

FOR THE CASE OF  
090214 DOL Prevailing Wage

TRANSCRIPT OF

**Meeting**

September 2, 2014

*Stone & George*

COURT REPORTING

2020 Fieldstone Pkwy

Suite 900 - PMB 234

Franklin, TN 37069

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STATE OF TENNESSEE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
PREVAILING WAGE COMMISSION MEETING

September 2, 2014

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1 APPEARANCES:

2 Commissioner Burns Phillips, Chairman

3 Commissioner Peter Heimbach, Jr., State Architect

4 Commissioner Paul Degges, TDOT Designee

5 Commissioner Stephen Wright  
Wright Brothers Construction Company, Inc.

6 Sydne Ewell, Legal Counsel

7 Kim Y. Jefferson, Administrator

8 Mark Finks, Assistant Administrator

9 Christina Tugman, Assistant

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## AGENDA

- 1
- 2 I. Call to Order and Roll Call
- 3 II. Conflict of Interest Declaration
- 4 III. Old Business
- 5 \* Review and approve November 25, 2013  
6 Prevailing Wage Commission Meeting Minutes
- 7 IV. New Business
- 8 \* Review and Discuss Preliminary 2014  
9 Highway and Bridge Survey Mailing List
- 10 \* Discuss and Approve Schedule for 2014  
11 Prevailing Wage Survey
- 12 a. Survey notice to be mailed  
13 September 29, 2014
- 14 b. Deadline for receipt of Survey  
15 Responses, 3rd State working day  
16 past October 31, 2011 (Nov. 5, 2014)
- 17 c. Proposed date to review data and set  
18 Preliminary Rates-Nov. 14th (Fri),  
19 Nov. 17th (Mon), or Nov. 18th (Tue),  
20 2014
- 21 d. Proposed date for Final Meeting and  
22 Establish Final Rates-Nov. 24th (Mon),  
23 Nov. 25th (Tue), Nov. 26th (Wed), or  
24 Dec. 1st (Mon), 2014
- 25 e. Deadline for setting Final Dates-  
December 1, 2014
- 26 V. Additional Business
- 27 VI. Adjourn
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MS. TUGMAN: Good morning,  
commission members. Today is September the 2nd,  
2014, and I would like to call this Prevailing  
Wage Commission Meeting to order.

Could the commission members please  
state their name for the record.

MR. WRIGHT: Steve Wright.

MR. DEGGES: Paul Degges,  
D-E-G-G-E-S.

CHAIRMAN PHILLIPS: Burns Phillips,  
Labor and Workforce Development.

MR. HEIMBACH: Peter Heimbach,  
state architect.

MS. TUGMAN: Okay. Our next order  
of business is the Conflict of Interest  
Declaration. Has everybody signed theirs, the  
commission members? If you could take a look at  
those, we only sign those once a year. So at the  
very first meeting we go ahead and sign those, and  
those are kept on record for an entire year.

CHAIRMAN PHILLIPS: So we need to  
sign this one, then?

MS. TUGMAN: Yes.

MR. DEGGES: I'm sitting in for a

1 member of my staff. Do I just need to sign my  
2 name and then --

3 MS. TUGMAN: No. What I'm going to  
4 do is I'm going to send that to him because he'll  
5 have to sign it himself.

6 MR. DEGGES: Okay.

7 MS. TUGMAN: So I'll email that to  
8 Mr. Crabtree.

9 So just sign those and I will turn it  
10 over to Mr. Phillips, Commissioner Phillips.

11 CHAIRMAN PHILLIPS: Where is the --

12 MS. TUGMAN: It should be on the  
13 last -- next-to-the-last page. And I'll collect  
14 those at the end.

15 CHAIRMAN PHILLIPS: Review old  
16 business. Do we have a motion to approve the  
17 minutes of September 17th, 2013?

18 MS. TUGMAN: It's November 25th,  
19 2013, from the last meeting.

20 CHAIRMAN PHILLIPS: You're right.  
21 I'm looking at the wrong one.

22 MR. DEGGES: Motion to approve  
23 minutes.

24 MR. WRIGHT: Second.

25 CHAIRMAN PHILLIPS: Motion has been

1 made and seconded. Any discussion?

2 (No verbal response.)

3 CHAIRMAN PHILLIPS: All approved,

4 say "aye."

5 (Affirmative response.)

6 CHAIRMAN PHILLIPS: Old business is

7 approved.

8 New business. I'll open the floor to

9 discussion for any new business besides the

10 survey. Anything other than the survey?

11 MR. WRIGHT: I have nothing.

12 CHAIRMAN PHILLIPS: That's the only

13 really new business we have, right, Kim?

14 MS. JEFFERSON: Right. And review

15 and discuss the preliminary 2014 Highway and

16 Bridge Survey Mailing List, the first item. And

17 the survey list, I believe Christina has improved

18 it. It contains all of the companies' names and

19 addresses.

20 MS. TUGMAN: Yes. This list right

21 here, the first list that we have right here, was

22 actually provided by Mr. Crabtree. This is the

23 list that he provides every year. And this is the

24 list of contractors. And this is what we sent

25 to -- through our mailout every year. So if you



1 see anything, like, maybe a company on here that  
2 might not fit or if you know somebody that might  
3 not be in highway construction, the commission  
4 usually looks at these and go -- sometimes we'll  
5 see a couple on here that might not be in business  
6 anymore or wouldn't participate in the highway  
7 survey. But this is the list that we would use  
8 for our mailout.

9 This second list here is a list of  
10 all unions. And we had talked about this. These  
11 are usually building, but there might be some on  
12 here that do highway work. So if they don't want  
13 to participate, then they won't call in, but it's  
14 better to be safe than sorry and not leave them  
15 off of the list.

