
**SENATE COMMITTEE
ON
BUSINESS AND COMMERCE**

**SUBCOMMITTEE ON
PREVAILING WAGE RATES**



**INTERIM REPORT TO THE
78TH TEXAS LEGISLATURE**



Senator Troy Fraser
Acting Chairman
Senator John Carona
Senator Mike Jackson

The Texas Senate
Business and Commerce Committee

Senator Eddie Lucio
Senator Frank Madla
Senator Eliot Shapleigh
Senator Leticia Van de Putte

October 25, 2002

The Honorable Bill Ratliff
Lieutenant Governor of Texas
The Capitol, Second Floor East
Austin, Texas

Dear Governor Ratliff:

On behalf of the Senate Committee on Business and Commerce, I hereby submit the interim report prepared by the Subcommittee on Prevailing Wage Rates.

The Subcommittee report was prepared pursuant to Committee Charge #5 to assess the prevalence of prevailing wage rate differences in state procurement contracts and to determine if identified variances justify the use of additional methodologies to determine prevailing wage rates.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Troy Fraser".

Troy Fraser
Acting Chairman





The Senate of Texas
Leticia Van de Putte, R. Ph.
District 26

October 18, 2002

The Honorable Troy Fraser, Chairman
Senate Committee on Business and Commerce
Room 370, Sam Houston building
Austin, Texas 78711

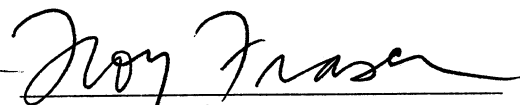
Dear Chairman Fraser:

The Senate Committee on Business and Commerce Subcommittee on Prevailing Wage is pleased to submit the following interim report for consideration by the full Senate Committee on Business and Commerce and the 78th Texas Legislature.


Respectfully submitted,



Senator Leticia Van de Putte, Chair



Senator Troy Fraser



Senator Mike Jackson

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**SUBCOMMITTEE ON PREVAILING WAGE
INTERIM CHARGE NUMBER FIVE**

Executive Summary

This subcommittee was charged to assess the prevalence of prevailing wage rate differences in state procurement contracts. The Committee was to determine if identified variances justify the use of additional methodologies to determine prevailing wage rates.

In order to fully explore the issue of prevailing wage rate laws, Senator Van de Putte held two hearings of the Subcommittee on Prevailing Wage: January 9, 2002 and March 18, 2002, at which all members of the committee were present. Over the course of these two hearings, information was presented representing all sides of the prevailing wage debate.

It is the conclusion of this subcommittee that no recommendations be made on this interim charge at this time.

Background

According to Section 2258 of the Texas Government Code¹, any public entity that uses state dollars to fund a state procurement contract must include a wage rate requirement for workers in the contract. The fundamental question this committee must address is how to determine the appropriate, or “prevailing” wage rate. The General Services Commission (GSC)² has been the agency charged with providing prevailing wage rate determinations for building construction trades state procurement contracts. Prior to the 77th Legislative Session, the GSC looked to two sources of information: the United States Department of Labor (DOL) Davis-Bacon Act wage rate data or the Texas Workforce Commission (TWC) Labor Market Information (LMI) wage rate survey. The statute required that the procuring agency use the Davis-Bacon wage rate or conduct a survey in the local political subdivision where the work is to be performed. The GSC, however, was either using the Davis-Bacon rate or using the median wage rate as determined by the TWC, instead of conducting a wage rate survey of their own.

In the last legislative session, Senator Eliot Shapleigh authored S.B. 464³, relating to determining prevailing per diem wage rate to be paid in connection with constructing a public work for the state, which attempted to equalize pay for similar work performed in different areas of the state. The bill as filed directed the state to use the higher of the following three figures to determine a prevailing wage rate: 1) the wages paid to workers employed on similar projects in the political subdivision of the state where the work is performed; 2) the average between the local wage rate and the statewide rate; or 3) the average between the local wage rate and the federal wage rate according the Davis-Bacon Act. S.B. 464 failed to pass, but was amended on to S.B. 311.⁴ In its final form, the amendment affects those counties on the Texas-Mexico border and the counties adjacent to Texas-Mexico border counties.⁵

As a result of S.B. 311, the Texas Building and Procurement Commission (TBPC) and the Texas Department of Transportation (TxDOT) have amended their rules to include the new calculation described above. According to TBPC, there are now three wage rates to review for these

¹See Appendix B for Government Code, Section 2258, Prevailing Wage Rates.

