

House Labor and Industry Committee
House Bills 1367/1685 Public Hearing
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My name is Tim Woolford, founding partner of Woolford Law, P.C., a Lancaster-based law firm which specializes in providing legal services to the construction industry. We represent over 200 construction companies in Pennsylvania. Many of these companies perform work that is subject to the Prevailing Wage Act. Over the last several decades, many contractors have been increasingly frustrated by their inability to obtain consistent information from L&I concerning crafts and the proper classification of work for purposes of paying the prevailing wages. Under the Prevailing Wage Act, the rate that an employer is required to pay his workers is determined by the task that the worker is performing at any given time. The crux of the problem is that *there are no written guidelines that a contractor can rely on to determine how to pay each worker*. This has created a considerable amount of uncertainty regarding how to classify work for purposes of determining the wage or rate to be paid.

Presently, it is the policy of L&I officials to base the classification decision on "custom and usage" in the building and construction industry. This standard has proved to be unworkable and ambiguous because there are no objective, readily ascertainable sources to define it. L&I officials and investigators from the Bureau of Labor Law Compliance (a department within L&I responsible for PWA enforcement) cannot agree among themselves on the application of custom and usage. For example, if you ask one investigator how to classify certain work you will get one answer but if you ask another investigator about the exact same work, you often receive a different answer. One investigator will say a certain task should be classified as sheet metal and another will claim it is roofing. There is no unanimity among L&I officials and investigators. Compounding the problem, there are no objective standards that a contractor can look to for guidance. This bill seeks to provide standards so that everyone knows the rules. The Occupational Outlook Handbook published by the United States Department of Labor has detailed descriptions of the tasks performed under each craft. If this bill becomes law, contractors with questions regarding how to classify work can consult this source. L&I officials can consult the source as well. That way, L&I and contractors are playing by the same rules. It will eliminate any disputes as to whether a contractor is misclassifying work and paying the incorrect wage to the worker and it will ensure that all L&I officials provide consistent interpretations.

It is a fundamental notion of our system of government that companies and individuals have a right to know what conduct is permitted and what conduct is prohibited. A law must provide fair notice of what conduct is forbidden and must describe the prohibited conduct in a manner that does not encourage arbitrary or discriminatory enforcement. Under the current system, contractors are left to guess

and speculate and investigators have unfettered discretion to determine what the law is on an ad hoc basis. To make matters worse, L&I officials and investigators have not been able to agree among themselves as to what is permitted and what is prohibited. I recently represented a contractor in a prevailing wage enforcement action and the presiding officer remarked in formal submission to the Secretary that he was taken aback by the constant flip-flopping by the Bureau's investigators on the issue of which tasks belong which task. He also accurately remarked that the current situation in which contractors have no objective sources to use for guidance, where investigators cannot even agree among themselves on what the rules are as "*unfair to the say the least,*" and he went on to explain that "*public works contractors have a right to know what conduct is permitted and what is prohibited.*" This legislation will answer that question and in doing so, will greatly assist contractors in complying with the law.

Most contractors I know have no problem paying prevailing wages - they just want to know what the rules are so that they can follow them. The same is true of building codes, OSHA requirements all other aspects of their construction business - "*Give me clear guidance on what the rules are and I will follow them,*" they constantly say. If any of you have ever been involved in any construction project no matter how small (even a bathroom renovation or building a deck), the worst thing is surprises. When an investigator comes in after the fact telling a contractor that work was misclassified and that back wages need to be paid, it is catastrophic. Surprises eventually lead to layoffs and even to closures and unfortunately, we are seeing that more and more across the construction industry. This legislation eliminates surprises and puts an end to the guessing game. It affords fair notice to all contractors and will resolve most of the problems.