



## Legislative Fiscal Bureau

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May 19, 2009

Joint Committee on Finance

Paper #850

### **Local and Municipal Public Works Project Prevailing Wage Applicability Thresholds, Records, and Publicly Funded Private Construction Projects (DWD)**

[LFB 2009-11 Budget Summary: Page 695, #19]

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#### **CURRENT LAW**

Current law requires DWD to determine prevailing wage rates for all types of local public works projects, state public works projects (except highways and bridges), and state contracted highway construction projects. DWD enforces local and state prevailing wages laws, while the Department of Transportation enforces prevailing wage laws for highway construction projects.

#### **GOVERNOR**

Modify prevailing wage applicability thresholds and provisions related to employee records for local and state public works projects, and create a prevailing wage law applicable to publicly funded private construction projects.

#### **DISCUSSION POINTS**

1. Generally, state and local government prevailing wage laws require that certain laborers, workers, mechanics, and truck drivers employed on a state or local public works project be paid the prevailing wage rate determined by DWD, and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay. The term "prevailing wage rate" means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for a majority of the hours worked in a trade or occupation on projects in an area (generally the county). To determine prevailing wage rates and

hours of work for local and state public works projects, DWD conducts an annual survey of wages and fringe benefits paid to, and hours worked by, individuals employed in the construction and related industries in each of the state's 72 counties.

Before bids are solicited for any public works project, the state agency or local governmental unit having the authority to contract is required to apply to DWD to determine the prevailing wage rate for each trade or occupation required in the work under contemplation in the area in which the work is to be done. The Department conducts investigations and holds public hearings, as necessary, to define the trades or occupations that are commonly employed on projects that are subject to the prevailing wage laws, and to obtain information concerning the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. DWD issues its determination within 30 days after receiving the request. The prevailing wage rates determined by the Department and the prevailing hours of labor must be posted in at least one conspicuous and easily accessible place on the site of the project.

The following table shows the number of prevailing wage determinations issued by DWD for 2006 through 2008. The totals do not include state highway projects, or municipal projects undertaken by seven municipalities that are exempt from the law, because they have local prevailing wage laws. DWD allocates \$385,900 GPR and 4.5 GPR positions annually to administer the state's prevailing wage laws. Attachment 1 is a pamphlet, prepared by DWD, that provides answers to frequently asked questions about the Wisconsin prevailing wage laws for state and municipal public works projects. The pamphlet provides broad range of information about the state law.

### **Prevailing Wage Determinations**

<u>Year</u>	<u>Municipal Projects</u>	<u>State Projects</u>	<u>Total</u>
2006	1,229	261	1,490
2007	1,208	281	1,489
2008	1,253	295	1,548

### **Project Cost Thresholds**

2. Most projects must exceed a specified dollar threshold to be covered by prevailing wage laws. Thresholds are established for single trade and multiple-trade projects. As of January 1, 2009, the threshold for a single-trade project is \$48,000, and the threshold for a multiple-trade project is \$234,000. Prevailing wage laws do not apply to projects below these thresholds. A "single trade project" is defined as one in which a single trade (such as a carpenter, glazier, or electrician) accounts for 85% or more of the total labor cost of the project. A "multiple-trade project" is defined as one in which no single trade accounts for more than 85% of the total labor cost of the project. (State highway and bridge projects have no threshold, and are all covered by the law.) Most work performed on the site of a project subject to any of these laws must normally be paid for at the proper prevailing wage rate. The thresholds are adjusted every year in proportion to the change in

construction costs, as measured by the construction cost index as published in Engineering News-Record.

3. Under the bill, the current separate thresholds for single-trade projects and multiple-trade projects would be eliminated. Instead, \$2,000 would be the estimated project cost of completion below which state prevailing wage law provisions would not apply for all state and local public works projects. The definitions of "single-trade public works project" and "multiple-trades public works project" would be repealed, and DWD would no longer be required to annually adjust, to reflect changes in construction costs, the threshold amount below which prevailing wage law would not apply. These provisions would take effect on January 1, 2010.

4. DWD indicates that the principal reason for lowering the project thresholds is to conform state thresholds with federal Davis-Bacon law thresholds. The federal Davis-Bacon Act requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed in similar projects in the area. The Davis-Bacon Act was enacted by Congress in 1931 and amended in 1935 to substantially its present form.

### **Required Records**

5. Under current law, each contractor, subcontractor, or contractor's or subcontractor's agent performing work on a project is required to keep full and accurate records clearly indicating the name and trade or occupation of every person performing the work, and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked. If requested by an individual, DWD is required to inspect the payroll records of any contractor, subcontractor, or agent performing work on a project to ensure compliance with record keeping requirements. If the contractor, subcontractor, or agent subject to the inspection is found to be in compliance, and if the person making the request is a person performing the work subject to prevailing wage laws, the Department charges the person making the request the actual cost of the inspection. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance, and if the person making the request is not a person performing work subject to prevailing wage law, DWD is required to charge the person making the request the greater of \$250 or the actual cost of the inspection.

6. Assembly Bill 75 would require each contractor, subcontractor, or contractor's or subcontractor's agent that performed work on a state or local public works project to submit, to the contracting local governmental unit or state agency, weekly certified records indicating the name and trade occupation of every person subject to prevailing wage laws, and an accurate record of the hours worked and wages paid to those persons during the preceding week.

7. DWD indicates that requiring contractors and subcontractors to submit certified payrolls that then became public records would provide individual workers and third parties, such as competitors and unions, with information that could be used to identify violations of prevailing wage laws, and that would lead to more accurate complaints against violators. However, contractors and subcontractors, particularly smaller businesses, could experience increased administrative costs

in complying with the records submission requirement.

8. Under federal law, contractors are required to maintain payroll and basic records during the time of work on the project, and for three years following completion. Contractors are required to submit, weekly, a copy of all the payrolls to the federal agency that is party to the contract (or to the sponsor or owner for transmission to the agency) for each week in which any contract work is performed. Illinois, Michigan, and Minnesota require contractors and subcontractors to maintain accurate payroll records, for reasonable inspection by the state agency responsible for enforcing the prevailing wage law.

9. Current provisions that authorize a person, subject to prevailing wage provisions, to request that DWD inspect the records of any contractor, subcontractor, or agent to determine compliance with prevailing wage laws would be modified to require that the person be charged the costs of inspection if the contractor, subcontractor, or agent is found to be in compliance with the law and the Department finds that the request is frivolous. A person not subject to prevailing wage provisions making a similar frivolous request would pay the greater of \$250 or the cost of the inspection. In order to find that a request was frivolous, DWD would be required to determine that the person making the request made the request in bad faith, solely for the purpose of harassing or maliciously injuring the contractor, subcontractor, or agent subject to the inspection, or that the person making the request knew, or should have known, that there was no reasonable basis for believing that a violation of prevailing wage provisions had been committed.

10. The Department indicates that charging all complainants the cost of any investigation discourages people from filing complaints even when made in good faith. The AB 75 provision would permit good faith complaints to be made without charge, while allowing DWD to charge for frivolous complaints. In 2008 DWD received 106 complaints of prevailing wage law violations, and there were two cases where DWD charged the complaint initiator for the cost of invalid investigations.

### **Publicly Funded Private Construction Projects**

11. The bill would establish a state prevailing wage law for publicly funded private construction projects. Generally, the provisions of the law would be similar to the provisions governing state and municipal public works projects, but include the provisions in the bill related to cost thresholds and recordkeeping. The specific provisions included in the bill are described in Attachment 2.

12. Under the bill, "publicly funded private construction project" would be defined as a construction project, other than a project of public works, that receives financial assistance from a local governmental unit.

13. "Financial assistance" would be defined as any grant, cooperative agreement, loan, contract (other than a public works contract, a supply procurement contract, a contract of insurance or guaranty, or a collective bargaining agreement), or any other arrangement by which a local governmental unit provided or otherwise made available assistance in any of the following forms: (a) funding; (b) a transfer or lease of real or personal property of the local governmental unit or of

any interest in or permission to use, other than on a casual or transient basis, that property for less than fair market value or for reduced consideration; (c) proceeds from a subsequent transfer or lease of real or personal property transferred or leased from the local governmental unit, if the local governmental unit's share of the fair market value of the property was not returned to the local governmental unit; or (d) a redevelopment contract, economic development agreement, revenue agreement, contract, or assistance provided under specified municipal law provisions (industrial development revenue bonding, tax incremental financing, blight elimination and slum clearance, and business improvement districts). If a construction project did not receive financial assistance, as defined above, the project would not be a publicly funded private construction project and, therefore, would not be subject to the prevailing wage law for publicly funded private construction projects

14. The definition of financial assistance is modeled after provisions in a City of Madison ordinance that requires prevailing wages to be paid on construction projects financed in whole or part with City financial assistance. The ordinance has been in effect since 1997. Federal law applies Davis-Bacon Act prevailing wage provisions to "federally assisted" contracts. These include contracts where the federal government may offer grants, loans, loan guarantees, and insurance to an entity operating a construction project.

### **State Comparison**

15. Attachment 3, based on information compiled by DWD and a report prepared for the Ohio General Assembly, provides a comparison of state prevailing wage laws. Thirty-two states have such laws, while 18 states, including Iowa, do not have prevailing wage laws. The method of computing the prevailing wage varies among states. Some states use the modal rate (the rate that occurs with the most frequency), the median rate, the average rate, the weighted average rate (the sum of all rates times the number of workers receiving that rate divided by the number of workers), or the plurality rate (the rate that occurs among 50%, 40%, or 30% of applicable workers). The project cost threshold amounts are statutory amounts, and not adjusted for inflation, where applicable. Thirteen states shown in the table have cost thresholds of \$2,000 or less. Nine of the 18 states that currently do not have a prevailing wage law had the law at one time and repealed it.