²Effective September 1, 2001, the General Services Commission was abolished and its functions transferred to the newly created Texas Building and Procurement Commission pursuant to sunset legislation S.B. 311, 77th Legislative Session.

³See Appendix C for Engrossed version of S.B. 464 (77R), by Shapleigh.

⁴See Appendix D for selected sections of Enrolled version of S.B. 311 (77R), by Zaffirini.

⁵ The counties affected by the amendment to S.B. 311 are: El Paso, Hudspeth, Presidio, Jeff Davis, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, Cameron, Willacy, Kennedy, Brooks, Jim Hogg, Duval, La Salle, Dimmit, Zavala, Uvalde, Edwards, Sutton, Crockett, Pecos, Reeves, and Culberson.

affected counties: a local rate, a state rate, and the difference between the state and county rates. The statute requires the following:⁶

- ▶ The public body shall conduct a survey of the wages received by classes of workers employed on projects of a character similar to the contract work both statewide and in the political subdivision in which the public work is to be performed.
- ▶ The public body shall also consider the prevailing wage rate as determined by the Davis-Bacon Act, if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work.
- ▶ The public body shall determine the general prevailing wage rate of per diem wages in the locality based on the higher of:
 - 1) the rate determined from the survey conducted in the political subdivision;
 - 2) the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined from the statewide survey;
 - 3) if applicable, the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined by the DOL.⁷

The remaining Texas counties are still required to adhere to the provisions stated in Government Code, Section 2258, Prevailing Wage Rates.

⁶Government Code, Section 2258.022, Determination of Prevailing Wage Rates

⁷“Wage Rate Procedures for the General Services Commission,” handout, pages 4-5.

Committee Hearings

The January 9 hearing set forth the problem of prevailing wage differences in state procurement contracts and focused on the major state agencies involved in the state procurement process. Senator Shapleigh began the committee hearing with a statement outlining his view of the prevailing wage rate issue. Invited testimony came from TBPC, TWC, and TxDOT. Much of the testimony focused on how wage rate information is gathered/surveyed in Texas and how that information is used by state agencies in procurement contracts.

The March 18 hearing was divided into three panels: state agency officials who testified at the first hearing, labor representatives, and building and construction contractors. Thereafter, public testimony was taken.

In both hearings, the subcommittee members questioned the apparent duplication of efforts in collecting wage rate data. TBPC is charged with gathering the wage rate data, but has not conducted its own wage survey since 1995 because it contends the cost is prohibitive (\$25 million) and it could not get an acceptable response rate. Instead, TBPC uses the Davis-Bacon Act wage rates or it uses the wage rate data collected by TWC to determine a locality's wage rate. TWC conducts statewide wage rate surveys under strict guidelines for the Bureau of Labor Statistics.⁸ It posts the wage data information on the TWC website which is available to anyone. TxDOT conducts a statewide wage rate survey and a separate wage rate survey for each county affected by S.B. 311.⁹ Both agencies are required to gather information in a particular way and TxDOT contends that the information it must gather is far more detailed than the information that TWC captures in its survey. However, the wage rate surveys conducted by TWC and TxDOT are incompatible. It should be further noted, that the University of Texas System Office of Facilities Planning and Construction (OFPC) has experienced much the same challenges with the GSC and Davis-Bacon wage rates as both TWC and TBPC. Because of the concern that some of the Davis-Bacon wage rates were based on outdated surveys, OFPC recently decided to develop its own wage rate survey, with the help of outside consultants, for use throughout the University of Texas System. OFPC hopes to have its survey conducted by early 2003. Until then, UT OFPC will continue to use Davis-Bacon wage rates.¹⁰ Due to the obvious duplication of effort among state agencies, the subcommittee members agreed that the issue of orchestrating wage rate surveys among the state agencies should be further studied.