16 CHAIRMAN PHILLIPS: Okay. Right.

17 MS. TUGMAN: But these are what  
18 these two lists are right here, is who we would  
19 mail out to.

20 MR. HEIMBACH: And the larger list  
21 comes from TDOT's prequalification list?

22 MR. DEGGES: Correct.

23 MR. HEIMBACH: Okay.

24 MR. DEGGES: TDOT maintains a list.  
25 For anybody to contract through TDOT, the State of

1 Tennessee, you have to be prequalified with our  
2 agency. It's a registration process. And so we  
3 maintain a database, and that's what this database  
4 is.

5 CHAIRMAN PHILLIPS: So this is  
6 current, then.

7 MR. DEGGES: This is current.

8 CHAIRMAN PHILLIPS: Okay. And,  
9 Christina, do we send out the survey to all these?

10 MS. TUGMAN: Yes.

11 CHAIRMAN PHILLIPS: Okay. What  
12 kind of response do we usually get?

13 MS. TUGMAN: Usually, I would say  
14 by mail we get around 200 responses. Via the  
15 Internet, between 100 to 250. There's, I believe,  
16 about -- let's see -- between 750 to 900 on this  
17 list. And not everybody responds. Some of them  
18 will say they want to be taken off the list or  
19 what have you. But, I mean, that's about how many  
20 respond. So that's going to leave you a total of  
21 maybe, like, 400 to 450 people that respond.

22 CHAIRMAN PHILLIPS: And how many  
23 are on the list, did you say?

24 MS. TUGMAN: I believe between,  
25 like, 750 and 900.

1                   CHAIRMAN PHILLIPS: Okay.

2                   MS. TUGMAN: And they will all get  
3 their own unique passwords, at least the bigger  
4 list will. They'll get their -- well, I mean,  
5 these will, too. They'll get their own specific  
6 password if they want to participate in the survey  
7 online. If they don't want to do it online, then  
8 they will receive -- which is our next thing to  
9 discuss. Well, also you have to look at the  
10 letter and the form or what have you.

11                  MS. JEFFERSON: And, Christina,  
12 what we mainly want the Board to assist us with is  
13 approve this list so we can go ahead and start  
14 with the mailing?

15                  MS. TUGMAN: Yes. We need the list  
16 to be approved so that we can give it to our IT  
17 people so they can go ahead and start assigning  
18 them their own specific password so they can fill  
19 this out online if they choose to.

20                  MR. HEIMBACH: So do you need an  
21 official Board action?

22                  MS. TUGMAN: Yes.

23                  CHAIRMAN PHILLIPS: Is there a  
24 motion to approve the list?

25                  MR. HEIMBACH: I move that we

1 approve the list.

2 MR. DEGGES: Second.

3 CHAIRMAN PHILLIPS: A motion has  
4 been made and seconded to approve and accept this  
5 list as our mailing list.

6 MR. DEGGES: Well, our  
7 prequalification process has a -- there's an  
8 expiration date, so the companies will have to  
9 re-up with us, and so it's a rolling list, so to  
10 speak. There are a lot of companies who might not  
11 contract directly with TDOT, but use our process  
12 and contract with the local government. So it's  
13 not unusual to see a much larger number appear  
14 that are companies that we don't necessarily  
15 directly do business with, but indirectly, through  
16 various programs where they're a sub-recipient of  
17 federal aid funds or state funds or TDOT, they'll  
18 do work -- work with us.

19 MR. HEIMBACH: And I would assume  
20 at some level those individuals are covered as  
21 having membership in one of these organizations or  
22 being tied to someone that does.

23 MR. DEGGES: You know, we don't  
24 deal directly with the unions through the  
25 department. We deal through the contractors, so

1 I'm not real, real familiar with exactly how the  
2 union access to us works. If they write us a  
3 letter or call us, we'll respond to them, but I  
4 just don't have a whole lot of background of  
5 dealing directly with the unions. We typically  
6 will deal directly with companies who we have  
7 questions of or issues with.

8 CHAIRMAN PHILLIPS: Right. But we  
9 send a survey to the unions, right, Christina?

10 MS. TUGMAN: Yes.

11 CHAIRMAN PHILLIPS: Okay. And do  
12 we usually get a response?

13 MS. TUGMAN: Sometimes we do. I  
14 mean, whenever we did building, we always got  
15 plenty of response, so ...

16 CHAIRMAN PHILLIPS: Okay.

17 MR. HEIMBACH: And there's also  
18 more than just unions on this.

19 CHAIRMAN PHILLIPS: Yes.

20 MR. HEIMBACH: The Associated  
21 General Contractors in D.C. and Building and  
22 Construction Trades Council on this which are, to  
23 my knowledge, not unions.

24 MS. TUGMAN: I want to mention one  
25 other thing. And I didn't put this on the new

1 business. I think it was because we weren't going  
2 to change the letter. But it has been changed.  
3 Usually we have color on the letter, but this we  
4 decided not to, to save costs.

5 And, also, we added on the third  
6 paragraph of this letter. It says, "Go green for  
7 your company's convenience." The "go green" has  
8 been added. So this letter does need to be  
9 approved because we had that changed. So just  
10 take a look over the letter, and if you have any  
11 concerns, or what have you, or anything else you  
12 want us to change on this, we can do that.

13 CHAIRMAN PHILLIPS: Motion to  
14 approve.

15 MR. DEGGES: Second.

16 CHAIRMAN PHILLIPS: So moved. It's  
17 been seconded.

18 All in favor say "aye."

19 (Affirmative response.)

