCGAURAN: Right. |
| 9 | MS. CAUDILL: -- and add to it $1.25, you get $29.85. |
| 10 | MS. MCGAURAN: That what I got. |
| 11 | MS. JEFFERSON: Okay. Is that within the range? |
| 12 | MS. CAUDILL: Yes. |
| 13 | MS. JEFFERSON: The next one is Powder Person/Blaster. |
| 14 | MS. CAUDILL: Okay. The current rate is $21.46, adding 0.94. $22.40. |
| 15 | MS. MCGAURAN: That what I got. |
| 16 | MS. JEFFERSON: Is that within the range? |
| 17 | MS. SHERROD: Yes. |

Stone & George Court Reporting 615.221.1089
MS. JEFFERSON: All right. And the final one is Sweeping Machine/Vacuum Operator.

MS. CAUDILL: The current rate is $16.89, adding 0.74, $17.63.

MS. MCGAURAN: That's what I got.

MS. JEFFERSON: Okay. Great. And is that within the range?

MS. CAUDILL: Yes.

MS. SHERROD: Yes.

THE WITNESS: Okay. So I'm going to make a motion that we accept a rate for Craft Number 1, Bricklayer, at $16.15; and Craft Number 11, Ironworkers Reinforcing, at $18.44; and Craft Number 12, Ironworker Structural, at $19.13; and Craft Number 15, Painter/Sandblaster at $29.85; and Craft Number 16, Powder Person/Blaster at $22.40; and Craft Number 19, Sweeping Machine/Vacuum Operator at $17.60. That is my motion.

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: All in favor?

(Affirmative response.)

MS. MCGAURAN: Do we need to remove the motion that was originally made to set the 303 as it was distributed?

MR. BAILEY: It was never seconded.

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MS. JEFFERSON: So just to be clear, we are using spreadsheet 3 of 3 with the modifications of your motion.

MS. MCGAURAN: Yes. We are basically increasing them all by the state average of 4.38 percent, which then gives us numbers that are within the range.

MS. JEFFERSON: Now, when you say "them all" --

MS. MCGAURAN: It means all of the ones that we were reviewing today.

MS. JEFFERSON: The six.

MS. MCGAURAN: The six, right.

CHAIRMAN PHILLIPS: The ones in red.

MS. MCGAURAN: Craft Numbers 1, 11, 12, 15, 16, and 19.

CHAIRMAN PHILLIPS: Okay. Are you-all ready?

MS. JEFFERSON: Okay. And did you want to get Mr. --

MR. WRIGHT: Mr. Summers and, actually, Mr. Starwalt, who happened to be on the text somehow, would like to be conferenced in if possible. Would you like their numbers?

MS. JEFFERSON: Let me see if I can get them on the telephone here. We may need to do one on the cell phone, and we may need to do the other one here, because I'm not sure if this is...

MR. SUMMERS: Hello?

MR. WRIGHT: Rab, you're in the conference call, sir, on my cell phone.

MR. SUMMERS: Thank you.

MR. WRIGHT: Okay. We're going to add Kent, too.

MR. STARBWALT: Hello?

MR. WRIGHT: We're adding you by conference call, sir.

MR. STARBWALT: Yes, sir.

MR. WRIGHT: You and Rab are both on here. I'll set this in the middle of the room. I hope you can hear it.

MS. MCGAURAN: So Rab, can you hear us?

MR. SUMMERS: Yes, I can.

MS. MCGAURAN: And Kent?

MR. STARBWALT: Yes, ma'am.
· not we change our rules as they currently are
written and as they have been brought forward.
And what's in question, specifically,
with regard to the rules is Section 800-03-02-.03
effective dates. And it's the section that
says -- the sentence that says, "No contract shall
be let by any state agency or by any new
municipality, county, or other political
subdivision for a state highway construction not
in compliance with the prevailing wage rates as
established by the Commission."
And that's what the rules say today,
and so we're in discussion, at this point, to
understand whether we need to modify these rules
at all.