### **Economic Impact Studies**

16. Debates about prevailing wage laws have occurred as long as the laws have existed. Generally, prevailing wage laws are supported as a mechanism for encouraging development of the economy along a high-skill path that leads to more productive and cost-effective production. As a result, workers will be paid higher wages while not significantly increasing the cost of public construction. Prevailing wage laws increase the likelihood that public construction projects will have a higher multiplier effect on the economy, and more significantly increase local economic output and the tax base. Contractors will be more likely to hire the most skilled workers available, which increases the level of safety of the workplace, and decreases the likelihood of poor quality and cost over-runs on the project.

17. Prevailing wage laws are opposed because such laws may unnecessarily increase costs and interfere with the efficient operation of markets. It has also been argued that the method of

determining what the "prevailing" wage is viewed as biased and unfair, because the nature and extent of prevailing wage surveys are biased, and sometimes fraudulent.

18. A large literature of economic studies analyzing the economic impact of prevailing wage laws has developed over time. Some of the more recent studies follow:

A 2006 study, conducted by the Kentucky Governor's Office for Policy Research (Jones, 2006), used U.S. Bureau of Labor Statistics (BLS) data to compile a weighted wage rate comparison of prevailing wage rates and average wage rates in Kentucky counties. The study found that, statewide, there was an average savings of 17.1% on the labor share of state construction projects in the absence of a prevailing wage. The county-specific difference ranged from 6.4% to 40.8%. The study estimated that elimination of the prevailing wage requirement would result in average savings of 6.65% of project costs. The report also notes that the prevailing wage requirement artificially raises the price of labor, resulting in a distortion of the capital-labor input ratio used by construction firms on prevailing wage projects. Firms would substitute away from the relatively more expensive labor, and utilize a greater level of capital equipment.

A Mackinac Center for Public Policy study compiled wages in the construction industry in Michigan from BLS statistics and compared those wages to prevailing wages established for various construction workers, such as carpenters and electricians (Kersey, 2007). The data indicated that Michigan's prevailing wage law resulted in an average wage increase of 39.1%. The study concluded that the prevailing wage law caused contractors to pay wages that averaged 40% to 60% higher than those determined by the market. Based on U.S. Census data, the prevailing wage law was estimated to increase the cost of construction by 10% to 15%. Repeal of the law would have saved state taxpayers an estimated \$216 million in 2002. Exempting school districts from the law would have saved an estimated \$109 million in 2002, and repeal of local prevailing wage laws would have saved municipalities an estimated \$16 million. The report states that although there is some evidence that prevailing wage laws are associated with modest improvements in productivity, the increase would not offset the higher wage costs. Also, evidence of the effect of prevailing wage laws on worker safety is conflicting, and there is no evidence that the laws improve building quality. Finally, prevailing wage laws may limit the number of jobs in the construction industry.

The Center for Governmental Research (CGR) produced a report in 2008 for the New York State Economic Development Council to assess the impact of prevailing wage requirements on the cost of construction in New York State. CGR recorded the median market wages (including benefits) of metropolitan statistical areas in New York and across the U.S., and the prevailing wages in the New York areas and then used the data to determine the costs of constructing a virtual prototype project in each of those regions. The study found that, within the state, the prevailing wage increased the total cost of a typical construction project by 36% across the state's major metropolitan areas. The cost differential ranged from 23% for upstate regions, to 53% for downstate regions. Project costs were 28% higher for upstate projects than for out-of-state competitors, while costs were 76% higher for downstate communities than for out-of-state competitors.

The Beacon Hill Institute at Suffolk University compared the U.S. Department of Labor, Wage and Hour Division (WHD) method of determining prevailing wages under the federal Davis

Bacon Act to the average wage calculations of the BLS and found that the WHD "mismeasure" of wages had three principal consequences: (a) the WHD methods inflated wages, on average, by 22%; (b) the WHD methods inflated construction costs by 9.91%; and (c) the WHD methods increased public construction costs by \$8.6 billion per year (Glassman, Head, Tuerk, and Bachman, 2008). Similarly, a number of reports by the Heritage Foundation have criticized the WHD methods of calculating prevailing wage rates for federal projects. Prevailing wage provisions in the American Recovery and Reinvestment Act (ARRA) are estimated to inflate construction costs by \$17 billion (Sherk, 2009). Because prevailing wage determinations are inaccurate, they bear little relation to market rates. In some cities rates are much higher than market rates and in some cities rates are much lower. For example, rates for carpenters and plumbers in Sarasota Florida were \$6.55 an hour, which was below the state's minimum wage of \$7.21 (Sherk, 2008). Also, prevailing wage requirements make it difficult for minority contractors to employ and train unskilled minority workers (Sherk, 2009).

A 2005 econometric analysis found that, all else equal, low-income housing projects were significantly more expensive if developers were required to pay prevailing wages (Dunn, Quigley, and Rosenthal, 2005). Based on a sample of 205 low-income housing projects subsidized by the California Tax Credit Allocation Commission during 1997 through 2002, and using a number of statistical models to determine costs, the authors concluded that prevailing wage requirements increased construction costs between 9% and 37%. Imposition of the law decreased the number of low-income housing units by more than 3,100 units per year.

19. A 2006 report prepared for the Minnesota Office of the Legislative Auditor (Jordan, 2006) included a review and evaluation of the literature that measured the relationship between prevailing wage laws and the cost of construction. Studies reviewed included: (a) the relationship between prevailing wage and quality of construction and productivity of workers; (b) the effect of prevailing wage laws on project cost; and (c) other impacts of prevailing wage laws, such as the impact on construction worker wages, training and apprenticeship programs, and state tax revenues. In reviewing the various studies of the effects of prevailing wage laws on total costs of construction, the author indicates that some failed to control for the range of variables that affect costs. The studies failed to allow for factor substitution, and assumed labor is homogeneous. Other studies used regression analysis to control for factors other than prevailing wage laws that might impact total cost. The results of these types of studies is mixed, but the "preponderance" of available studies show that prevailing wage laws do not have a statistically significant impact on the total cost of public construction projects. Using regression analysis, the study estimated the impact of changing or repealing the Minnesota prevailing wage law on the income of construction workers in the state, and the resulting impact on state revenues. The analysis found that changing or repealing the state's prevailing wage law would result in a net loss in state construction worker wages of between \$193 million and \$901 million per year. State tax revenues would decrease between \$37.8 million and \$178 million. Also, the study indicated that weakening or repealing the state prevailing wage law would result in a weakening of apprenticeship training programs, increases in injury rates, increased project cost overruns, and a weakening of the position of minorities and women in the construction industry.

A recent report prepared by economist Peter Philips on the potential effects of a state

prevailing wage law in Iowa (Philips, 2006) reflected much of the author's research on prevailing wage laws. According to Philips, prevailing wage regulations increase training and productivity. Where prevailing wage laws have been repealed, apprenticeship training declined. Apprenticeship training in Kansas construction decreased 38% in the four years after the state repealed its prevailing wage law in 1987, while minority apprenticeship training fell 54%. Based on data from the 2002 Census of Construction, states with prevailing wage laws were estimated to have, on average, 13% to 15% higher value added per construction industry worker statewide, when compared to states without prevailing wage laws (Philips).

Phillips's research also showed that prevailing wage laws did not raise costs. Due to technological changes, improved materials, and increased managerial efficiency, the share of wage costs as a percent of total construction costs has been falling. In 1972, wage costs were about 27% of total construction costs in the U.S., while in 2002 wage costs had declined to approximately 20% of total construction costs. During the mid-1990s, Kentucky enacted a prevailing wage law, Ohio, repealed the state law, and a Michigan court suspended prevailing wage regulations on school construction for over two years. Using FW Dodge construction data for 391 new schools constructed in Kentucky, Ohio, and Michigan, Philips found the mean square foot construction cost for rural schools in the periods in which there was no prevailing wage law was \$96, compared to \$98 when there was a law. For urban schools, the mean square foot cost was \$114, with or without a prevailing wage law. The author then applied an econometric model to control for other factors and estimated that prevailing wage regulations raised school construction costs 0.7%, a result that was not statistically significant (Philips, 2001). A subsequent peer-reviewed study of 4,000 new schools built nationally found that there was no measurably or statistically significant effect of prevailing wage regulations on total start costs (Azari-Rad, Philips, and Prus, 2002).

Using BLS data from the Census of Fatal Occupational Injuries, for 2003 through 2005, Philips performed regression analysis to test the relationship between prevailing wage laws and the construction fatality rate by state. One model showed that, in general, prevailing wage laws decreased construction fatalities by approximately 25%, while a second model showed an approximate decrease of 28% in states with medium strength laws, and a 42% decrease in states with strong laws. Finally, data from the 2002 Census of Construction showed that legally mandated per-worker payments, for construction workers, into worker's compensation, unemployment insurance, and social security were 25% higher in prevailing wage law states. Employer contributions to health insurance and pension plans for construction workers and their families were 65% higher in prevailing wage law states. Philips writes that failure to pay health insurance in the construction industry can end up costing state taxpayers. A study of uncompensated care from public hospitals from 1998 through 2000, in Clark County, Nevada, found that the total cost of uncompensated care attributable to employed construction workers and their families was \$37 million for the period.

A comprehensive review of research related to prevailing wages and government contracting costs was recently published (Mahalia, 2008). The report concluded that a growing body of economic studies finds that prevailing wage regulations do not inflate the cost of government construction contracts. The report indicates that a basic premise is that prevailing wage laws raise costs for contractors, and the contractors pass the costs on to the government. However, for a



number of reasons, the costs to government may not increase, regardless of the wage differences: (a) contractors might already be paying wages that are required under prevailing wage laws; (b) labor costs are not the predominant costs in government contracts; (c) prevailing wage rates can attract higher-skilled workers, and more efficient management, so that increased productivity would offset higher wages; and (d) higher wages may be offset by factor substitution, such as more efficient materials.

