



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

Prevailing Wages

FEBRUARY 2007

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OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA • James Nobles, Legislative Auditor

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Members of the Legislative Audit Commission:

Minnesota's prevailing wage law, like those in other states, is controversial. Critics charge that the law, which requires the Department of Labor and Industry to set a floor on the wages and benefits paid to workers on state-funded construction projects, raises public construction costs. In addition, critics contend that prevailing wage rates are often set at the highest rate paid in a geographic area. Supporters of the law claim that the law does not raise overall construction costs and has a number of benefits, including improved construction quality, higher tax collections, and lower injury rates.

We cannot resolve the debate over the costs and benefits of prevailing wage laws. Existing research does not provide a clear answer to the question of whether prevailing wage laws increase overall construction costs. In addition, we do not think that research has convincingly demonstrated the benefits claimed for these laws.

However, it is clear that Minnesota's prevailing wage law is not being effectively enforced. While the agencies that issue construction contracts are in a better position to monitor compliance and withhold funds from violators, a 1973 state law gave enforcement responsibility to the Department of Labor and Industry on all prevailing wage projects other than state highway projects. The department does little to fulfill this responsibility because it lacks resources and effective enforcement authority.

We found that the Department of Labor and Industry has correctly calculated most prevailing wage rates but has set some rates without following all of the legal requirements. These problems can be attributed to errors in computer programming and manual processing.

This report was researched and written by John Yunker (project manager) and Carrie Meyerhoff. We appreciate the cooperation we received from the Department of Labor and Industry and others who provided information used in preparing this report.

Sincerely,



James Nobles
Legislative Auditor

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Summary

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

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 (pp. 24-26).
- 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 (pp. 31-33).
- 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 (pp. 20-22, 32).
- 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 (pp. 44-48).
- 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 (pp. 55-58).

- Research does not provide a clear answer about how prevailing wage laws affect public construction costs or construction quality (pp. 75, 84).

Key Recommendations:

- The Department of Labor and Industry should take steps to improve the response rate to its annual survey of construction wages and benefits (p. 30).
- 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 (pp. 45, 47, 48).
- 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 (p. 59).
- The Legislature should require contractors working on state-funded projects to submit certified payroll records to contracting agencies (p. 61).
- The Legislature should examine the need for additional funding for compliance monitoring and enforcement activities (p. 60).

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

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

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

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 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

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

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 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.

Introduction

Minnesota law requires that “prevailing wages” be paid to laborers working on public works projects financed in whole or in part by the state. Minnesota is not unique in this regard. Thirty-two states and the federal government currently have prevailing wage requirements.

But, in Minnesota and elsewhere, these requirements have been controversial. In fact, nine states that previously passed prevailing wage laws repealed them in the 1980s and 1990s. Opponents of prevailing wage laws argue that the requirements raise the costs of government construction projects. They believe costs are higher because prevailing wage rates are too often set at the union wage and fringe benefit rate, which tends to be the highest rate earned by construction workers in a particular area.

State law requires the prevailing wage rate in Minnesota to be the most commonly reported rate—or mode—for a particular job class in an area. Some legislators have argued that Minnesota should use the median wage rate for an occupation rather than the mode.¹ In addition, they have suggested that, instead of conducting its own annual survey of construction contractors and unions, the Department of Labor and Industry should use results from the Occupational Employment Statistics (OES) survey conducted by the Department of Employment and Economic Development. The median wages for construction occupations in the OES survey are generally significantly less than the prevailing wage rates set by the Department of Labor and Industry.

Supporters of prevailing wage laws maintain that there is no evidence that government construction costs are higher because of the prevailing wage requirement. They claim that the prevailing wage requirement results in the use of more highly skilled and productive workers. In their view, the additional productivity may more than offset the higher wages and benefits that are required by the prevailing wage law. Even if construction costs are higher, supporters say that the additional costs are more than offset by the higher taxes paid by construction workers who earn more because of the prevailing wage law. Supporters also suggest that prevailing wage laws improve the quality of public construction work, decrease the number of construction injuries, and reduce the costs of uncompensated health care by providing health insurance to more workers.

In response to this controversy, the Legislative Audit Commission directed us to examine Minnesota’s prevailing wage requirement. Legislators were interested

¹ The median is the midpoint of a group of reported wages. Half of the reported wages are higher than the median, and half are lower than the median.

in evaluating the method used to set prevailing wage rates in Minnesota. They also wanted us to critically review those studies that have examined the economic impact of prevailing wage laws. In addition, some legislators were concerned that Minnesota's prevailing wage requirement is not adequately enforced. This report specifically addresses the following issues:

- **Does the Department of Labor and Industry use reasonable methods to survey contractors and unions about construction wages and benefits?**
- **Are reasonable methods used to set prevailing wage rates?**
- **How well do state agencies enforce the state's prevailing wage law?**
- **What evidence do existing studies provide about the impact of prevailing wage laws on government costs and revenues and the broader economy?**

To conduct this evaluation, we first examined the laws and rules governing the operation of Minnesota's prevailing wage requirement and collected information on the requirements of other states and the federal government. Second, we interviewed various business and labor groups about their views on Minnesota's prevailing wage law. We also interviewed staff from the Department of Labor and Industry regarding the determination of prevailing wage rates and their enforcement role. And, we interviewed staff from the Department of Transportation regarding their enforcement efforts and staff from other agencies and government units regarding their roles in contracting for public construction projects and enforcing prevailing wage requirements. Third, we examined in detail the methods used by the Department of Labor and Industry to set prevailing wage rates and considered alternative methods. Finally, we reviewed the studies that have examined the economic impact of prevailing wage laws.

Chapter 1 of this report provides background information on Minnesota's prevailing wage requirements and the requirements of other states and the federal government. Chapter 2 evaluates the methods used by the Department of Labor and Industry to collect information on construction wages and benefits and to set prevailing wage rates based on that information. In Chapter 3, we examine whether the state's prevailing wage law is being adequately enforced. Finally, Chapter 4 critically reviews studies that have estimated the impact of prevailing wage requirements on government budgets, construction workers, and the broader economy.

Background

SUMMARY

Minnesota's prevailing wage law requires contractors to pay laborers and mechanics working on state-funded construction projects wages that "prevail" in the geographic area for the type of work performed. The "prevailing wage" is the most frequently reported wage (or mode) among data collected by the Department of Labor and Industry through an annual survey. When more than one mode exists for a job class in a particular geographic area, the highest mode "prevails."

Critics claim that Minnesota is one of only two states that use the mode to set prevailing wage rates. Minnesota is not as unique as critics claim since 19 other states and the federal government use the mode to set prevailing wage rates. However, unlike Minnesota, 15 of these states and the federal government only use the mode if it represents a minimum percentage of reported wages, ranging from 30 to 51 percent. Otherwise, most of them use the average reported rate.

Minnesota's prevailing wage law sets a floor on the wages and benefits that must be paid to workers on state-funded construction projects.

In 1973, Minnesota passed a prevailing wage law so that construction projects financed with state dollars would be constructed "by the best means and highest quality of labor reasonably available" and that the people working on the projects would be paid "according to the real value of the services they perform."¹ The law requires that contractors pay laborers and mechanics working on state-funded construction projects a wage and fringe benefit rate that has been determined to be "prevailing" for the particular type of construction in the geographic area. The prevailing wage rate sets a floor, not a ceiling, on compensation. Workers may be compensated at a rate higher than the prevailing wage rate but not at a lower rate. The Department of Labor and Industry is responsible for setting prevailing wage rates in Minnesota.

The value of state and local government construction by Minnesota firms is estimated to have reached over \$5.6 billion in 2002, or almost one-fifth of the value of all construction by Minnesota firms that year.² Not all of this construction is subject to the state's prevailing wage law. The figure includes local government projects that may not be covered by the state law. Although the portion covered by the state's prevailing wage law is unknown, it is most

¹ *Minnesota Statutes* 2006, 177.41.

² Auditor analysis of data from U.S. Census Bureau, 2002 Economic Census, http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0223A2A&-_lang=en; accessed March 30, 2006. The value reflects receipts for construction work done by Minnesota establishments, not the value of work done in Minnesota. Some of the construction work was done in other states, and firms from other states did work in Minnesota. The figure does not include the value of work done by individuals who are not employed by an establishment. Some receipts may be counted more than once.

likely a significant amount. As a result, the law is an important and controversial issue. This chapter answers the following questions:

- **How does Minnesota’s prevailing wage law work? What types of construction projects does it cover?**
- **How are the state’s prevailing wage rates set?**
- **How does the state’s prevailing wage law compare with the laws of other states and the federal government?**

MINNESOTA’S PREVAILING WAGE LAW

In this section, we first discuss the types of projects and workers that are covered by Minnesota’s prevailing wage law. Then, we explain the requirements the law places on contractors and subcontractors working on covered projects. Finally, we explain what types of rates are set by the Department of Labor and Industry.

Covered Projects and Workers

Minnesota’s prevailing wage law applies to construction projects “financed in whole or part by state funds.”³ In addition to covering construction, repair, or remodeling of state buildings and construction and repair of state trunk highways and bridges, the law can apply to local government and private construction projects. Prevailing wages must be paid to workers on local government construction projects that receive direct state aid. For example, the law applies to local government road construction financed with county or municipal state aid. However, local government projects that do not receive direct state aid are not subject to the law’s requirements.⁴ The state’s prevailing wage law also applies to private construction financed with state assistance provided under the state’s ethanol development program and other economic development programs, including the Job Opportunities and Building Zones program.

State-funded construction projects are covered by the prevailing wage law if they meet the minimum dollar thresholds set in law. A construction project involving only one job class is covered by the law if the project costs \$2,500 or more. If the project involves more than one job class, prevailing wages must be paid on projects of \$25,000 or more. For example, a plumbing project would be covered if it involved only plumbers and cost at least \$2,500. But, if it included other job

Some local government and private construction projects must also comply with the prevailing wage law.

³ *Minnesota Statutes* 2006, 177.42, subd. 2.

⁴ In 1995, the Minnesota Supreme Court clarified that there had to be a direct relationship between state funds and a construction project for a project to be considered as funded in whole or in part by state funds. Thus, Debt Service Equalization Aid (DSEA), which provides property tax relief to school districts, is not considered state funding for the purpose of the prevailing wage law. A new school building financed by a school district bond issue would not be subject to the prevailing wage law, even though DSEA would reduce the school district’s debt service. However, if the state gave a grant or loan to the school district to provide direct financial assistance for the new school building, the project would be subject to the law. *NewMech Companies, Inc., v. Independent School District 206*, 540 N.W.2d 801 (Minn. 1995).

classes besides plumbing, the project would be covered only if it cost at least \$25,000.

The state's prevailing wage law generally applies to all construction workers on a state-funded project. For example, the law covers laborers, power equipment operators, truck drivers, and workers in special crafts. In addition, the prevailing wage law covers "laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle."⁵ For example, a truck driver who delivers gravel to a state highway project and spreads it in the roadway is covered by the law. Drivers who transport materials within a construction site or haul materials such as dirt or sections of an old roadway from a construction site also are covered by the prevailing wage law.

Wages for some workers are exempt from the prevailing wage law.

State law specifically exempts some workers. "Laborers or mechanics who process or manufacture materials or products" and those who deliver "materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply processed or manufactured materials or products" are not subject to the law.⁶ For example, a truck driver who simply delivers materials from a commercial establishment to a building job site and is not involved in any construction work is not covered by the law. A truck driver who delivers sand, gravel, or rock to a state-funded highway project is not covered by the law if the driver delivers the materials from a commercial establishment and does not spread or deposit the materials in the roadway.⁷

Requirements for Contractors

Minnesota's prevailing wage law requires contractors and subcontractors on state-funded construction projects to pay an hourly compensation rate that is at least as high as the prevailing wage rate set by the Department of Labor and Industry (DLI). The compensation rate includes both a wage component and a fringe benefit component. Contractors do not have to pay those exact rates of wages and benefits. But, workers must receive total compensation that equals or exceeds the sum of the two components. A contractor or subcontractor can pay more in wages and less in fringe benefits, as long as the total compensation rate is at least as high as the "prevailing wage rate" set by the department.

Contractors also have to pay overtime wages to workers who work more than the prevailing hours of labor. State law does not allow the prevailing hours of labor to exceed 8 hours in a day or 40 hours in a week.⁸ If workers on a covered project exceed these limits, the law requires that contractors pay them at least one

⁵ *Minnesota Statutes* 2006, 177.43, subd. 2; 177.44, subd. 2.

⁶ *Ibid.*

⁷ *Minnesota Rules* 2005, 5200.1106, subparts 1 through 8, provide further clarification on the types of work covered by the prevailing wage law, particularly the application of the law to truck drivers.