⁸Mr. Mark Hughes, Testimony before the Subcommittee on Prevailing Wage, January 9, 2002.

⁹Mr. Thomas Bohuslav, Testimony before the Subcommittee on Prevailing Wage, January 9, 2002.

¹⁰Letter dated September 12, 2002 to The Honorable Leticia Van de Putte from Sidney J. Sanders, Assistant Vice Chancellor for Facilities Planning and Construction, University of Texas System.

TxDoT faces an additional problem in determining wage rates. Its construction projects occasionally cross county lines (approximately 12% of the time) and even zone lines¹¹ (approximately 4% of the time).¹² When a construction project extends beyond these borders, it becomes more cumbersome to determine which is the appropriate wage rate to use for the contract.¹³

The hearing discussion then turned to the contractors' concerns about requiring a prevailing wage rate for construction contracts. Andy Rittler of the Associated Builders and Contractors (ABC) testified that local political subdivisions are in the best position to make the most appropriate decisions on determining how wages should be paid on a government contract and that mandating the use of Davis-Bacon wage rates removes local control from the bidding process. He also testified that mandating these higher prevailing wage rates will dramatically increase construction costs. For instance, Mr. Rittler stated that the repeal of the prevailing wage laws in the State of Washington would reduce public school construction costs by 12.7% and labor costs by 27%. Additional information provided to the subcommittee by the ABC shows that similar inflated costs were found many other states, including Michigan,¹⁴ Utah,¹⁵ Ohio, Florida, and Kentucky. All in all, his point was that these prevailing wage laws needlessly increase the costs of public school construction and thus present a useless burden on tax payers.¹⁶ In order to ensure accurate wage rate information, Lance Lively, on behalf of the Associated General Contractors of Texas (AGC), submitted written testimony which espoused the association's long-standing commitment to conducting periodic wage rate surveys for engineering construction throughout Texas. In addition to conducting its own wage rate surveys, AGC assists TxDoT and DOL with collecting highway construction wage rates.¹⁷

¹¹ A "zone" as the term is used by TxDoT means a DOL "wage zone."

¹²Mr. Thomas Bohuslav, Testimony before the Subcommittee on Prevailing Wage, January 9, 2002.

¹³ Subsequent to the March 18, 2002 Business and Commerce Subcommittee on Interim Charge #5 hearing, TxDoT asked Chairman Clyde Alexander of the House Transportation Committee to submit a Request for Opinion to the Office of Attorney General (RQ-0526-JC) March 21, 2001. However, this request was later rescinded.

¹⁴Vedder, Richard. Michigan's Prevailing Wage Law and Its Effects on Government Spending and Construction Employment. Midland, Michigan: Mackinac Center for Public Policy, 1999.

¹⁵Thiebolt, A.J. "A New Evaluation of Impacts of Prevailing Wage Law Repeal." Journal of Labor Research.

¹⁶Mr. Andy Rittler, Testimony before the Subcommittee on Prevailing Wage, March 18, 2002.

¹⁷Mr. Lance Lively, Testimony before the Subcommittee on Prevailing Wage, March 18, 2002.

The next panel, representing labor interests, testified in favor of retaining prevailing wage rates.¹⁸ Danny Tilley of the Texas Building and Construction Trades Council (TBCTC) testified that his group believes in maintaining a prevailing wage rate. TBCTC argues the Davis-Bacon wage rates are the most fair way to arrive at a prevailing wage rate because the Davis-Bacon wage rates are the most accurate reflection of wages in a particular area. Moreover, he contends that paying the higher prevailing wage rates are necessary to offset the costs to employees of apprenticeship programs, pensions and health benefits. Mr. Tilley went on to state that due to low wages, construction trades are losing highly-skilled, master-level craftsmen. His point is that lower wages cause workers with the highest skills to spend more time supervising and job training, rather than building. This, in turn, drives up the overall costs of construction. Mr. Tilley concluded that without prevailing wages, deadlines are missed, maintenance costs go up, and the overall costs of the project skyrocket.