In reviewing the research, Mahalia identifies three main categories: (a) the wage differential approach; (b) cross-sectional analysis, and (c) time series analysis. The wage differential approach consists of determining if wages under prevailing wage laws are higher, and assuming the increase in wages is passed on to the government in higher contract costs. A number of such studies are identified including, studies by the GAO in 1979, the Makinac Center for Public Policy (Vedder 1999), the Beacon Hill Institute (Glassman et al. 2008) and the Center for Government Research (CGR, 2008). The author indicates that these studies assume, rather than empirically examine, the relationship between higher wages and construction costs. As a result, they do not control for other factors, such as project location or time of year, that also can affect costs.

The cross-sectional approach uses econometric techniques to compare the costs of construction when it is subject to prevailing wage laws and when it is not. The first econometric cross-sectional study of prevailing wage laws and construction costs used regression analysis to compare the costs of public construction contracts subject to federal prevailing wage regulation with the costs of private construction contracts that were not (Fraundorf et al, 1984). The results showed that public construction was on average 26.1% more expensive than private construction. (The authors acknowledged that, with labor costs about 30% of total construction costs, the estimate seemed somewhat high). This analysis was partially replicated in 1996 (Prus), but the comparison made was between public and private construction costs in states with prevailing wage laws to those costs in states without the laws. Prus did not find a statistically significant difference in construction costs in states with prevailing wage laws and in states without such laws. Studies by Philips (1996, 1998), Prus (1999), Azari-Rad et al. (2002; 2003) generally found construction costs were not statistically different for contracts subject to prevailing wage laws and those that were not. However, the study by Dunn et al. (2005), cited above, did conclude that prevailing wage rates in California increased construction costs for low-income residential projects.

Time series analysis is used to compare construction costs before and after, either repeal or enactment, of prevailing wage laws. Thieblot used President Nixon's suspension of the Davis-Bacon Act in 1971 to compare contract bids before suspension with rebids after suspension. The differences in re-bids suggested a savings of 4.74% on government construction contract costs from repeal of Davis-Bacon. However, the original contract bids were made public before the re-bid process, meaning bidders had knowledge of their competitors' offers for projects. Studies by Bilginsoy and Philips (2000), and Philips (2001) found that prevailing wage laws caused no statistically significant increase in government construction costs.

Mahalia indicates that recent case studies suggest there may be other societal benefits of prevailing wage laws, such as improved safety, increased apprentice training, and increased tax revenues. For example, Belman and Voos (1995) concluded that losses in income and state tax

revenues would outweigh the potential cost savings from repealing Wisconsin's prevailing wage law. The study found that repeal of the law would reduce income in the construction industry by \$123 million, and result in a net decrease of \$6.8 million in state tax revenues. Philips found that the number of apprentices in Utah decreased 40% following repeal of the state's prevailing wage law in 1981.

## **ALTERNATIVES**

### **A. Project Cost Thresholds**

1. Adopt the Governor's recommendation to establish \$2,000 as the estimated project cost of completion below which state prevailing wage law provisions would not apply for all state and local public works projects.
2. Delete the Governor's recommendation.

### **B. Required Records**

1. Adopt the Governor's recommendation to require each contractor, subcontractor, or contractor's or subcontractor's agent that performed work on a state or local public works project to submit, to the contracting local governmental unit or state agency, weekly certified records indicating the name and trade occupation of every person subject to prevailing wage laws, and an accurate record of the hours worked and wages paid to those persons during the preceding week.
2. Delete the Governor's recommendation.
3. Adopt the Governor's recommendation to modify current provisions to require that a person, subject to prevailing wage provisions, who requests that DWD inspect the records of any contractor, subcontractor, or agent to determine compliance with prevailing wage laws be charged the costs of inspection if the contractor, subcontractor, or agent is found to be in compliance with the law and the Department finds that the request is frivolous, and that a person not subject to prevailing wage provisions making a similar frivolous request would pay the greater of \$250 or the cost of the inspection.
4. Delete the Governor's recommendation.

### **C. Publicly Funded Private Construction Projects**

1. Adopt the Governor's recommendation to establish a state prevailing wage law for publicly funded private construction projects.
2. Delete the governor's recommendation.

Prepared by: Ron Shanovich  
Attachments

## ATTACHMENT 1

Additional copies of this booklet are available from:

Department of Workforce Development  
Equal Rights Division  
Labor Standards Bureau

201 East Washington Avenue  
P. O. Box 8928  
Madison, WI 53708  
(608) 2666860

The Labor Standards Bureau of the Department of Workforce Development, Equal Rights Division, has prepared this pamphlet to provide you with answers about Wisconsin's prevailing wage rate laws.

The answers provided are applicable to most, but not all, situations because a variety of facts must often be considered in order to make a proper interpretation of these laws. The information in this pamphlet reflects the laws, administrative rules, and judicial or administrative interpretations in effect at the time of printing. These factors may change from time to time. The Labor Standards Bureau will update this pamphlet as time and budget constraints permit.

The information in this pamphlet may not reflect the policies and procedures utilized by the Wisconsin Department of Transportation (DOT) to carry out its responsibilities pursuant to §103.50, Wisconsin Statutes. The DOT is the only state agency that can enforce the payment of prevailing wage rates on state highway and bridge projects. If you have questions or wish to file a complaint on a state highway or bridge project, you should contact the appropriate Labor Compliance Coordinator at the DOT.

### **What is Wisconsin's prevailing wage rate law?**

Wisconsin actually has three (3) separate prevailing wage rate laws. Each law covers a different type of public works project. Section 66.0903, Wisconsin Statutes covers projects bid or negotiated by a local governmental unit. Section 103.49, Wisconsin Statutes covers projects bid by a state agency, except state highway and bridge projects. Section 103.50, Wisconsin Statutes covers state highway and bridge projects bid by the Wisconsin Department of Transportation.

### **When were these laws enacted?**

Section 66.293, Wisconsin Statutes (Renumbered 66.0903 in January 2001) was enacted in 1933. Sections

103.49 and 103.50, Wisconsin Statutes were enacted in 1931. Extensive revisions to all of these laws were enacted in 1996.

### **What is the purpose of these laws?**

These laws were enacted to discourage the awarding of public works contracts to employers who frequently underbid local employers by paying their workers substantially less than normally received by workers in an area. Governmental agencies were precluded from awarding contracts exclusively to local employers because various bid laws required that most public works contracts be awarded to the lowest responsible bidder. As wages were the most controllable factor in the bidding process, workers were put in the precarious position of having their wages manipulated by their employer. This problem created instability in the local construction industry. Prevailing wage rate laws were enacted to provide a partial solution to this problem.

### **How did these laws resolve this problem?**

These laws mandated that most workers employed on public works projects must receive wages which are representative of the wages normally paid to workers on similar private projects in an area. Employers were required to base their bids on prudent planning, good management and supervision and the skill and efficiency

of their workers and not solely on the wages paid to their workers.

### **Who administers these laws?**

The Department of Workforce Development is the state agency that is primarily responsible for administering these laws with the assistance of the Wisconsin Department of Justice and local governmental units. The Wisconsin Department of Transportation has the authority to enforce the payment of the prevailing wage rates on all state highway and bridge projects.

### **Do these laws cover all public works projects?**

No. Most projects must exceed a specified dollar threshold to be covered by these laws. Thresholds are established for single trade and multiple-trade projects. As of January 1, 2008, the threshold for a single trade project is \$45,000 and the threshold for a multiple-trade project is \$221,000. These laws do not cover projects below these thresholds. A "single trade project" is defined as one in which a single trade (such as a carpenter, glazier, electrician, etc.) accounts for 85% or more of the total labor cost of the project. A "multiple-trade project" is defined as one in which no single trade accounts for more than 85% of the total labor cost of the project. State highway and bridge projects have no threshold and are all covered by the law. Most work performed on the site of a project subject to any of these laws must normally be paid for at the proper prevailing wage rate.

### **When my contract is under the threshold, do I need to pay prevailing wage rates?**

Yes. Contracts are different from projects. A project consists of all contracts and subcontracts necessary to be completed for a project to meet its intended use. Monetary thresholds apply to projects. Contracts are usually only a portion of a project.

### **Are the thresholds ever adjusted?**

Yes. The thresholds are adjusted every year. The adjustments usually take place in the month

of January. The adjustment must be made in proportion to the change in construction costs, as measured by the construction cost index as published in Engineering News-Record.

### **What is the definition of the term “project” under these laws?**

Generally speaking, the term “project” means all labor, material, furnishings or other things of value required to be supplied by a bidder or bidders to construct a project for its intended use, excluding the cost of land, architectural and engineering fees and planning and research costs.

A single project may not be divided into two (2) or more projects for the purpose of avoiding these laws. All contracts or subcontracts awarded to complete a specific project are considered as a part of that project if they are closely related in purpose, time, and place. The estimated cost of a project must be fairly calculated using the most current prevailing wage rates available from the department. Similar or related work performed at the same time may be considered as separate projects only if each portion of work has a separate budget, is advertised, bid or negotiated and awarded separately and the completion of one portion of work is not dependent on another portion of work. It is the responsibility of each state agency or local governmental unit to justify the separation of projects. All service, maintenance and warranty work is excluded from coverage under these laws. Supply and installation contracts may be excluded under certain circumstances.

### **Is a prevailing wage rate determination required if a project is bid without obtaining a prevailing wage rate determination because the total estimated cost was below the minimum threshold, but the low bid was above the minimum threshold?**

It depends. Assuming that the estimate was made in good faith, if the low bid exceeds the estimate by less than 12%, a prevailing wage rate determination is not required. If however, the low bid exceeds the estimate by more than 12%, a prevailing wage rate determination is required, except under highly unusual circumstances.

### **Must a prevailing wage rate determination be used if the low bid is below the minimum threshold?**

Yes. If a prevailing wage rate determination is issued it is in effect. The determination remains in effect even if the low bid is below the minimum threshold.

### **Do these laws ever cover private projects?**

These laws generally apply only when a state agency or local governmental unit solicits bids or negotiates a contract for a public works project. A “turnkey” project may be subject to these laws depending on the ultimate use of the project.