⁸ *Minnesota Statutes* 2006, 177.42, subd. 4.

and one-half times the wage component of the prevailing wage rate for the additional hours.⁹

State rules require each contractor or subcontractor performing work on a public project to post at the construction site the applicable prevailing wage rates and the wage component of the prevailing wage rates.¹⁰ These rates must be posted in at least one conspicuous place for employees working on the project.

State law also requires contractors and subcontractors to provide the appropriate agencies with copies of their payroll records on covered projects when requested. Contractors and subcontractors must also allow the agencies access to all payroll records if requested.¹¹ For all projects except state-funded highway projects, the Department of Labor and Industry has the responsibility for enforcing the prevailing wage law and has access to the payroll records of contractors and subcontractors.¹² For state-funded highway projects, the Department of Transportation is responsible for enforcement and has access to payroll records.¹³ State law also gives DLI access to payroll records of contractors and subcontractors on state-funded highway projects.¹⁴

Contractors who pay compensation rates lower than the prevailing wage rates can be charged with a misdemeanor. Violators can be fined up to \$1,000 or imprisoned up to 90 days for each day of noncompliance.¹⁵ Contractors who violate the prevailing wage law applicable to state-funded highway projects can be fined up to \$300 or jailed up to 90 days for each day of noncompliance. They can also be fined \$1,000 and imprisoned up to one year for inducing workers to accept a wage that is less than the prevailing wage. An employee who knowingly permits a contractor or subcontractor to pay less than the prevailing wage rate or kicks back to the employer part of the wage on a state-funded highway project can be fined \$40 or imprisoned up to 30 days.¹⁶

The Department of Labor and Industry (DLI) sets prevailing wage rates for two types of construction—commercial and highway/heavy.

Types of Rates

The Department of Labor and Industry sets prevailing wages for two types of construction: (1) commercial construction and (2) highway and heavy construction. Commercial construction rates are set for each county and apply to all state-funded building construction except highway and heavy construction.

⁹ *Minnesota Statutes* 2006, 177.43, subd. 1; 177.44, subd. 1.

¹⁰ *Minnesota Rules* 2005, 5200.1110.

¹¹ *Minnesota Statutes* 2006, 177.43, subd. 6; 177.44, subd. 7.

¹² *Minnesota Statutes* 2006, 177.43, subd. 6. Enforcement of the prevailing wage law is discussed in detail in Chapter 3.

¹³ *Minnesota Statutes* 2006, 177.44, subd. 7.

¹⁴ *Minnesota Statutes* 2006, 177.43, subd. 6.

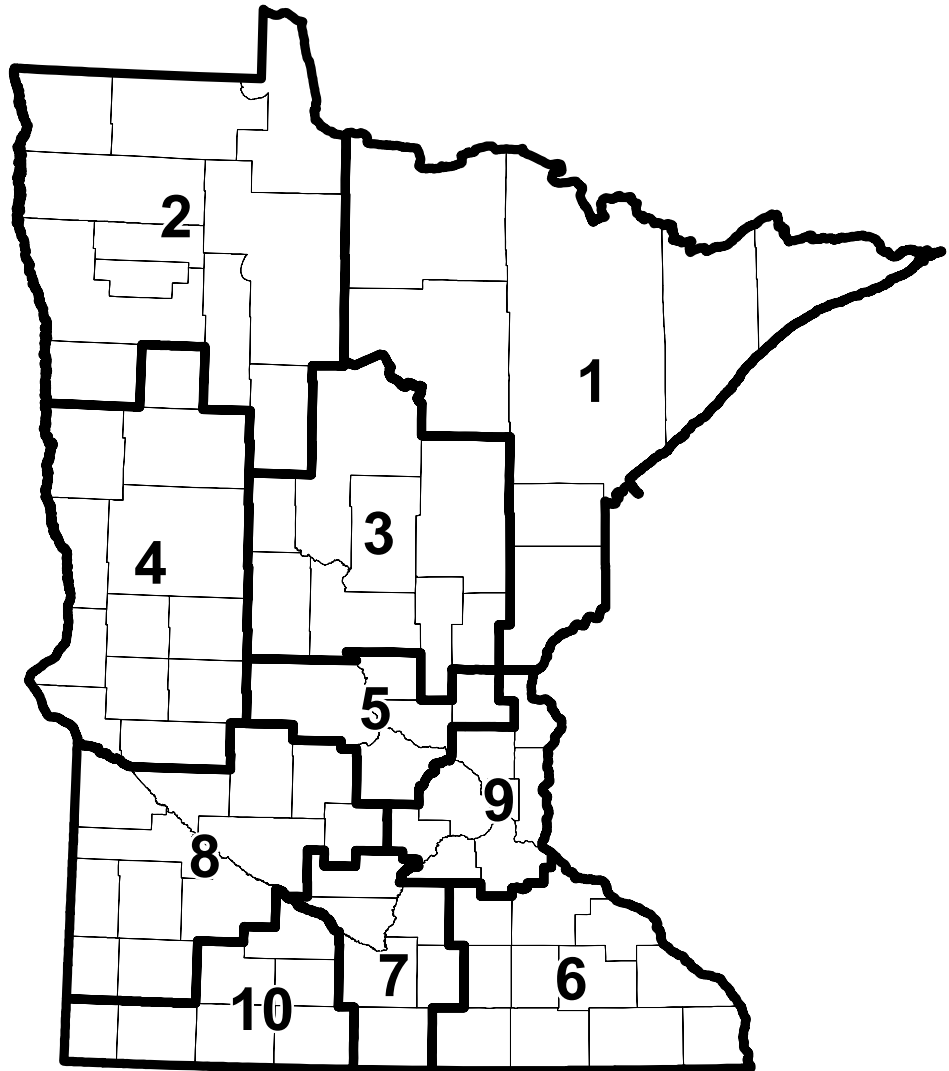
¹⁵ *Minnesota Statutes* 2006, 177.43, subd. 5. It is also a misdemeanor for an employee of the state to execute a contract for a project without complying with the prevailing wage law.

¹⁶ *Minnesota Statutes* 2006, 177.44, subd. 6.

Commercial rates are set for each county.

Highway/heavy construction rates are set for public works projects such as “roads, highways, streets, airport runways, bridges, power plants, dams, and utilities.”¹⁷ For the purpose of setting highway/heavy construction prevailing wages, counties are grouped into the ten regions shown in Figure 1.1.¹⁸

Figure 1.1: Prevailing Wage Highway/Heavy Regions



Highway/heavy rates are set for ten regions.

NOTE: [Minnesota Rules 2005, 5200.1030, subp. 1](#), defines the state's highway/heavy regions.

SOURCE: Office of the Legislative Auditor.

¹⁷ [Minnesota Rules 2005, 5200.1010, subp. 3](#).

¹⁸ [Minnesota Rules 2005, 5200.1030, subp. 1](#).

Overall, DLI establishes up to 4,656 prevailing wage rates each year.

For both commercial and highway/heavy construction, the Department of Labor and Industry sets prevailing wage rates for laborers, power equipment operators, truck drivers, and workers in special crafts. For each type of construction, DLI may set up to 48 prevailing wage rates that cover 147 job classes. The 147 job classes include nine types of laborers, 93 classes of power equipment operators, 16 classes of truck drivers, and workers in 29 special crafts.¹⁹ Although prevailing wage rates cover 147 job classes, only 48 rates are set because the department combines the classes of power equipment operators into six groups and the classes of truck drivers into four groups. Table 1.1 shows the 48 job groups for which rates may be set.

Overall, DLI may set 4,176 prevailing wage rates for commercial construction projects. This figure includes 48 rates for each of Minnesota's 87 counties. For highway/heavy construction projects, there are a total of 480 prevailing wage rates that may be set by DLI. This number includes 48 rates for each of the ten regions shown in Figure 1.1.

In addition to compensation rates for construction workers, Minnesota law requires the Department of Labor and Industry to set minimum rates for truck equipment furnished for state-funded highway projects.²⁰ The truck rental rates set by the department include both the prevailing wage rates set for truck drivers as well as the hourly costs of owning and operating a truck.²¹ The purpose of truck rental rates is to level the playing field so that neither independent truck owner-operators nor trucking firms have a competitive advantage created by the prevailing wage law. Without truck rental rates, truck drivers employed by trucking firms would have to be paid the wages required under the prevailing wage law, but independent owner-operators would not have to be paid those wages because they are not employees. Truck rental rates insure that independent operators cannot charge a total rate that is less than the prevailing wages that trucking firms and contractors must pay their drivers. Truck rental rates also ensure that trucking firms charge rates that cover not only wages, but also the estimated costs of operating a truck.

RATE SETTING PROCESS

A small number of staff administers Minnesota's prevailing wage law. For the most part, two professional staff and one clerical staff in the Labor Standards Section of the Department of Labor and Industry are responsible for administering the state's prevailing wage law. These staff set prevailing wage rates based on an annual survey of construction wages and handle questions and complaints regarding the operation and enforcement of the state's prevailing

¹⁹ The Department of Labor and Industry identifies job classes based on the nature of the work involved and with consideration of collective bargaining agreements, apprentice agreements on file with the department, and general custom and usage in the construction industry. The master job classifications are in *Minnesota Rules 2005, 5200.1100*. In July 2006, the department started the rulemaking process to modify some of the existing job classes.

²⁰ *Minnesota Statutes 2006, 177.44, subd 3.*

²¹ *Minnesota Rules 2005, 5200.1105.*

Table 1.1: Prevailing Wage Master Job Classifications
Laborers

- Laborers, common
- Laborers, skilled
- Laborers, landscaping
- Flag persons
- Watch persons
- Blasters
- Pipelayers
- Tunnel miners
- Underground and open ditch laborers

Power Equipment Operators

- Group 1 (includes five job classes such as operators of helicopters and tower cranes)
- Group 2 (includes 12 job classes such as operators of locomotive cranes and stationary-plant concrete mixers)
- Group 3 (includes five job classes such as operators of elevating graders)
- Group 4 (includes 39 job classes such as operators of tractors, bulldozers, and pavement breaker or tamping machines)
- Group 5 (includes 19 job classes such as operators of air compressors and tree chippers)
- Group 6 (includes 13 job classes such as operators of portable gravel screening plants and power actuated jacks)

Truck Drivers

- Group 1 (includes three job classes such as tractor-trailer drivers)
- Group 2 (includes drivers of four or more axle unit, straight body trucks)
- Group 3 (includes three job classes such as drivers of three axle units)
- Group 4 (includes nine job classes such as drivers of two axle units)

Special Crafts

- Heating and frost insulators
- Boilermakers
- Bricklayers
- Carpenters
- Carpet layers (linoleum)
- Cement masons
- Electricians
- Elevator constructors
- Glaziers
- Lathers
- Ground persons
- Ironworkers
- Linemen
- Millwrights
- Painters
- Piledrivers
- Pipefitters and steamfitters
- Plasterers
- Plumbers
- Roofers
- Sheet metal workers
- Sprinkler fitters
- Terrazzo workers
- Tile setters
- Drywall tapers
- Wiring system technicians
- Wiring system installers
- Asbestos abatement workers
- Sign erectors

Prevailing wage rates cover 147 job classifications.

SOURCE: Office of the Legislative Auditor summary of master job classifications listed in [Minnesota Rules 2005, 5200.1100](#).

wage law. In addition to their prevailing wage duties, these staff have other labor standards responsibilities as well. Overall, the department estimates that it spent about \$174,000 to administer the prevailing wage law during fiscal year 2006,

with most of those expenses dedicated to setting prevailing wage rates.²² Appropriations from the state’s General Fund provide the funding for the department’s administration of the prevailing wage law.

Prevailing Wages for Construction Workers

The Department of Labor and Industry sets prevailing wage rates for construction workers by job class and geographic area.²³ The process of setting rates involves a number of steps. First, DLI conducts an annual survey of construction wages and benefits. Second, department staff determine which combined wage and benefit rate is the most commonly reported rate, or mode, for each job class and geographic area. If contractors did not report wage and benefit information for a job class and geographic area, staff use the prevailing wage rate from the prior year, if available. Finally, DLI “certifies”—or officially publishes—the state’s prevailing wage rates. The department certifies prevailing wage rates in October of each year for highway/heavy construction and in December of each year for commercial construction. This section describes the process in more detail.

Wage Survey

In order to set prevailing wage rates, DLI obtains data from contractors and unions each spring.

Each April, DLI conducts a survey of construction contractors and other interested parties (primarily unions). The survey asks contractors and others to provide information on the wages and benefits paid to construction workers on commercial or highway/heavy construction projects during the past 12 months beginning in April of the previous year. The survey is voluntary, so contractors might not respond at all or might respond with information on only some projects. DLI’s mailing list for 2006 included approximately 16,000 addresses of contractors and other interested parties, including unions and local government agencies. Contractors accounted for about 99 percent of the addresses.

