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TESTIMONY ON SENATE BILLS 820, 821 AND 822 AND IMPACTS OF PREVAILING WAGE LAWS

PRESENTED TO THE
HOUSE LABOR AND INDUSTRY COMMITTEE

BY

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EXECUTIVE DIRECTOR

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Good morning. I am Douglas Hill, Executive Director for the County Commissioners Association of Pennsylvania. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties. I am pleased to share our written comments with you today on the impact of Pennsylvania's Prevailing Wage Act on our counties generally, and on SB 820, 821 and 822 specifically.

Counties have endured a series of seemingly ongoing cuts and reductions to state human services allocations in particular over the last nine budget cycles, forcing them to increase local property taxes, eliminate or curtail vital public services, lay off employees, delay payments to providers and increase borrowing. However, our counties are very aware that the fiscal situation facing the Commonwealth as the 2011-2012 budget was negotiated is not unlike those they face in their communities. To that end, the top county government priority for this year was chosen as mandate relief rather than funding, as county officials ask the state to work with them in addressing out-of-date and unnecessary statutory requirements that prevent them from getting the most value out of limited resources and using taxpayer dollars most effectively and efficiently.

As part of CCAP's mandate relief agenda, we have identified several mandates where changes to existing law can result in more efficient use of limited resources and overall savings to local budgets and taxpayers. One of those mandates from which counties are seeking relief is requirements under the Prevailing Wage Act.

Under the Prevailing Wage Act, prevailing wages must be paid on public projects of more than $25,000, an amount which has not been updated since the 1960s, and quite frankly, now captures virtually all public construction projects in the counties. While we understand that a full repeal of the Prevailing Wage Act would be very difficult to move through the General Assembly, we are open to discussing a number of options, including increasing the threshold for prevailing wage projects as under SB 821, amending the definition of "maintenance" as under SB 822, or allowing for a local opt-out of prevailing wage requirements.

Impact on General County Construction
The prevailing wage requirements can increase the cost of many middle-range projects, such as construction of prisons, juvenile detention facilities and local courthouses and judicial facilities, generally by 10 to 15 percent depending on the region in which the project is being done.

For instance, the cost for a new prison in Franklin County, built in 2006-2007, was a little more than $27 million. Using the 10 to 15 percent figure, approximately $2.5 million to $3.5 million of that cost is associated with the additional costs of prevailing wages. However, Franklin County officials have been told that the increased cost for prevailing wages in their area is actually closer to 20 to 30 percent, since they are a more rural area and prevailing wages are typically based on metropolitan areas where costs and wages are comparatively higher. If that is the case for this project, approximately $4.5 million to $6.2 million of the cost can be associated with the additional costs of prevailing wages.

Unfortunately, we realize that an example like this is ultimately the result of best guesses and estimations, as it is very difficult to offer an exact number for the cost prevailing wage requirements add to county projects. In order to have a perfect comparison, a local government would need to be able to complete the exact same project in the exact same conditions, twice – once utilizing prevailing wages and once without. Quite simply, this is impractical and unfeasible.

With that being said, we are aware of some anomalies that have occurred that provide actual numbers to compare, perhaps where a county or municipality may have bidded a project without prevailing wages and later accepted state funds so that the project had to be re-bid to reflect prevailing wages. CCAP surveyed its members to see if this type of information could be gleaned, and while many of the counties who responded indicated they did not have such circumstances and therefore no data to share, we were able to find a few examples of the impact of prevailing wages:

- In Berks County, a bid for a mold remediation and restoration project came back from one contractor at a total of $49,350 excluding prevailing wages, and a total of $58,081 including prevailing wages, a difference of almost 18 percent. Another contractor would not submit a quote with prevailing wages due to labor issues.
- In Carbon County, a bridge repair project was estimated by the county engineer to cost $21,520, and was awarded to the lowest bidder, using prevailing wages, at $41,862. The highest bid was $69,000, also using prevailing wages.
- In Montour County, although they had no hard data, their chief clerk reports that they have done several projects utilizing inmates and workers from the Pennsylvania Conservation Corps, which saved the county thousands of dollars because they were not required to pay prevailing wages. Lycoming County also uses pre-release crews to complete all maintenance and minor repairs to avoid the increased costs of prevailing wages where feasible.