### **How do I apply for a prevailing wage rate determination?**

For all projects, except state highway and bridge projects, you must apply to the Department of Workforce Development (DWD) to obtain a prevailing wage rate determination. The department requires that all applications be made on form ERD5719. The form is available at no charge from DWD or it can be downloaded from DWD’s website. The prevailing wage rates for all state highway and bridge projects must be obtained from the Wisconsin DOT.

### **Who should complete and submit the application?**

The application may be completed and submitted by an authorized official of a local governmental unit or state agency, or by an authorized representative, such as an architect, professional engineer, or construction manager.

### **When should the application be submitted?**

The application should be submitted 50 to 60 days prior to soliciting bids or negotiating a contract for a project.

### **How long does it take the department to issue a prevailing wage rate determination?**

The department has 30 days from the date it receives an application to issue the prevailing wage rate determination. Most prevailing wage rate determinations are issued in less than 30 days, but it is best to anticipate that it will take the department the full 30 days to issue the determination.

### **If a project is covered by a prevailing wage rate determination issued pursuant to the federal Davis-Bacon Act, is a prevailing wage rate determination also required pursuant to Wisconsin's prevailing wage rate laws?**

Yes, as long as the project meets all of the requirements previously mentioned.

### **Do these laws cover public projects that are privately funded?**

Regardless of where the money to fund the project comes from, these laws are applicable when a state agency or local governmental unit solicits bids or negotiates a contract.

### **Is any local governmental unit exempt from applying for a prevailing wage rate determination?**

Yes. Any local governmental unit that has adopted an ordinance or other enactment which sets forth standards as high as or higher than those prescribed in §66.0903, Wisconsin Statutes, may be exempted from applying to the department for a prevailing wage rate determination. The local governmental unit is not exempt from the law but is merely exempt from applying to the department for prevailing wage rate determinations on a project-by-project basis. The department routinely exempts about a dozen local governmental units. Every local governmental unit that desires to be "exempt" must have a methodology in place to enforce the payment of the prevailing wage rates before an exemption will be granted.

### **What can be done if a local governmental unit or state agency fails to request a prevailing wage rate determination before it solicits bids or negotiates a contract?**

Sections 66.0903 and 103.49, Wisconsin Statutes provide that the department can issue a prevailing wage rate determination after a contract has been awarded or negotiated. A prevailing wage rate determination issued after the fact is just as binding on all parties as if it had been issued before the awarding or negotiating of a contract.

## **Can an employer recover extra compensation if a prevailing wage rate determination was issued after a contract was awarded or negotiated?**

Yes. A local governmental unit or state agency is required to either terminate the contract and re-solicit bids using the prevailing wage rate determination or reimburse the affected employer for any valid increased costs through a change order or other appropriate procurement procedure.

## **How does the department determine prevailing wage rates?**

DWD is required to conduct an annual survey regarding the wages and fringe benefits paid to workers employed in the construction and related industries in each of Wisconsin's 72 counties. Annual survey booklets are mailed to construction contractors in late May each year. Only employers in construction and related industries are allowed to participate in the annual survey.

The survey form requests employers to provide the name of each project, project type, public or private work, location (city, village, town and county), numerical labor classification of the trade reported, the hourly base wage for journey workers, the hourly fringe benefit rate for journey workers, union affiliation, and finally the total hours worked in the survey base period. The base period for the annual survey is June 1 of the prior year through May 31 of the current year. All surveys must be either received by DWD or postmarked no later than July 31 of the current year, and be properly completed, to be accepted for compilation.

Following computer entry of all properly completed and timely returned annual prevailing wage survey forms, the department calculates the projected prevailing wage rates for each county to become effective January 1 of the following year. These preliminary hourly rates are called the "initials". The initials are published on the department's website.

The department then conducts a 30day review/correction period where information or data used to calculate the hourly rates can be corrected. Because the beginning of the 30day review/correction period is dependent upon completion of the entry of all returned survey data the exact dates of the review/correction period vary from year to year. Typically, the review/correction period occurs in October November. At the conclusion of the review/correction period, and after entering corrected data, the department calculates the "finals" which go into effect January 1 of the following year.

## **Is completion of the annual survey mandatory?**

Yes, except if the business did not perform any construction or related work during the survey period nor had no workers that performed construction work during the survey period. The annual survey is the sole basis for determining prevailing wage rates.

## **What does the term "prevailing wage rate" mean?**

The term "prevailing wage rate" means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for a majority of the hours worked in a trade or occupation on projects in an area. If there is no rate at which a majority of the hours worked in a trade or occupation on projects in an area is paid, then the prevailing wage rate shall be the average hourly basic rate of pay, weighted by the number of hours worked, plus the average

hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest paid 51% of hours worked in that trade or occupation.

**What does the term “area” mean?**

The term “area” means the county in which a proposed project is located. If the department determines that there is insufficient wage data in that county, “area” means those counties that are contiguous to that county. If the department determines that there is insufficient wage data in those counties, “area” means those counties that are contiguous to those counties. If the department determines that there is insufficient wage data in those counties, “area” means the entire state. If the department is requested to conduct an administrative review, “area” means the city, village, or town in which a proposed project is located.

**What does the term “insufficient wage data” mean?**

The term “insufficient wage data” means less than 500 hours of work performed by a particular trade or occupation on projects that are similar to a proposed project.

**Can different types of projects have different prevailing wage rates for the same trade or occupation?**

Yes. Prevailing wage rates are determined for several different types of projects including building and heavy construction, sewer, water and tunnel construction, airport pavement and state highway construction, local street and miscellaneous paving construction and residential and agricultural construction. Different types of projects frequently have different prevailing wage rates for the same trade or occupation.

**Are fringe benefits a part of the prevailing wage rate?**

Yes. The prevailing wage rate for every trade or occupation normally includes the hourly basic rate of pay, plus the hourly contributions for health insurance, vacation, pension, and other bona fide economic benefits.

**Must an employer provide a worker with fringe benefits?**

No. An employer is not required to provide any fringe benefits to a worker. An employer is only required to pay the total prevailing wage rate specified for each trade or occupation. Pay can be all in cash or any combination of cash and bona fide fringe benefits, paid by the employer.

**Are contributions made by an employer for workers compensation, unemployment insurance, social security, etc., considered fringe benefits?**

No. Any contribution that is required by law is not considered to be a bona fide fringe benefit.

**Are costs, incurred by an employer for uniforms, lodging, meals, or use of a company vehicle considered fringe benefits?**

No. Uniforms, lodging, meals, mileage, riding time and waiting time payments are specifically excluded as bona fide fringe benefits. Payments for such items are considered



reimbursements or business expenses which an employer may choose to bear, but which are not purely for the worker's benefit. Other costs such as the use of an employer's vehicle cannot accurately be calculated on an hourly basis and is, therefore, excluded.

**Are workers ever entitled to premium pay?**

Yes. If premium pay is required, it is specifically set forth on each determination. No premium pay is required for height pay, pay for work with particular products, shift differential, or supervisory pay.

**Must overtime be paid for work performed in excess of 8 hours in a day on a public works project?**

No. All covered workers must receive at least time and one-half for all covered work performed in excess of 10 hours in a day on Monday through Friday. Daily overtime is not required on projects subject to the federal Davis-Bacon Act. If a project is subject to both state and federal prevailing wage rate laws, daily overtime must be paid.

**Must overtime be paid for work performed in excess of 40 hours in a week on a public works project?**

Yes. All covered workers must receive at least time and one-half for all covered work performed in excess of 40 hours in any week.

**Are workers entitled to overtime for work performed on a Saturday, Sunday or holiday on a public works project?**

Yes. All covered workers must receive at least time and one-half for all covered work performed on Saturday, Sunday and the following Holidays: New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, and Christmas. Time and one-half must also be paid for all covered work performed on the day before a holiday if New Years Day, July 4<sup>th</sup> or Christmas falls on a Saturday or the day after a holiday, if New Year's Day, July 4 or Christmas falls on a Sunday.

**How is overtime calculated on a public works project?**

Overtime is calculated by multiplying the hourly basic rate of pay, listed on the prevailing wage rate determination for the trade performed by the worker by 1.5. If the worker's normal rate of pay is higher than the hourly basic rate of pay on the prevailing wage rate determination the worker must be paid time and one-half at their normal rate of pay.

In either event the amount specified for fringe benefits on the prevailing wage rate determination is required to be paid on all hours worked but not at time and onehalf. The practice of "banking" overtime hours is prohibited.

**Once a local governmental unit or state agency obtains a prevailing wage rate determination for a project, can the same determination be used for another project?**

No. A prevailing wage rate determination issued for a specific project can only be used for that project. If another project is bid or negotiated, another prevailing wage rate determination must be requested.

If several projects are being bid or negotiated at the same time, a prevailing wage rate determination can be issued to cover all of the projects. The name or scope of each project appears on each prevailing wage rate determination.

### **How soon must a prime contract be awarded or negotiated after a prevailing wage rate determination is issued?**

If a prevailing wage rate determination is issued on or before June 30<sup>th</sup> in a particular year, prime contracts must be awarded or negotiated by the end of that year. If a prevailing wage rate determination is issued after June 30<sup>th</sup> in a particular year, prime contracts must be awarded or negotiated within 180 days of the date of issuance.

If a prime contract is not awarded or negotiated prior to the expiration date, another prevailing wage rate determination must be requested. Prevailing wage rate determinations for state highway and bridge projects are issued once a year on the last working day in April. Each annual determination is good until the next annual determination is issued.

### **Are prevailing wage rate determinations ever updated?**

No. Prevailing wage rate determinations are never updated after being issued regardless of the duration of the project, change in local wage conditions or change in collective bargaining agreements. Prevailing wage rate determinations may contain a future increase if determinable. When the future date is reached, employers must pay their workers the future increase.