20 CHAIRMAN PHILLIPS: So this is the  
21 schedule -- we're actually sending it out,  
22 Christina?

23 MS. TUGMAN: Yes. And I gave you  
24 another calendar to look at because actually the  
25 first one that I sent via email has the holiday on

1 the 10th and it should have been on the 11th. But  
2 here's the calendar you can look at as well.

3 We will be mailing the survey out on  
4 the 29th of September, and then we have the  
5 deadline to receive those survey responses by the  
6 third state working date past October the 31st,  
7 which is November the 5th. And these are the  
8 proposed dates to review data and set preliminary  
9 rates, and I have November 14th, November 17th,  
10 and November 18th.

11 Of course we need time to compile the  
12 data, because sometimes there's issues with people  
13 not putting the correct information online. They  
14 will write it down wrong. We have to call them to  
15 verify their information. So it seems to get  
16 shorter and shorter every year, but these are the  
17 tentative dates that we have.

18 And then the proposed date for the  
19 final meeting and to establish final rates will be  
20 November the 24th, the 25th, or the 26th. And  
21 then we have December the 1st, which will be the  
22 last day, which is the deadline to take the final  
23 rates.

24 I know these dates are kind of tight,  
25 so working kind of with everybody's schedule,

1 these are the dates that I came up with. So this  
2 is what we're looking at right now as far as what  
3 the dates are for setting preliminary rates and  
4 setting the final rate.

5 CHAIRMAN PHILLIPS: So do we need  
6 to see who --

7 MS. TUGMAN: We need to decide what  
8 dates are going to be good for everybody.

9 CHAIRMAN PHILLIPS: Yeah, and what  
10 suits the board members the best.

11 MS. JEFFERSON: Yes.

12 MR. WRIGHT: I have a conflict on  
13 Wednesday the 26th.

14 MS. TUGMAN: We'll cross that one  
15 out.

16 MR. HEIMBACH: And I have a  
17 conflict on Monday the 17th.

18 MS. TUGMAN: So that leaves us the  
19 14th and the 18th. I know some of us don't like  
20 to have meetings on Fridays, but ...

21 CHAIRMAN PHILLIPS: Well, it's  
22 either the 14th or 18th. What do we think?

23 MR. DEGGES: I would propose the  
24 18th.

25 CHAIRMAN PHILLIPS: I would, too.



1 Friday is not all that good.

2 MR. DEGGES: More time to get the  
3 data compiled.

4 MS. TUGMAN: What time would you  
5 like on the 18th? This time, in the morning?

6 (Affirmative response.)

7 MS. TUGMAN: Okay.

8 CHAIRMAN PHILLIPS: Does that suit  
9 everybody's schedule?

10 (Affirmative response.)

11 CHAIRMAN PHILLIPS: Okay. Now, the  
12 next one.

13 MS. TUGMAN: And then, of course,  
14 we have the 24th, 25th, or December the 1st. I  
15 know that's a holiday weekend and holiday week, so  
16 it may be difficult.

17 CHAIRMAN PHILLIPS: Okay. I know  
18 that December the 1st is best for me.

19 MR. HEIMBACH: Either one works for  
20 me.

21 MR. DEGGES: December the 1st.

22 MS. TUGMAN: All right. Same time?

23 CHAIRMAN PHILLIPS: Same time.

24 MS. TUGMAN: All right. That was  
25 easy.

1                   CHAIRMAN PHILLIPS: We don't have  
2 to have a motion on that, do we?

3                   MS. TUGMAN: No. We don't have to  
4 have a motion on that.

5                   CHAIRMAN PHILLIPS: So, then, any  
6 additional business?

7                   MS. JEFFERSON: We do have  
8 additional business. Jason Beard is here to give  
9 us some updates.

10                  CHAIRMAN PHILLIPS: Introduce  
11 yourself, Jason.

12                  MR. BEARD: Jason Beard. I'm the  
13 legislative liaison for the Tennessee Department  
14 of Labor and Workforce Development.

15                  I just wanted to give the commission  
16 an update. Every department, every board, every  
17 commission and state government has a sunset date.  
18 This commission's sunset date is set for June 30th  
19 of 2015. As a part of those sunsets, the  
20 comptroller's office often does the sunset audit,  
21 and then the government operations committee  
22 follows up with a sunset hearing. And then based  
23 upon that hearing and that audit and all the  
24 findings and testimony that comes through that  
25 process, then in the 2015 general assembly

1 session, there's a bill that will come through to  
2 either reauthorize this commission or not. And  
3 the period of years for which it will be  
4 reauthorized is often dependent upon the findings  
5 through that audit process and that hearing  
6 process.

7 Like I said, this commission is up  
8 for sunset this next summer. We do not have a  
9 date for the sunset hearing yet. It will either  
10 be November 18th or 19th or December 16th or 17th.  
11 Those days in both months are a Tuesday and a  
12 Wednesday. The Tuesday meetings begin at  
13 1:30 p.m. The Wednesday meetings begin at  
14 9:00 a.m.

15 The legislature prefers to have a  
16 representative from the commission to actually be  
17 present for this sunset hearing. As you can  
18 imagine, that would be some indication that the  
19 commission is important enough to be reauthorized  
20 if some of the members feel it important enough to  
21 actually show up for the hearing.

22 So that will be coming up, and you  
23 guys need to decide who you want to kind of be  
24 there to represent the commission for that sunset  
25 hearing.

1                   MR. DEGGES: Let me ask you a quick  
2 question. Typically, at sunset hearings, you  
3 know, we -- in state government, there's a lot of  
4 those -- there's a presentation. Will this Chair  
5 or somebody make a presentation and address  
6 what -- basically issues with what this Board does  
7 and any audit issues that might be -- I mean, we  
8 don't have the audit back yet, I take it.

