

Legislation Text

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September 17, 2009

TO THE PRESIDENT AND MEMBERS OF THE COUNCIL OF THE CITY OF PHILADELPHIA:

I am returning herewith to your honorable body, without my signature, Bill No. 090292, which was passed by Council at its session on June 11, 2009.

First, I want to state that I understand the policy issue the bill is seeking to address and I agree with the goal. In fact, in a letter dated June 4, 2009 which I sent to Councilwoman Sanchez, the sponsor of this measure, I commended her for her leadership on this measure and stated that I supported her efforts to “protect worker’s rights by ensuring prevailing and livable wages.” And, I pledged to work with Councilwoman Sanchez and the various stakeholders to “craft an amenable solution” while pointing out the need to better understand the potential citywide fiscal implications of the bill.

This bill emanated out of a situation occurring as a result of the need to achieve budget efficiencies due to the very serious and significant fiscal crisis facing the City. One of the many steps the City implemented to reduce costs, was authorizing certain emergency housing providers under contract to the City to individually solicit security services with the agreement that the level of security would be maintained. The providers then entered into direct agreements for security services that were at rates lower than the city-wide security contract that had been providing security at these emergency housing facilities, thus unfortunately, resulting in lowered wages for some of the security guards at some of these facilities.

Once again, I committed to Councilwoman Sanchez that I would work with her to resolve this situation. Clearly, any solution would have cost implications and I indicated that once a State budget and the legislation we needed from the State to balance our budget and financial plan were enacted, the City would be in a better position to craft a remedy. Unfortunately, the fiscal uncertainty that has existed all summer due to no final action on either of the State components has impeded my ability to work with the sponsor and stakeholders on alternative solutions. It is important for you to know, though, that I have made a personal commitment directly to Councilwoman Sanchez that I will resolve the wage rate issue upon completion of the State budget issues.

With Council’s resumption of its legislative session, I am required to take action on this measure or it becomes law without my signature. I have chosen to not sign this bill because of the significant legal issues the bill also raises. The City Solicitor has opined that the provisions of the bill exceed Council’s powers under the Home Rule Charter by proscribing substantive terms of certain professional services contracts. A copy of the full opinion is attached. I would also like to note that Administration testimony provided at the committee hearing on this bill stated these legal concerns with the bill and that testimony is a part of the legislative record.

Permit me to briefly summarize the Charter issue. This bill would extend prevailing wage requirements to non-professional service work performed on City *professional* service contracts. Currently, the City's prevailing wage ordinance imposes prevailing wage requirements on certain *non*-professional services contracts with the City, and on all subcontracts of such *non*-professional services contracts. The current prevailing wage rules do not impose any requirements on City *professional* services contracts.

Bill No. 090292 would require that a professional services contractor of the City who performs some *non*-professional services pursuant to the professional services contract must pay its workers who perform those non-professional services a prevailing wage, regardless whether the contractor employs those non-professional workers directly or by subcontract.

Although the Administration is free to include any such requirement in its professional services contracts, if the Administration so wishes and if funding is available, Council does not have the power under the Home Rule Charter to mandate such a requirement; and thus the bill is unenforceable. Council may have power to impose such requirements with respect to *non*-professional service contracts of the City, but that power does not extend to professional services contracts.

Because Bill No. 020292 would effectively dictate the substantive terms of contracts not subject to the lowest responsible bidder requirement -- *i.e.*, the bill would require that non-professional service contracts include a provision requiring certain subcontractors to comply with certain prevailing wage rules -- the bill exceeds Council's power and is unenforceable.

Based on the foregoing legal issues, I am returning the bill without my signature.

Respectfully submitted,
Michael A. Nutter
Mayor

attachment