### **Can prevailing wage rates ever be changed?**

Yes. A local governmental unit or state agency may request an administrative review regarding any wage rate issued pursuant to §66.0903 or §103.49, Wisconsin Statutes. Each request must be made in writing and received by mail with a postmark date within 30 days from the date the prevailing wage rate determination was issued. All requests must be made at least 10 days before the date that a construction contract(s) is awarded or negotiated. Each request must include wage rate information for the contested trade or occupation on at least 3 similar projects that were constructed within the city, village, or town where the proposed project is located and which were included in the department's most recent annual survey.

The department must also consider wage rate information from other similar projects, if available, from the most recent annual survey. The same calculation criteria used to initially determine prevailing wage rates are used in the administrative review process. If the Department of Transportation considers any wage rate issued pursuant to §103.50, Wisconsin Statutes to be incorrect, it may appeal to the Governor, whose decision is final.

### **Does a copy of the prevailing wage rate determination have to be posted?**

Yes. A copy of the applicable prevailing wage rate determination, also known as the "white sheet," must be posted, by the local governmental unit or state agency in at least one conspicuous and easily accessible place on the site of the project. If there is no common posting site on a project, a local governmental unit may post a copy of the applicable prevailing wage rate determination at the place normally used to post public notices.

## **Must employers routinely file weekly payroll reports with a local governmental unit or state agency?**

No. Weekly payroll reports are not required by law, administrative rule, or regulation to be routinely filed with any local governmental unit or state agency. Every employer is required to keep good business records that accurately reflect each worker's name, work performed, and hours worked and wages earned. Employers are required to file this information with a local governmental unit or state agency if specifically requested to do so. In addition, a prime contractor may require a subcontractor to remit a weekly payroll report to the prime contractor as a condition for obtaining a subcontract.

## **When must an employer file an affidavit of compliance?**

All prime contractors must file an affidavit of compliance with the local governmental unit or state agency upon completion of the project. All agents or subcontractors must file an affidavit of compliance with the prime contractor that awarded them their subcontract. No local governmental unit, state agency, or prime contractor may authorize a final payment until such an affidavit is filed in proper form and order. Affidavits are not required on state highway and bridge projects.

Forms ERD5724 (Prime Contractor Affidavit) and ERD10584 (Agent or Subcontractor Affidavit) are available at no charge from the department or can be downloaded from DWD's website.

## **What determines the proper classification of a worker?**

The department determines prevailing wage rates for a wide variety of trades or occupations. All workers must be classified using only those trades or occupations recognized by the department and included in the applicable prevailing wage rate determination. The proper classification of a worker depends on the specific duties the worker performs and not a previously assigned occupational title. The department publishes a "Dictionary of Occupational Classifications and Work Descriptions" that describes, in detail, the primary purpose and typical duties performed by each classification that it recognizes. A copy of the dictionary is available at no charge from the department. It is also on DWD's web site at the following address:

[http://www.dwd.state.wi.us/er/prevailing\\_wage\\_rate/Dictionary/dictionary\\_main.htm](http://www.dwd.state.wi.us/er/prevailing_wage_rate/Dictionary/dictionary_main.htm)

## **Can a worker be classified in more than one trade or occupation?**

Yes. This practice is known as "cross-classification". If a worker performs the duties of more than one trade or occupation, the worker must be paid the prevailing wage rate determined for each trade or occupation. Cross-classification is to be used only when the duties performed by each classification are separate and distinct. If a worker performs only an incidental amount of work in another classification, then cross-classification is not allowed. The term "incidental" is defined as less than 15% of the work performed within a given week on the site of a public works project.

## **Do these laws cover all workers?**

No. With the exception of truck drivers, these laws cover only those workers employed on the

site of a project. Administrative, clerical, supervisory and non-construction related workers are exempt from these laws. Foremen that do not perform manual labor on the site of a project are also exempt. Any worker employed in a shop that is processing or manufacturing materials or products for a project is also exempt from these laws unless the shop is dedicated exclusively, or nearly so, to serve a particular project. Sole proprietors, owners, partners, corporate members, or family members that perform covered work on the site of a project must receive the applicable prevailing wage rate for such work.

### **Can an apprentice work on a public works project?**

Yes. However, in order to be a bona fide apprentice, the worker must be formally registered in an apprenticeship program administered by the U.S. Department of Labor, a state agency recognized by the U.S. Department of Labor or under Wisconsin's apprenticeship law, Chapter 106, Wisconsin Statutes.

### **What is Executive Order 108?**

As a condition to performing state contract work, Executive Order 108 requires all state construction projects administered through the Department of Administration (DOA) and the Department of Transportation (DOT), to add a clause in each contract requiring contractors and subcontractors employing five or more craft workers of apprentice-able trades in the State of Wisconsin to employ apprentices on state-administered construction jobs. Questions concerning Executive Order 108 should be directed to DWD's Bureau of Apprenticeship and Training Standards at (608) 2662439.

### **How much does an apprentice have to be paid on a public works project?**

An employer must calculate an apprentice's hourly basic rate of pay by multiplying the journeypersons hourly basic rate of pay specified in the prevailing wage rate determination issued for a project, or by multiplying the hourly basic rate of pay specified in the apprentice's indenture, whichever is greater, by the appropriate percentage specified in the apprentice's indenture. In addition, all apprentices must receive fringe benefits at the same percentage used to calculate the hourly basic rate of pay. An apprentice can only receive this reduced rate of pay if they perform work within the scope of their indenture.

### **How many apprentices can an employer use on a public works project?**

There is no prevailing wage rate law, administrative rule, or regulation regarding the number of apprentices that an employer can use on a project subject to these laws. The appropriate Local Joint Apprenticeship Committee and DWD's Bureau of Apprenticeship Standards prescribe the ratio of apprentices to journeypersons.

### **Can a nonunion employer have an apprentice?**

Yes. Any employer is entitled to have an apprentice if the requirements set forth by the department's Bureau of Apprenticeship Standards are met. An employer cannot be denied an apprentice solely because it is nonunion.

### **Can a subjourneyperson work on a public works project?**

Yes, but only if such a classification has been found to prevail in the area where the project is located and the employer has requested written permission from this department to employ a subjourneyperson before starting work on the project. Form ERD10880 must be used by all contractors to request permission to employ a subjourneyperson. The form is available at no charge from the department or can be downloaded from DWD's website.

### **Are there limitations to the work that a subjourneyperson can perform?**

Any limitations on the work a subjourneyperson can perform will be specifically set forth in the correspondence from this department to the employer who requested permission to employ the subjourneyperson. Other employment restrictions may be set forth in the correspondence.

One of the most common restrictions is that the employer must employ a bona fide apprentice in the same classification as the subjourneyperson before a subjourneyperson can be employed on a project.

### **What must a worker be paid if a subjourneyperson classification does not prevail in an area?**

The worker must receive the full journeypersons wage rate for the appropriate trade or occupation.

### **How often must a worker be paid?**

All workers in the construction industry must be paid at least once every 31 days. Workers employed under a valid collective bargaining agreement may be paid less frequently depending on the language in such agreement. Workers who quit or are discharged must be paid on the next regularly scheduled payday.

### **Can a worker voluntarily give up or accept less than the prevailing wage rate to which he/she is entitled?**

No. All workers must be paid the full wages to which they are entitled. A worker cannot "kickback" to their employer any wages earned.

### **What is the penalty for taking or giving a kickback?**

Any employer who induces a worker to give up, waive or return any part of the wages that the worker is entitled to receive by threat not to employ, threat of dismissal, or any other means, is guilty of a class "E" felony. A class "E" felony is punishable by a fine of up to \$10,000, imprisonment for up to 2 years, or both.

Any worker who knowingly gives up, waives or returns any wages earned, is guilty of a class "C" misdemeanor which is punishable by a fine of up to \$500, imprisonment for up to 30 days, or both.

## **Can an employer reduce a worker's normal hourly basic rate of pay for work on a private project when working on a public works project?**

No. It is illegal for an employer to reduce the hourly basic rate of pay of a worker during a week that the worker is employed on both a private project and a public works project subject to the prevailing wage rate laws.

## **What can an employer legally deduct from a worker's pay?**

An employer can legally deduct the amount necessary to satisfy:

- (1) federal and state taxes
- (2) social security taxes
- (3) advances on wages made without discount or interest
- (4) court ordered payments such as child support
- (5) contributions for health insurance if previously consented to by the worker,
- (6) savings bond purchases when voluntarily authorized by a worker
- (7) any deductions requested by a worker to enable them to repay loans to or purchase shares in a credit union
- (8) any deduction authorized by a worker to agencies such as the Red Cross or United Way
- (9) any deduction authorized by a worker to pay regular union initiation fees
- (10) membership dues but not fines or special assessments
- (11) any other deduction allowed pursuant to the federal Copeland Act.

All of the above deductions may be made without the approval of the Secretary of the U.S. Department of Labor. Other deductions may require the approval of such Secretary.

## **Is a worker entitled to the prevailing wage rate for travel time?**

No. Workers are not entitled to the prevailing wage rate for time spent traveling from their home to a job or the employer's place of business or the return trip home. Under certain circumstances travel pay may be required for time spent traveling from an employer's place of business to a job. Time spent traveling during the workday on the employer's business may also require the payment of travel time. A worker is normally only entitled to an "agreed upon" wage rate for travel time. An "agreed upon" wage rate may not be less than the minimum wage. Prevailing wage rates are normally only required to be paid for work performed on the site of a project.

## **Are truck drivers entitled to receive the prevailing wage rate?**

It depends. Truck driving involves the greatest number of variables that must be considered when determining coverage under these laws. Truck drivers that deliver processed or manufactured materials or products to a public works project are not covered by these laws if they are employed by a commercial establishment which has a fixed place of business from which it regularly supplies such materials or products.