9                   MS. JEFFERSON: No, we don't.

10                  MR. BEARD: Yes -- no, we do not  
11 have an audit back. Yes, there would be a  
12 presentation expected to address any findings that  
13 would come through the audit. And if there are no  
14 findings, then to address, basically, what this  
15 commission does, its purpose, how it serves the  
16 state of Tennessee and its citizens therein. So  
17 yes, there would be a presentation expected.

18                  MR. DEGGES: The goal being, of the  
19 sunset hearing, is to basically justify the  
20 existence of the commission.

21                  MR. BEARD: Exactly. It's the  
22 legislature's attempt to exercise some sort of a  
23 supervisory role over government agencies. If  
24 they're going to reauthorize it, then, you know,  
25 if there's any funding attached to that and they

1 want to -- it's their oversight function.

2 CHAIRMAN PHILLIPS: Jason, you  
3 know, I'm new to this. What do they base that on?  
4 What do they base their recommendations on, like,  
5 on a Board like this? Do you know?

6 MR. BEARD: Right. As far as  
7 reauthorizing, whether it be for one year or two  
8 years --

9 CHAIRMAN PHILLIPS: Yes, or not.  
10 Yes.

11 MR. BEARD: -- or up to five, I  
12 believe?

13 CHAIRMAN PHILLIPS: Right.

14 MR. BEARD: It's often -- it's  
15 based upon audit findings. It's based upon that  
16 hearing, whether they deem this as a safe entity  
17 that's operating efficiently and doesn't need  
18 additional oversight. If there's multiple  
19 findings, if the hearing process, as the testimony  
20 goes through that, doesn't address those findings  
21 to their satisfaction, then they may say, "Well,  
22 you know, this is a worthwhile commission. We'll  
23 reauthorize you for a year," or "we'll reauthorize  
24 you for two years, but we want you back in to see  
25 what progress you're making on findings that come

1 through."

2                   Again, we haven't gotten any results  
3 back from the audit, so we don't know at this  
4 point whether there are any findings at all  
5 attached to this commission. But that would be  
6 what their recommendation would be based on, which  
7 would then be reflected in the legislation to  
8 reauthorize.

9                   CHAIRMAN PHILLIPS: Okay. And say  
10 again who would attend that.

11                   MR. BEARD: Who would attend the  
12 hearing?

13                   CHAIRMAN PHILLIPS: Right. Or is  
14 required.

15                   MR. BEARD: Well, it's before the  
16 government operations committee, and the  
17 commission would determine who their  
18 representative ...

19                   CHAIRMAN PHILLIPS: One or all,  
20 just whatever.

21                   MR. BEARD: Correct.

22                   CHAIRMAN PHILLIPS: Okay.

23                   MR. BEARD: I see a lot of people  
24 looking at you, sir.

25                   CHAIRMAN PHILLIPS: All right.

1 Thanks, Jason.

2 MR. FINKS: Did you say one of the  
3 dates is November the 18th?

4 MR. BEARD: Yes.

5 MR. FINKS: Would it be in the  
6 morning or in the afternoon on November the 18th?

7 MR. BEARD: November the 18th would  
8 be a Tuesday meeting which would be at 1:30 p.m.

9 CHAIRMAN PHILLIPS: Okay.

10 MR. FINKS: Okay. So it wouldn't  
11 conflict with -- okay.

12 CHAIRMAN PHILLIPS: Right.

13 MR. BEARD: That's right.

14 MR. FINKS: Thank you.

15 MR. HEIMBACH: And if I'm not  
16 mistaken, the primary purpose for prevailing wage  
17 is, now that the state building has been removed  
18 from prevailing wages, is for TDOT and for federal  
19 programs; is that correct?

20 MR. DEGGES: Sort of, kind of.

21 MR. BEARD: If I might address  
22 that, that actually came up early this -- earlier  
23 this summer. One of the representatives who was  
24 instrumental in the change in the law regarding  
25 prevailing wage had a constituent that contacted

1 us based upon a contract at the Henry Horton State  
2 Park.

3 Basically there was a camping area,  
4 and the roadway that went through the camp area  
5 was part of the contract to be resurfaced. Based  
6 upon the statute as it exists in its amended form,  
7 we interpreted that roadway to fall under  
8 prevailing wage. It wasn't a TDOT project. It  
9 wasn't a highway bridge, a TDOT project, but it  
10 was a road which fell under the statute, and so  
11 prevailing wage applied.

12 Well, the representative was very  
13 emphatic that he intended and the legislature  
14 intended that the prevailing wage only apply to  
15 TDOT road and bridge projects. So it is my  
16 understanding that there will probably be  
17 legislation this session to revisit that and  
18 further restrict the definition of what prevailing  
19 wage applies to.

20 MR. DEGGES: Well, there is a  
21 federal prevailing wage.

22 MR. HEIMBACH: Right.

23 MR. DEGGES: And sometimes the  
24 state is more and sometimes the federal is more.  
25 So we have to look at both of those.



1                   MR. HEIMBACH: And with respect to  
2 state parks, if I'm not mistaken, there is an  
3 executive order from Lamar Alexander's  
4 administration that actually makes roadways within  
5 state parks coordinated efforts with TDOT.

6                   MR. DEGGES: Some. Some.

7                   MR. HEIMBACH: Okay.

8                   CHAIRMAN PHILLIPS: In this case,  
9 it was not.

10                  MR. DEGGES: Not all.

11                  MR. HEIMBACH: Okay.

12                  MR. DEGGES: It's the minority  
13 rather than the majority.

14                  MR. HEIMBACH: Okay.

15                  MR. WRIGHT: If I could add, as a  
16 contractor that works in several southeast states,  
17 the value of this commission to me is that the  
18 wage rates printed in your DOT proposals are  
19 relevant. Most of the other states in the South,  
20 their minimum wage, some of them are even less  
21 than the federal minimum wage. So they're  
22 irrelevant. Tennessee is the one state that this  
23 wage actually guarantees and, I would think,  
24 helps. Most of the people that work on a TDOT  
25 road, their wage scales are set by this versus

1 market conditions which could be quite a bit less  
2 in other places. We pay more for labor in  
3 Tennessee than pretty much any of the adjoining  
4 states.