Public testimony focused not only on the issue of a prevailing wage, but the issue of earning a “living” wage. It was argued that lower wages equal bad economic consequences because they make more individuals dependent on public assistance. For instance, Jose Rodriguez, El Paso County Attorney suggested a correlation between lower wages and higher workers’ compensation claims which arise from accidents due to inadequate training for the job.¹⁹ Another witness insisted that lowering or even repealing prevailing wage rate laws will not significantly lower construction costs. Additionally, a public witness stated prevailing wage rates reduce predatory contractors who hire workers at the lowest possible price rather than trying to hire the most skilled workers at the prevailing wage. In summary, public testimony favored maintaining prevailing wage rate laws because they not only spur workers to do a better job and afford them a better life, but the building contractors end up delivering a better product for their client, agency, or political subdivision.

¹⁸A majority of states in the United States do have prevailing wage rates, and of the 19 states that do not, they are mostly smaller states, according to Mr. Tilley’s testimony.

¹⁹Mr. Jose Rodriguez, Testimony before the Subcommittee on Prevailing Wage, March 18, 2002.

Recommendations

The members of the subcommittee recognize that the prevailing wage rate laws are complex and require additional study, especially regarding the collection of wage rate data in various state agencies. That being said, it is the conclusion of this subcommittee that no recommendations are made on this interim charge at this time.

Appendix A

Subcommittee Minutes

MINUTES

SENATE COMMITTEE ON BUSINESS & COMMERCE

Subcommittee on Interim Charge #5

Wednesday, January 9, 2002

2:00 p.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Business & Commerce, Subcommittee on Interim Charge #5, was held on Wednesday, January 9, 2002, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator Leticia Van de Putte, Chair

Senator Troy Fraser

Senator Mike Jackson

MEMBERS ABSENT:

Chair Van de Putte called the meeting to order at 2:12 p.m. There being a quorum present, the following business was transacted:

The chair welcomed the members and those attending the meeting. She advised that, in accordance with interim charge #5, the subcommittee shall assess the prevalence of prevailing wage rate differences in state procurement contracts. The subcommittee shall determine if identified variances justify the use of additional methodologies to determine prevailing wage rates.

Chair Van de Putte introduced Senator Eliot Shapleigh who made a statement to the subcommittee. Senator Shapleigh expressed his concerns regarding regional wage rate differences for identical work paid to employees hired by state government contractors.

The chair advised that invited testimony would be heard at this meeting and called the following witnesses:

John Davenport, Director of Construction Procurement, General Services Commission,
Mark Hughes, Workforce Information, Analysis & Reporting Division Director,
Texas Workforce Commission, and
Thomas Bohuslav, P. E., Construction Division Director, Texas Department of
Transportation.

SENATE COMMITTEE ON BUSINESS & COMMERCE

Subcommittee on Interim Charge #5

Minutes

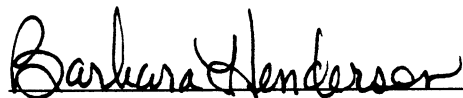
Wednesday, January 9, 2002

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Upon completion of the witnesses' testimony and response to members' questions, Chair Van de Putte called Jose Rodriguez, El Paso County Attorney, El Paso, Texas, who had wished to testify. Mr. Rodriguez was not available when called, but the chair advised that his name would be entered into the record.

There being no further business, at 3:37 p.m. Chair Van de Putte moved that the subcommittee stand recessed subject to the call of the chair. Without objection, it was so ordered.