Truck drivers employed by commercial establishments that deliver mineral aggregate, such as sand, gravel and stone, to a public works project are covered by these laws if the material is deposited substantially in place when it is delivered to the project and the material is not further transported by truck. These laws do not cover the delivery of mineral aggregate by a

commercial establishment to a public works project if it is stockpiled for future use. A stockpile is defined as a storage pile that is replenished and is typically used as a reserve for use as needed. Regardless, these laws cover truck drivers that haul mineral aggregate exclusively on the site of a public works project if the aggregate is stockpiled or deposited substantially in place.

Truck drivers that deliver ready-mixed concrete or bituminous concrete to a public works project are not covered by these laws unless such material is produced on the site of the project, or from a portable batch plant which is dedicated exclusively, or nearly so, to the project. Time spent hauling excavated material or spoil from, and returning to, the site of a public works project is covered by these laws. The term “truck driver” includes the owner-operator of a truck. A worker who drives a pickup truck is not normally considered to be a “truck driver.”

**If a project has both a federal and state prevailing wage rate determination, what wage rate must be paid if different wage rates have been determined for the same trade or occupation?**

The higher of the two wage rates must generally be paid. However, wage rates determined pursuant to Wisconsin’s prevailing wage rate laws on some housing projects are not enforceable if they are higher than the wage rates determined by the federal government, pursuant to the U.S. Housing Act of 1937.

**Does any state agency or local governmental unit investigate the wages paid on prevailing wage projects?**

Yes. The Department of Workforce Development conducts investigations based on written complaints, on all projects except state highway and bridge projects. The Wisconsin Department of Transportation conducts all investigations on state highway and bridge projects. Some local governmental units conduct investigations on projects within their jurisdiction.

**How does a person file a complaint?**

Any person can file a complaint. All complainants must complete form ERD9850 and send it to the department. The more facts that are provided about an alleged violation, the better the chances are to recover any unpaid wages. Be specific. Indicate the name of the employer, the project(s) worked on, the exact nature and dates the work was performed, the wage rate received and the names of other workers that were employed on the project. Copies of check stubs are frequently very helpful. Form ERD9850 can be obtained from the department at no charge or can be downloaded from the DWD website.

**When should a complaint be filed?**

As soon as one suspects a violation has occurred. Unpaid wages cannot be collected for work performed more than two (2) years prior to the filing of a complaint.

### **Can a complainant's name be kept confidential?**

No. The department does not accept anonymous complaints.

### **How long does it take the department to complete an investigation?**

Each investigation is different. The department's goal is to complete each investigation in about 120 days. Complex cases, however, can take much longer. State law gives the department up to two (2) years to complete an investigation.

### **Can an employer legally terminate a worker for filing a complaint?**

No. Employers are prohibited from retaliating against workers that file complaints, attempt to enforce a right permitted by law, testify in an investigation or assist in an investigation regarding prevailing wage rate laws.

Employers are also prohibited from retaliating against a worker because the employer believes the worker has done or may do any of the actions indicated above. Contact the division's Civil Rights Bureau intake staff person at (608) 2666860 if you have questions regarding retaliation.

### **Can a worker be compensated if their employer retaliates against them for filing a complaint?**

Yes. Following an administrative hearing compensation in lieu of reinstatement may be awarded if requested by any party and must be awarded if requested by all parties. Such compensation may not be less than 500 times or more than 1,000 times the hourly wage of the person discriminated against when such discrimination occurred.

### **If a complaint is filed and the employer is found to be in compliance with the law, how much does a complainant have to pay?**

If a worker filed the complaint on their own behalf, they would be required to pay the actual cost the department incurred in conducting the investigation. If the complaint was filed by anyone else, they would be required to pay the department a minimum of \$250, or the actual cost of the investigation, whichever is greater.

### **What happens if an employer underpays a worker?**

The department will order the employer to reimburse the worker the full amount of any unpaid wages owed. If the employer refuses to pay, the investigation is normally referred to either the District Attorney or Attorney General for collection and prosecution.

### **Are employers fined and penalized by the department if they violate these laws?**

No. All prevailing wage rate laws contain one or more penalties; however, the department does not have the authority to impose any penalty. All penalties must be imposed by a court of law. The department's only responsibility is to conduct investigations and attempt to recover any unpaid wages.

Any violation on a prevailing wage rate project can result in a fine of up to \$200 a day, imprisonment for not more than 6 months, or both. Violations can also result in a forfeiture of



\$10 to \$100 a day. If a worker files an action on their own behalf in a court of competent jurisdiction and is successful in such action, they are entitled to an amount equal to their unpaid wages as liquidated damages, plus reasonable attorney fees and costs.

### **What additional actions can the department take if an employer violates these laws?**

Under certain circumstances the department can recover up to an additional 50% of any unpaid wages found due. Normally, this additional compensation can only be recovered if an employer failed to complete a self-audit as instructed. In addition, the department has authority to debar contractors from public works projects.

### **Can the department debar an employer from working on a public works project?**

Yes. If it is determined that an employer has:

- (1) failed to pay a worker the proper prevailing wage rate
- (2) failed to pay a worker at least one and one-half times the proper hourly basic rate of pay for all hours worked in excess of 10 hours per day or 40 hours per week
- (3) induced a worker to give up, waive or return any part of the wages earned on a public works project
- (4) falsified, deliberately destroyed or failed to keep the required payroll records on a public works project.

Debarment can be imposed against an employer, including its responsible officers, directors, members, shareholders or partners provided such individual is vested with the management of the affairs of the individual or legal entity.

### **For what length of time can an employer be debarred?**

An employer can be debarred for up to three years. The existence of a cause for debarment does not always require that an employer be debarred. The seriousness of the offense, past compliance history, attitude, and other mitigating factors must be considered by the department when it determines the length of time an employer is to be debarred.

### **What should all local governmental units and state agencies remember to do when soliciting bids or negotiating contracts on a project covered by a prevailing wage rate determination?**

- (1) File an application for the prevailing wage rate determination with the department 50 to 60 days prior to soliciting bids or negotiating a contract.
- (2) Include a statement in the notice that is issued for the purpose of securing bids to the effect that the project will be covered by a prevailing wage rate determination.
- (3) Physically incorporate a copy of the prevailing wage rate determination in the specifications and each contract.
- (4) Insert a clause in every prime contract which states that the project is subject to the provisions of either §66.0903 or §103.49, Wisconsin Statutes (whichever is applicable) and Chapter DWD 290 of the Wisconsin Administrative Code.

(5) Obtain a “Disclosure of Ownership” form, if necessary, from each contractor on the date bids are submitted or negotiations are completed.

(6) Review the department’s current “Consolidated List of Debarred Contractors” to ensure that a contract will not be awarded to or negotiated with a contractor who is ineligible to receive a contract or participate as a subcontractor.

(7) Post a copy of the applicable prevailing wage rate determination.

(8) Obtain an “Affidavit of Compliance” from each prime contractor prior to releasing the prime contractor’s final payment.

**What should all employers remember to do when working on a project covered by a prevailing wage rate determination?**

(1) Review the prevailing wage rate determination for the project before submitting a bid or negotiating a contract.

(2) Incorporate a copy of the prevailing wage rate determination into all subcontracts.

(3) Keep good business records for each worker employed on the project.

(4) Request the department to issue a wage rate for any subjourneyperson that is anticipated on the project.

(5) Contact the department for information regarding the proper classification of workers, how to properly pay straight time, overtime and fringe benefits, etc.

(6) Obtain an “Affidavit of Compliance” from each subcontractor prior to releasing the subcontractor’s final payment.

**What is Wisconsin Act 181 regarding drug testing?**

Effective May 1, 2007, Wisconsin Act 181 requires employers performing construction work in Wisconsin for municipal government and state building projects to have a written substance abuse testing program in place. DWD is not responsible for enforcement of this law, nor is it authorized to answer questions concerning the provisions of Wis. Act 181. For legal advice on complying with this law you may wish to consult with a private attorney. Wisconsin Act 181 can be viewed on DWD’s website at the following address:

[http://dwd.wisconsin.gov/er/prevailing\\_wage\\_rate/disclaimer.pdf](http://dwd.wisconsin.gov/er/prevailing_wage_rate/disclaimer.pdf)

## ATTACHMENT 2

### Publicly Funded Private Construction Projects

Under Assembly Bill 75, any owner or developer of real property who entered into a contract for the erection, construction, remodeling, repairing, or demolition of any publicly funded private construction project on that real property would be required to include in the contract a stipulation that employees could not work a greater number of hours per day or per week than the prevailing hours of labor. However, such an employee would be permitted or could be required to work more than the prevailing hours of labor per day and per week, if he or she was paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay. In addition, the employee could not be paid less than the prevailing wage rate in the same or most similar trade or occupation in the area in which the project was situated. These provisions would not apply to any project for which the estimated cost of completion was less than \$2,000.

The prevailing wage and hours of work provisions would apply to all laborers, workers, mechanics, and truck drivers: (a) employed on the site of a publicly funded private construction project; or (b) employed in the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of a publicly funded private construction project, or from a facility dedicated exclusively, or nearly so, to a publicly funded private construction project by a contractor, subcontractor, agent, or other person performing any work on the site of the project.

A laborer, worker, mechanic, or truck driver who was regularly employed to process, manufacture, pick up, or deliver materials or products from a commercial establishment that had a fixed place of business from which the establishment regularly supplied processed or manufactured materials or products would not be entitled to receive the prevailing wage rate or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor unless either of the following applied:

a. The individual was employed to go to the source of mineral aggregate (such as sand, gravel, or stone) that was to be immediately incorporated into the work, and not stockpiled or further transported by truck, and to pick up that mineral aggregate, and deliver that mineral aggregate to the site of a publicly funded private construction project that was subject to prevailing wage provisions by depositing the material substantially in place, directly or through spreaders from the transporting vehicle.

b. The individual was employed to go to the site of a publicly funded private construction project that was subject to prevailing wage provisions, pick up excavated material or spoil from the site of the project, and transport that excavated material or spoil away from the site of the project.