5 MR. BEARD: I think that might be  
6 important testimony at a sunset hearing.

7 CHAIRMAN PHILLIPS: Yeah. That  
8 would be very important to bring forward.

9 MR. WRIGHT: It's true. It's  
10 relevant. I think that's a part of the reason  
11 I've always appreciated this group. It is  
12 relevant to what you do.

13 CHAIRMAN PHILLIPS: Do those other  
14 states -- they don't have any sort of --

15 MR. WRIGHT: Your Class A operator  
16 here is what, \$18 or something? And in Alabama I  
17 think it's 8.50. But you can't hire anybody for  
18 less than 13.

19 CHAIRMAN PHILLIPS: Right.

20 MR. WRIGHT: So, you know, the guy  
21 in Tennessee is making \$3 or \$4 more than -- it's  
22 more -- when you go to another state, it's a  
23 matter of what you can hire the work for, not what  
24 the scale is.

25 CHAIRMAN PHILLIPS: Okay. Which

1 makes this more relevant. Okay.

2 MR. WRIGHT: It's good for the  
3 worker here.

4 CHAIRMAN PHILLIPS: Okay. Very  
5 good.

6 MS. JEFFERSON: And one other item  
7 I wanted you to assist us with is the rules, the  
8 changes and the way we're going to handle the  
9 rules.

10 MR. BEARD: Basically, the  
11 governor's office has instructed us to approach  
12 the rule process in the same way that we approach  
13 a bill during a legislative session. And  
14 basically what that means, whenever there's a rule  
15 proposed, I would need to be contacted and let me  
16 know that that takes place. And we would then  
17 work with the committee. It's government  
18 operations. They have rule review every month,  
19 and we would go and we would meet with the  
20 different committee members, explain what our rule  
21 is, and answer any questions that they might have,  
22 relay any concerns that they might have so that  
23 when it comes to the full committee, all of that  
24 legwork would have been done and we can hopefully  
25 move that through a little bit easier.

1                   So we would definitely need your  
2 feedback as a commission whenever these rules are  
3 proposed to be able to educate me and whoever our  
4 subject matter expert would be to go up on the  
5 Hill and then speak knowledgeably about those rule  
6 changes.

7                   CHAIRMAN PHILLIPS: Excellent.  
8 Good.

9                   MS. JEFFERSON: And, also,  
10 Mr. Chair, could we refer to Sydne Ewell so that  
11 she can tell us where we are as far as the  
12 prevailing wage rules are concerned.

13                   MS. EWELL: Well, I drafted the  
14 rules based on the current law, and I forwarded  
15 the information to Mark Finks who is our new  
16 assistant administrator for division workplace  
17 regulations and compliance.

18                   And the definitions that you have  
19 under the rules need to be updated. And I  
20 forwarded Mark two or three references in order  
21 for someone on their staff there to go through all  
22 of the definitions that are existing in order to  
23 make the necessary changes. And I submitted  
24 information and highlighted the information that  
25 needs to be updated. So it's basically in Mark's

1 hands at this point.

2 MR. FINKS: Okay.

3 CHAIRMAN PHILLIPS: So it's in  
4 progress, right, Mark?

5 MR. FINKS: It's in progress, yes,  
6 sir.

7 CHAIRMAN PHILLIPS: Okay. Very  
8 good.

9 MS. JEFFERSON: And, also, we're  
10 deleting all of the language that has to do with  
11 building.

12 MS. EWELL: That's correct.

13 CHAIRMAN PHILLIPS: Anything else?

14 MS. EWELL: If you want to see a  
15 draft of what I've done, I can just send it around  
16 the room if you'd like.

17 CHAIRMAN PHILLIPS: That will be  
18 fine, Sydne, yeah.

19 MS. EWELL: Let me pull it out.  
20 And that's basically all that I can do at this  
21 point.

22 MS. JEFFERSON: And at some point,  
23 Mark will send that to Sydne and she will  
24 distribute it to all the members so that you-all  
25 can review it.

1 CHAIRMAN PHILLIPS: Okay.

2 Excellent.

3 (Document distributed.)

4 CHAIRMAN PHILLIPS: Are there a  
5 significant number of changes?

6 MS. EWELL: Well, yes and no. I  
7 edited some of the rules. You can see the  
8 information there. Do you have your current rules  
9 with you now?

10 CHAIRMAN PHILLIPS: I do not.

11 MS. EWELL: Okay. Well, this is a  
12 current set of rules if you want to look at that,  
13 Commissioner.

14 CHAIRMAN PHILLIPS: Let me just see  
15 it.

16 MS. EWELL: I can basically give  
17 you an overview of what I've done. I've taken out  
18 the information and the -- the information that  
19 you see in red on the loose pages indicates the  
20 changes that are necessary. I updated the  
21 regulations based on the new law, and I took all  
22 the information out related to buildings, which  
23 was in the first section A there. And then I  
24 updated all the information in all the existing  
25 rules and deleted information related to bridges

1 and corrected some of the language in the  
2 statutory authority that was incorrect in the  
3 existing rules.

4 MR. HEIMBACH: Given that there is  
5 a potential discrepancy between the legislative  
6 intent and the interpretation, has that been  
7 addressed at all in the rules?

