

# Prevailing Wages

## Major Findings:

- The Department of Labor and Industry uses reasonable methods to collect wage and benefit information for the purpose of setting prevailing wage rates. It is not possible, however, to determine if the survey results are representative of the non-residential construction industry.
- The method used to calculate prevailing wage rates may sometimes result in rates that are not representative of wages and benefits paid for nonresidential construction work.
- This problem occurs because Minnesota, unlike many states and the federal government, does not require the prevailing wage rate to represent a minimum percentage of the reported compensation rates.
- Although the Department of Labor and Industry calculates most prevailing wage rates in accordance with state laws and rules, the department has incorrectly set some rates due to computer programming and other errors.
- Minnesota has an acceptable program for enforcing the state's prevailing wage law on state-funded highway projects, but there is confusion over the responsibility for enforcing the law on other projects.

- Research does not provide a clear answer about how prevailing wage laws affect public construction costs or construction quality.

## Recommendations:

- The Department of Labor and Industry should take steps to improve the response rate to its annual survey of construction wages and benefits.
- The Department of Labor and Industry should revise its computer program and review process so that prevailing wage rates are set in strict accordance with laws and administrative rules.
- The Legislature should make contracting agencies primarily responsible for enforcing the state's prevailing wage law. The Department of Labor and Industry should provide training and technical assistance to the agencies.
- The Legislature should require contractors working on state-funded projects to submit certified payroll records to contracting agencies.
- The Legislature should examine the need for additional funding for compliance monitoring and enforcement activities.

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**Except for state highway projects, Minnesota lacks a prevailing wage enforcement program.**

## Report Summary

State law requires that prevailing wages be paid to laborers working on public works projects financed in whole or in part by the state. Minnesota's law, like those elsewhere, has been controversial. Critics contend that prevailing wage laws increase the cost of public construction projects. They also claim that the prevailing wage rate is too often set at the highest rate paid in a geographic area and may not be representative of rates typically paid.

Supporters of prevailing wage laws, however, contend that prevailing wage laws do not increase construction costs and have a number of benefits, including improved construction quality and lower injury rates. They also say that Minnesota's law is not being adequately enforced.

As a result, the Legislative Audit Commission directed us to evaluate Minnesota's prevailing wage law. Our study examines the methods used to set prevailing wage rates, current enforcement practices, and the economic impact of prevailing wage laws.

### **The Department of Labor and Industry uses reasonable methods to collect wage and benefit data, but the data still have limitations.**

The Department of Labor and Industry (DLI) conducts an annual survey of the wages and fringe benefits paid to construction workers on commercial and highway/heavy construction projects. The results of the survey are used to set prevailing wage rates for workers in 48 job classifications.

The DLI survey is an acceptable method for collecting wage and benefit information. The department allows any contractor or union that has done commercial or highway/heavy construction work to submit this information, and the survey can be completed online.

However, it is debatable whether responses to the survey are representative of the wages and benefits paid for commercial and highway/heavy construction. The response rate to the survey appears to be low, and about half of the information on

commercial construction is provided by unions.

Nevertheless, there are no superior alternatives to the current survey. Some critics have suggested using the Occupational Employment Statistics (OES) survey conducted by the Department of Employment and Economic Development. However, for a variety of reasons, the OES survey is not well-suited to the purpose of setting prevailing wage rates. The OES survey includes wage information about workers in residential construction and outside the construction industry. Using that information in setting prevailing wage rates for commercial or highway/heavy construction would not be appropriate since the skill levels of residential construction workers are different and their compensation rates are considerably lower.

### **The method used to calculate prevailing wage rates may sometimes result in rates that are not representative of wages and benefits paid for nonresidential construction work.**

Minnesota law requires a prevailing wage rate to be the most commonly reported rate—or “mode”—for a particular job class in a geographic area. Critics contend that this method of calculating prevailing wages results in high rates that are often union wages and not representative of rates paid for construction work in some communities. It is argued that using the mode favors unions because union rates for all workers in a particular job class in an area are generally the same, while nonunion compensation rates vary from employee to employee. As a result, critics contend that the most common single rate of pay will be the union rate. Critics also suggest that nonunion contractors do not respond to the survey because they believe their responses will not change the results.

It is difficult to determine whether prevailing wage rates are representative of the rates paid in the industry because there is no other usable source of information on compensation rates paid for commercial and highway/heavy construction work besides the department's annual survey. Critics cite the difference between prevailing wage rates and median rates from the OES survey as evidence that

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**The Department of Labor and Industry should try to improve the response rate to its annual survey of wages and benefits.**

prevailing wage rates are not representative. But, as mentioned above, that comparison does not consider the difference in wage rates between nonresidential and residential construction.

There is, however, evidence that prevailing wage rates may sometimes be unrepresentative of the rates reported in the survey. About 6 percent of the prevailing wage rates set in 2005 were based on 20 percent or fewer of the compensation rates reported for that job class and area. This happens because Minnesota, unlike most states that use the mode to set prevailing wage rates, does not require that the mode represent a minimum percentage of the reported rates. The federal government and most of the states using the mode only use it if it represents a minimum percentage—ranging from 30 percent to slightly more than 50 percent—of the reported rates. Otherwise, they generally use an average rate.