Senator Leticia Van de Putte, Chair


Barbara Henderson, Clerk

WITNESS LIST

Business & Commerce

January 9, 2002 - 2:00 PM See Remark

Prevailing Wage Rate Differences - State Contracts

ON: Bohuslav, Thomas (TxDOT), Austin, TX
Davenport, John (General Services Commission), Austin, TX
Hughes, Mark Director, Workforce Info. & Analysis/TWC (Tx Workforce
Commission), Austin, TX

Registering, but not testifying:

ON: Rodriquez, Jose R. (El Paso County Attorney's Office), El Paso, TX

MINUTES

SENATE COMMITTEE ON BUSINESS & COMMERCE

Subcommittee on Interim Charge #5

Monday, March 18, 2002

1:00 p.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Business & Commerce, Subcommittee on Interim Charge #5, was held on Monday, March 18, 2002, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator Leticia Van de Putte, Chair
Senator Troy Fraser
Senator Mike Jackson

MEMBERS ABSENT:

Chair Van de Putte called the meeting to order at 1:25 p.m. There being a quorum present, the following business was transacted.

The Chair made opening remarks and advised that the focus of the first Subcommittee meeting was on state agencies and how rates were determined for use on state procurement contracts. This meeting would focus on the impact prevailing wage rates have on the industry, on labor and the State.

Chair Van de Putte then called Panel 1 - Update From State Agencies. The panelists were:

John Davenport, Director, Construction Procurement,
Texas Building and Procurement Commission,
Mark Hughes, Workforce Information, Analysis & Reporting Division Director,
Texas Workforce Commission, and
Thomas Bohuslav, P.E., Construction Division Director,
Texas Department of Transportation.

The following witnesses were called to respond to questions raised during testimony by Panel 1:

Jose Rodriguez, El Paso County Attorney, El Paso,
Denise Donnelly, Office of the Attorney General, Austin,

SENATE COMMITTEE ON BUSINESS & COMMERCE

Subcommittee on Interim Charge #5

Minutes

Monday, March 18, 2002

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The Chair called for testimony by the sole member of Panel 3 - Contractors, Andrew Rittler, representing the Association of Building Contractors, Austin. Travis Snell, representing the Comptrollers Office, was called to respond to a question raised during Mr. Rittler's testimony.

Chair Van de Putte then called Panel 2 - Labor representatives:

Danny Tilley, Executive Secretary, Texas Building & Construction Trades Council,
Bob Salvatore, President, AFL-CIO, San Antonio,
Ronnie Raspberry, Executive Secretary, Houston Building Trades, Houston,
Rick Lord, Business Agent, UAPP 68, Houston, and
Gordon Byram, Business Manager, IBEW Local 520, Austin.

Upon completion of testimony by Panel 2, the Chair called for public testimony to commence, as follows:

Rev. James Hall, Texas Industrial Areas Foundation Network, El Paso,
Sister Bernie Barrett, Metro Alliance, COPS, San Antonio,
Bonifacio Raymundo, Valley Interfaith, McAllen,
Father Jerry Franks, Valley Interfaith, McAllen.

Chair Van de Putte recalled Jose Rodriguez, El Paso County Attorney, to present his testimony, as well as a video by Mayor Raymond Caballero, Mayor of El Paso.

Mr. Rodriguez' testimony was followed by testimony from:

Douglas Shawn Broadrick, Road Sprinkler Fitters Members, Waller, Texas, and
Lance Lively, AGL - Road Division, Austin.

There being no further business, at 4:02 p.m. Chair Van de Putte moved that the Subcommittee stand recessed subject to the call of the chair. Without objection, it was so ordered.