If a contractor or other interested party chooses to participate in the prevailing wage survey, he or she must complete a separate survey for each project, indicating whether the project was commercial or highway/heavy construction.²⁴ Survey participants can complete the survey on paper or online. A “project” reported on a survey might be only part of what some people might think of as a project. Multiple contractors that worked on a large project may each submit a survey reflecting their work on the project. For example, electrical, plumbing, and stucco contractors may each submit a survey reflecting work they did on a new building. In addition, if a contractor had multiple contracts for different stages of the new building, the contractor may report each contract as a project.

²² Department management estimates that about 2.1 full-time equivalent staff work on prevailing wage administration. During peak workload times, other DLI staff may assist the prevailing wage staff with data entry. In addition, the department’s information systems staff provide ongoing support for the administration of the prevailing wage law.

²³ Unless indicated otherwise, the remaining references to job classes refer to the 38 job classes, six groups of power equipment operators, and four groups of truck drivers for which prevailing wage rates may be set.

²⁴ Commercial projects must have cost at least \$2,500 to be reported. Highway/heavy projects must have cost at least \$25,000. *Minnesota Rules* 2005, 5200.1050, subp. 2.

In 2005, DLI received about 13,400 surveys, reporting over 10,500 commercial projects and 2,800 highway/heavy projects.

For each project a contractor reports, the contractor is asked to list the wages, benefits, and job classification of each worker on the project.²⁵ A contractor or other interested party can report the same employee multiple times, once for each project on which the person worked. Respondents to the 2005 prevailing wage survey reported wages and benefits for about 64,000 workers—over 44,000 working on commercial projects and almost 20,000 on highway/heavy projects.²⁶

Determination of Prevailing Wage Rates

After conducting the prevailing wage survey, DLI determines the prevailing wage rates for job classes in each geographic area. In determining commercial prevailing wage rates, the Department of Labor and Industry first attempts to set rates based on the information received from contractors and unions about projects in each county. For highway/heavy construction, the department attempts to set rates based on information for each highway/heavy region. According to the department's administrative rules, at least two projects must be reported for a county or highway/heavy area for a prevailing wage to be calculated.²⁷ If two projects are reported and at least one includes a rate for a particular job class, then department staff are able to set a prevailing wage rate for the job class.

In Minnesota, a prevailing wage rate is based on the most frequently reported wage—or mode—for a job class and geographic area.

Prevailing wage rates are based on the combined wage and fringe benefit rate paid to the greatest number of workers in a county or region in a job class. That is, the prevailing wage rate represents the mode of reported wages for a job class in a geographic area. If there is more than one mode, the highest of the modes is the prevailing wage.²⁸ For example, in response to the 2005 prevailing wage survey, DLI received wage information for five flag persons working in commercial construction in Crow Wing County. The reported wages included two workers each earning combined wages and benefits of \$16.43 per hour, one worker earning \$17.69, and two workers earning \$18.40. Both \$16.43 and \$18.40 are modes. Because \$18.40 is the highest mode, it was the prevailing wage rate.

The Department of Labor and Industry follows some additional steps if it is unable to determine a prevailing wage based on the survey information it receives for a county or highway/heavy region. Figure 1.2 depicts the prevailing wage certification process for commercial construction and its complexity if contractors and unions do not report sufficient information. In the case of commercial construction, if DLI receives too few surveys or the surveys it

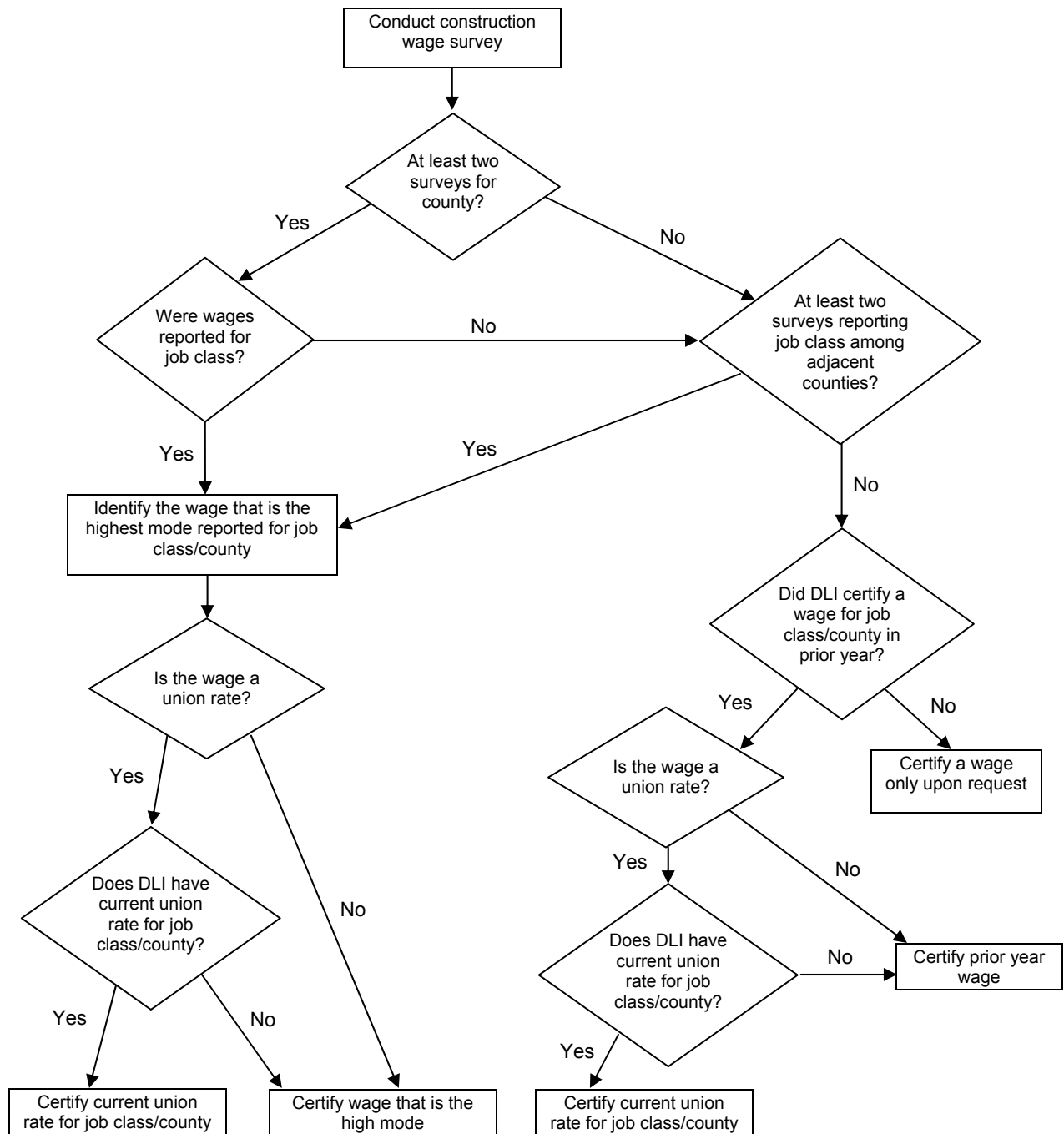
²⁵ Contractors may use any of the 147 job classes identified by DLI. According to [Minnesota Rules 2005, 5200.1050, subp. 2](#), only employees who worked 24 hours or more on highway/heavy projects or 8 hours or more on commercial projects should be reported.

²⁶ The number of workers includes workers reported multiple times.

²⁷ [Minnesota Rules 2005, 5200.1030, subp. 2a, item A; 5200.1035, subp. 2, item A.](#)

²⁸ [Minnesota Rules 2005, 5200.1060, subp. 2.](#)

Figure 1.2: Prevailing Wage Certification Process for Commercial Construction



NOTES: In this figure, "job class" refers to the 38 job classes, six groups of power equipment operators, and four groups of truck drivers for which DLI may set rates. The process for certifying highway/heavy rates is similar to the process illustrated above except that all rates are by highway/heavy region instead of county and adjacent-region data are not used in the absence of current-year information. DLI is the Department of Labor and Industry.

SOURCE: Office of the Legislative Auditor.

DLI is not able to set prevailing wage rates for all job classes in all geographic areas because of data limitations.

receives do not reflect a particular job class, DLI attempts to calculate prevailing wages based on adjacent county information. If work was performed in a job classification in two or more projects in adjacent counties, rules instruct the department to determine a rate using information from all of the adjacent counties.²⁹ If adjacent county information is insufficient, or if regional information is insufficient for highway/heavy rates, DLI determines the prevailing wage based on the prior year's rate.³⁰ If a rate was not certified in the prior year, DLI does not certify a rate except upon request.

In spite of the fact that DLI received wage data for over 60,000 construction workers in 2005, the Department of Labor and Industry was unable to set rates for all job classes in all geographic areas in 2005. As Table 1.2 shows, DLI certified about 84 percent of the possible prevailing wage rates for commercial construction. About one-third of the possible commercial construction rates were based on projects that occurred in the county. Projects in adjacent counties

Table 1.2: Certification of 2005 Prevailing Wages

	Number of Prevailing Wage Rates	Percentage of Possible Rates
Commercial Construction		
Certified rates	3,499	83.8%
Rates based on:		
2005 own-county data	1,379	33.0
2005 adjacent-county data	1,234	29.5
Prior years	886	21.2
Rates not certified	677	16.2
Total possible rates	4,176	100.0
Rates not certified with 2005 data	1,563	37.4
Highway/Heavy Construction		
Certified rates	316	65.8%
Rates based on:		
2005 data	225	46.9
Prior years	91	19.0
Rates not certified	164	34.2
Total possible rates	480	100.0
Rates not certified with 2005 data	255	53.1

NOTE: Numbers reflect wages certified by the Department of Labor and Industry as of May 30, 2006. The department might certify additional wages, make changes to certifications, or decertify other wages after wages are first certified in October (for highway/heavy construction) and December (for commercial construction). Wages are certified upon their official publication.

SOURCE: Office of the Legislative Auditor analysis of Department of Labor and Industry 2005 prevailing wage data.

²⁹ *Minnesota Rules* 2005, 5200.1035, subp. 2, items B and C.

³⁰ *Minnesota Rules* 2005, 5200.1030, subp. 2a, item B; 5200.1035, subp. 2, item D.

provided the information for another 30 percent of commercial rates, and prior-year rates were the basis for about 21 percent of the rates. The department certified 66 percent of the possible highway/heavy rates in 2005. Most of the certified rates were based on 2005 data.

After determining the wage and benefit rate that “prevails” for a job class and area—whether that rate is a mode based on current-year information or a rate based on the prior year—DLI certifies that rate. However, as Figure 1.2 shows, if staff determine that the “prevailing” wage and benefit rate is a rate paid to union workers pursuant to a collective bargaining agreement, the department certifies the current union wage and benefit rate for the job classification in that county or region, instead of the mode or prior-year rate. If the “prevailing” rate is a union rate paid to union members in a different part of the state, the department certifies the union rate from the collective bargaining agreement that is applicable to the county or region for which the rate is being set.³¹ Finally, if the union agreement indicates that the rate is going to change during the following 12 months, the certified prevailing wage rate must change accordingly.³²

Table 1.3 provides two examples of how prevailing wage rates are set. In the “Union Wage” example, the certified prevailing wage rate differs from the mode, or the most commonly reported rate. The “Union Wage” example shows five wage and benefit rates reported for carpenters in Douglas County, with each rate reported once. Since the job class has multiple modes, the highest mode of \$34.55 is the prevailing rate. DLI staff determined that \$34.55 was a union wage, but that it was a union rate from a different part of the state. As a result, DLI staff certified the union rate for carpenters in Douglas County, including an increase in rates after May 1, 2006. The “Nonunion Wage” example shows six wage and benefit rates reported for heating and frost insulators in Pope County. Since there is only one mode—\$20.00—it prevails. Since it is not a union rate, it is also the certified prevailing wage rate.

DLI’s administrative rules outline a process for people to petition the department for reconsideration of certified prevailing wage rates. Parties may also petition the department for a public hearing if they are not in agreement with the department’s determination after reconsideration.³³ According to department staff, interested parties call the department if they think an error has been made in a certified rate and the department corrects it if an error was made. Seldom have issues related to setting prevailing wage rates for construction workers proceeded to an informal conference or public hearing.

³¹ For example, this situation could occur if a union contractor from the Twin Cities metropolitan area reported work that the firm did in an outstate Minnesota county. Setting the prevailing wage rate at local union rates helps to limit the extent to which wage rates from elsewhere in the state are imported into the county or region for the purpose of setting the prevailing wage rate.

