

February 25, 1999

The Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Initiative Regarding Amendment to Title 44, Chapter 10, Idaho Code

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on February 19, 1999. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. It must be stressed that, given the strict statutory time frame in which this office must respond and the complexity of the legal issues raised in this petition, this office's review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only," and the petitioners are free to "accept or reject them in whole or in part."

BALLOT TITLE

Following the filing of the proposed initiative, our office will prepare short and long ballot titles. The ballot titles should impartially and succinctly state the purpose of the measure without being argumentative and without creating prejudice for or against the measure. While our office prepares the titles, if petitioners would like to propose language with these standards in mind, we would recommend that they do so and their proposed language will be considered.

MATTERS OF SUBSTANTIVE IMPORT

The proposed initiative would create a new code section, Idaho Code § 44-1006, that states:

44-1006. Determining prevailing wages as paid in county seat of county in which work is being performed.—The advertised specifications for every contract let by the State of Idaho and/or any county, city, school district, or other political subdivision of the state for construction, repair and maintenance work on public buildings or public works projects, which involves the employment of mechanics and/or laborers, shall contain a provision stating the minimum wage rates and fringe benefits to be paid various classes of laborers and mechanics in the performance of the contract. It shall be the responsibility of the director of the department of

labor and industrial services to determine the prevailing wage rates and fringe benefits in accordance with rates compiled by and on file with the Davis-Bacon Section of the United States Department of Labor by the following procedure:

- (a) In all counties in which wage rates and fringe benefits have been compiled by the United States Department of Labor in accordance with the Davis-Bacon Act, such rates and fringe benefits shall be deemed to be the prevailing rates in the county seat of the county in which the work is to be performed.
- (b) In all other instances the director of the department shall make a determination after an actual survey of wages and fringe benefits being paid at or near the site of the work. Such determination shall be deemed to be the prevailing rates in the county seat of the county in which the work is to be performed.

The identical language that is proposed by the initiative was enacted by the Idaho legislature in 1955, 1965 and 1974 as Idaho Code § 44-1006. See 1955 Idaho Session Laws 77-78; 1965 Idaho Session Laws 456 (adding “fringe benefits”); 1974 Idaho Session Laws 1056 (changing “state commissioner of labor” to “director of the department of labor and industrial services”). In 1985, the legislature repealed Idaho Code § 44-1006. 1985 Idaho Session Laws 8. Therefore, the proposed initiative is simply an attempt to resurrect previously repealed statutory language.

One statutory change that has occurred since 1985 affects the language in the proposed initiative. Idaho Code § 67-2402 has changed the name of the “Idaho Department of Labor and Industrial Services” to the “Idaho Department of Labor.” The petitioners should probably change the designation of the agency in the proposed language to reflect its current name.

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style and matters of substantive import and that the recommendations set forth above have been communicated to petitioner Daniel R. Obray by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

ALAN G. LANCE
Attorney General

Analysis by:

MATTHEW J. MCKEOWN
Deputy Attorney General