8 MS. EWELL: I don't understand your  
9 question.

10 MR. HEIMBACH: The question about  
11 roads that don't fall within -- they fall in  
12 building projects rather than in highway projects.

13 MS. EWELL: No.

14 MR. HEIMBACH: Okay.

15 MS. EWELL: I've never seen  
16 anything in writing about that.

17 MR. HEIMBACH: Okay.

18 MS. EWELL: And so we just  
19 basically -- in the past they used dictionary  
20 occupational titles. Now, there's some other  
21 references that exist on the Internet that anyone  
22 has access to, and I can send you-all the links so  
23 you can look at those and -- or I guess the emails  
24 that I sent to Mark, and you can look at those as  
25 you look at the draft of the definitions.

1                   Do you want me to send what I've --  
2           there's an issue about my software and Mark's  
3           software, and I had to give him a hard copy  
4           because I have a 2003 Microsoft Word version. He  
5           has a --

6                   MR. FINKS: 2007.

7                   MS. EWELL: -- 2007. And mine does  
8           not communicate with his.

9                   CHAIRMAN PHILLIPS: They don't talk  
10          to each other.

11                  MS. EWELL: Yes. And they sent  
12          some information to me, so I had to give him an  
13          actual hard copy. So I don't know if you-all have  
14          had a chance to update it or not based on what  
15          I've done.

16                  MR. FINKS: Christina and I have  
17          been working on it.

18                  MS. EWELL: So maybe the  
19          information should come from Mark since he has a  
20          later version of the Word document.

21                  MS. JEFFERSON: That's fine.

22                  MR. HEIMBACH: And what I was  
23          referring to is if we had anything in the rules  
24          that potentially was going to be modified by the  
25          previous discussion that if there is legislative



1 intent to narrow the definitions, that --

2 MS. EWELL: We're just going by the  
3 state statute.

4 MR. HEIMBACH: Right.

5 MS. EWELL: So I could look up the  
6 executive order when I go back upstairs. I'm not  
7 familiar with that at all.

8 MR. HEIMBACH: Okay. And --

9 MS. EWELL: Do you have any  
10 information about the parks and ...

11 MR. DEGGES: Well, I mean, there is  
12 an executive order that dates back to Lamar  
13 Alexander, I believe, that attempts to define  
14 which roads and state parks the Department of  
15 Transportation will be responsible for. As you  
16 can imagine, the state parks come to TDOT a lot  
17 asking TDOT to pave roads, campgrounds, parking  
18 lots, and they would spend all of the money that  
19 they could probably.

20 So we have this -- an executive order  
21 is what we use as our basic agreement. In  
22 addition to that, there are times where there's  
23 work done in state parks or other state agencies  
24 through a journal voucher process. So there are  
25 actually other work that is done. It's typically

1 very, very small in scope. But those projects are  
2 generally done through the building commission, or  
3 an agency will request the work and TDOT does it.  
4 So the ability to contract through a general  
5 services contract is applicable to about every  
6 state agency that has a parking lot that they're  
7 responsible for.

8 So it's possible that some of the  
9 on-call contracts that general services use could  
10 potentially fall into the same situation where  
11 it's not TDOT personnel and forces doing the work,  
12 but it is a contract that is used that's obtained  
13 through general services, a bulk item or, you  
14 know, spot price type of contract.

15 CHAIRMAN PHILLIPS: Seems like it  
16 all has to be dealt with in legislation.

17 MS. JEFFERSON: Yes.

18 CHAIRMAN PHILLIPS: I don't see  
19 anything in here that deals with it.

20 MS. JEFFERSON: And since -- I  
21 believe that Mr. Beard alluded to the fact that  
22 one of the representatives may propose legislation  
23 this session. And if that's the case, we'll wait  
24 until we see what it looks like. Then we can go  
25 back and revise our rules.

1                   MR. HEIMBACH: And that's what I  
2 wanted to make sure of, is that we weren't getting  
3 ahead of any legislative proposals. Or if there  
4 was a legislative request to change it in the  
5 rules instead of in the statute, that we took care  
6 of that and actually followed the legislative  
7 intent, if that's the correct thing to do.

8                   MS. EWELL: The law changed. It  
9 was effective January 1st, 2014. So basically,  
10 you do need to update your rules now and not wait  
11 until later.

12                   MR. HEIMBACH: Absolutely.

13                   CHAIRMAN PHILLIPS: Right.

14                   MR. HEIMBACH: Right. I completely  
15 agree with that. I just wanted to make sure that  
16 we're updating them appropriately if there is  
17 additional legislative intent that's being --  
18 that's different from the interpretation.

19                   MS. EWELL: Jason, do you have  
20 anything in writing about the legislative intent  
21 that you can tender?

22                   MR. BEARD: No, nothing in writing.  
23 Basically the representative --

24                   CHAIRMAN PHILLIPS: That's the  
25 problem.

1 MR. BEARD: Right.

2 CHAIRMAN PHILLIPS: There's so many  
3 pieces of legislation, the intent is not reflected  
4 in the language.

5 MR. BEARD: It's not reflected --  
6 the intent as communicated by the representative  
7 to me is not reflected in any of the subcommittee  
8 testimony. It's not reflected in any of the full  
9 committee testimony. It's not reflected in the  
10 full house floor vote testimony, the full senate  
11 vote. It's nowhere to be found except in the  
12 Representative's heart.

13 And so I think he wants to make sure  
14 that that intent is reflected in the Tennessee  
15 Code Annotated. And so that's why we anticipate  
16 this legislation to be brought this session.