It is unclear whether union rates are certified as prevailing wage rates more frequently than would be indicated by union labor's share of nonresidential construction work in Minnesota. While a majority of prevailing wage rates are union rates, an estimated 27 percent of construction workers are covered by a collective bargaining agreement. However, the estimated percentage of union members is based on all construction workers including those in residential construction. The union share of residential construction work is very small, while it is significantly higher for commercial and highway/heavy work.

**While generally conforming to state law and rules, the Department of Labor and Industry has set some prevailing wage rates without following all of the procedures in its rules.**

The department has incorrectly set some rates because of errors in the computer program used to calculate prevailing wage rates from survey data. In addition, department staff have made some mistakes in updating union rates to the current contract rates. The department has also been inconsistent in determining those fringe benefits that can be included in prevailing wage rates.

After correcting these problems, the department will also need to revise its rules. Under certain circumstances, following the current rules would result in wage and benefit information from a county being ignored when setting prevailing wages in that county. Because the computer program does not follow all of the rate-setting procedures in the rules, this problem has not affected any prevailing wage rates thus far. However, once the computer program is fixed, the problem could affect rates in some counties.

**There is confusion about enforcement responsibilities on state-funded building projects.**

State law assigns enforcement responsibilities to the Department of Labor and Industry for building projects and to the Department of Transportation (MnDOT) for highway projects. While MnDOT operates a compliance monitoring and enforcement program, DLI does not have staff resources to enforce the law. In addition, DLI is not in a good position to enforce the law. Unlike MnDOT, DLI does not manage construction projects and cannot effectively monitor compliance with the law. DLI also cannot withhold payments from contractors who violate the law. Agencies contracting for construction projects are in a better position to ensure compliance with the law, but some of these agencies assume that DLI is responsible for enforcement.

As a result of this confusion, Minnesota lacks an organized enforcement program for public works projects other than highway projects. There is little monitoring for compliance with state law, and insufficient attention is paid to including language that supports enforcement efforts in construction contracts.

To correct this problem, state law should be amended to make contracting agencies primarily responsible for enforcement and give DLI an advisory and technical assistance role. The Legislature should consider the need for additional funding if it expects stronger state enforcement.

Another way to improve compliance with the law would be to require contractors to periodically submit certified payroll records to contracting agencies. Reviewing these

**Due to computer programming and other errors, some prevailing wage rates have been set incorrectly.**

**Prevailing wage laws increase compensation in the construction industry, but their impact on overall construction costs is unclear.**

records and conducting occasional onsite interviews are the main tools used by MnDOT to monitor compliance with the prevailing wage law. These tools allow MnDOT to withhold payments from contractors that are violating the law or pursue more serious penalties in court. Requiring the submission of certified payroll records also enables MnDOT to pursue felony charges against violators for falsifying reports. Without such evidence, violators are subject only to misdemeanor charges, which prosecutors are often not inclined to pursue.

**Research does not provide clear answers about the economic impact of prevailing wage laws.**

Studies indicate that prevailing wage laws increase the wages and benefits of all construction workers, not just those working on prevailing wage projects. However, research provides little guidance about other economic impacts of these laws.

For example, studies of the impact of prevailing wage laws on construction costs have produced mixed results. Some have estimated that such laws result in a small increase in costs. But the most comprehensive studies have generally failed to find an impact that is statistically significant.

Some studies have claimed that increased tax collections from higher wages offset any increased public construction costs resulting from prevailing wage laws. The

results of these studies are, however, questionable. The studies appropriately assume that prevailing wage laws increase wages and benefits for all construction workers, but fail to consider what impact these higher payroll costs might have on private construction.

Supporters of prevailing wage laws contend that these laws improve the quality of public construction work and result in greater training and fewer injuries for construction workers. There is little or no research on construction quality, so the impact of these laws on the quality of public construction work is unknown.

Some studies have claimed that prevailing wage laws are associated with a modest reduction in construction injury rates. However, it is not entirely clear whether prevailing wage laws cause the reduction in injury rates. States with such laws may also be more likely to place a greater emphasis on workplace safety. A stronger interest in safety, rather than prevailing wage laws, may explain the differences in injury rates.

The full evaluation report, *Prevailing Wages*, is available at 651-296-4708 or:

[www.auditor.leg.state.mn.us/ped/2007/prevailingwages.htm](http://www.auditor.leg.state.mn.us/ped/2007/prevailingwages.htm)

## Summary of Agency Response

*In a letter dated January 23, 2007, Commissioner Scott Brener wrote: "On the whole, we found the report educational and helpful. We are already in the process of implementing many of your recommendations to the department." His letter points out that the department's ability to increase the survey response rate or extensively audit survey data will require additional funding from the legislature.*

*He concurred with our legislative recommendations to make contracting agencies responsible for prevailing wage enforcement and the Department of Labor and Industry responsible for training and technical assistance. He further stated that the department will follow these recommendations "to the extent that the legislature enacts your recommendations and we have the resources to do so."*