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TESTIMONY ON HOUSE BILL 1271

PRESENTED TO THE
HOUSE LABOR AND INDUSTRY COMMITTEE

BY

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EXECUTIVE DIRECTOR

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Harrisburg, PA

The County Commissioners Association of Pennsylvania (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. Although we were unable to attend the hearing this morning, I am pleased to provide the committee with our written comments regarding House Bill 1271 and its impact on our counties.

Given the current budget and resource problems facing both the state and local levels, counties are asking the General Assembly to review and re-visit mandates and statutory provisions that are outdated or unnecessary. In fact, mandate relief was selected as CCAP's top priority for 2011, reflecting our members' awareness of the fiscal realities they were likely to face, and are now facing, in the FY 2011-2012 budget. Thus, 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 this 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 of our public construction projects. The prevailing wage requirements can increase the cost of many middle-range projects, such as renovation of prisons, juvenile detention facilities and local courthouses and judicial facilities, generally by 10 to 15 percent from accounts we have heard.

The list of potentially covered public works projects also includes county responsibility to maintain 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.

Counties are rapidly facing the prospect of a vastly increasing number of projects, both in terms of replacing the structure outright as well as ongoing maintenance. 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 complicated the issue.

Prior to 2007, resurfacing projects where the road is milled and resurfaced were interpreted through an MOU between PennDOT and the Department of Labor and Industry to be maintenance work under the Act, and therefore exempt from prevailing wage mandates. However, this MOU was challenged in *Youngwood Borough v. Pennsylvania Prevailing Wage Appeals Board*, in which the Board ruled that Youngwood Borough should have used prevailing wage rates for its milling and repaving project. CCAP filed a joint amicus brief in support of the Borough when the case was appealed to the Pennsylvania Supreme Court, along with the Pennsylvania League of Cities and Municipalities, the Pennsylvania Association of Township Commissioners, Pennsylvania State Association of Boroughs and Pennsylvania State Association of Township Supervisors. In that brief, we collectively argued that as the law currently reads, "maintenance" is considered a subset of "repairs," to the extent that nature of the repair does not change or expand the original work, and thus the Board's ruling should be overturned.

The Board's decision, though, was ultimately upheld by the Pennsylvania Supreme Court, so that some of the maintenance projects on county bridges that meet the $25,000 threshold have since been subject to prevailing wages. However, 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.

House Bill 1271 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 estimated cost 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.

In the Marcellus Shale region where roads and bridges are taking an additional burden from the heavy truck traffic, Lycoming County staff report that they expected to see additional liquid fuels funding due to increased purchases of fuel for industry-related vehicles. This funding, though, has remained flat, and conversations with PennDOT have revealed that more fuel efficient vehicles and general economic slowdown are likely counteracting any effects of increased fuel purchases.

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.

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 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. House Bill 1271, 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 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 House Bill 1271. Specifically, they recommend the committee consider that bridge repairs such as scour repairs and abutment underpinnings be delineated as maintenance to provide clarity.

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 and answer any questions you may have at your convenience.