17 MR. HEIMBACH: And I think the --  
18 and I've heard some of this conversation, also,  
19 from the building commission's side, and one of  
20 the references in the statute is to exclude  
21 building commission building projects. And  
22 building commission building projects, as Paul  
23 said, do include parking lots and roads sometimes.  
24 And because of that, those have not been submitted  
25 for wage rates because they are building

1 commission projects. And the statute  
2 specifically, in our minds, excludes building  
3 commission projects.

4 And so that's the discrepancy that's  
5 in there. It refers to highway projects, which is  
6 a specific type of project that is appropriated to  
7 TDOT, not to the building commission.

8 MR. BEARD: I think it's very clear  
9 that the legislation needs clarification.

10 CHAIRMAN PHILLIPS: Therein lies  
11 the problem.

12 MR. HEIMBACH: Yes, absolutely.

13 MR. DEGGES: "Highway" is a broad  
14 definition.

15 MR. HEIMBACH: It can be.

16 CHAIRMAN PHILLIPS: Kent, you  
17 wanted to say something?

18 MR. STARWALT: Kent Starwalt, the  
19 executive vice president of the Tennessee Road  
20 Builders Association.

21 We obviously were very involved in  
22 that legislation as well because we wanted -- we  
23 like the prevailing wage as it relates to the  
24 highway project, and I was not aware that it was  
25 specific.

1 I understand the exemption for  
2 building commission projects, but I was under the  
3 intent, as it was going through, that it would --  
4 you know, it's roads and bridges. I mean, that's  
5 what this thing applies to -- and that it wasn't  
6 just specifically for TDOT projects.

7 So whatever it is, I think that I  
8 have a little bit of concern about maybe the  
9 proposed legislation, but we'll have to obviously  
10 see it when it comes through. But that was  
11 certainly our intent in trying to keep prevailing  
12 wage for road and bridge projects, that it would  
13 apply to them, not just --

14 CHAIRMAN PHILLIPS: All road and  
15 bridge.

16 MR. STARWALT: Absolutely. And  
17 withstanding the exemption for -- or the removal  
18 of the building commissioners.

19 CHAIRMAN PHILLIPS: Yes. Right.  
20 And that's what --

21 MR. BEARD: Which is how it  
22 currently stands as you read the black letter of  
23 the law.

24 CHAIRMAN PHILLIPS: Right. Okay.

25 MR. STARWALT: Thank you.

1                   CHAIRMAN PHILLIPS: Thank you,  
2     Kent.

3                   Any other comments or any other  
4     business?

5                   (No verbal response.)

6                   CHAIRMAN PHILLIPS: Motion to  
7     adjourn?

8                   MR. HEIMBACH: So moved.

9                   MR. DEGGES: Second.

10                  CHAIRMAN PHILLIPS: Okay. We're  
11     adjourned.

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END OF THE PROCEEDINGS.

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STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON )

I, Cassandra M. Beiling, a Notary Public  
in the State of Tennessee, do hereby certify:

That the within is a true and accurate  
transcript of the Prevailing Wage Commission  
Meeting taken on the 2nd day of September, 2014.

I further certify that I am not related to  
any of the parties to this action, by blood or  
marriage, and that I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 16th day of September, 2014.

\_\_\_\_\_  
Cassandra M. Beiling, CCR, LCR# 371  
Notary Public State at Large  
My commission expires: 3/12/2016