³² *Minnesota Rules* 2005, 5200.1060, subs. 3 and 5.

³³ *Minnesota Rules* 2005, 5200.1090.

Table 1.3: Examples of Determining the Mode and Certified Prevailing Wage Rate, 2005

	Union Wage ^a		Nonunion Wage ^b	
	Wage	Number of Workers	Wage	Number of Workers
	\$14.92	1	\$15.00	1
	24.39	1	17.00	1
	33.08	1	20.00	2
	33.44	1	22.00	1
	34.55	1	24.00	1
Mode:	\$34.55		\$20.00	
Certified prevailing wage: ^c	\$27.94 ^d	until 5/1/06	\$20.00	
	\$29.39	after 5/1/06		

^a Data reflect reported wages and benefits for carpenters in Douglas County.

^b Data reflect reported wages and benefits for heating and frost insulators in Pope County.

^c The certified prevailing wage is the wage officially published by the Department of Labor and Industry.

^d The certified prevailing wage is the union wage for carpenters in Douglas County. The mode is a union carpenter wage for a different geographic area.

SOURCE: Office of the Legislative Auditor analysis of 2005 prevailing wage survey data.

Wage Rates for Individual Workers and Projects

While prevailing wage rates are clearly established for job classifications within geographic areas, construction work does not always stay within defined job classes and areas. Therefore, a state agency or contractor who is trying to determine the appropriate prevailing wage rate for a worker on a project may be confronted with something more complicated than simply looking up a wage certified by the Department of Labor and Industry. There are at least two circumstances under which this occurs.

First, tasks that a worker performs do not always neatly correspond to the state's master job classifications. A worker might perform work in more than one job class. When more than one class applies, the worker should be paid the appropriate rate for each class for the amount of time the work is performed. For example, a nonunion carpenter might do carpentry work for seven hours and operate power equipment for one hour. That worker should be paid at least the carpenter wage for the seven hours of carpentry, and at least the appropriate rate for operating power equipment for the remaining hour.

Second, projects might be covered by more than one prevailing wage rate due to the source of funding or geography. On any individual highway project, determining the applicable prevailing wage rates can be complicated if both state and federal funds are involved and the project occurs in two or more areas with different prevailing wage rates. For example, if a highway project covers more

When a construction project includes both state and federal funding, the higher of the federal and state prevailing wage rates applies.

than one highway/heavy region, state law requires that only one state prevailing wage rate be paid for each job class.³⁴ Contractors must pay the highest of the rates from the relevant regions so that the project complies with the law in each region.³⁵ An even higher rate may apply if federal funds are used on the project. Contractors must pay the higher of the state rate and the applicable federal rate for each segment of the project in order to comply with both the state and federal prevailing wage requirements.³⁶ Table 1.4 illustrates this process, showing prevailing wage rates for a fictitious highway project crossing highway/heavy regions 6 and 7. For this project, \$19 per hour is the state prevailing wage rate that applies to the whole project because it is the highest of the two regions' state rates. Since the federal Davis-Bacon Act also applies, the higher of the state and federal prevailing wage rates applies to each segment. In our example, \$19 per hour would be the appropriate rate on the Faribault County segment of the project, whereas \$20 would be the appropriate rate for the segment in Freeborn County. The contractor could choose to pay the \$20 rate for the entire project for administrative simplicity.

Table 1.4: Prevailing Wage When More Than One Rate Applies

State Highway Project			
Faribault County Highway/Heavy Region 7		Freeborn County Highway/Heavy Region 6	
State prevailing wage rate:	\$15	State prevailing wage rate:	\$19
Federal Davis-Bacon rate:	\$10	Federal Davis-Bacon rate:	\$20
Prevailing wage rate:	\$19	Prevailing wage rate:	\$20

NOTE: The project and rates are fictitious and are for illustration purposes only.

SOURCE: Office of the Legislative Auditor.

Truck Rental Rates

In addition to setting prevailing wage rates for construction workers, the Department of Labor and Industry must set truck rental rates for use on state-funded highway construction projects. As mentioned earlier, truck rental rates include the prevailing wage rates for truck drivers and an hourly rate for the costs of operating various types of trucks. Unlike wage rates, the department calculates statewide truck operating costs instead of different operating costs for each highway/heavy region. According to DLI's administrative rules, truck operating costs are "determined by averaging the itemized costs of operating a

³⁴ *Minnesota Statutes* 2006, 177.44, subd. 4.

³⁵ "Labor Compliance – Wage and Fringe Benefit Requirements," <http://www.dot.state.mn.us/const/labor/wagefringerequirements.html>; accessed March 31, 2006.

³⁶ *Ibid.*

vehicle as submitted by at least five trucking firms of various size and five independent truck owner operators.”³⁷

DLI collects information on the itemized costs of operating trucks through a survey of contractors, trucking firms, and independent owner-operators. The department attempts to collect data for five categories of trucks: (1) two axle units; (2) three axle units; (3) four or more axle unit straight body trucks; (4) tractors only; and (5) trailers only. In order for the department to calculate a rate for a type of truck, DLI must receive information from at least five trucking firms of various sizes and five independent truck owner-operators. When the department is unable to calculate operating costs, the prior year’s rate is used.³⁸

In January 2006, DLI mailed about 1,200 truck rental rate surveys and received about 100 usable surveys in response. In August, DLI certified truck rental rates for three axle units, four or more axle units, tractor-trailers, and tractors only. The department did not receive enough survey responses to set rates for two axle units. In addition, the department did not receive enough responses from independent truck owner-operators to set rates for trailers. DLI calculated the tractor-trailer rate, which is the sum of the tractor-only and trailer-only rates, using the 2005 trailer rates and 2006 tractor rates.

Prior to certifying truck rental rates, the Department of Labor and Industry is required to hold an “informal conference.”³⁹ At the conference, interested parties are provided the opportunity to review the truck rental rate survey data and provide additional information to the department. As they do with prevailing wage rates, people have the right to petition the department for reconsideration of certified truck rental rates and to petition for a public hearing if they are not satisfied with the department’s decision after reconsideration.

“Truck rental rates” for highway/heavy construction projects have been particularly controversial.

Truck rental rates have been the subject of much controversy throughout the history of the state’s prevailing wage law. Although truck rental rates were part of the original 1973 prevailing wage law, DLI did not certify rates until 1988.⁴⁰ Lawsuits followed in 1989 and 1990. MnDOT, which is responsible for enforcing prevailing wages on highway projects, took a non-enforcement stance and was sued by the Teamsters in 1996. MnDOT was subsequently ordered to enforce the truck rental rates and was then sued by truck brokers in 1997. New administrative rules became effective in 2001. Due to concerns with data received in response to surveys in 2001, 2002, and 2003, DLI did not certify truck rental rates until 2004. Various parties petitioned DLI for reconsideration of the 2004 rates, and when the commissioner upheld the rates, the parties requested a public hearing. Petitioners claimed that DLI conducts the truck rental rate survey and calculates rates in ways that are inconsistent with statutes and rules. The administrative law judge issued a recommendation that favored

³⁷ *Minnesota Rules* 2005, 5200.1105.

³⁸ *Minnesota Rules* 2005, 5200.1120.

³⁹ *Minnesota Rules* 2005, 5200.1105.

⁴⁰ Office of Administrative Hearings, “In the Matter of the Truck Rental Rate Effective December 20, 2004, Findings of Facts, Conclusions of Law and Recommendations of the Administrative Law Judge,” 4; <http://www.oah.state.mn.us/aljBase/190016601.rpt.htm>; accessed September 14, 2006.

The federal government and 31 other states have prevailing wage laws.

DLI's position.⁴¹ This case is currently before the Minnesota Court of Appeals. A second case challenging various aspects of state law and rules was filed in and dismissed by Ramsey County District Court.⁴² Despite these legal challenges, DLI has continued to set truck rental rates. The department certified a new set of truck rental rates in August 2006, and these rates were the subject of a petition for reconsideration in October 2006. Again, the commissioner upheld the rates and the petitioners have requested a public hearing.

FEDERAL AND OTHER STATES' LAWS

The federal Davis-Bacon Act requires that prevailing wages be paid on construction projects that are federally funded.⁴³ In addition, 31 states besides Minnesota have prevailing wage laws.⁴⁴ These laws all address wages paid on at least some publicly funded construction, but they vary in a number of ways. For example, prevailing wage laws vary in the types of construction and the size of construction projects covered by the laws. In addition, the laws vary in the methods used to calculate prevailing wage rates. In this section we compare Minnesota's prevailing wage law to the federal law and those in other states. We focus on: (1) the size of the construction projects covered by the prevailing wage requirement and (2) the method used to calculate the prevailing wage.

Project Size Thresholds

As mentioned above, Minnesota's prevailing wage law applies to projects of \$2,500 or more when one construction job class is involved, and \$25,000 or more when more than one job class is involved. These dollar thresholds have not been changed since the passage of the prevailing wage law in 1973. Since then, construction prices have increased four and one-half to five-fold. As a result, increasingly smaller projects have become subject to the state's prevailing wage requirements.

However, Minnesota's project thresholds are not low when compared with those used by the federal government and other states. For example, for projects involving multiple job classes, Minnesota's \$25,000 threshold is higher than the federal government's \$2,000 threshold. In addition, as indicated in Table 1.5, Minnesota's \$25,000 threshold is lower than thresholds in 14 states, higher than those in 14 states, and equal to those in 3 states. Minnesota's \$2,500 threshold for projects using one job class is lower than the thresholds in 17 states, but it is still higher than the federal threshold of \$2,000.

⁴¹ *Ibid.*

⁴² In an unpublished opinion, the Court of Appeals affirmed the dismissal in October 2006. *M.B.E., Inc., et al. v. Minnesota Department of Labor and Industry, et al.*, File No.: C1-05-2410 (Minn. Ct. App., October 24, 2006).

⁴³ *40 U. S. Code, sec. 3142* (2005).

⁴⁴ We are using the states identified by the U.S. Department of Labor as having prevailing wage laws. See: <http://www.dol.gov/esa/programs/whd/state/dollar.htm>; accessed March 24, 2006. Other researchers use different counts. For example, a number of sources do not list Vermont among the states with prevailing wage laws.

Table 1.5: State Thresholds for Prevailing Wage Projects

State	Threshold Amount
Alaska	\$2,000
Arkansas	\$75,000
California	\$1,000
Connecticut	\$400,000 for new construction \$100,000 for remodeling
Delaware	\$100,000 for new construction \$15,000 for remodeling
Hawaii	\$2,000
Illinois	None
Indiana	\$150,000
Kentucky	\$250,000
Maine	\$50,000
Maryland	\$500,000
Massachusetts	None
Michigan	None
Minnesota	\$25,000 where more than one job class is involved \$2,500 where a single job class is involved
Missouri	None
Montana	\$25,000
Nebraska	None
Nevada	\$100,000
New Jersey	\$2,000 \$10,743 if the work is done for a municipality
New Mexico	\$60,000
New York	None
Ohio	\$69,853 for new construction ^a \$20,955 for remodeling ^a
Oregon	\$50,000
Pennsylvania	\$25,000
Rhode Island	\$1,000
Tennessee	\$50,000
Texas	None
Vermont	\$100,000
Washington	None ^b
West Virginia	None ^c
Wisconsin	State and municipal contracts: \$209,000 where more than one trade is involved; \$43,000 where a single trade is involved State highway contracts: None
Wyoming	\$25,000

^a Beginning January 1, 1996, and every two years thereafter, threshold amounts will be adjusted according to the change in the U.S. Department of Commerce, Bureau of the Census Implicit Price Deflator for Construction, provided that no increase or decrease may exceed 6 percent for the two-year period.

^b A separate law applicable only to state college/university construction provides for a \$25,000 threshold amount.

^c A \$50,000 threshold is applicable for projects of the West Virginia Infrastructure and Jobs Development Council.

SOURCES: Lisa Jordan, *An Evaluation of Prevailing Wage in Minnesota: Implementation, Comparability and Outcomes* (Brevard, North Carolina, October 2006), 70-77; and U.S. Department of Labor, "Dollar Threshold Amount for Contract Coverage Under State Prevailing Wage Laws, January 1, 2006," <http://www.dol.gov/esa/programs/whd/state/dollar.htm>; accessed March 24, 2006.

Rate Calculation Methods

One of the more controversial issues surrounding Minnesota's prevailing wage law is that Minnesota bases its prevailing wages on the mode, or the combined wage and fringe benefit rate that is paid to the greatest number of workers reported for a particular job class in a geographic area. And, as mentioned above, when there are multiple modes for a job class in an area, the highest mode is determined to be the prevailing rate.

Most states that base their prevailing wages on the mode require that the mode represent a minimum percentage of reported wages; however, Minnesota does not.

