

MAR 28 1997

## STATE OF MINNESOTA

### DEPARTMENT OF LABOR AND INDUSTRY

**In the Matter of the Proposed  
Adoption of the Rule of the State  
Department of Labor and Industry,  
Labor Standards Division, Governing  
Prevailing Wage; Job Classifications  
Minnesota Rules, Part 5200.1100**

**STATEMENT OF NEED  
AND REASONABLENESS**

#### I. INTRODUCTION

In 1973 Minnesota enacted its own prevailing wage law patterned after the Federal Davis/Bacon Act and the Wisconsin Prevailing Wage Law. As in other states which have enacted their prevailing wage statutes, the Minnesota law is sometimes known as the Little Davis/Bacon Act.

The legislature determined it to be in the public interest that public buildings and other public works be constructed and maintained by the best means and highest quality of labor reasonably available and also that persons working on public works would be compensated according to the real value of the services performed. Therefore, the legislature declared it to be the state's policy "that wages of laborers, workers and mechanics on projects financed in whole or in part by state funds should be comparable to wages paid for similar work in the community as a whole. Minn. Stat. § 177.41

The original Minnesota prevailing wage law required each state agency to make determinations of the prevailing wages for building projects it conducted. The Department of Labor and Industry was granted the authority to enforce compliance with prevailing wages for construction of public buildings and the Department of Highways was given the authority to enforce the prevailing wage rates on highway construction projects. The Department of Labor was to be responsible for defining classes of labor for both highway and building construction and for determining the prevailing wage rates for highway construction.

In 1975 the law was amended to require the Department of Labor and Industry to also determine rates for building construction, previously the responsibility of each contracting agency. Also in 1975 the law was amended to provide that prevailing wage rates will apply to projects financed in whole or in part by state funds, in contrast to the original 1973 law which mandated prevailing wage rates be paid on "state projects".

The first administrative rules regarding the statute were promulgated in 1977. The 1977 rules defined the classes of labor which include laborers, heavy equipment operators, truck drivers, and special crafts. The rules also set procedures for determining the prevailing rates for classes of labor for highway construction projects. The general classes of labor adopted in 1977 remain along with most of the specific classifications.

These proposed rules rename one master job classification already in the rules to more accurately describe the work actually done by workers in this classification. These proposed rules also two master job classifications which are new to the rules but which have been in existence in the construction industry for some time.

In subpart 5 of the rule, entitled "Special Crafts", class 401 currently entitled "Asbestos Workers" is being changed to "Heat and Frost Insulators". Subpart 5, Special Crafts, generally includes the building trades classifications. Asbestos work is a trade in which piping is insulated for protection from heat and frost. Asbestos was the primary insulation material when this job classification was created. Asbestos is no longer used for insulation purposes in the construction industry. Adopting the name "Heat and Frost Insulator" will more clearly identify the type of work performed in this labor class. The new name will also avoid confusion with master job classification number 435, "Asbestos Abatement Worker", and thereby make prevailing wage surveying and reporting less confusing.

The rules also add two new classes. Class 430, entitled "Wiring Systems Technician" and class 431, "Wiring Systems Installer" are new classifications in the rules. However, the actual occupation has been present in the construction trades for some time. In fact the Department of Labor and Industry proposed, but did not actually adopt, two almost identical master job classifications in June of 1984. Again in January of 1994 the Department of Labor and Industry published a proposed rule to include these two master job classifications, albeit with slightly different titles. Contingent letters of objection were received in sufficient quantity so the Department was faced with a choice of deleting the two job classifications or holding a hearing. The objections received as a result of the January 1994 proposal were not to the adoption of the two new classes, but that the names given to them were confusing. This proposal differentiates the two classes by calling one a "Wiring Systems Technician" and the other a "Wiring Systems Installer".

Wiring Systems Technicians are highly skilled workers who install and work on a broad range of low voltage electrical applications such as telephone lines and computer local area network wiring. Wiring Systems Installers are also highly skilled workers performing work described as peripheral devices and/or wiring including pulling cable, and installation of devices in a diverse number of low voltage electrical applications, again such as telephone wiring and computer local area network wiring. The addition of these two new classes will allow bidders to receive a survey of the prevailing rate for this type of work when creating bid documents for prevailing wage commercial construction contracts. The addition of the two classes is reasonable because the classes have been in existence for

some time and the terminology used to identify the two classes is in common use throughout the construction industry.

## **II. STATUTORY AUTHORITY TO PROMULGATE THESE RULES**

The Department of Labor and Industry has both general and specific rule making authority to promulgate these proposed rules. Pursuant to Minn. Stat. § 175.171(2), Department has the authority to adopt reasonable and proper rules relative to the exercise of its powers and duties and to regulate the mode and manner of its investigations and hearings.

Specific statutory authority regarding prevailing wages is found in Minn. Stat. §§ 177.41 to 177.44. Specifically, sections 177.42, subdivision 6, 177.43, subdivision 6, 177.43, subdivision 4, and 177.44, subdivision 3. Section 177.44, subdivision 3 directs the Department to establish classes of labor and mechanics commonly employed in highway construction work. Section 177.43, subdivision 4 contains the authority to investigate and determine the prevailing wage rates on state construction projects, other than highway and heavy construction projects.

## **III. SMALL BUSINESS CONSIDERATIONS, COST TO LOCAL PUBLIC BODIES, IMPACT UPON AGRICULTURAL LAND, AND EFFECT UPON SPANISH SPEAKING PEOPLE.**

### **A. SMALL BUSINESS CONSIDERATIONS.**

Minn. Stat. § 14.115(1994) requires state agencies to consider methods for reducing the impact of proposed rules on small business when a proposed new rule may affect small businesses. The Department has determined that the adoption of these rules will have no direct effect upon small businesses. Any minor indirect effect upon small businesses is out weighted by the Department's need to define classes of labor and to determine prevailing wage rates.