<p style="text-align: center;"><b>A</b></p> <p><b>ability</b> 32:4  <b>able</b> 26:3  <b>absolutely</b> 33:12  35:12 36:16  <b>accept</b> 10:4  <b>access</b> 11:2 29:22  <b>accurate</b> 38:9  <b>action</b> 9:21 38:14  <b>actual</b> 30:13  <b>actually</b> 6:22 12:21  12:24 17:16 17:21  21:22 23:4 23:23  31:25 33:6  <b>add</b> 23:15  <b>added</b> 12:5 12:8  <b>addition</b> 31:22  <b>additional</b> 3:20 16:6  16:8 19:18 33:17  <b>address</b> 18:5 18:12  18:14 19:20 21:21  <b>addressed</b> 29:7  <b>addresses</b> 6:19  <b>adjoining</b> 24:3  <b>adjourn</b> 3:21 37:7  <b>adjourned</b> 37:11  <b>administration</b> 23:4  <b>administrator</b> 2:7  2:8 26:16  <b>affirmative</b> 6:5 12:19  15:6 15:10  <b>afternoon</b> 21:6  <b>again</b> 20:2 20:10  <b>agencies</b> 18:23 31:23  <b>agency</b> 8:2 32:3 32:6  <b>agenda</b> 3:1  <b>agree</b> 33:15  <b>agreement</b> 31:21  <b>ahead</b> 4:20 9:13 9:17  33:3  <b>aid</b> 10:17  <b>alabama</b> 24:16  <b>alexander</b> 23:3 31:13  <b>all</b> 6:3 6:18 7:10 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25:7  <b>assistant</b> 2:8 2:9  26:16  <b>associated</b> 11:20  <b>association</b> 35:20  <b>assume</b> 10:19  <b>attached</b> 18:25 20:5  <b>attempt</b> 18:22  <b>attempts</b> 31:13  <b>attend</b> 20:10 20:11</p>	<p><b>audit</b> 16:20 16:23  17:5 18:7 18:8  18:11 18:13 19:15  20:3  <b>authority</b> 29:2  <b>aware</b> 35:24  <b>aye</b> 6:4 12:18</p> <p style="text-align: center;"><b>B</b></p> <p><b>back</b> 18:8 18:11  19:24 20:3 31:6  31:12 32:25  <b>background</b> 11:4  <b>base</b> 19:3 19:4  <b>based</b> 16:22 19:15  19:15 20:6 22:1  22:5 26:14 28:21  30:14  <b>basic</b> 31:21  <b>basically</b> 18:6 18:14  18:19 22:3 25:10  25:14 26:25 27:20  28:16 29:19 33:9  33:23  <b>beard</b> 16:8 16:12  16:12 18:10 18:21  19:6 19:11 19:14  20:11 20:15 20:21  20:23 21:4 21:7  21:13 21:21 24:5  25:10 32:21 33:22  34:1 34:5 35:8  36:21  <b>been</b> 5:25 10:4 12:2  12:8 12:17 13:1  21:17 25:24 29:6  30:17 34:24  <b>before</b> 20:15  <b>begin</b> 17:12 17:13  <b>beiling</b> 1:22 38:6  38:23  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<b>campgrounds</b> 31:17  <b>camping</b> 22:3  <b>care</b> 33:5  <b>case</b> 23:8 32:23  <b>cassandra</b> 1:22 38:6  38:23  <b>ccr</b> 1:22 38:23  <b>certainly</b> 36:11  <b>certify</b> 38:7 38:13  <b>chair</b> 18:4 26:10  <b>chairman</b> 2:2 4:11  4:22 5:11 5:15 5:20</p>	<p>5:25 6:3 6:6 6:12  7:16 8:5 8:8 8:11  8:22 9:1 9:23 10:3  11:8 11:11 11:16  11:19 12:13 12:16  12:20 14:5 14:9  14:21 14:25 15:8  15:11 15:17 15:23  16:1 16:5 16:10  19:2 19:9 19:13  20:9 20:13 20:19  20:22 20:25 21:9  21:12 23:8 24:7  24:13 24:19 24:25  25:4 26:7 27:3 27:7  27:13 27:17 28:1  28:4 28:10 28:14  30:9 32:15 32:18  33:13 33:24 34:2  35:10 35:16 36:14  36:19 36:24 37:1  37:6 37:10  <b>chance</b> 30:14  <b>change</b> 12:2 12:12  21:24 33:4  <b>changed</b> 12:2 12:9  33:8  <b>changes</b> 25:8 26:6  26:23 28:5 28:20  <b>choose</b> 9:19  <b>christina</b> 2:9 6:17  8:9 9:11 11:9 12:22  30:16  <b>citizens</b> 18:16  <b>clarification</b> 35:9  <b>class</b> 24:15  <b>clear</b> 35:8  <b>code</b> 34:15  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<p>9:5 9:8 10:8 11:6 13:3 13:14 13:19 13:21 17:1 17:3 17:9 17:22 18:4 22:16 27:17 27:23 27:23 31:15 32:3 <b>williamson</b> 38:3 <b>within</b> 23:4 29:11 38:9 <b>withstanding</b> 36:17 <b>witness</b> 38:18 <b>won</b> 7:13 <b>word</b> 30:4 30:20 <b>work</b> 7:12 10:18 10:18 23:24 24:23 25:17 31:23 31:25 32:3 32:11 <b>worker</b> 25:3 <b>workforce</b> 1:1 4:12 16:14 <b>working</b> 3:12 13:6 13:25 30:17 <b>workplace</b> 26:16 <b>works</b> 11:2 15:19 23:16 <b>worthwhile</b> 19:22 <b>wouldn</b> 7:6 21:10 <b>wright</b> 2:5 2:5 4:8 4:8 5:24 6:11 14:12 23:15 24:9 24:15 24:20 25:2 <b>write</b> 11:2 13:14 <b>writing</b> 29:16 33:20 33:22 <b>wrong</b> 5:21 13:14</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yeah</b> 14:9 24:7 27:18 <b>year</b> 4:19 4:21 6:23 6:25 13:16 19:7 19:23 <b>years</b> 17:3 19:8 19:24</p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>00</b> 17:14</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>100</b> 8:15 <b>1089</b> 1:25</p>	<p><b>10th</b> 13:1 <b>11th</b> 13:1 <b>12</b> 38:24 <b>13</b> 24:18 <b>14th</b> 3:14 13:9 14:19 14:22 <b>16th</b> 17:10 38:19 <b>17th</b> 3:15 5:17 13:9 14:17 17:10 <b>18</b> 24:16 <b>18th</b> 3:15 13:10 14:19 14:22 14:24 15:5 17:10 21:3 21:6 21:7 <b>19th</b> 17:10 <b>1st</b> 3:18 13:21 15:14 15:18 15:21 33:9</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>200</b> 8:14 <b>2003</b> 30:4 <b>2007</b> 30:6 30:7 <b>2011</b> 3:13 <b>2013</b> 3:5 5:17 5:19 <b>2014</b> 1:10 3:7 3:9 3:11 3:13 3:15 3:18 3:19 4:4 6:15 33:9 38:11 38:19 <b>2015</b> 16:19 16:25 <b>2016</b> 38:24 <b>2020</b> 1:23 <b>221</b> 1:25 <b>234</b> 1:24 <b>24th</b> 3:17 13:20 15:14 <b>25</b> 3:5 <b>250</b> 8:15 <b>25th</b> 3:17 5:18 13:20 15:14 <b>26th</b> 3:17 13:20 14:13 <b>29</b> 3:11 <b>29th</b> 13:4 <b>2nd</b> 4:3 38:11</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>30</b> 17:13 21:8 <b>30th</b> 16:18 <b>31</b> 3:13 <b>31st</b> 13:6</p>	<p><b>37069</b> 1:24 <b>371</b> 1:22 38:23 <b>3rd</b> 3:12</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>400</b> 8:21 <b>450</b> 8:21</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>50</b> 24:17 <b>5th</b> 13:7</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>615</b> 1:25</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p><b>750</b> 8:16 8:25</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>900</b> 1:24 8:16 8:25</p>		
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