CHAIRMAN PHILLIPS: Mr. Reinbold,
welcome.
MR. REINBOLD: Yes, sir.
CHAIRMAN PHILLIPS: We're glad to
have you here.
MR. REINBOLD: Thank you.
CHAIRMAN PHILLIPS: And we're open
to your comments and suggestions.
MR. REINBOLD: Well, my name is
John Reinbold. I'm general counsel at TDOT. And
highway construction projects shall pay not less
than the prevailing wage rate for all the
classifications of work, and so on, that you-all
work on every quarter, I guess, or however often
you-all meet.

So that's the mandate of the statute
right there. So there are terms in there that we
have to understand the definition of, and those
definitions are provided. In Tennessee Code
12-4-402(5) it defines a state contract as any
contractual agreement, written or oral, entered
into by any person, firm, or corporation with this
state for the performance of work on a state
highway construction project.

So I make a distinction -- I read a
distinction in the law between the contracts to
which it applies and the projects to which the
prevailing wage rates apply. And if you go
through the definition of a state highway
construction project, it's -- and you, basically,
work on a public highway, the public highway, the
way it's defined right there in the statute, would
include state highways as well as local roads. So
the project on which the prevailing wage could
apply, yes, could include local roads. But the
contract has to be a contract with this state.
And for a contract to be with this state between a
highway contractor entering into a state contract,
meaning a contract between a person, firm, or
corporation with this state, you have to have a
contract between a highway contractor and a state
agency. Those are the contracts to which the
prevailing wage rate applies. I don't know how
else to read it.

And so, to me, that's confirmed in
every other provision in the Prevailing Wage Act
does not deal with contractual obligations of the
parties to the contract -- to the prevailing -- to
the contract to which the prevailing wage rate
applies.
If you start with 12-4-407 all the
way through 12-4-412, every one of those statutes
refers to a contract between a highway contractor
and a state agency. None of them refers to a
contract between a highway contractor and a local
government. Not one of them. There isn't
anywhere in the code that it makes any reference
to it at all to any contract between a highway
contractor and a local government.

And, to me, you're reading something
into the statute that simply isn't there if you try to apply it to contracts that are between a city or a county and a highway contractor, even if the project involves state or federal funds administered through TDOT. And it doesn't render meaningless the provisions in there that the projects can be on local roads. I acknowledge that readily. The project can involve work on a local road, and in the emails I sent to Mr. Bailey, I gave a couple of examples of that. A state industrial access highway project is not on a state highway. But TDOT enters into a contract to construct that state industrial access road, and when it's constructed, it's turned over to the local government to maintain. That's a local road. Would the prevailing wage rates apply? Yes.

Similarly, if we have an HSIP -- it's a Highway Safety Improvement Project that's under a federal aid program of where TDOT will construct various safety improvements, signs and markings and various improvements on local roads, county roads that already exist, and then we construct those improvements, turn them over to the locals to maintain, does the prevailing wage rate apply? Yes.

As "any street, road, highway, expressway, bridge or viaduct, including an adjacent right-of-way that is constructed or maintained by the state or any municipality or political subdivision of the state and that is funded in whole or in part with federal or state highway funds."

That doesn't say anything about having to be a state agency, and it doesn't say anything about it having to be a contract let by a state agency. So why is that wrong?

MR. REINBOLD: I don't say that it's wrong. I would say there's some tension between the first part of 403 and the second part of 403. But if you read the language that actually establishes the mandate of when the act applies, there's 403(b) which says, "Any time a highway contractor enters into a state contract for the performance of a state highway construction project" -- again, there's a distinction between a contract and project. A project doesn't have to be on the state highway system. Agreed. But it says a state contract. And a state contract is a contract between a private entity and this state. I don't know how else to read it, other than a contract with the state, meaning a state agency.