Some critics of Minnesota's rate-setting method have claimed that only Minnesota and California use the mode. However, Minnesota's method is not as unique as critics claim. As Table 1.6 indicates, five states, including Minnesota and California, use only the mode to set their prevailing wage rates.⁴⁵ Another 15 states use the mode to set the prevailing wage only if it represents a minimum percentage of the rates paid for a particular job class and geographic area. These states are indicated in Table 1.6 as using the majority/average, minimum percentage/average, and median methods. States that use the "majority/average" method use the mode to set the prevailing wage as long as the mode represents a majority of reported wages. If the mode does not represent the majority, these states use an average of reported rates. States that use the "minimum percentage/average" method use the mode to set the prevailing wage rate if the mode represents a minimum percentage of reported rates (such as 30 percent), and use an average if it does not.

Nine states use the "majority/average" method to set their prevailing wage rates. Two of these nine states adopt the federal Davis-Bacon rates, which are based on a majority/average method. An additional five states use the "minimum percentage/average" method. They use the mode if it represents at least 30 to 50 percent of the reported rates. Otherwise, they use the average rate. One state (Maine) uses the mode if it represents a majority of reported rates and, if not, it uses the median.⁴⁶

Eight states do not use the mode at all. Two states use the average rate without first considering the mode. In addition, there are six states that use the rates from

⁴⁵ We were able to identify the methods used to calculate prevailing wages in Minnesota and 27 other states. It is unclear how four states calculate their prevailing wage rates. We attempted to categorize the 27 states and Minnesota based on the primary method reflected in laws or regulations. This can be difficult because a state may use a sequence of methods or put limits on the prevailing wage rates. In Montana, for example, a minimum of five workers must be reported for an occupation in a geographic area for the prevailing wage rate to be based on the "minimum percentage/average" method, and in no case can the prevailing wage exceed the collectively bargained rate. If fewer than five workers are reported, the collectively bargained rate for the occupation and geographic area is used. If the occupation in the district does not have a collective bargaining agreement, a weighted average of rates reported in contiguous geographic areas is used. *Montana Rules* 2006, 24.17.121.

⁴⁶ The median is the middle rate of a group of reported rates. Half of the reported rates are higher than the median, and half are below the median. Using the median to set prevailing wage rates is the equivalent of a "majority/median" method. If a particular compensation rate represents a majority of the reported rates, then that rate is the median rate. As a result, the majority/average and median methods are similar in that they set the prevailing wage rate at the mode if the mode represents a majority of the reported rates. They differ when there is no rate that represents a majority.

Table 1.6: State Methods for Calculating Prevailing Wages

State	Collective Bargaining Agreement	Methods Using Mode					Other
		Simple Mode	Minimum Percentage/Average ^a	Majority/Average ^b	Median	Average	
Alaska				x ^c			
Arkansas				x			
California		x					
Connecticut				x ^d			
Delaware				x			
Hawaii		x					
Illinois							x
Indiana		x					
Kentucky				x			
Maine					x		
Maryland			x ^e				
Massachusetts	x						
Michigan	x						
Minnesota		x					
Missouri		x					
Montana			x ^f				
Nebraska							x
Nevada			x ^e				
New Jersey	x						
New Mexico			x ^g				
New York	x						
Ohio	x						
Oregon				x			
Pennsylvania	x						
Rhode Island				x ^d			
Tennessee						x	
Texas							x
Vermont						x ^h	
Washington				x			
West Virginia							x
Wisconsin				x ⁱ			
Wyoming			x ^g				
Number of states	6	5	5	9	1	2	4

^a States that use the “minimum percentage/average” method use the mode to set the prevailing wage rate if the mode represents a minimum percentage of reported rates and use an average if it does not.

^b Under the “majority/average” method, a state uses the mode to set the prevailing wage as long as the mode represents a majority of reported wages. If the mode does not represent the majority, the state uses an average of reported rates.

^c Alaska calculates the average after excluding the top and bottom 5 percent of wages.

^d Connecticut and Rhode Island use the Davis-Bacon rates calculated by the federal government using a majority/average method.

^e In Maryland and Nevada, the mode must represent at least 40 percent of reported wages.

^f In Montana, the mode must represent at least 50 percent of reported wages. The state uses Davis-Bacon wage determinations for highway and heavy construction.

^g In New Mexico and Wyoming, the mode must represent at least 30 percent of reported wages.

^h Vermont uses the average wage (excluding fringe benefits) from a survey that covers all construction workers.

ⁱ Wisconsin calculates the average based on the highest-paid 51 percent of hours worked in the trade or occupation.

SOURCES: Office of the Legislative Auditor analysis of state statutes and regulations.

collective bargaining agreements. These states use union rates without considering whether the rates represent the mode.

In Chapter 2, we will examine Minnesota's rate-setting process in more detail. In particular, we will consider more carefully whether there are any problems with Minnesota's rate-setting process and calculation method.

Setting Rates

SUMMARY

Critics claim that Minnesota's prevailing wage rates are frequently higher than the wages and benefits earned by most construction workers in a community. While some aspects of the rate-setting process favor the selection of higher rates, there is little evidence to support such broad claims. However, some prevailing wage rates do not reflect the majority of wages and benefits reported to the Department of Labor and Industry. This concern arises in part because Minnesota does not require the mode to represent a minimum percentage of reported rates.

We think the Department of Labor and Industry uses reasonable methods to collect wage and benefit information, although there are legitimate concerns about whether the department's survey data are representative of compensation rates in the commercial and highway/heavy sectors of the state's construction industry. Because there are no better alternatives to the department's existing survey, the department should focus on improving the response rate to its survey.

While the department generally calculates prevailing wage rates in accordance with state law and rules, we found instances in which the department set rates without following all of the required procedures in its rules. The department has also made inadvertent errors in setting rates. The department needs to ensure its computer program calculates rates in accordance with rules. In addition, the department should carefully review rates before publishing them.

Opponents of Minnesota's prevailing wage law argue that prevailing wages are not representative of wages paid in their communities. They say that prevailing wages are more likely to be set at collectively bargained rates, even when union workers do not predominate in an area. Some legislators have suggested that Minnesota use the median wage reported in the Occupational Employment Statistics (OES) survey conducted by the Department of Employment and Economic Development as the prevailing wage, instead of the current method of using the most frequently reported wage from the Department of Labor and Industry's annual survey.

Proponents of prevailing wage laws say that the laws prevent contractors working on state-funded construction projects from undercompensating workers. Government construction projects are awarded to the lowest responsible bidder. Requiring that contractors pay at least the "prevailing wage" for an area prevents them from keeping bids down by undercutting local wages. In Minnesota, the prevailing wage law is justified as a way of obtaining the highest quality labor on state-funded construction projects and ensuring that construction workers are appropriately paid.

Minnesota identifies the prevailing wage as the most frequently reported wage for a job class in a geographic area from a survey of contractors and others. Since prevailing wages are the outcome of the survey process and calculation method, we looked at these two processes more closely. This chapter answers the following questions:

- **Does the Department of Labor and Industry use appropriate methods to survey contractors and unions about construction wages and benefits?**
- **Are reasonable methods used to set prevailing wage rates?**
- **Has the department calculated prevailing wage rates in accordance with state laws and rules?**

The first section of this chapter reviews Minnesota's prevailing wage survey process. The second section focuses on the calculation method used by the Department of Labor and Industry to set the prevailing wage rates. The third section of the chapter discusses prevailing hours of labor. The final section highlights some concerns we have about the administration of the state's prevailing wage law.¹

COLLECTING WAGE DATA

The Department of Labor and Industry's (DLI) prevailing wage survey is a reasonable approach to collecting wage data.

As we explained in Chapter 1, the Department of Labor and Industry sends an annual survey to contractors and interested parties to collect information on construction wages paid in Minnesota. We found that:

- **Although there are legitimate questions about whether the wage and benefit information collected by the Department of Labor and Industry is representative of rates paid in the construction industry, there is no better alternative to the department's annual survey.**

We think the department's process is reasonable because it is inclusive, and the department has tried to make responding to the survey convenient. In other words, the department does not purposefully exclude certain contractors or try to dissuade responses by creating a difficult reporting process. In addition, the survey focuses on those sectors of the construction industry—namely commercial construction and highway/heavy construction—that are relevant to establishing Minnesota's prevailing wages. Although we have some concerns about the wage data collected by the survey, there is not an alternative source of construction wage data that is clearly better than the data collected by the Department of Labor and Industry.

¹ The chapter focuses on prevailing wages for construction workers. We did not evaluate truck rental rates, which are the subject of a lawsuit before the Minnesota Court of Appeals.

Survey Process

DLI's survey process is inclusive and focuses on nonresidential construction wages.

The Department of Labor and Industry (DLI) has an inclusive survey process. The prevailing wage survey mailing list, which now includes over 14,000 contractors and other interested parties, is extensive. To assess the completeness of the list, we compiled a list of contractors and subcontractors from a database of construction projects in Minnesota and compared the list to DLI's.² Our analysis suggests that the department's list is fairly comprehensive, although the department could expand it by another 5 to 7 percent using sources similar to those we used.

In addition, each year the department attempts to expand its mailing list and last year took steps to make the list more inclusive of different types of contractors. DLI annually surveys local government officials for information about contractors who have undertaken nonresidential construction in their jurisdictions in the previous 12 months.³ The department adds to its mailing list any contractors who are not already on it. Also, in 2005, the department responded to concerns related to Job Opportunity Building Zone (JOBZ) projects that were subject to prevailing wage laws. The concerns reflected that JOBZ construction projects likely use a different pool of contractors than those in DLI's list. To make its list more comprehensive, the Department of Labor and Industry obtained a list of construction contractors from the Department of Employment and Economic Development. Adding these names expanded DLI's list by about 75 percent, from roughly 8,000 in 2005 to over 14,000 in 2006.

The department has also made responding to the survey relatively convenient. The department accepts surveys throughout the year so that contractors and unions can complete and submit surveys as projects are completed. In addition, the department accepts wage information on forms that others have developed and that the department has approved.⁴ Finally, in 2003 the department implemented a web survey so people can complete and submit the survey online.

The survey instrument that the Department of Labor and Industry uses focuses on appropriate wage data. The survey focuses on nonresidential construction and asks for wage and fringe benefit information for the types of laborers and mechanics that are covered by the prevailing wage law. This is the information that is relevant for establishing prevailing wages for commercial and highway/heavy construction. Finally, the survey requests information only for projects that meet the minimum dollar thresholds of \$2,500 for commercial construction or \$25,000 for highway/heavy construction.

² We created the project database using public and private sources of data on construction projects covering various years between 2002 through 2005. The project database was not comprehensive and associated contractors were not always indicated. Subcontractors were seldom included.

³ *Minnesota Rules* 2005, 5200.1050, subp. 2c.

⁴ Some contractors and unions have developed their own electronic forms which they complete, print, and mail to the department.

Survey Responses

Although we think the Department of Labor and Industry's survey process is reasonable, the survey could produce results that are unrepresentative of compensation rates in the nonresidential construction industry. The reported wages and benefits would be unrepresentative of industry compensation rates if either higher-paid workers or lower-paid workers are disproportionately represented in the survey. This can be a problem if the survey response rate is low. Unrepresentative survey results can also occur if unions and union contractors (or alternatively nonunion contractors) are more likely to respond to the survey.

It is not possible to determine conclusively if the Department of Labor and Industry's survey produces results that are unrepresentative of industry compensation rates. In order to convincingly demonstrate that there is a problem, we would need another source of wage and benefit data for commercial and highway/heavy construction work besides the department's survey. However, there is no other valid source. Critics have suggested that the department's survey does not produce representative information. But they have used the OES survey as a comparison. The OES survey is not comparable because it includes information on the wages paid to workers in residential construction. Residential construction workers generally are nonunion employees and are paid less than workers in commercial and highway/heavy construction.

However, as we discuss below, there are legitimate concerns about the survey response rate. In addition, there are several aspects of the survey process that could lead to an overrepresentation of union wages.

However, the response rate to DLI's survey appears to be low.