I would also note that projects constructed in the private industry that do not use prevailing wages have not been, to my knowledge, shown to be of lesser quality than those using prevailing wages in the public sector. Even in the absence of prevailing wages, there are a wealth of safety and construction standards in statute which must still be met, including asbestos and lead abatement requirements and the Uniform Construction Code.

Impact on County Bridge Maintenance

Counties are responsible for the maintenance of some 4,000 county bridges more than 20 feet in length, funded with a gas tax allocation that, until Act 44, has remained largely unchanged since 1930. In addition, PennDOT estimates that there are 22,500 county and local bridges that are between eight and 20 feet in length, and catalogues another 29,000 under eight feet. With an historical lack of federal and state infrastructure funding, many of these bridges are structurally deficient and many others are approaching the end of their useful life, meaning that counties are rapidly facing the prospect of a vastly increasing number of projects. Each of those repair and construction projects on county bridges that meets the $25,000 threshold is also subject to prevailing wages.

However, while the Prevailing Wage Act defines maintenance as "the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased," recent changes in interpretations of that definition have further complicated the issue. Since the

Youngwood Borough case was decided in 2007, some of the projects on county bridges that meet the $25,000 threshold and would have previously been considered maintenance are now subject to prevailing wages. In addition to repaving and milling projects, according to the Department of Labor and Industry's website, work such as pipe replacement (even, one county reported, if the replaced pipe is the same type and size as the original), pavement base repairs and some large-scale guide rail replacement and upgrades are also considered to be construction rather than maintenance, and therefore subject to prevailing wages.

Cumberland County, for instance, does a maintenance RFP every other year and other maintenance work as needed. In 2010, the maintenance contract totaled $121,430 for work on 17 bridges that included clearing and grubbing, crack sealing, deck flushing/washing, patching, concrete repair and debris removal. The 2008 maintenance contract includes repair types similar to the 2010 contract, and totaled $118,000. Also in 2008, the county incurred a cost of $325,000 for deck rehabilitation of one bridge, which was slightly less than the county's Liquid Fuels allocation for that year. All of these projects were subject to prevailing wages.

We would note, though, that counties have indicated that in conversations with PennDOT staff, they have been told projects that might otherwise be considered maintenance, but are not under current interpretations of the law, typically cost as much as 15 to 20 percent more because of prevailing wage requirements, which leaves even fewer dollars available for these projects than conjectured above. (As an estimate, Cumberland County might have saved $15,800 to $20,200 on its 2010 contract, $15,400 to $19,700 on its 2008 contract, and $42,000 to $54,200 on the 2008 deck rehabilitation project, had those contracts not been subject to prevailing wages.)

Senate Bill 822 would amend the definition of "maintenance" under the Act to specify certain activities included under the umbrella of maintenance work, including replacement in kind of guide rails, pipes, line painting, patching of cement concrete surfaces, and bridge cleaning, washing, resurfacing and minor nonstructural repairs. What would this mean for counties? Because of the financial challenges counties are experiencing, finding enough money to keep up with general repairs and maintenance is already an ongoing challenge. While we appreciate that Act 44 provided five million dollars in new funding for county bridges, and $30 million to municipalities for local road maintenance, funding continues to fall far short of identified need. Adding another 10 or 15 percent (or more) in estimated costs to some of these projects because they are interpreted to be construction rather than maintenance, therefore require prevailing wages, means some simply won't get done.