A truck driver who was an owner-operator of a truck would have to be paid separately for

his or her work and for the use of his or her truck.

Before the owner or developer of any publicly funded private construction project entered into a contract or solicited bids on a contract for the performance of any work, the owner or developer would be required to apply to DWD to determine the prevailing wage rate for each trade or occupation required in the work under contemplation in the area in which the work is to be done. The Department would be required to conduct investigations and hold public hearings as necessary to define the trades or occupations that were commonly employed on publicly funded private construction projects, and to determine the prevailing wage rates in all areas of the state for those trades or occupations, in order to determine the prevailing wage rate for each trade or occupation. DWD would have to issue its determination within 30 days after receiving the request, and file the determination with the owner or developer applying for the determination and with the local governmental unit providing financial assistance for the project.

Upon petition of any owner or developer contracting for a publicly funded private construction project, DWD would be required to issue an order exempting the owner or developer from applying to the Department for a prevailing wage rate determination if the project was also subject to an ordinance or other enactment of a local governmental unit that set forth standards, policy, procedure, and practice resulting in standards as high or higher than the state prevailing wage provisions.

By January 1 of each year, DWD would be required to compile the prevailing wage rates for each trade or occupation in each area. In addition to the current prevailing wage rates, the compilation would have to include future prevailing wage rates when those prevailing wage rates could be determined for any trade or occupation in any area, and to specify the effective date of those future prevailing wage rates. If a publicly funded private construction project extended into more than one area, there would be one standard of prevailing wage rates for the entire project.

In determining prevailing wage rates, DWD could not use data from projects that were subject to state and federal prevailing wage laws, unless the Department determined that there was insufficient wage data in the area to determine those prevailing wage rates. In such cases the Department could use data from those projects.

Any person could request a recalculation of any portion of an initial determination within 30 days after the initial determination date if the person submitted evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the initial determination did not represent the prevailing wage rate for that trade or occupation in the area. The evidence would have to include wage rate information reflecting work performed by persons working in the contested trade or occupation in the area during the current survey period. The Department would be required to affirm or modify the initial determination within 15 days after the date on which the Department received the request for recalculation.

In addition to a recalculation, the owner or developer that requested the determination could request a review of any portion of the determination, within 30 days after the date of

issuance of the determination, if the owner or developer submitted evidence with the request showing that the prevailing wage rate for any given trade or occupation included in the determination did not represent the prevailing wage rate for that trade or occupation in the city, village, or town in which the proposed publicly funded private construction project was located. That evidence would have to include wage rate information for the contested trade or occupation on at least three similar projects located in the city, village, or town where the proposed publicly funded private construction project was located on which some work had been performed during the survey period, and which were considered by the Department in issuing its most recent prevailing wage compilation. DWD would be required to affirm or modify the determination within 15 days after the date on which it received the request for review.

A reference to the prevailing wage rates and the prevailing hours of labor would have to be published in any notice issued for the purpose of securing bids for the publicly funded private construction project. If any contract or subcontract for a publicly funded private construction project was entered into, the prevailing wage rates and the prevailing hours of labor would have to be physically incorporated into and made a part of the contract or subcontract. However, for a minor subcontract, as determined by the Department, the method of notifying the minor subcontractor of the prevailing wage rates and prevailing hours of labor applicable to the subcontract, would be prescribed by rule by DWD. The prevailing wage rates and prevailing hours of labor applicable to a contract or subcontract could not be changed during the time that the contract or subcontract is in force. For the information of the employees working on the project, the prevailing wage rates determined by the Department, the prevailing hours of labor, and the provisions of state law would have to be posted by the owner or developer in at least one conspicuous and easily accessible place on the site of the project.

If DWD found that an owner or developer had not requested a prevailing wage determination, or that an owner, developer, contractor, or subcontractor had not physically incorporated a determination into a contract or subcontract, or had not notified a minor subcontractor of a determination in the manner prescribed by the Department by rule, the Department would be required to notify the owner, developer, contractor, or subcontractor of the noncompliance, and file the determination with the owner, developer, contractor, or subcontractor within 30 days after the notice.

After completion of a publicly funded private construction project and before receiving final payment for his or her work on the project, each agent or subcontractor would be required to furnish the contractor with an affidavit stating that the agent or subcontractor had complied fully with the requirements of the prevailing wage law. A contractor could not authorize final payment until the affidavit was filed in proper form and order. Similarly, after completing a publicly funded private construction project and before receiving final payment for his or her work on the project, each contractor would be required to file with the owner or developer contracting for the work, an affidavit stating that the contractor had complied fully with the requirements of the prevailing wage law, and that the contractor had received an affidavit from each of the contractor's agents and subcontractors. An owner or developer could not authorize a final payment until the affidavit was filed in proper form and order. If an owner or developer

authorized a final payment before the affidavit was filed in proper form and order, or if DWD determined, based on the greater weight of the credible evidence, that any person performing work covered by the prevailing wage law was or may have been paid less than the prevailing wage rate, or less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor, and the Department requested that the owner or developer withhold all or part of the final payment, but the owner or developer failed to do so, the owner or developer would be liable for all back wages payable up to the amount of the final payment.

Each contractor, subcontractor, or agent performing work on a publicly funded private construction project that was subject to the prevailing wage law, would be required to keep full and accurate records clearly indicating the name and trade or occupation of every person performing the work on the project, and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked. By no later than the end of the week following a week in which a contractor, subcontractor, or contractor's or subcontractor's agent performed work on a project, the contractor, subcontractor, or agent would be required to submit, to the contracting owner or developer, a certified record of the name and trade or occupation of every person performing the work on the project, and of the number of hours worked by each of those persons and the actual wages paid for that preceding week.

DWD or the local governmental unit that provided financial assistance for a publicly funded private construction project would be authorized to demand and examine, and every contractor, subcontractor, and contractor's or subcontractor's agent would be required to keep, and furnish upon request by the Department or local governmental unit, copies of payrolls and other records and information relating to the wages paid to persons performing work covered by the prevailing wage law. DWD could inspect records in the manner authorized under state labor standards law. Every contractor, subcontractor, or agent performing work on a publicly funded private construction project covered by the prevailing wage law would be subject to state law requirements relating to the examination of records. State law provisions related to prohibition of employment discrimination would apply to discharge and other discriminatory acts arising in connection with any proceeding under the prevailing wage provisions.

If requested by any person, DWD would be required to inspect the payroll records of any contractor, subcontractor, or contractor's or subcontractor's agent performing work on a publicly funded private construction project that was subject to the prevailing wage law to ensure compliance. In the case of a request made by a person performing work covered by the law, if DWD found that the contractor, subcontractor, or agent subject to the inspection was in compliance and that the request was frivolous, the Department would be required to charge the person making the request the actual cost of the inspection. In the case of a request made by a person not performing work subject to the prevailing wage law, if the Department found that the contractor, subcontractor, or agent subject to the inspection was in compliance, and that the request was frivolous, the Department would be required to charge the person making the request the greater of \$250 or the actual cost of the inspection. In order to find that a request was frivolous, DWD would be required to find that the person making the request made the request in bad faith, solely for the purpose of harassing or maliciously injuring the contractor,

subcontractor, or agent subject to the inspection, or that the person making the request knew, or should have known, that there was no reasonable basis for believing that a violation of the law had been committed.

Current law DWD enforcement powers would generally apply; however, penalty provisions would not apply to any person who failed to provide any information to the Department to assist in determining prevailing wage rates in certain cases. Certain state provisions related to prohibition of employment discrimination would apply to discharge and other discriminatory acts arising in connection with any proceeding under the prevailing wage law.

Any contractor, subcontractor, or contractor's or subcontractor's agent who failed to pay the prevailing wage rate determined by DWD, or who paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor, would be liable to any affected employee in the amount of his or her unpaid wages or his or her unpaid overtime compensation and for an additional equal amount as liquidated damages. An action to recover the liability could be maintained in any court of competent jurisdiction by any employee for and in behalf of that employee and other employees similarly situated. No employee could be a party plaintiff to the action, unless the employee consented in writing to become a party, and the consent was filed in the court in which the action was brought. In addition to any judgment awarded to the plaintiff, the court would be required to allow reasonable attorney fees and costs to be paid by the defendant.

Any contractor, subcontractor, or contractor's or subcontractor's agent who violated these provisions, with certain exceptions outlined below, could be fined not more than \$200 or imprisoned for not more than six months or both. Each day that any violation continued would be considered a separate offense. This provision would not apply to a person who failed to provide any information to assist the Department in determining prevailing wage rate.

Anyone who induced a person who sought to be, or was employed on any publicly funded private construction project, that was subject to the prevailing wage law, to give up, waive, or return any part of the wages to which the person was entitled under the contract governing the project, or who reduced the hourly basic rate of pay normally paid to a person for work on a project that was not subject to the prevailing wage law during a week in which the person worked both on a project that was subject to the law, and on a project that was not subject to the law, by threat not to employ, by threat of dismissal from employment, or by any other means, would be guilty of a criminal offense, under current law provisions governing violation of prevailing wage laws.

A person employed on a publicly funded private construction project that was subject to the prevailing wage law, who knowingly permitted a contractor, subcontractor, or contractor's or subcontractor's agent to pay him or her less than the prevailing wage rate set forth in the contract governing the project, who gave up, waived, or returned any part of the compensation to which he or she was entitled under the contract, or who gave up, waived, or returned any part of the compensation to which he or she was normally entitled, for work on a project that was not

subject to the prevailing wage law, during a week in which the person worked both on a project that was subject to the law, and on a project that was not subject to the law, would be guilty of a criminal offense under provisions governing violation of prevailing wage laws.

Anyone who induced a person who sought to be or was employed on any publicly funded private construction project that was subject to the prevailing wage law, to permit any part of the wages to which the person was entitled under the contract governing the project to be deducted from the person's pay would be guilty of a criminal offense under provisions governing violation of prevailing wage laws, unless the deduction would be permitted under federal law for a person who is working on a project that is subject to federal prevailing wage provisions.