Senator Leticia Van de Putte, Chair



Barbara Henderson, Clerk

WITNESS LIST

Business & Commerce
March 18, 2002 - 1:00 PM See Remark

Prevailing State Wage Rate Differences

ON: Barrett, Sister Bernie (Metro Alliance, COPS), San Antonio, TX
Bohuslav, Thomas Director, Construction Division (Texas Department of Transportation), Austin, TX
Broadrick, Douglas Shawn (Members of Road Sprinkler Fitters), Waller, TX
Byram, Gordon Business Manager (IBEW Local 520), Austin, TX
Davenport, John Director, Construction Procurement (Texas Building and Procurement Commission), Austin, TX
Donnelly, Denise (Office of the Attorney General), Austin, TX
Frank, Father Jerry (Valley Interfaith), McAllen, TX
Hall, Rev. James (Texas Industrial Areas Foundation Network), El Paso, TX
Hughes, Mark (Texas Workforce Commission), Austin, TX
Lively, Lance (AGL - Road Division), Austin, TX
Lord, Rick (Texas Pipe Trades), Houston, TX
Raspberry, Ronnie Executive Secretary (Houston Gulf Coast Building and Construction Trades Council), Houston, TX
Raymundo, Bonifacio (Valley Interfaith), McAllen, TX
Rittler, Andrew (Association of Building Contractors), Austin, TX
Rodriguez, Jose El Paso County Attorney (Self), El Paso, TX
Salvatore, Bob (San Antonio Building and Trades Council), San Antonio, TX
Snell, Travis (Comptrollers Office), Austin, TX
Tilley, Danny Executive Secretary (Texas Building & Construction Trades Council), Austin, TX

Appendix B

**Texas Government Code, Section 2258
Prevailing Wage Rates**

CHAPTER 2258. PREVAILING WAGE RATES

SUBCHAPTER A. GENERAL PROVISIONS

§ 2258.001. Definitions

In this chapter:

(1) "Locality in which the work is performed" means:

(A) for a contract for a public work awarded by the state, the political subdivision of the state in which the public work is located:

(i) which may include a county, municipality, county and municipality, or district, except as provided by Subparagraph (ii); and

(ii) which, in a municipality with a population of 500,000 or more, may only include the geographic limits of the municipality; or

(B) for a contract for a public work awarded by a political subdivision of the state, the geographical limits of the political subdivision.

(2) "Public body" means a public body awarding a contract for a public work on behalf of the state or a political subdivision of the state.

(3) "Worker" includes a laborer or mechanic.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 1422, § 14.04, eff. Sept. 1, 2001.

§ 2258.002. Applicability of Chapter to Public Works

(a) This chapter applies only to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction.

(b) This chapter does not apply to work done directly by a public utility company under an order of a public authority.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.003. Liability

An officer, agent, or employee of a public body is not liable in a civil action for any act or omission implementing or enforcing this chapter unless the action was made in bad faith.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

SUBCHAPTER B. PAYMENT OF PREVAILING WAGE RATES

§ 2258.021. Right to be Paid Prevailing Wage Rates

(a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:

(1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and

(2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

(b) Subsection (a) does not apply to maintenance work.

(c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 165, § 18.01, eff. Sept. 1, 1997.

§ 2258.022. Determination of Prevailing Wage Rates

(a) For a contract for a public work awarded by a political subdivision of the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or

(2) using the prevailing wage rate as determined by the United States

Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work.

(b) This subsection applies only to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. For a contract for a public work awarded by the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work as follows. The public body shall conduct a survey of the wages received by classes of workers employed on projects of a character similar to the contract work both statewide and in the political subdivision of the state in which the public work is to be performed. The public body shall also consider the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, but only if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work. The public body shall determine the general prevailing rate of per diem wages in the locality based on the higher of:

(1) the rate determined from the survey conducted in the political subdivision;

(2) the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined from the statewide survey; and

(3) if applicable, the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined by the United States Department of Labor.

(c) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(d) A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.

(e) The public body's determination of the general prevailing rate of per diem wages is final.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 165, § 18.02, eff. Sept. 1,

1997.

Amended by Acts 2001, 77th Leg., ch. 1422, § 14.05, eff. Sept. 1, 2001.

§ 2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

(a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.

(b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.

(c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.

(d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

(e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.024. Records

(a) A contractor and subcontractor shall keep a record showing:

(1) the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work; and

(2) the actual per diem wages paid to each worker.

(b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.025. Payment Greater Than Prevailing Rate Not Prohibited

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.026. Reliance on Certificate of Subcontractor

A contractor is entitled to rely on a certificate by a subcontractor regarding the payment of all sums due those working for the subcontractor until the contrary has been determined.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

SUBCHAPTER C. ENFORCEMENT; CIVIL AND CRIMINAL PENALTIES

§ 2258.051. Duty of Public Body to Hear Complaints and Withhold Payment

A public body awarding a contract, and an agent or officer of the public body, shall:

(1) take cognizance of complaints of all violations of this chapter committed in the execution of the contract; and

(2) withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated this chapter.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.052. Complaint; Initial Determination

(a) On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023 by a contractor or subcontractor, a public body shall make an initial determination as to whether good cause exists to believe that the violation occurred.