Survey Response Rate

Construction projects reported in the 2005 prevailing wage survey appear to reflect a fraction of the nonresidential construction that occurs in the state. Because there is no straightforward way to calculate a response rate to the department's survey, we attempted to measure how thoroughly the reported projects reflect nonresidential construction in Minnesota.⁵ For an unrepresentative sample of 21 Minnesota counties, it appears that about 25 to 38 percent of construction projects that were in some stage of construction in 2003 were reported to DLI in the 2003, 2004, or 2005 surveys (surveys that would

⁵ There is no straightforward way to measure a response rate because it is unclear how many contractors and subcontractors who receive the survey have done commercial or highway/heavy construction work in the last year. Firms that have not done such work should not be counted as potential respondents. We obtained data from private and government sources to identify construction projects that occurred in Minnesota. Our database of projects is not exhaustive. For example, it is more likely to include larger projects. Although we attempted to exclude projects that were in early planning stages, the database might include projects that did not go forward.

cover construction occurring from April 2002 to March 2005).⁶ The percentage of reported projects varied widely by county.⁷

Even though some wages and benefits were reported on 25 to 38 percent of construction projects we examined, it is likely that the percentage of reported wages and benefits was even lower. Because we did not have information on how many job classes were involved in each project, we counted a project as being reported in the survey as long as wages for workers from at least one job class were reported. However, in many projects, there is more than one type of worker involved. For example, many types of workers would be involved in the construction of a new building or a major remodeling project. But, we counted such a project as being reported in the survey if any workers were reported.

Another indication of a low response rate is the relatively low percentage of prevailing wages that DLI was able to set based on 2005 survey data for the geographic region in question. In 2005, DLI was unable to set two-thirds of possible commercial construction wages using information reported for the county for which the rate was being set. For highway/heavy construction, over half of possible rates could not be set using information from the 2005 survey. The lack of responses in a county or highway/heavy region may be due to an absence of nonresidential construction using certain types of workers, but the nonreporting of construction projects to DLI is probably a contributing factor.⁸

Reporting of Union Wages

Unions submit about half of the reported wage data for commercial construction.

Some aspects of Minnesota's prevailing wage survey process could lead to overrepresentation of union wages among reported wages. First, projects on which union labor worked have a greater chance than projects using nonunion labor of being reported to DLI. If a contractor who uses union labor chooses not to respond to the prevailing wage survey, his or her projects might still be reported by the union. In contrast, there is not an organized body to report projects for contractors who use nonunion labor. For commercial projects, entities other than contractors (usually unions) provided about half of the wage data submitted in response to the 2005 survey. For highway/heavy projects, other entities provided about one-fourth of the wage data.

Second, DLI accepts wage data on projects that were subject to prevailing wage requirements. A majority of Minnesota's 2005 prevailing wage rates were union

⁶ Because DLI increased its mailing list in 2006, it is possible that it will receive information on a greater percentage of construction work in the future. However, we were unable to check the responses to the 2006 survey because data from that survey were not yet available.

⁷ We selected two counties from each highway/heavy region except Region 9 (for which we selected only one county) and two additional counties that border other states. The 21 counties represented approximately 16 percent of the projects in our database. The counties were: Aitkin, Anoka, Beltrami, Benton, Big Stone, Blue Earth, Clay, Cook, Houston, Jackson, Lake, Lincoln, Martin, Mower, Pennington, Redwood, Sibley, Todd, Traverse, Wright, and Yellow Medicine. Among counties, the percentage of projects reported ranged from around 7 percent to over 64 percent.

⁸ An absence of construction using certain classes of labor is particularly likely for highway/heavy construction, in which certain job classes are seldom used. For example, DLI did not certify any highway/heavy prevailing wage rates for 10 job classes in 2005.

rates. Thus, using past prevailing wages to set future wages reinforces collectively bargained rates. This is a concern particularly for highway/heavy construction since much of the highway construction in the state is subject to prevailing wage requirements.⁹

Finally, contractors who work on prevailing wage projects, unions, and union contractors may be more likely to respond to the department's survey. Contractors who work on prevailing wage projects would be more willing to respond to the prevailing wage survey because prevailing wages affect the work they do. Unions and contractors who use union labor might be more likely to respond because it is in their interest for a prevailing wage to reflect the union wage that is required by collective bargaining agreements. Although contractors who use nonunion labor would have the same preference for prevailing wages to reflect what they already pay, critics suggest they may be less likely to respond because their wages are not uniform and would not necessarily affect the prevailing wage. In some counties for some job classifications, a survey response from one contractor who used nonunion labor on a project would not make a difference. For example, the 2005 commercial construction prevailing wage for skilled laborers in Hennepin County was based on over 1,100 workers who were paid the same wage.

Increased reporting by nonunion contractors could affect many prevailing wage rates.

Despite what nonunion contractors might think, reporting by nonunion contractors could make a difference for many prevailing wage rates. Some 2005 prevailing wage rates that were union rates could have been different with only slightly more reporting. Over one-third of the commercial construction wage rates set in 2005 were based on projects in adjacent counties and one-quarter were based on prior-year information. Sixty-five percent of these rates were union rates. With only two reported projects and one reported wage rate, prevailing wage rates could have been set for these counties without using adjacent-county rates or prior-year rates. In addition, 131 prevailing wage rates that were based on a county's own information for 2005 were union wages based on only one observation. In these cases, two identical reported wage rates from nonunion contractors would have been enough to set prevailing wage rates at nonunion rates. Overall, 1,510 prevailing wage rates that were based on union wages could have been certified as nonunion wages without requiring a lot of additional reporting by nonunion contractors.¹⁰

While there are some aspects of the survey process that may result in union wages being overrepresented, we cannot definitely determine whether that is occurring. To make that determination, we would need to compare the percentage of union wages reported in the survey to the percentage of union employees in the commercial and highway/heavy sectors of the state's construction industry. However, while information is available on the percentage of union members among all construction workers in the state, information is not

⁹ The U.S. Department of Labor excludes wages reported for Davis-Bacon projects from setting commercial and residential federal prevailing wage rates when adequate data are available without them. However, Davis-Bacon projects are used when setting highway rates.

¹⁰ This statement assumes that nonunion labor did some work in the relevant job classes in these geographic areas.

available on the percentage of union members among workers in commercial and highway/heavy construction.

Survey Options

There are a number of alternatives to the Department of Labor and Industry's current wage and benefit survey. In this section, we consider the Occupational Employment Statistics survey, federal Davis-Bacon rates, and collective bargaining agreements. While each of these alternatives has some merits, they all have serious shortcomings. As a result, we suggest that the department focus on improving the response rate to the existing survey.

Alternatives

Some legislators have suggested the Occupational Employment Statistics (OES) survey conducted by the Department of Employment and Economic Development as an alternative to DLI's prevailing wage survey. Using the OES survey would reduce the administrative burden of the prevailing wage law, but the survey includes wage and benefit information that is unrelated to commercial and highway/heavy construction. The OES survey covers all construction workers, including those who work in residential construction and outside the construction industry, while prevailing wage rates should be based only on wages and benefits paid to workers in commercial and highway/heavy construction. Using the OES survey to set prevailing wage rates would not be appropriate since residential construction workers have different skills and generally lower compensation rates than commercial and highway/heavy construction workers.

Also, the OES survey asks a sample of employers to provide information about employees who worked during a limited period of time. In contrast, the DLI survey asks all employers and other interested parties to provide information on any workers employed over a one-year period of time. The OES sample methods may be statistically valid for OES purposes, but may not be valid for the purposes of identifying prevailing wages. In addition, because much construction employment tends to be short-term and project-related, the DLI approach makes more sense for the purpose of setting prevailing wage rates.

Finally, the OES survey does not measure fringe benefits and uses different job classes than the DLI survey. The state's ability to adapt the OES survey to meet DLI's needs is limited by the fact that the federal government funds the OES survey, establishes the procedures, and draws the sample.

Adopting federal Davis-Bacon rates is a second alternative that some states use instead of collecting their own wage information. As with the OES survey, this option would reduce the administrative burden of the prevailing wage law. However, the survey process used by the U.S. Department of Labor does not

The Occupational Employment Statistics survey is not a good alternative to the current wage survey.

necessarily result in better data.¹¹ In addition, the U.S. Department of Labor surveys states only every three years and rates can be outdated.

Finally, some states simply use wage rates in collective bargaining agreements to set prevailing wage rates. This option is not inclusive and would cause prevailing wage rates to be unrepresentative of the wages and benefits paid for nonresidential construction work in some parts of Minnesota. In 2005, almost one-third of Minnesota's commercial prevailing wage rates and one-quarter of highway/heavy prevailing wage rates were nonunion wages. Simply basing rates on collective bargaining agreements would fail to recognize the role of nonunion labor in nonresidential construction.

Improving the Existing Survey

Because there are no clearly better alternatives to the existing survey, we think the Department of Labor and Industry should focus on improving the existing survey. In particular, the department should try to increase the number of responses from contractors.

RECOMMENDATION

The Department of Labor and Industry should develop and implement options to increase contractors' responses to the prevailing wage survey.

DLI should try to improve the response rate to its wage and benefit survey.

The Department of Labor and Industry should consider several approaches to increase responses to the prevailing wage survey. For example, the department could develop a public information campaign to let contractors know that their responses to the prevailing wage survey can impact prevailing wages. The department could work on the survey instructions to clarify that it is seeking information on all nonresidential construction projects that meet the dollar thresholds. DLI could do a follow-up mailing, as is the standard practice with survey work. Finally, DLI could reach out to contractor organizations, chambers of commerce, and unions to enlist their help in increasing responses.

The department could also consider two other options to make the survey data more representative of compensation rates for private construction work in Minnesota. First, the department could consider excluding data from projects that were subject to the state's prevailing wage law. The federal government does this for commercial construction but not for highway construction. Second, the department could consider allowing only contractors, and not unions, to provide wage and benefit information. The purpose of both of these options would be to make the survey data more representative of industry compensation rates. The disadvantage of both options is that they might reduce the amount of wage and benefit information received from the survey and make it difficult for the department to set prevailing wage rates based on the survey data.

¹¹ U.S. Department of Labor, Office of Inspector General, *Concerns Persist With The Integrity of Davis-Bacon Act Prevailing Wage Determinations* (Washington, D.C., March 2004), 20-21; <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>, accessed November 3, 2006.

DETERMINING PREVAILING WAGE RATES

While the previous section focused on DLI’s data collection method, opponents of Minnesota’s prevailing wage law most often criticize the method the state uses to set the prevailing wage. The state uses the most frequently reported wage (or mode) for a job class in a geographic area to establish the prevailing wage rate. When there is more than one mode, the prevailing wage is the highest mode. We found that:

- **The Department of Labor and Industry’s method for setting prevailing wages is consistent with state law, but it can sometimes lead to wages that do not reflect most reported wages for a county or region.**

State law defines the prevailing wage rate as the wages and benefits paid to the largest number of workers.

When the Minnesota Legislature defined the “prevailing wage” as the wages and benefits “paid to the largest number of workers engaged in the same class of labor within the area,” it precluded any method other than the mode from being used to identify prevailing wages.¹² The Legislature also declared that it is in the public interest to use the “highest quality of labor reasonably available” when constructing buildings funded in whole or in part by the state.¹³ In the absence of information on workers’ skills, using the highest mode when there is more than one is a reasonable approach for identifying high quality labor.

The Minnesota Legislature could have defined “prevailing wage” differently than it did. However, we believe that the Legislature purposefully defined “prevailing wage” and that, objectively speaking, the definition is not “incorrect.” A more ambiguous definition would have left open the question of the most appropriate measure for identifying prevailing wages consistent with legislative direction. For example, laws in Arkansas and Illinois speak of prevailing wages as those wages “generally” paid in a community.¹⁴ If the Minnesota Legislature had taken a similar approach, then the Department of Labor and Industry would have to select a mathematical approach to capture wages “generally” paid. However, state law is very clear about the approach the Department of Labor and Industry should use to identify the prevailing wage.

Nonetheless, the single wage that is most frequently paid in a community does not necessarily reflect the majority of wages paid in a community. Critics contend the use of the mode to set prevailing wage rates: (1) results in rates that are higher than wages generally paid in their communities, (2) favors union rates, and (3) allows wages to be exported to other counties. Because adequate information about wages of nonresidential construction workers is not available, we cannot determine how well Minnesota’s prevailing wages reflect all wages paid in communities. However, we discuss these three concerns below based on the wages and benefits reported in the 2005 prevailing wage survey. In addition,

¹² *Minnesota Statutes* 2006, 177.42, subd. 6.

¹³ *Minnesota Statutes* 2006, 177.41.

¹⁴ Arkansas Code 22-9-302(6) and 820 ILCS 130/2.

we explore how alternatives to the mode would have affected the 2005 prevailing wages.

Reflection of Community Wages

Critics claim that Minnesota's method of determining prevailing wages results in wages that are higher than wages that are usually paid in their local communities. As support, critics point to the median wages for construction workers that are reported in the Occupational Employment Statistics (OES) survey conducted by the Department of Employment and Economic Development. The median wages reported in the OES survey are generally lower than the prevailing wages established by DLI. However, we have already discussed why the OES survey is not a good source of information on wages of nonresidential construction workers.