A person employed on a publicly funded private construction project who knowingly permitted any part of the wages to which he or she was entitled, under the contract governing the project, to be deducted from his or her pay would be guilty of a criminal offense under provisions governing violation of prevailing wage laws, unless the deduction would be permitted under federal law for a person who is working on a project that is subject to federal prevailing wage provisions.

DWD would be required to notify any owner or developer applying for a prevailing wage determination, and any owner or developer that was exempt, of the names of all persons whom the Department found to have failed to pay the prevailing wage rate or found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor at any time in the preceding three years, with certain exceptions. The Department would be required to include with each name, the address of the person, and to specify when the person failed to pay the prevailing wage rate, and when the person paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor. An owner or developer could not award any contract to the person, unless otherwise recommended by DWD, or unless three years elapsed from the later of the date on which the Department issued its findings, or the date of final determination by a court of competent jurisdiction. The notification could not include the name of any person on the basis of having let work to a person whom the Department found to have failed to pay the prevailing wage rate, or found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

These provisions would not apply to any contractor, subcontractor, or contractor's or subcontractor's or agent that, in good faith, committed a minor violation, as determined on a case-by-case basis through administrative hearings with all rights to due process afforded to all parties, or that had not exhausted or waived all appeals.

A person submitting a bid or negotiating a contract on a publicly funded private construction project that was subject to these provisions would be required, on the date on which the person submitted the bid, to identify any construction business in which the person, or a shareholder, officer, or partner of the person, if the person was a business, owned at least a 25% interest on the date the person submitted the bid, or at any other time within three years preceding the date on which the person submitted the bid or negotiated the contract, if the



business was found to have failed to pay the prevailing wage rate or to have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor.

DWD would be required to promulgate rules to administer these provisions.

The prevailing wage law for publicly funded private construction projects would be subject to other state law provisions that apply to the current prevailing wage law including limits on access to certain employee information, inclusion of wage rate data in determining prevailing wages for state highway construction projects, substance abuse prevention on projects, exclusion from certain minimum wage requirements, wage claim coverage, prohibitions against employment discrimination, and criminal penalties for certain employer or employee actions.

For purposes of determining prevailing wages, "area" would mean: (a) the county in which a proposed publicly funded private construction project was located; or (b) if DWD determined that there was insufficient wage data in that county, those counties that were contiguous to that county; or (c) if the Department determined that there was insufficient wage data in those counties, "area" would mean those counties that are contiguous to those counties; or (d) if the Department determined that there was insufficient wage data in those counties, "area" would mean the entire state. If the Department was requested to review a determination because the prevailing wage did not represent the municipal prevailing wage for a trade or occupation, "area" would mean the city, village, or town in which a proposed publicly funded private construction project was located.

"Publicly funded private construction project" would be defined as a construction project, other than a project of public works, that receives financial assistance from a local governmental unit.

"Financial assistance" would be defined as any grant, cooperative agreement, loan, contract (other than a public works contract, a supply procurement contract, a contract of insurance or guaranty, or a collective bargaining agreement), or any other arrangement by which a local governmental unit provided or otherwise made available assistance in any of the following forms: (a) funding; (b) a transfer or lease of real or personal property of the local governmental unit or of any interest in or permission to use, other than on a casual or transient basis, that property for less than fair market value or for reduced consideration; (c) proceeds from a subsequent transfer or lease of real or personal property transferred or leased from the local governmental unit, if the local governmental unit's share of the fair market value of the property was not returned to the local governmental unit; or (d) a redevelopment contract, economic development agreement, revenue agreement, contract, or assistance provided under specified municipal law provisions (industrial development revenue bonds, tax incremental financing, blight elimination and slum clearance, and business improvement districts).

"Hourly basic rate of pay", "insufficient wage data", "local governmental unit", "prevailing hours of labor" and "truck driver" would be defined under current local and state public works project prevailing wage law provisions.

Generally, "prevailing wage rate" for any trade or occupation engaged in the erection,

construction, remodeling, repairing, or demolition of any publicly funded private construction project in any area would mean the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits, and any other bona fide economic benefit, paid directly or indirectly, for a majority of the hours worked in the trade or occupation on projects in the area. If there was no rate at which a majority of the hours worked in the trade or occupation on projects in the area was paid, "prevailing wage rate" would mean the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits, and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation on projects in that area.

These provisions would take effect on the bill's general effective date.

### ATTACHMENT 3

#### Comparison of State Prevailing Wage Laws

State	Year Adopted	Project Cost Threshold	Definition
Alaska	1931	\$2,000	Wage paid for work of similar nature in region where public work to be done.
Alabama	Repealed in 1980		
Arizona	Repealed in 1984		
Arkansas	1955	\$75,000	Minimum wage rate prevailing in county or locality where work is to be performed, for workers in work of a similar character.
California	1931	\$1,000	Not less than prevailing per diem wages for work of similar character in same locality.
Colorado	Repealed in 1985		
Connecticut	1933	\$400,000 for new construction and \$100,000 for remodeling	Customary or prevailing wage for some work in same trade or occupation in town where project is being constructed.
Delaware	1962	\$100,000 for new construction and \$15,000 for remodeling	Wages paid to a majority of employees performing similar work, or in the absence of a majority, the average wages paid to all employees.
Florida	Repealed in 1979		
Georgia	No law		
Hawaii	1955	\$2,000	Not less than the wages for corresponding classes of laborers and mechanics on projects of similar character in the state and not less than the rate paid under the Davis-Bacon Act.
Idaho	Repealed in 1985		
Illinois	1931	None	Prevailing hourly rate including fringe benefits for work of similar character in same locality.
Indiana	1935	\$150,000	Not less than the common construction wage for each class of workers in the county.
Iowa	No law		

<b>State</b>	<b>Year Adopted</b>	<b>Project Cost Threshold</b>	<b>Definition</b>
Kansas	Repealed in 1987		
Kentucky	1982	\$250,000	Basic hourly rate paid majority of workers employed in each class in locality where work is to be performed, if no majority rate, then average rate.
Louisiana	Repealed in 1988		
Maine	1933	\$50,000	Hourly wage paid to median number of workers employed in same trade or occupation in the second/third week of September.
Maryland	1945	\$500,000	Hourly rate, including fringe benefits, paid to 50% or more workers in same class for projects similar to proposed public work in the local city where work is to be performed.
Massachusetts	1914	None	For laborers, at least the wages paid to laborers employed by town (or highest of the towns, if applicable) where construction taking place, unless a collective bargaining agreement specifies otherwise. For craftsmen, at least rate under collective bargaining agreement, if any; otherwise wages paid to unspecified plurality or majority by private employers.
Michigan	1965	None	Wages and fringe benefits prevailing in locality where work is to be performed.
Minnesota	1973	\$25,000 multiple trade, \$2,500 single trade	Prevailing hourly rates including fringe benefits paid to largest number of workers in the same class of labor in the area.
Mississippi	No law		
Missouri	1957	None	Hourly wages plus fringe benefits prevailing for workers engaged in work of a similar character in the locality where work is to be performed.
Montana	1931	\$25,000	Prevailing wages including fringe benefits for similar work in district where work is to be performed.
Nebraska	1923	None	Wages paid by at least 50% of contractors in same business or field of endeavor.
Nevada	1937	\$100,000	Hourly or daily rate prevailing in county where work is to be performed.
New	Repealed in 1985		

<b>State</b>	<b>Year Adopted</b>	<b>Project Cost Threshold</b>	<b>Definition</b>
Hampshire			
New Jersey	1913	\$2,000 for most projects; \$11,682 if work done for municipality	Wage rate determined by collective bargaining agreements paid by employers employing a majority of workers subject to the collective bargaining agreement in the locality where work is to be performed.
New Mexico	1937	\$60,000	Prevailing wages of those employed on similar projects in state or locality.
New York	1897	None	Rates prescribed under collective bargaining agreements if those rates apply to 30% or more of workers in same trade in locality; if less than 30%, average wages paid to trade in locality in last 12 months.
North Carolina	No law		
North Dakota	No law		
Ohio	1931	\$73,891 for new construction; \$22,166 for remodeling/upgrading	Basic hourly wage, including fringe benefits, paid in same trade in same county under collective bargaining agreements; if there is no collective bargaining agreement in the county, the wage described above for the nearest county with a collective bargaining agreement.
Oklahoma	Invalidated by 1995 court decision		
Oregon	1959	\$50,000	Hourly wage and fringe benefits paid a majority of workers employed in same trade on similar projects in locality where work is to be performed.
Pennsylvania	1961	\$25,000	Prevailing minimum rate in locality where public work performed for workers in the same class during the term the work is performed, as determined by state labor secretary.
Rhode Island	1935	\$1,000	Hourly rate and fringe benefits paid in appropriate political subdivision to corresponding types of employees on similar projects.
South Carolina	No law		
South Dakota	No law		
Tennessee	1975	\$50,000	Prevailing wage for same work in same district.

<b>State</b>	<b>Year Adopted</b>	<b>Project Cost Threshold</b>	<b>Definition</b>
Texas	1933	None	Daily rates for similar work in same locality.
Utah	Repealed in 1981		
Vermont	1973	\$100,000	Mean prevailing wage published periodically by the Department of Employment and Training.
Virginia	No law		
Washington	1945	Normally none but \$25,000 applies to state university projects	Hourly rate, benefits, and overtime paid majority of workers in same trade in same locality; if no majority, then the average hourly rate.
West Virginia	1935	None except \$50,000 threshold applies to West Virginia infrastructure and Jobs Development Council projects	Prevailing hourly rate for work of similar character in the locality where work is to be performed.
Wisconsin	1931	\$48,000 single trade; \$234,000 multiple trade	Hourly wage and fringe benefits paid majority of workers employed in same trade in same area where work is to be performed.
Wyoming	1967	\$25,000	Wages and benefits of workers engaged in work of a similar character.