ALLEGHENY INSTITUTE FOR PUBLIC POLICY

November 12, 2013 **Policy Brief: Volume 13, Number 55**

Will the Legislature Finally Amend the Prevailing Wage Law?

With wrangling over transportation legislation expected to resume now that election season is over, a surprise topic will be possible changes in Pennsylvania's prevailing wage law which is now recognized as a major contributor to unnecessarily high costs in public construction. The Senate Bill under consideration (SB 1) does not mention any alterations to Pennsylvania's 1961 prevailing wage law which requires prevailing wages to be paid on any publicly funded construction project with a value of $25,000 or more. Some House Republicans are insisting on increasing that threshold to $100,000 in return for their votes on the legislation. Preferably, the law would be repealed altogether since the overwhelming amount of work will be done on projects costing well above $100,000.

For years we have advocated the repeal of the prevailing wage law as it inflates the cost of construction, and thus the price tag to taxpayers, anywhere from 10 to 30 percent on publicly funded projects. But the prevailing wage law doesn't just mandate a higher wage; it also mandates the level of fringe benefits that must be paid. Fringe benefits for union workers are programs often paid from trusts set up by the union and funded from dues payments and are not subject to payroll taxation. If a private, non-union contractor wishes to embark on any prevailing wage project, and they don't have such a trust, they must pay more in wages to compensate for benefits and thus will also be paying higher payroll taxes. It is more often this latter requirement that causes non-union firms to pass on bidding for public works projects such as road construction.

As of January 1, 2013, the U.S. Department of Labor documents thirty-two states, including Pennsylvania, with prevailing wage laws[1]. Of the eighteen states without, only one state is located in the northeast, New Hampshire (repealed in 1985), while most are located in the south (eight). Pennsylvania's current threshold of $25,000 is higher than its neighbors New York (no minimum) and New Jersey ($2,000) but is less than West Virginia ($50,000 for projects through the WV Infrastructure and Jobs Development Council, although zero elsewhere), Ohio ($78,258 for infrastructure work such as roadways and bridges, but $200,000 for other new construction), Delaware ($100,000), and Maryland ($500,000). Two Midwestern states had adjusted their threshold in 2012 as Indiana went from $150,000 to $350,000 and Wisconsin went from $25,000 to

[1] www.dol.gov/whd/state/dollar.htm

$100,000. Neighboring Ohio adjusts for inflation (increased from $73,891 to $78,258 in 2010). If Pennsylvania's minimum was adjusted for inflation it would top $195,775[2].

But past efforts to raise the threshold in Pennsylvania have failed despite the efforts of many municipalities (through the lobbying efforts of the Pennsylvania League of Cities and Municipalities) who are mostly affected by the law and the low minimum. After all not many PennDOT road or bridge projects will fall below $100,000 let alone $25,000. According to the agency's annual report, they spent $1.6 billion on highway and bridge maintenance and $2.3 billion on highway and bridge improvement. While maintenance projects fall outside the prevailing wage law, roadway milling, which was considered to be maintenance, was ruled by the Pennsylvania Supreme Court to be subject to the law in 2008. As we had written then (*Policy Brief Volume 8, Number 52*), this ruling was a blow to municipal budgets.

There may never be a more propitious time for the Legislature to address the anti-free market and special interest favor granting provisions in the prevailing wage law. With proponents of increases in mass transit funding pushing for higher taxes and fees, the members opposed to higher taxes should at least get some concession from the mass transit advocates. It is well past the time to push back against the cost increasing powers granted to mass transit and highway work; namely the right of transit workers to strike and prevailing wage requirements on capital projects. With fiscal pressures mounting in the form of coming huge jumps in pension fund contributions, the state must begin looking for ways to reduce other spending. Eliminating laws that unnecessarily and unfairly add to government costs and taxpayer burdens provides an excellent opportunity to rein in spending.

Indeed, it would be far better to enact the option offered by the House majority leader that provides $500 million for work on bridges most in need of repair than proceed with the Senate passed bill that is both overly generous and raises taxes too much. Debate about mass transit funding ought to be argued separately because of the numerous entangled issues it raises.

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[2] Using the September 2013's CPI of 234.149 and the CPI from 1961 of 29.9.