And again, every single provision in the act that deals with that contract refers to a contract between the state agency and a highway contractor. If the act was intended to apply to local governments, why is there no provision in there at all giving any instructions as to how this would apply to a local government contract? There aren't any.

MR. BAILEY: So just based on your interpretation, if Wilson County hires a contractor to construct a local road and they are receiving some state funds for that construction, the Prevailing Wage Act would not apply.

MR. REINBOLD: If it's a locally let and administered contract. That's the way I read the law. It would not apply to that contract.

MR. BAILEY: And in that case, then I say -- if that's the interpretation, then I say that the words constructed by any municipality or political subdivision of the state are rendered meaningless. Those words are meaningless.

MR. REINBOLD: Well, that's simply not true. The words are meaningful in the example.
I just gave. A state highway construction project, as opposed to a state highway contract, or a state contract -- a state highway construction project could include work on a local road, and yes, the highway Prevailing Wage Act would apply to that project if it's a state contract. And again, I just gave examples of that that give the words of the statute meaning in the case of a state industrial access road projects or the highway safety improvement projects. One is state money; the other is federal money. Both are contracts that TDOT awards and administers, and the Prevailing Wage Act would apply even though that's on local roads.

MR. BAILEY: Well, I mean, even the language of the current rules -- I mean, that's why we're having this discussion. The rules already recognize the fact that it says no contract shall be let by any state agency or by any municipality, county, or other political subdivision for a state highway construction project not in compliance with the prevailing wage rates as established by the Commission.

So that's been in the rules for I don't know how many years. So, I mean, it has always been applied that way, to local contracts as well as state contracts. And it's --

MR. REINBOLD: And it's been applied to airport projects and other things which we discussed last year --

MR. BAILEY: Right.

MR. REINBOLD: -- and determined clearly are not really within the statute.

MR. BAILEY: I absolutely agree. I absolutely agree.

MR. REINBOLD: And, you know, so the fact that it's been applied in a manner doesn't mean that it's applied correctly.

MR. BAILEY: True. But that's where I get to what I think the intent of the act was. If the intent was to completely exclude local road projects, there wouldn't have been any mention of that in the definition of a public highway.

MR. REINBOLD: I don't agree with that. Again, that means -- that clarifies that in a state contract for the construction of improvements on local roads, the Prevailing Wage Act applies. That's exactly -- that gives meaning to those words. And, again, in the two examples I gave, not local -- not state highways, local roads, state contract, the prevailing wage applies, yes.

MR. BAILEY: Yeah, if it's a state contract. But you're saying if it's a local government contract with a contractor and they're receiving state highway funds for that local project, that the Prevailing Wage Act would not apply.

MR. REINBOLD: I believe that's the correct way to read the statute, yes.

MR. BAILEY: That's where we're at. I mean, you know...

MR. STARWALT: This is Kent Starwalt. Can I ask you a quick question?

CHAIRMAN PHILLIPS: You may.

MR. REINBOLD: Yes, sir.

MR. STARWALT: So John, would -- if you have -- if Rab or Steve do a project and they have done a project, a local project, local administered project, so -- whereby you say a prevailing wage would not be required, can they turn that in -- and let's say they did pay the prevailing wage when they paid the wages on it, can they turn that project in to help determine the prevailing wage in the state?

MR. REINBOLD: Well --

MR. STARWALT: If it's not a state highway contract, so therefore --

MR. REINBOLD: That's correct.

MR. STARWALT: But it was not a state highway contract, because it was with TDOT, but it was on a local road.

MR. REINBOLD: Well, Kent, to answer that question, you look at the statute that addresses how the Prevailing Wage Act is to be established. And that's at 12-4-405. And it says, 12-4-405(1), every highway contractor, as herein defined in the state of Tennessee, shall have the right to certify on the contract that's entered into to the Commission on or before October 31 on each unit that a determination is to be made the following. Copies of payroll records for the preceding calendar quarter that by area, as defined in subdivision 2, the number of hours worked and straight fund for hours paid, for such hours in the each of the classifications referred.
to in this part by area as defined in subdivision 2, so on and so on.

