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Prevailing Wage Rate Turmoil

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For many decades, Wisconsin has had a statutory requirement that a prevailing wage rate be paid for public works projects. Recent administrative decisions and provisions contained in the Governor's budget have dramatically altered the landscape for this public policy.

Under current Wisconsin law, a local governmental unit entering into a public works contract by direct negotiation or solicitation of bids must ensure that the prevailing wage rate is paid to workers employed for this project. The Labor Standards Bureau of Wisconsin's Department of Workforce Development conducts an annual survey of wage rates paid to various construction trades. When a public works project is contemplated, the Labor Standards Bureau issues a determination as to the minimum wage rate to be paid the various employees working on the public works project. It is generally acknowledged that the prevailing wage rate represents a wage closely approximating that paid to union workers as the computation formula weighs heavily in favor of the union wage rate. Additionally, prevailing wage rate compliance adds a substantial administrative burden for contractors.

In February, 2009, the Labor Standards Bureau issued initial decisions in a number of cases for which prevailing wage rate inquiries were made by a construction trade group. The Bureau found that all of the projects reviewed required the payment of the prevailing wage rate. What made these decisions noteworthy is that none of the cases involved services being performed directly for a local governmental unit. Instead, all of the projects were private development projects for which the work was being performed by or on behalf of a private developer.

The Labor Standards Bureau reasoned that prevailing wage rates apply to projects for which public improvements are being provided. In the cases considered by the Bureau, developers were providing improvements such as roads or public utilities. The local governmental unit required that these improvements be performed by the developer as a condition of the project approval. The requirements were contained in the developer's agreement entered into by the developer and the community. Upon completion of the work, the public improvements would be dedicated to the community.

Developers are critical of these decisions because they appear to be an unwarranted extension of the prevailing wage rate beyond the scenarios contemplated by the statutes. It is argued that prevailing wage rates should apply only when the local governmental unit is the party directly contracting to construct the public improvements. The Bureau argues that a developer's agreement is a means by which the community has directly contracted with the developer to provide the required public improvements. It is irrelevant, the decisions argue, that the developer then contracts with another party to do the actual construction. Since the ultimate nature of the work is in the form of a public improvement and the community contracts with the developer to provide those improvements, the Bureau found that the prevailing wage rate should apply.

While the Labor Standards Bureau considered the application of the prevailing wage rate to developer agreement projects, the Governor's budget proposed substantial changes to the prevailing wage rate statutes. Under the current law, prevailing wage rate applies only to single trade projects for which $48,000 or more will be expended or multiple trade projects with expenditures exceeding $243,000. Under the budget proposal, a $2,000 expenditure threshold would apply across the board, substantially increasing the coverage of the prevailing wage rate statute.

The new proposal would also extend prevailing wage rate coverage to a class of project not specifically covered by the current law. The budget bill creates the publically funded, private construction project as a class of project subject to prevailing wage rates. These projects include any project that receives governmental grants, loans, funding, or transfer of property from a local government unit. It also includes projects utilizing redevelopment contracts, economic development agreements, industrial development revenue bonding, tax incremental districts, or business improvement districts.

Trade and professional associations on both sides of this issue have made the administrative findings of the Labor Standards Bureau and the proposed legislation high priority issues. Opponents of the legislative proposal argue that the issue is of such substantial importance that it should be treated as stand alone legislation, not included in the budget bill.

Opponents argue that the proposed changes in the prevailing wage rate laws will have an adverse effect on economic development by substantially increasing the cost of and burden upon private developments which include construction and dedication of public improvements. Whatever the outcome of the administrative and legislative issues, the landscape for private development projects which include public improvements has been changed dramatically. Developers and parties interested in this issue should contact their Reinhart real estate attorney with any questions on this pervasive issue.