In proposing these rules the Department has considered each of the following methods for reducing the impact of the rule on small businesses:

- (i) the establishment of less stringent compliance or reporting requirements for small businesses;
- (ii) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (iii) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (iv) the establishment of performance standards for small businesses to replace design or operational standards required in the rule;
- (v) the exemption of small businesses from any or all requirements of the rule.

The rule does not impose new reporting requirements for small business. The prevailing wage statute does not allow for less stringent compliance or for exemption for any employers large or small, so the options of less stringent compliance or exemption are not appropriate. Adding the new classifications does not impose schedules or deadlines, so establishment of less stringent deadlines is not an option. The addition of new classifications does not significantly impact compliance or reporting requirements for small or large businesses, therefore, the consolidation or simplification of compliance or reporting requirements was not considered applicable. Likewise, because the proposed addition of labor classifications does not impose design or operational standards, the establishment of performance standards specifically for small businesses was also considered to be inapplicable.

**B. FISCAL IMPACT ON LOCAL PUBLIC BODIES.**

The total cost to all local public bodies in the state to implement these rules is not likely to exceed \$100,000 in either of the two years immediately following adoption of the rules. Accordingly, pursuant to Minn. Stat. §14.11, subdivision 1, the Department of Labor and Industry makes no specific estimate of the total cost to all local public bodies in the state to implement these rules for the two years immediately following their adoption.

**C. AGRICULTURAL LAND IMPACT**

The Department of Labor and Industry has determined that the adoption of these classes would not have a direct and substantial impact on agricultural land under, Minn. Stat. § 14.11, subp. 2, (1994).

**D. EFFECT UPON SPANISH SPEAKING PEOPLE**

These rules do not have their primary effect on Spanish speaking people and therefore are not subject to Minn. Stat. § 3.9223, subdivision 4 (1994).

**IV. NEED FOR AND REASONABLENESS OF THE SPECIFIC MASTER JOB CLASSIFICATIONS ADDED.**

**5200.1100 MASTER JOB CLASSIFICATIONS**

**SUBP. 5 SPECIAL CRAFTS**

**401 ~~Asbestos Workers~~ - Heat and Frost Insulators**

Asbestos Work is a trade which involves the insulation of piping for heat and frost. The purpose for the elimination of the term "asbestos worker" is to accurately reflect current construction practices because asbestos is no longer used for insulation

purposes in the construction industry. In addition, the term "heat and frost insulator" is needed to make more clear the identification of the kind of work performed in the labor class. The change is reasonable in order to avoid confusion with the Asbestos Abatement Worker (435), when reporting or requesting classes of labor.

#### **430 Wiring Systems Technician**

The addition of the rule 430 Wiring Systems Technician is needed to comply with existing rule 5200.1100. This existing rule allows the department to certify rates for other classifications if they are in general use in the area being surveyed. Wiring Systems Technician is a highly skilled craft that has come with the introduction of diversified low voltage electrical applications such as provided in the Minnesota State Board of Electricity "Laws and Rules Regulating Licensing of Electricians and Inspection of Electrical Installations", MN. Stat. Chap. 326, and the National Electrical Code, (Articles 640, 725, 760, 770, 800, 810, and 820). The rule will permit the department to certify rates for entities contemplating projects for inclusion in their bid documents.

The rule adds this craft of 430 Wiring Systems Technician to the existing list of labor classes. With inclusions of this craft, the department will be able to survey interested parties for information of wage rates paid for this class of labor.

The addition of the class Wiring Systems Technician is reasonable because the terminology used to identify this craft is in common use within the construction industry.

#### **431 Wiring Systems Installer**

The addition of the rule 431 Wiring Systems Installer is needed to comply with existing rule 5200.1100. This existing rule allows the department to certify rates for other classifications if they are in general use in the area being surveyed. Wiring Systems Installer is a highly skilled craft performing work described as peripheral devices and/or wiring including pulling cable, and installation of devices, that has come with the introduction of diversified low voltage electrical applications such as provided in the Minnesota State Board of Electricity "Laws and Rules Regulating Licensing of Electricians and Inspection of Electrical Installations", MN. Stat. Chap. 326, and the National Electrical Code (Articles 640, 725, 760, 770, 800, 810, and 820). The rule will permit the department to certify rates for entities contemplating projects for inclusion in their bid documents.

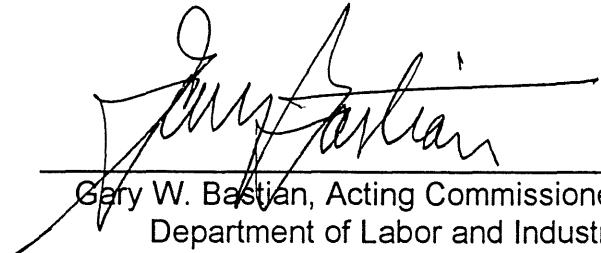
The rule adds this craft of 431 Wiring Systems Installer to the existing list of labor classes. With inclusion of this craft, the department will be able to survey interested parties for information of wage rates paid for this class of labor.

The addition of the class Wiring Systems Installer is reasonable because the terminology used to identify this craft is in common use with the construction industry.

#### V. CONCLUSION

Based upon the foregoing, the Department of Labor and Industry's proposed amendments to the Master Job Classifications are both necessary and reasonable.

Dated March 27, 1995



\_\_\_\_\_  
Gary W. Bastian, Acting Commissioner  
Department of Labor and Industry