Although we do not think the median wages reported in the OES survey are a good source for comparison, several situations could result in a prevailing wage that does not represent most wages reported for a community. First, since Minnesota does not require that the most frequently reported wage represent a minimum percentage of reported wages in order to be certified as the prevailing wage, a "prevailing wage" could be substantially different than the majority of reported wages. As Table 2.1 shows, about 6 percent of commercial prevailing wage rates and 9 percent of highway/heavy rates that were set using 2005 wage data were based on modes that represented 20 percent or less of the reported wages. The first two examples in Table 2.2 illustrate cases in which the most frequently reported wages were quite different from the other reported wages. The \$43.31 hourly wage for Le Sueur County pipefitters and steamfitters was over \$18.00 higher than the next highest reported wage. For 31 of the commercial construction prevailing wage rates in 2005, the mode was more than twice the median reported wage.¹⁵ The prevailing wage for Todd County carpenters was less than half of the majority of reported wages. This was the only case in which the mode was less than half of the median wage.

In addition, sometimes prevailing wages are based on the highest of multiple modes or a single observation. The example of common laborers in Mahanomen County in Table 2.2 illustrates a case in which the highest of multiple modes prevailed. The reported union wage of common laborers in Mahanomen County prevailed because it was the highest of multiple modes, but it was more than \$10.00 per hour higher than the next highest wage. In some cases, the highest mode might be based on only one observation. For example, according to the eight wages reported, heating and frost insulators working in commercial construction in Faribault County earned anywhere from \$13.52 an hour to \$46.50 an hour. Seven of the eight wages were under \$23.10. The certified wage (which represented an updated collectively bargained rate) was \$48.53.

¹⁵ Nine of the 31 cases involved heating and frost insulators. Common laborers and skilled laborers were each represented five times, and a group of power equipment operators was represented four times.

Table 2.1: Prevailing Wage Rates, by Percentage of Reported Wages Equal to the Mode, 2005

Percentage of Reported Wages Equal to the Mode	Number of Prevailing Wages	Percentage of Prevailing Wages	Percentage of Prevailing Wages Identified as Union Rates
Commercial Construction			
10 percent or less	7	.3%	28.6%
10.1 to 20 percent	148	5.7	32.4
20.1 to 30 percent	179	6.9	43.6
30.1 to 40 percent	184	7.0	56.0
40.1 to 50 percent	297	11.4	49.8
Over 50 percent	<u>1,798</u>	<u>68.8</u>	79.2
Total	2,613	100.0%	
Highway/Heavy Construction			
10 percent or less	4	1.8%	75.0%
10.1 to 20 percent	16	7.1	43.8
20.1 to 30 percent	28	12.4	53.6
30.1 to 40 percent	27	12.0	66.7
40.1 to 50 percent	29	12.9	65.5
Over 50 percent	<u>121</u>	<u>53.8</u>	86.0
Total	225	100.0%	

NOTE: Figures reflect prevailing wages certified as of May 30, 2006. After initial certification in October (for highway/heavy rates) and December (for commercial rates), the Department of Labor and Industry can certify, correct, or decertify rates.

SOURCE: Office of the Legislative Auditor analysis of Department of Labor and Industry 2005 prevailing wage data.

Table 2.2: Examples of Commercial Prevailing Wages, 2005

Le Sueur County Pipefitters and Steamfitters		Todd County Carpenters		Mahnomen County Common Laborers	
Reported Wages	Number of Workers	Reported Wages	Number of Workers	Reported Wages	Number of Workers
\$10.00	1	\$14.00	4	\$10.00	1
12.00	1	15.50	1	10.45	2
15.50	1	28.95	1	10.75	1
16.00	1	32.77	1	11.00	1
18.00	1	33.72	1	11.25	2
24.80	1	33.77	1	11.55	2
43.31	2	34.02	2	11.75	2
				12.10	1
				13.48	1
				24.24	2
Prevailing wage:	\$43.31	Prevailing wage:	\$14.00	Prevailing wage:	\$24.24

NOTE: The prevailing wages are the wages reported most frequently, not the wages certified by the Department of Labor and Industry. Union wages that prevail are certified at their current collectively bargained rate.

SOURCE: Office of the Legislative Auditor analysis of Department of Labor and Industry 2005 prevailing wage data.

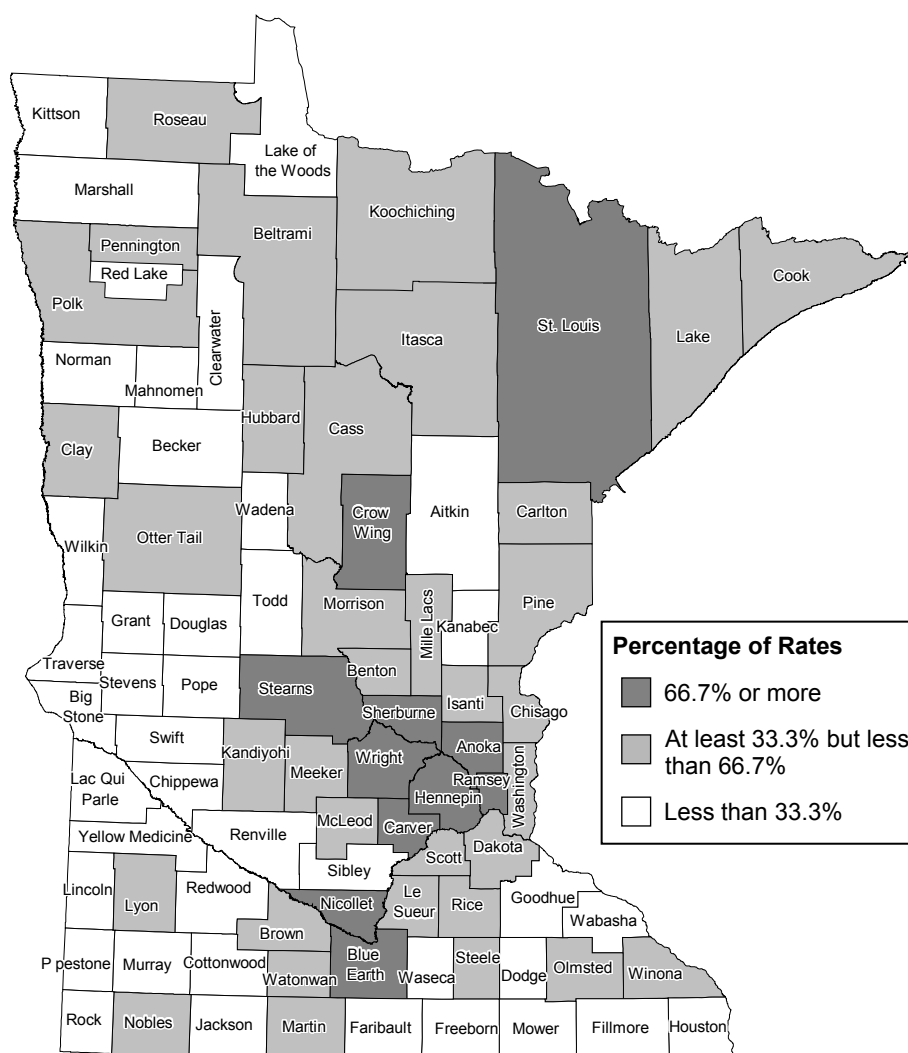
Finally, many prevailing wages are based on wages paid in adjacent counties or in prior years. We cannot identify cases in which rates based on prior years or adjacent counties are unrepresentative of rates in communities. By design, prior-year rates and adjacent-county rates are set when contractors do not report nonresidential construction projects in a county.¹⁶ However, for 40 commercial construction rates that were based on own-county wage data, had the modes been based on projects in adjacent counties, the modes would have been over twice as high. Figure 2.1 depicts the percentage of commercial construction prevailing wages that were based on construction projects in each county in 2005. As the map shows, counties in and around the seven-county metropolitan area had relatively high percentages of wages based on projects in their counties and thus would be less affected by adjacent-county and prior-year wages that were very different from community wages. For example, 89 percent of Hennepin County's prevailing wages were based on projects that occurred in Hennepin County, the highest percentage of any county. However, counties in western and southern Minnesota had quite low percentages of wages based on commercial construction work that occurred in their counties. Several counties had less than 10 percent of their wages based on construction in the county and two counties (Big Stone and Kittson) had no rates based on recent projects in the county.

In spite of these illustrations of unrepresentative prevailing wages, most of the prevailing wages that the Department of Labor and Industry set using 2005 survey data were based on a wage that was reported for a majority of workers in the job class and geographic area. As shown in Table 2.1, 69 percent of commercial construction prevailing wages and 54 percent of highway/heavy construction wages represented over half of the reported wages for a job class in a geographic area. In addition, for 292 of the 815 commercial prevailing wages that were based on modes that accounted for less than a majority of reported wages, the mode was less than or equal to the median reported wage.

In addition, the frequency with which prevailing wages are based on the highest of multiple modes is modest. Over 85 percent of the 2005 prevailing wages were based on a wage distribution that included only one mode. In fact, the most frequently occurring wage was the only wage reported for 1,050 commercial prevailing wage rates. In 2005, 364 commercial prevailing wages (14 percent of the rates based on 2005 data) and 23 highway/heavy wages (10 percent of the rates based on 2005 information) were based on the highest of multiple modes. For 248 of these commercial wages and 8 highway/heavy wages, the highest mode was a single observation. In addition, in 42 cases, the difference between the high mode and the low mode was \$1.00 or less.

¹⁶ Prevailing wages are supposed to reflect the wages and fringe benefits paid to the largest number of workers engaged in the same class of labor in "the county or other locality from which labor for any project is normally secured." (*Minnesota Statutes* 2006, 177.42, subd. 3.) If little or no nonresidential construction using a particular job class is occurring in a county, it is conceivable that a contractor would need to hire workers from neighboring counties.

Figure 2.1: Percentage of Commercial Construction Prevailing Wages Based on Own-County Data, 2005



NOTE: Percentages reflect wages certified by the Department of Labor and Industry as of May 30, 2006. The department might certify additional wages, make changes to certifications, or decertify other wages after wages are first certified in October (for highway/heavy construction) and December (for commercial construction).

SOURCE: Office of the Legislative Auditor analysis of Department of Labor and Industry 2005 prevailing wage data.

Union Rates

Critics claim that Minnesota's use of the mode combined with union pay practices biases the process in favor of setting prevailing wage rates that are collectively bargained rates. Union wages are generally the same for union workers at the journeyman level in the same job class and geographic area. In contrast, nonunion workers—even those working for the same contractor—may

A majority of the 2005 prevailing wage rates were union rates.

be paid different rates. As a result, critics conclude that the mode, which is the most common compensation rate, is likely to be a union rate even when union workers do not do the majority of the work.

Collectively bargained rates comprised the majority of Minnesota's 2005 prevailing wage rates. The Department of Labor and Industry identified 69 percent of the prevailing wage rates as union rates in 2005, including about two-thirds (68 percent) of commercial construction prevailing wage rates and almost three-quarters (74 percent) of highway/heavy wage rates. These percentages reflect the number of rates certified. However, if one counts job classes instead of rates, 51 percent of the job classes were covered by prevailing wage rates that were union rates.¹⁷ For commercial construction, about half (49 percent) of the job classes were covered by union rates. For highway/heavy construction, just over three-quarters (76 percent) of the job classes were covered by union wage rates.

Unfortunately, there are not good data to gauge the percentage of prevailing wage rates that "should be" collectively bargained rates. We do not know which workers reported in the 2005 prevailing wage survey were paid pursuant to a collective bargaining agreement and we do not know how well the data represent all nonresidential construction work in the state.¹⁸

National data sources provide some guidance but are outdated or measure unionization in a way that makes them unhelpful for our purposes. For example, according to a 1984 report, construction by nonunion contractors accounted for over 65 percent of commercial construction projects, 35 to 40 percent of industrial construction, and over 50 percent of highway/heavy construction nationwide.¹⁹ While these figures make the percentage of union prevailing wage rates in Minnesota seem high, Minnesota tends to be more unionized than the nation as a whole. At the same time, unionization has declined nationwide since 1984.

Critics argue that the high incidence of union prevailing wages is evidence of union bias because union presence among construction workers is much lower. In 2005, about 27 percent of workers in Minnesota's private construction industry were covered by a collective bargaining agreement.²⁰ At the same time, a majority of Minnesota's prevailing wage rates were collectively bargained rates.

However, these are not appropriate comparisons. Data on workers covered by collective bargaining agreements include residential construction, which has a

¹⁷ This difference occurs because six prevailing wage rates cover 93 power equipment operator job classes and four rates cover 16 truck driver job classes.

¹⁸ To test whether there is a bias toward union wages, we would need to know whether union wages prevail even when union workers do not perform the majority of nonresidential construction in a job class and geographic area in Minnesota.

