

Testimony on behalf of Youngwood Borough regarding HB 1271  
Kris Long, Councilman – Borough of Youngwood, PA  
August 17, 2011

Good morning.

My name is Kris Long, I am a Councilman from the Borough of Youngwood, Pennsylvania and on behalf of the borough, I am pleased to testify before this committee concerning the Prevailing Wage Act and House Bill 1271 and how it applies to the matter, Borough of Youngwood vs. Prevailing Wage Appeals Board. I chair the budget and finance committee for the borough and with me today is Youngwood Borough Council Vice President, Mr. William Genard, who chairs the borough operations committee and Youngwood Borough Solicitor, Mr. Gerald Yanity who was co-counsel in arguing the Borough of Youngwood vs. Prevailing Wage Appeals Board case before the Pennsylvania Supreme Court.

To begin, a brief introduction of Youngwood, PA. The borough is situated within Westmoreland County, five miles south of the county seat of Greensburg and it borders New Stanton Borough, which is at exit 75 of the Pennsylvania Turnpike. The population of Youngwood is approximately 3,300 and the borough operates within a yearly budget of approximately \$700,000. The borough also plans a biannual street project normally in the \$150,000 to \$175,000 range.

The event in question that has brought us here today, as it relates to HB 1271, is the Youngwood 2005 Street Resurfacing Project and before I explain the details of the

project and its aftermath, I want to offer the definitions of two words I researched in the Webster Collegiate Dictionary while preparing this testimony.

CONSTRUCT: to make or form new

MAINTAIN: to keep in an existing state of repair - to preserve from failure or decline

To further define repair.

REPAIR: to restore by replacing parts to make a sound or healthy state – to renew

The Youngwood 2005 Street Resurfacing Project (the “project”) was contracted to include the resurfacing of five (5) streets, surface treatment of two (2) streets, minor drainage work on one (1) street, patching of one (1) street and other incidental work. The project did include the milling of asphalt which did not constrict or make impassable the streets in question. The streets were usable between the phases of milling and paving, which is common during resurfacing projects in Pennsylvania. The purpose of the project was to maintain the existing facilities and to preserve them from failure or decline.

The project did not include work that caused a change or increase in the size or type of the existing facilities. No part of the project had specifications to construct, or to make or form new.

As with other projects of the same scope prior to 2005, this project was budgeted and advertised for bid with reliance on the Pennsylvania Department of Transportation (PennDOT) Publication 9 which defined this project as “maintenance” work. The Youngwood Borough engineer, Bove Engineering, relied upon this publication from

PennDOT as the firm has done on numerous projects in the past. The project was awarded for \$183,209 and the work was performed by Pompei & Sons of Bentleyville, Washington County, PA. The project, which was again defined by PennDOT's Publication 9, was outside the requirements of paying prevailing wages.

Only after the project was completed, did Youngwood receive a notification from the Bureau of Labor Law Compliance (the "Bureau") stating that the project was defined by the Bureau as "construction" work which then required the payment of prevailing wages. To fulfill the requirement, the borough was notified to pay additional money to make up the difference between the wages bid and the prevailing wage. The funds to pay the difference were not budgeted nor were they anticipated as an expenditure, thus putting additional strain on a balanced and tight budget.

Youngwood challenged the Bureau's determination by appealing the matter to the Commonwealth Court of Pennsylvania. Youngwood felt that it had justifiably relied upon the guidance it received from a state agency, PennDOT, in classifying its projects as a maintenance project. The case then proceeded to the Pennsylvania Supreme Court, which ruled that the process of milling and repaving, which is the most widely accepted method of preserving the useful life of a roadway, was not "maintenance" work but rather, was considered to be the same thing as building a new road, for purposes of the Prevailing Wage Act.

The case argued by Youngwood was denied and as a result, the borough paid the unbudgeted difference of \$23,086.80 and complied in full to the ruling of the courts

concerning the prevailing wage.

After the payment of \$23,086.80 to the Bureau plus the awarded bid of \$183,209, the project grand total was \$206,295.80.

Because of the ruling of the Pennsylvania Supreme Court, I am here today on behalf of the Borough of Youngwood to ask the Legislature for relief for municipalities such as ours, across the Commonwealth. We ask that the Legislature enact into law the common sense guidelines, as set forth in PennDOT Publication 9, which we had been following for years prior to the Supreme Court's decision.

I would like to stress that Youngwood does not advocate any repeal of the Prevailing Wage Law but it does support common sense changes that will clarify the rules which municipalities of any size can follow concerning maintenance and construction when projects are advertised for bid.

The clarification of "maintenance" can be achieved through HB 1271 where the definition will include the types of activities permissible under PennDOT guidelines which Youngwood has relied on and has always been compliant. The borough supports the payment of prevailing wages for public works projects that are defined as "construction" but regarding "maintenance", this clarification is needed for municipalities of all sizes when projects are bid that will extend the life of existing facilities with work that does not involve a change or increase in the size or the type of the existing facilities. When bidding projects using the clarification of HB 1271 regarding "maintenance", municipalities will be able to provide more service with the

taxpayer funding that will allow the dollars spent to go further towards the improvement of the existing facilities that the public relies on. During these uncertain economic times, it is imperative that all public money is to be used in the most efficient manner in order to provide the highest of service and the greatest amount of return to the citizens of Pennsylvania. HB 1271 will aid in providing this service and return.

The Borough of Youngwood supports HB 1271.

Thank you for allowing this testimony on this matter. I would be glad to entertain any questions that I can answer and if I may, allow Mr. Yanity or Mr. Genard to assist with any concerns.

Respectively submitted,

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