

APPROVAL MEMORANDUM - No. 53 Chapter 678

MEMORANDUM filed with Senate Bill Number 6356, entitled:

"AN ACT to amend the labor law, in relation to contracts for public work and building service work; and providing for the repeal of such provisions upon expiration thereof"

APPROVED

It has long been a guiding principle of the Labor Law in this State that prevailing wage must be paid on a project for public work made pursuant to an agreement by public entities. In 1996, an appellate court held that when such public work, on public land, was performed pursuant to a permit rather than a formal contract, there was no "agreement" and so prevailing wage rules do not apply. The purpose of this bill is to close that loophole.

In discussions on this legislation, and in the submissions on this bill, some groups have expressed concerns about possible consequences of this bill. Those concerns are not warranted, however, because they are based upon interpretations that are not consistent with the language of the bill or with the expressed intent of the sponsors.

For example, some affordable housing advocates fear that this bill will make affordable housing "public work," and thus subject to prevailing wage rules where it has not been before. To the contrary, nothing in this bill changes the definition of public work. Indeed, the sponsors have stated unequivocally in extensive legislative colloquies about the bill that it is not the intent of the legislation to apply prevailing wage rules to privately developed or owned affordable housing. The Department of Labor - which construes and enforces prevailing wage laws - also informs me that the bill does nothing to alter the definition of public work generally, or to change its position with regard to the application of prevailing wage rules to affordable housing in particular. Finally, I note that the courts have rejected efforts to bring various private affordable housing projects within the definition of public work, even where public funding was involved, and the language of the bill - and the statements of the sponsors - make clear that the legislation does not in any way overturn those decisions.

Some groups have raised the more specific concern that prevailing wage rules could be held to apply to the installation of sewers or the laying or maintenance of sidewalks or streets ancillary to construction of affordable housing or other private housing developments that are not themselves public work, particularly where such ancillary construction

is ultimately turned over to public ownership. Here too, there is nothing in the historical record to indicate that such ancillary work on private developments has ever been deemed "public work," and therefore it should not be subject to prevailing wage rules after passage of this bill. Moreover, sponsors from both houses specifically confirmed in the legislative debates that it was not the intent of the legislation to apply prevailing wage rules in these circumstances. Again, the Department of Labor shares this view.

On the basis of the above understanding of this legislation, which is amply supported by its language and the stated intent of its drafters, I fully support this bill. The prevailing wage rules are an important and

necessary element of labor relations in this State, and contribute to the well-being of workers and the public alike. The narrow court interpretations of the term "agreement" created an unwarranted loophole that has prevented the application of prevailing wage rules to public work projects that should be subject to those rules, and this bill properly closes that loophole in the law.

The bill is approved.

(signed) ELIOT SPITZER

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