The Governor's Transportation Funding Advisory Committee concurred with this assessment in its recently released recommendations, saying, "despite a 'maintenance first' philosophy, the impacts of reduced fuel tax revenue combined with inflation will mean that less maintenance will be performed each year on state- and locally-owned highways and bridges." The report also indicates that the quality of this maintenance will have to be reduced, which may be cheaper in the short run but does not last as long, does not produce the same higher-level driving surface and would lead to safety concerns and higher vehicle maintenance costs. This would be compounded by the fact that proper rehabilitation and reconstruction would be continually deferred.

Moreover, these expenditure trends reflect a continued pattern of deferred maintenance due to competing pressures on scarce property tax dollars on which counties rely for local revenue. The true annual need that has been identified to address capital costs is around $100 million, which includes all anticipated costs such as prevailing wages. Without prevailing wages, the annual need would be estimated to somewhere between $86.9 million and $90.9 million, which would bring needs closer to the roughly $80 million counties are currently able to invest in capital bridge improvements each year.

There is also an impact to the state in terms of the way in which dollars it provides to local governments are invested. For example, current bridge funding allocations from county liquid fuels and Act 44 funds amount to about $40 million. Using the 10 to 15 percent figure, this means that approximately $3.5 million to $3.6 million of that amount goes toward the additional costs associated with prevailing wages rather than underlying project costs.

Senate Bill 822, in ensuring that certain maintenance projects are captured as such and thus are exempt from prevailing wages, would be a step in the right direction to helping counties stretch scarce resources to ensure their piece of the Commonwealth's interdependent transportation system remains functional. County staff have also suggested that other types of in-kind and similar-sized repair and replacement of existing facilities also be captured under the definition of maintenance in Senate Bill 822. Specifically, they recommend the committee consider that bridge repairs such as scour repairs and abutment underpinnings be delineated as maintenance to provide clarity.

Trickle Down Impacts of Prevailing Wage Reforms

In looking at these numbers, it is clear that changes to existing law could result in more efficient use of limited resources and overall savings to local budgets and taxpayers. This is particularly important to counties, whose sole source of local revenue is the property tax.

In addition, as a public entity itself, the Commonwealth is also subject to prevailing wage requirements for projects of more than $25,000. Any reforms to the Prevailing Wage Law, therefore, have not only a critical impact on the state's budget, but also on local governments that receive state dollars for a wide variety of programs, including human services. For instance, we noted above the estimated funds that go toward prevailing wages from the dollars counties receive for bridge construction. Any reforms would then allow at least a portion of these state dollars to be used more effectively to address additional repairs to local bridges, as well as reduce the burden on local property tax dollars.

Under Gov. Corbett's recently released administrative circular containing policy guidelines for state agencies in preparing their 2012-2013 budget requests, he indicates "every agency must continue to diligently work to control spending." Further, "All agencies are expected to update their regulatory review agenda, identify outdated or unneeded regulations and propose their revision or elimination based on the review criteria established in Executive Order 1996-1, Regulatory Review and Promulgation. Agencies should particularly focus on regulations that add little value or benefit to the public and on those in which a less expensive non-regulatory approach may accomplish the same objectives. Those agencies whose regulations impact private-sector job development and investment should seek to streamline their processes to minimize the impediments to legitimate and positive job creation."

At a time when the focus of state and legislative leaders seems to be to find a way to save costs and to develop a streamlined budget, it makes sense for state and county leaders to work toward continuing our partnership. As the state engages in this effort to control state spending, we would suggest that prevailing wage reforms would help to achieve the goals outlined by Gov. Corbett, and help the state use its taxpayer dollars more strategically for the good of the entire Commonwealth.

In closing, we express our commitment to working with you on passage of legislation that truly meets the needs of the commonwealth and our local taxpayers. We have been pleased to see as we talk with legislators that there is a greater recognizance of the impact of state-imposed mandates on county budgets, coupled with a greater discussion on taking action on ameliorating measures. County officials will continue to seek means of providing services in a cost-effective way, and would very much appreciate the General Assembly's assistance in addressing those mandates that are beyond their control. We would be happy to discuss these comments further at your convenience.