So that's not limited by state contract. There's not any language in there that limits that to a state contract. It limits it to every highway contractor as herein defined. And a highway contractor as herein defined, that means any contractor, subcontractor, person, firm or corporation engaged in state construction projects for purposes of building, rebuilding, locating, relocating, repairing any public highway.

I think that -- so again, it's a highway contractor engaged in working on -- it says state construction project. I think that means a state highway construction project. When the Act was amended, I think they just missed that one. Because there used to be a definition of state construction project that included vertical projects as well. And when the Act was amended, that was eliminated and it was then restricted to state highway construction projects.

But in that case, the highway contractor simply has to be engaged in a state highway construction project for the purposes of building, rebuilding, locating, relocating and repairing any public highway, which would include -- a state highway construction project could include any highway project on a state or local road using -- because of the definition of public highway with the use of federal or state funds.

Mr. Wright: John, can I ask to read back to you what I think I've heard you say?

Mr. Reinbold: All right.

Mr. Wright: You think the prevailing wage applies to any contract let by TDOT.

Mr. Reinbold: Or any other state agency.

Mr. Wright: Okay. Be it the Department of Labor or whatever, anybody that reports to Governor Haslam.

Mr. Reinbold: (Nods head.)

Mr. Wright: But you're saying for the purposes of determining the wage rate, you see that we can -- that people who engage in the highway construction business, as you defined it, are requested to submit their data on projects that are -- how did you define it? -- but it didn't have to include -- it was a state highway project, but not a contract.

Mr. Reinbold: Correct.

Mr. Wright: So if I have a contract with my home county or home city that involves what would be defined as a public high or a public -- or whatever they call it, a state --

Mr. Reinbold: Public highway, right.

Mr. Wright: Yeah. Then it's okay to submit that rate in the survey, but I'm not necessarily required, nor is the County required to require the prevailing wage to be paid on the project.

Mr. Reinbold: All I can do is read the statute to you.

Mr. Wright: Yeah. I mean, but is that what I think I've heard you say?

Mr. Reinbold: Yes.

Mr. Wright: Okay.

Mr. Reinbold: If -- with this caveat. Remember, a public highway -- for some reason, the definition of -- it's in the definition of public highway and not state highway construction project -- but the public highway is defined in the statute. It means that any state highway or any road maintained or constructed by a municipality or political subdivision, state or local, in other words, that is funded in whole or in part with federal or state highway funds. So there has to be federal or state highway funds involved.

If you had a purely local project --

Mr. Wright: It is a little more difficult from --

Mr. Reinbold: -- local money on a local road, it wouldn't be included, is the way I read it.

Ms. McGauran: So again, I'm going to come back to 12-4-403. When I've been through this in the past, I've been told that when you have an A and a B, that the A's and the B's are two equal points of view, right, that they apply to both of those equally. One is not a subset of the other.

And so I agree that your B talks about your specific state contracts, but I don't see where your A does. Can you help me understand that?