¹⁹ Herbert R. Northrup, *Open Shop Construction Revisited*, Major Industrial Research Unit Studies No. 63 (Philadelphia: The Wharton School, University of Pennsylvania, 1984), 189 and 576.

²⁰ Barry Hirsch and David Macpherson, "Union Membership, Coverage, Density and Employment by State, 2005," <http://www.unionstats.com/>, accessed April 3, 2006.

much lower union presence than commercial and highway/heavy construction.²¹ In addition, the data on union coverage reflect the number of workers covered by union contracts, not the relative share of nonresidential projects on which they work. Finally, the unionization figure includes all workers in the construction industry. Workers such as managers and clerical staff comprise about 20 percent of workers in the construction industry and tend to be less unionized than laborers and trades people.

In addition, the geographic concentration of union prevailing wages in Minnesota coincides with geographic patterns of unionization in the construction industry. Metropolitan areas tend to be more heavily unionized than rural areas. As Figure 2.2 shows, for the most part, counties in and around the seven-county metropolitan area had higher percentages of union rates than other counties. St. Louis County (which includes Duluth) and Olmsted County (with Rochester), along with some of their neighboring counties, also had relatively high percentages of union prevailing wage rates. Highway/heavy prevailing wages showed a similar pattern. Figure 2.3 highlights the greater percentage of highway/heavy union rates in Region 1 (which includes Duluth) and Region 9 (which includes the seven-county metropolitan area).

Exported Wages

Lastly, critics argue that Minnesota's process allows wages from one geographic area to be "exported" to other geographic areas. For the most part, the Department of Labor and Industry's procedures guard against exporting wages from one part of the state to another. First, as described in Chapter 1, union prevailing wage rates are based on the appropriate collective bargaining agreement when they are certified. In other words, if the most frequently reported wage in County A is a collectively bargained rate for union members in County B, the certified rate for County A is the rate in the collective bargaining agreement that covers County A workers.²² Second, when a commercial prevailing wage rate cannot be set based on projects reported for a particular county, only wages reported for the counties that share a common border are used to calculate a rate. The department does not use data from counties that are geographically far removed from one another.

Having said that, there are circumstances in which a particular prevailing wage might not reflect wages that are typically paid in the geographic area. First, prevailing wages for commercial construction based on projects in adjacent counties could be different than the wages contractors in the primary county are accustomed to paying. For example, this might be the case in rural counties that are adjacent to metropolitan counties.

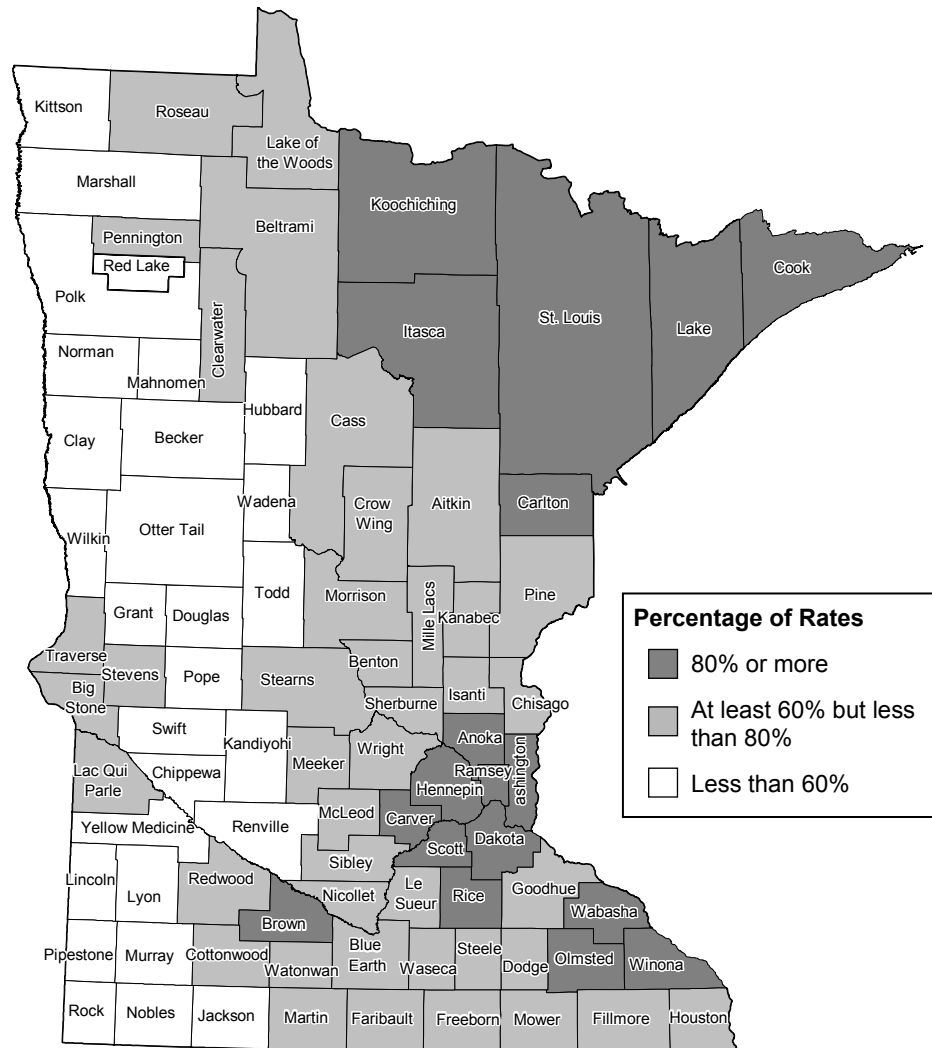
²¹ Gerald Finkel, "The American Construction Industry: An Overview," in Hamid Azari-Rad, Peter Philips, and Mark Prus, eds., *The Economics of Prevailing Wage Laws* (Aldershot, England: Ashgate, 2005), 29; and Northrup, *Open Shop Construction Revisited*, 189 and 575-576.

²² However, if a union agreement is not in place in County A or if the local union for County A has not provided wage data to the Department of Labor and Industry, the reported mode will become the prevailing wage rate.

Second, if workers from one geographic area did most of the reported work in another geographic area, their “exported” wages could be reported most often for the county or highway/heavy region for the survey period and provide the basis for the prevailing wage. The fact that the mode is used, instead of a method such as the median or average, means that the prevailing wage would not reflect the wages of local area workers at all.

Figure 2.2: Percentage of Union Prevailing Wages for Commercial Construction, by County, 2005

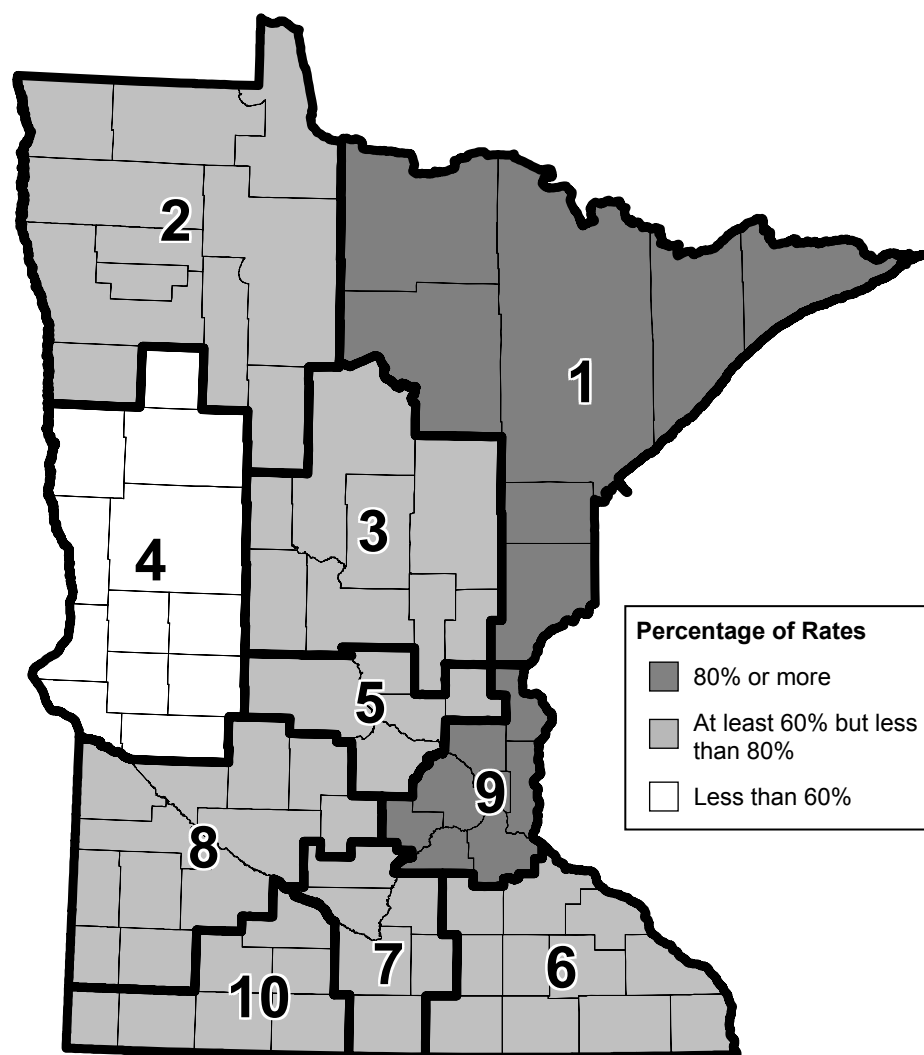
The percentage of prevailing wage rates that are union rates is higher near larger metropolitan areas.



NOTE: Percentages reflect wages certified by the Department of Labor and Industry as of May 30, 2006. The department might certify additional wages, make changes to certifications, or decertify other wages after wages are first certified in October (for highway/heavy construction) and December (for commercial construction).

SOURCE: Office of the Legislative Auditor analysis of Department of Labor and Industry 2005 prevailing wage data.

Figure 2.3: Percentage of Union Prevailing Wages for Highway/Heavy Construction, by Region, 2005



NOTE: Percentages reflect wages certified by the Department of Labor and Industry as of May 30, 2006. The department might certify additional wages, make changes to certifications, or decertify other wages after wages are first certified in October (for highway/heavy construction) and December (for commercial construction).

SOURCE: Office of the Legislative Auditor analysis of Department of Labor and Industry 2005 prevailing wage data.

Finally, a complicating factor is that a contractor must pay only one prevailing wage rate (the highest) for each job class on state-funded Department of Transportation highway projects that cross highway/heavy regions. Thus, a contractor in one region on a state-funded highway project might have to pay wages that prevailed in a different region. Technically, this is not a function of the mode being used to establish the prevailing wage. The same situation would occur regardless of the calculation method.

Alternative Calculation Methods

The previous sections showed that Minnesota’s prevailing wages sometimes do not represent the majority of wages reported for a community, and sometimes the differences between the mode and the majority of wages are quite large. We cannot determine how an alternative calculation method would affect prevailing wages because a different calculation method might change the willingness of some contractors and others to respond to the prevailing wage survey. However, because cases of unrepresentative prevailing wages may be of concern to legislators, we used 2005 survey data to examine the impact of four alternative calculation methods on the 2005 prevailing wages.²³ We found that:

- **The four alternatives for calculating prevailing wages that we evaluated would have resulted in the same 2005 prevailing wages in the majority of cases, but could have moderated some of the less representative 2005 rates.**

The first alternative we evaluated used the mode as the prevailing wage if it was equal to the wage reported for a majority of workers and the average if no reported wage represented a majority of workers. This mirrors the method used by the federal government when setting Davis-Bacon prevailing wage rates. At least 70 percent of commercial certified prevailing wages would not have been different if the “majority/average” method had been used in 2005. This is not surprising since most of the 2005 prevailing wages were based on a mode that reflected the majority of reported wages. At most, 22 percent of the wages would be lower, while 8 percent would be higher.²⁴ Over 200 of the commercial construction wages could have been more than \$5.00 lower under the “majority/average” method. Some classes of labor could be disproportionately affected. For example, 17 of the 87 certified common laborer wages and 31 of the 87 heating and frost insulator wages could have decreased by more than \$5.00. At least 57 percent of highway/heavy rates would be unchanged under the majority/average method, and up to 29 percent would decrease.²⁵

The second alternative defined the prevailing wage as the median of reported wages, a method that has been suggested by some legislators. This option is similar to the first option, except that a median was used instead of an average in the absence of a single wage reportedly paid to a majority of workers. An even

²³ In order to compare the alternatives to the current method, we restricted our analysis to rates for which we were able to replicate the mode identified by DLI and that we felt would provide meaningful information. We excluded 54 commercial rates and 15 highway/heavy rates. