

STATE OF MINNESOTA
Department of Labor and Industry
Labor Standards Division

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In the Matter of the Proposed
Adoption of a Rule of the State
Department of Labor and Industry,
Labor Standards Division, Governing
Prevailing Wages

STATEMENT OF NEED
AND REASONABLENESS

The proposed rule amends the list of workers subject to the "prevailing wage" law contained in Minnesota Statutes, section 177.41-177.44 (1988). The prevailing wage statutes and rules establish the procedures by which the Department of Labor and Industry sets a minimum wage for workers on construction projects¹ financed in whole or in part by state funds.

A list of master job classifications specifically subject to the prevailing wages as set by the Department is contained in Minnesota Rules, part 5200.1100. The proposed rule adds the category of "asbestos abatement worker" as class 435 in subpart 5. This class of workers is now prevalent in the state construction industry. When the current list of special crafts was compiled and promulgated as a rule in 1977, this class of workers did not exist or did not exist in sufficient numbers to justify a rate classification specifically for such work. The Minnesota Asbestos Abatement Contractors Association has recently requested that the Department propose this rule.

Because of the hazardous nature of asbestos-containing materials, Congress passed the Asbestos Hazard Emergency Response Act of 1986 (AHERA), 40 CFR, Part 763, Subp. E. AHERA requires local education agencies to identify asbestos-containing materials in their school buildings and take appropriate actions to control the release of asbestos fibers. The deadline for local education agencies to begin implementation of a management plan to do so was July 9, 1989; completion of the plan is to be done in a timely fashion. Public schools, as recipients of state funding because they operate from public buildings, must pay prevailing wages for erection, construction, remodeling, or repair work, including work on asbestos abatement projects. (Minn. Stat. § 177.41; 177.42, subd. 2; 177.43 (1988))

The Minnesota Asbestos Abatement Act, passed in 1987, requires licensure of all persons performing "asbestos-related work." Minn. Stat. § 326.72, subd. 1 (1988). "Asbestos-related work" is defined as "the enclosure, removal, or encapsulation of asbestos-containing material in a quantity that meets or exceeds the U. S. Environmental Protection Agency's requirement of 260 lineal feet of friable asbestos on pipes or 160 square feet of friable asbestos on other facility components." Minn. Stat. § 326.71, subd. 4 (1988).

The Commissioner of the Minnesota Department of Health issues a license to asbestos abatement contractors pursuant to Minn. Stat. § 326.72 (1988) and Minn. Rules, part 7005.1613, for all asbestos-related work in the state of Minnesota, and certifies asbestos abatement site supervisors and asbestos abatement workers pursuant to Minn. Stat. § 326.73 (1988) and Minn. Rules, part 7005.1614. This rule does not in any respect change the licensing, permit, certification, or other requirements for asbestos abatement work except that

¹ As defined by Minn. Stat. §177.42, subd. 2 (1988)

a minimum prevailing rate for asbestos abatement workers on state projects would be certified by the Department of Labor and Industry as the minimum pay rate for these workers.

Since 1973 when the prevailing wage law was first enacted, the asbestos abatement work in public buildings has increased from none or virtually none, to contracts totalling approximately \$5,520,000 for the two-year period which ended December 31, 1989. While the Minnesota Department of Administration is not certain of the dollar value of state asbestos abatement contracts for the coming biennium, the figure is expected to exceed five and a half million dollars. Because of the amount of asbestos abatement work presently occurring as well as anticipated future projects, a rate is needed for this classification in order to ensure fair compensation for this class of workers and to promote high quality work. State agencies letting bids on abatement work and contractors performing such work may better estimate liability for wages if a certified rate is included in bid specifications.

Failure to certify this class of workers may result in an underpayment to some workers, a result contrary to the letter and spirit of Chapter 177.

IMPACT ON SMALL BUSINESS

Minnesota Statutes § 14.115 requires an agency to fulfill several requirements when promulgating rules which may affect small business.

Subdivision 1 permits an agency to include more employees than the 50 stated in Item C if necessary to adapt the rule to the needs and problems of small business. The Department reviewed the rules and declines this option as the rule is not dependent on the number of employees a company has on its payroll.

Subdivision 2 requires an agency to consider five methods of listing the adverse impact on small business. The Department has considered each of the five methods and has reached the following conclusions:

A. Establishing less stringent compliance or reporting requirements. The Department has determined the Item A is not applicable as the rule does not include any reporting requirements.

B. Less stringent schedules or deadlines for compliance on reporting requirements. The Department has determined that Item B is not applicable as the rule does not include schedules or deadlines for compliance.

C. Consolidation or simplification of compliance or reporting requirements. The Department has determined that Item C is not applicable as the rule does not prescribe any reports and therefore, there are no reports to consolidate or simplify.

D. Establishment of performance standards to replace design or operational standards. This method does not apply as there are no design or operational standards contained in the rule.

E. The exemption of small business from any or all requirements. This method is clearly contrary to the statutory objectives that are the basis of the proposed amendment to the rule. The majority of asbestos abatement

contractors are probably small businesses; any exemption for small businesses from prevailing wage requirements would violate the statutory mandate to pay prevailing wages and thereby circumvent the legislative directive. The rule assists small business by setting a standard rate so that a smaller company is not easily underbid by a larger company which has more options in adjusting the various costs involved in funding the project. The prevailing wage law encourages competition based on non-wage costs rather than taking the lowest bid at the expense of underpayment to the worker.

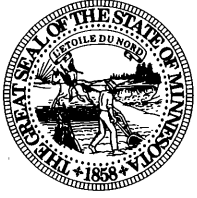
FISCAL IMPACT

This rule will not have a significant impact on the costs of projects covered by the prevailing wage determination law because the rates will be approximately the same as the existing wage rates. The rates will be approximately the same because they will be calculated based on a survey of current industry rates. Some employers will be positively impacted and others negatively impacted. In other words, employers now paying more than the prevailing rate will have an opportunity to decrease wages if not precluded from doing so by contract. Other employers will be required to increase wages to attain the prevailing rate. Still other employers will simply pay the same rate. Overall, wages will be approximately the same; the prevailing wage is simply the market rate in the community for the type of work in each class.

Any additional cost would be minor pursuant to Minn. Stat. §3.983, subd. 3(5) (Supp. 1989). Any additional cost, should there be any, would clearly not exceed \$100,000 in one year under Minn. Stat. §14.11, subd. 1 (1988) and likewise would not exceed three million dollars statewide under Minn. Stat. §3.983, subd. 3(5) ($.00242 \times \$130,750,969,473$ [taxable property in the state in 1989] = \$3,164,173). Therefore, a fiscal note need not be prepared.

SUMMARY

In summary, the new amendment to existing rules proposed for adoption is necessary to fulfill the Department's obligations and duties under the provisions of the prevailing wage law and to assure that the wages of laborers engaged in state projects are comparable to the wages paid for similar work in the community as a whole.



**Minnesota
Department of Labor and Industry**

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July 27, 1990

Legislative Commission to
Review Administrative Rules
Room 55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Dear Sir or Madam:

Enclosed is a final copy of the Statement of Need and Reasonableness for the proposed rules referenced above. I believe that your office was inadvertently sent a draft copy of the statement earlier this week. There are a few insignificant changes between the draft statement and this final version. Please discard the draft.

The proposed rule will be published in the July 30, 1990 State Register.

Sincerely,

Penny Johnson
Compensation Attorney

PJ/cb

Enclosure



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