Mr. Reinbold: Well, it is -- A is a declaration of policy. It is not -- they are
not words of command. And B contains the words of
command that says any contract entered into
between a highway contractor --
MS. MCGAURAN: So what if they --
MR. REINBOLD: -- entering into a
state contract, which is -- a state contract is a
contract between a highway contractor and a state
agency, by definition. That's the words of
command of the Act.
MS. MCGAURAN: So what are they
saying with A?
MR. REINBOLD: That state highway
construction projects include projects on local
roads where state or federal funds are used. That
is part of the goal of the Act.
You know, if there's tension here,
you know, maybe the General Assembly needs to sort
it out. If the words they wrote are not
subjectively what they intended, then maybe they
need to go back to the drawing board.
But if you read the intent of the
statute based on the words that are written, there
isn't any language in there, not one word in there
about a local contract. There isn't.
MS. MCGAURAN: But you talked about
the section earlier where you said it applies to
projects beyond just those projects for state
contracts.
MR. REINBOLD: No.
MS. MCGAURAN: You specifically
quoted a section --
MR. REINBOLD: No, no, no, no, no.
I said it applies to projects that are not only
state highways. I didn't say it applied to
contracts that are not state contracts.
MR. SUMMERS: I have a question.
MR. BAILEY: Who's speaking?
MS. MCGAURAN: Who has the
question?
MR. SUMMERS: Yes. When you
talk --
MS. MCGAURAN: Will you please say
your name.
MR. SUMMERS: Rab Summers.
When you talked about projects using
state funds, how would you define state funds? My
point is when you collect gas tax and by the
statute, part of those gas tax moneys go back to
the cities and counties. Those are funds from the
state. Would you say that if a project is let
with those gas tax dollars that are sent back to
the cities and counties, that those are state
funds?
MR. REINBOLD: Well, the term
"state highway fund" isn't defined specifically in
this Act. But the state highway fund is defined
separately in the statute. And that's the fund
that funds TDOT.
MS. MCGAURAN: Where is it defined?
MR. REINBOLD: Title 54, Chapter 1.
I don't remember the exact statute number. I
don't have that in front of me.
MR. STARWALT: John, this is Kent
Starwalt. If it's in order to ask another
question about something...
MR. BAILEY: Go ahead.
CHAIRMAN PHILLIPS: Go ahead.
MR. STARWALT: So just to clarify
here, in the Approve Act, there are projects there
where there are county highway bridges -- in
essence, there are bridges off the state system on
the county system, but TDOT is paying for that,
and TDOT will administer those contracts. So
while it's a county road, not a state highway road
or a state bridge -- it's a county bridge -- TDOT
is going to have a contract for that project. And
so therefore, I believe your determination would
be, since that's a state highway contract, even
though it's a non-state bridge, that the
prevailing wage would apply.
But in the same thing, we have the
state-aided funds, which go to the counties. And
through there the counties are administering the
project, so therefore, the prevailing wage would
not apply because it's a county project, even
though there's direct state-aid funds applied to
it. So is that the fair interpretation of what
you're saying?
MR. REINBOLD: Yes. I would say
the only word I would quibble with there is it's
not my determination; it's my opinion --
MR. STARWALT: Sure.
MR. REINBOLD: -- which I've been
asked to give. It's not my -- it's not my
decision, you know. It's not my determination.
MR. WRIGHT: Could I throw out a
potential solution for consideration? If we
were -- you know, John, we are under pressure. We
have to publish rates the day after tomorrow. So
this Commission has to act today on something. To
publish the rates, we've changed a lot of
definitions and done a lot of things. We need to
publishing some new rules.
I would consider making a motion that
we publish the rules as Mr. Bailey has them in
front of us, that we ask you to consider them in
their entirety, and if there needs to be
clarification -- what I think I hear is there
needs to be clarification between the projects and
the contracts, I mean, I think, and, actually,
what they apply to. And then we go ahead, we
approve that, and then ask for an Attorney
General's opinion on the difference between your
two opinions, if we can do that. I don't know if
we have the authority to. And if it comes back
that it is something that needs to be changed in
the rules, we can either change the rules or ask
the -- then as we come back in the fall, we could
ask the -- we could either change our rules again
or ask the legislature to make a corrective
something or other, or whatever you call it.
CHAIRMAN PHILLIPS: Or the
administration.
MR. WRIGHT: Does that seem like a
reasonable course of action today?