(b) A public body must make its determination under Subsection (a) before the 31st day after the date the public body receives the information.

(c) A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial determination.

(d) A public body shall retain any amount due under the contract pending a final determination of the violation.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.053. Arbitration Required for Unresolved Issue

(a) An issue relating to an alleged violation of Section 2258.023, including a penalty owed to a public body or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the contractor or subcontractor and any affected worker do not resolve the issue by agreement before the 15th day after the date the public body makes its initial determination under Section 2258.052.

(b) If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required under Subsection (a), a district court shall appoint an arbitrator on the petition of any of the persons.

(c) A public body is not a party in the arbitration.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.054. Arbitration Award; Costs

(a) If an arbitrator determines that Section 2258.023 has been violated, the arbitrator shall assess and award against the contractor or subcontractor:

- (1) penalties as provided by Section 2258.023 and this section; and
- (2) all amounts owed to the affected worker.

(b) An arbitrator shall assess and award all reasonable costs, including the arbitrator's fee, against the party who does not prevail. Costs may be assessed against the worker only if the arbitrator finds that the claim is frivolous. If the arbitrator does not find that the claim is frivolous and does not make an award to the worker, costs are shared equally by the parties.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.055. Arbitration Decision and Award Final

The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.056. Payment by Public Body to Worker; Action to Recover Payment

(a) A public body shall use any amounts retained under this chapter to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing wage rate as provided in the arbitrator's award.

(b) The public body may adopt rules, orders, or ordinances relating to the manner in which a reimbursement is made.

(c) If the amounts retained by a public body under this chapter are not sufficient for the public body to pay the worker the full amount owed, the worker has a right of action against the contractor or subcontractor and the surety of the contractor or subcontractor to recover the amount owed, reasonable attorney's fees, and court costs.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.057. Withholding by Contractor

(a) A contractor may withhold from a subcontractor sufficient money to cover an amount withheld from the contractor by a public body because the subcontractor violated this chapter.

(b) If the contractor has made a payment to the subcontractor, the contractor may withhold money from any future payments owed to the subcontractor or sue the subcontractor or the subcontractor's surety for the amount withheld from the contractor by a public body because of the subcontractor's violation.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.058. Criminal Offense

(a) An officer, agent, or representative of the state or of a political subdivision of the state commits an offense if the person wilfully violates or does not comply with a provision of this chapter.

(b) A contractor or subcontractor of a public work under this chapter, or an agent or representative of the contractor or subcontractor, commits an offense if the person violates Section 2258.024.

(c) An offense under this section is punishable by:

(1) a fine not to exceed \$500;

(2) confinement in jail for a term not to exceed six months; or

(3) both a fine and confinement.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

Appendix C

S.B. 464 (77R), by Shapleigh

A BILL TO BE ENTITLED

AN ACT

relating to determining the prevailing per diem wage rate to be paid in connection with constructing a public work for the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (1), Section 2258.001, Government Code, is amended to read as follows:

(1) "Locality in which the work is performed" means:

(A) for a contract for a public work awarded by the state, the political subdivision of the state in which the public work is located:

(i) _____[,] which may include a county, municipality, county and municipality, or district, except as provided by Subparagraph (ii); and

(ii) _____ which, in a municipality with a population of 500,000 or more, may only include the geographic limits of the municipality; or

(B) for a contract for a public work awarded by a political subdivision of the state, the geographical limits of the political subdivision.

SECTION 2. Section 2258.022, Government Code, is amended to read as follows:

Sec. 2258.022. DETERMINATION OF PREVAILING WAGE RATES.

(a) For a contract for a public work awarded by a political subdivision of the state, the [A] public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed; or

(2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work.