CHAIRMAN PHILLIPS: Yes.
MR. REINBOLD: What I thought we
were talking about was making changes to the rule.
CHAIRMAN PHILLIPS: Right. It --
MR. REINBOLD: Which, I mean --
CHAIRMAN PHILLIPS: It would really
only require a motion if we were changing them,
right?
MR. WRIGHT: Well, now, we have new
proposed rules that change a lot of things like
descriptions of blaster versus blaster handler and
class A operator. But there are rules.
CHAIRMAN PHILLIPS: Yes. We just
need a motion to approve the rules.
MR. BAILEY: Correct.
CHAIRMAN PHILLIPS: As defined.
MR. BAILEY: As modified today on
the discussion of blaster and handler.
CHAIRMAN PHILLIPS: Yeah.
MS. MCGAURAN: That's what I --
CHAIRMAN PHILLIPS: We don't need a
motion to -- we don't need anything about, you
know --
MR. WRIGHT: About the Attorney

MR. REINBOLD: Well, I mean, that's
for y'all to determine. It's not -- yeah. I
mean, if y'all want to ask for an opinion, I'm
certainly not going to say you shouldn't.
MR. WRIGHT: Well, I think we need
to get the legislature --
MR. REINBOLD: I think --
MR. WRIGHT: We need to get it
right, whatever that is.
MR. REINBOLD: A state official has
the right to ask the Attorney General for an
opinion. Commissioner Phillips could; TDOT could;
I assume y'all could as a commission. I don't
know. But as long as it's coming, basically, from
a point of authority.
MR. WRIGHT: I would like to make
that motion.
CHAIRMAN PHILLIPS: And I'll second
that motion.
MS. MCGAURAN: So that we -- and
what we're really saying, that we accept Section
800-03-02-.02 effective dates as written.
MR. WRIGHT: Yes.
MR. REINBOLD: As I understand
that's already in your rule. Right?

CHAIRMAN PHILLIPS: Yeah. And so
the motion is to approve the rules as presented to
the Commission, correct?
MS. MCGAURAN: With the
modifications previously discussed in this
meeting --
CHAIRMAN PHILLIPS: And
incorporated -- yes.
MS. MCGAURAN: -- incorporating
those for blaster and handler.
CHAIRMAN PHILLIPS: Handler, yes.
Okay.
That motion has been made and
seconded. All in favor?
(Affirmative response.)
CHAIRMAN PHILLIPS: So moved.
MS. MCGAURAN: Do you have to say
"All opposed?"
CHAIRMAN PHILLIPS: All opposed?
(No verbal response.)
MR. CRABTREE: I'm going to
abstain.
CHAIRMAN PHILLIPS: I could tell by
the look on your face you were.
MR. WRIGHT: Is there will to get
an Attorney General's opinion on the applicability
of this rule.

CHAIRMAN PHILLIPS: I think there
is. Because we -- over the last six years, we've
encountered so many of this situation. It's
incredible the number of statutes that are
ambiguous or even contradictory. And so I think
that we should. We can do that. I can do that.
We can ask for an opinion.

MS. MCGAURAN: That would be great.

CHAIRMAN PHILLIPS: Okay.

MS. MCGAURAN: Do we need to make a
motion that you ask, or can we just --

CHAIRMAN PHILLIPS: I think you
just do it.

MS. MCGAURAN: Okay. Good.

CHAIRMAN PHILLIPS: I mean, we can
just do it in our position without having to have
a motion or anything like that.

MS. MCGAURAN: Great.

CHAIRMAN PHILLIPS: So we will do
that, and we'll record that that will occur.

MR. WRIGHT: That gives us an
opportunity to address Mr. Reinbold's concerns and
Mr. Bailey's.

indeed, John. Thanks so much for taking your time
to come down.

Okay. So the only other thing is the
open discussion for proposed prevailing wage
commission meetings.

MR. CRABTREE: Did we vote on the
range?

MS. MCGAURAN: We did.

MS. JEFFERSON: We voted on the
times.

MR. WRIGHT: We already voted on
that.

MS. JEFFERSON: Do you see those
notes at the very bottom?

CHAIRMAN PHILLIPS: Yes. Are you
talking about the proposed dates?

MS. JEFFERSON: Yes. The proposed
dates and then those other notes at the bottom.

CHAIRMAN PHILLIPS: Yeah. And
you've got -- yes, I see those now. Okay.

Well, first, we'll deal with the
proposed dates. And the proposed dates are
August 15th or 22nd, 2019, and November 13th,
14th, 20th or 21st.

MR. WRIGHT: I'm good with both
August dates.

MS. MCGAURAN: I'm not. I have
limited options on the 22nd. The 15th is a better
date for me.

CHAIRMAN PHILLIPS: Okay.

MS. MCGAURAN: And both of the
times are fine on the 15th.

CHAIRMAN PHILLIPS: Okay. Wayburn?

MR. CRABTREE: It's good for me,
either one of them. I'm flexible.

MS. JEFFERSON: Since Mr. Summers
isn't a part of the conversation, we can actually
take you-all's dates and then go back and talk
with him about them, or you-all can notify Lynn
prior to the end of the year as to what's best for
you --

CHAIRMAN PHILLIPS: Right.

MS. JEFFERSON: -- and then we can
actually provide that information to the
Commission as a whole.

CHAIRMAN PHILLIPS: So each of us
would just -- well, I won't be here so none of it
matters, but --

MR. WRIGHT: Lynn, I'm good on
every day.
MS. KIRBY: All right.

CHAIRMAN PHILLIPS: So each of you check your schedules and just let Lynn know which is good for you.

And lastly, conflict of interest and declarations must be completed by the August 2019 meeting. And Lynn will provide you the forms.

MS. KIRBY: Yes.

CHAIRMAN PHILLIPS: Do I have a motion to -- is there any other discussion about anything?

MS. JEFFERSON: I would just like to thank all of the commission members. I think you-all have done a superb job this year. I think that in calculating our rates and you-all verifying our rates, I think that you-all have given us the direction and the guidance that we've needed as a Labor Standards Unit. And I'm just very appreciative.

I know that Commissioner has said today that this is his last meeting, and I think that we should actually commend him on a job well done.

(Appause.)

CHAIRMAN PHILLIPS: Well, I'd like to say that I think the Commission has done a good job, much different from when we first got here. And all of you are the subject matter experts.

I'm just sort of here. And I think you-all have down a wonderful job in getting these rates where they need to be professionally and fairly. So my compliments to all of you.

So I think it's a much more meaningful commission today than it was a number of years ago. Don't you, Kim?

MS. JEFFERSON: I do, too. I agree.

CHAIRMAN PHILLIPS: And that's because of you guys and ladies. So thank you. And also, through our staff who has also become -- made it much more professional than it used to be, and much more organized.

MS. JEFFERSON: Yes. And we're very appreciative --

CHAIRMAN PHILLIPS: Our gratitude to you as well.

MS. JEFFERSON: -- very appreciative. And Carolyn, actually, this is her last meeting as well.

Carolyn Sherrod, can you stand?

We want to recognize her on a job well done.

(Appause.)

MS. JEFFERSON: And Carolyn is our administrative services manager. She actually assists the administrative -- well, actually, the support staff. She oversees staff to ensure that all of this information is proper. So we're very appreciative of everything Carolyn has done in the way of supervising, and we just want to make sure we give her her well-deserved respect and her -- actually, her glory today.

MS. SHERROD: Thank you.

CHAIRMAN PHILLIPS: You and I will be riding off into the sunset. Thanks so much, Carolyn. We appreciate it.

MS. SHERROD: Thank you.

CHAIRMAN PHILLIPS: So any other comments or questions or...

If not, we'll take a motion to adjourn.

MR. WRIGHT: So moved.

MR. CRABTREE: Second.

CHAIRMAN PHILLIPS: All in favor.

(Affirmative response.)
CERTIFICATE

STATE OF TENNESSEE |
COUNTY OF WILLIAMSON |

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

That the within is a true and accurate transcript of the Prevailing Wage Commission Meeting taken on the 29th day of November, 2018.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of January, 2019.

__________________________
Cassandra M. Beiling, LCR# 371
Notary Public State at Large
My commission expires: 3/15/2020
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