(b) For a contract for a public work awarded by the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work as follows. The public body shall conduct a survey of the

wages received by classes of workers employed on projects of a character similar to the contract work both statewide and in the political subdivision of the state in which the public work is to be performed. The public body shall also consider the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, but only if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work. The public body shall determine the general prevailing rate of per diem wages in the locality based on the higher of:

(1) the rate determined from the survey conducted in the political subdivision;

(2) the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined from the statewide survey; and

(3) if applicable, the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined by the United States Department of Labor.

(c) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(d) [~~(c)~~] A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.

(e) [~~(d)~~] The public body's determination of the general prevailing rate of per diem wages is final.

SECTION 3. This Act takes effect September 1, 2001. The change in law made by this Act applies only to determining the general prevailing rate of per diem wages in connection with a contract for constructing a public work awarded by the state if the state first requests bids or proposals for its contract on or after that date.

Appendix D

**Selected Sections of
S.B. 311 (77R), by Zaffirini
Affecting Prevailing Wage Rate Statutes**

A BILL TO BE ENTITLED

AN ACT

relating to the abolition of the General Services Commission; to the transfer of its functions to a newly created Texas Building and Procurement Commission; and to the operations of certain other state agencies having functions transferred from or associated with the General Services Commission, including the Department of Information Resources, the telecommunications planning and oversight council, the attorney general, the Legislative Budget Board, and the State Cemetery Committee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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ARTICLE 14. MISCELLANEOUS PROVISIONS

.....

SECTION 14.04. Subdivision (1), Section 2258.001, Government Code, is amended to read as follows:

(1) "Locality in which the work is performed" means:

(A) for a contract for a public work awarded by the state, the political subdivision of the state in which the public work is located:

(i) [7] which may include a county, municipality, county and municipality, or district, except as provided by Subparagraph (ii); and

(ii) _____ which, in a municipality with a population of 500,000 or more, may only include the geographic limits of the municipality; or

(B) for a contract for a public work awarded by a political subdivision of the state, the geographical limits of the political subdivision.

SECTION 14.05. Section 2258.022, Government Code, is amended to read as follows:

Sec. 2258.022. DETERMINATION OF PREVAILING WAGE RATES. (a) For a contract for a public work awarded by a political subdivision of the state, the [A] public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work by:

(1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political

subdivision of the state in which the public work is to be performed; or

(2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, if the survey used to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work.

(b) This subsection applies only to a public work located in a county bordering the United Mexican States or in a county adjacent to a county bordering the United Mexican States. For a contract for a public work awarded by the state, the public body shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work as follows. The public body shall conduct a survey of the wages received by classes of workers employed on projects of a character similar to the contract work both statewide and in the political subdivision of the state in which the public work is to be performed. The public body shall also consider the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, but only if the survey used

to determine that rate was conducted within a three-year period preceding the date the public body calls for bids for the public work. The public body shall determine the general prevailing rate of per diem wages in the locality based on the higher of:

(1) the rate determined from the survey conducted in the political subdivision;

(2) the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined from the statewide survey; and

(3) if applicable, the arithmetic mean between the rate determined from the survey conducted in the political subdivision and the rate determined by the United States Department of Labor.

(c) The public body shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

(d) ~~(c)~~ A public body shall specify in the call for bids for the contract and in the contract itself the wage rates determined under this section.

(e) ~~(d)~~ The public body's determination of the general prevailing rate of per diem wages is final.

SECTION 14.06. The changes made to Sections 2258.001 and 2258.022, Government Code, by this Act apply only to determining the general prevailing rate of per diem wages in

connection with a contract for constructing a public work awarded by the state if the state first requests bids or proposals for its contract on or after the effective date of this Act.

.....

ARTICLE 15. EFFECTIVE DATE

SECTION 15.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 311 passed the Senate on April 24, 2001, by a viva-voce vote; May 25, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 25, 2001, House granted request of the Senate; May 27, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 311 passed the House, with amendments, on May 23, 2001, by a non-record vote; May 25, 2001, House granted request of the Senate for appointment of Conference Committee; May 27, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor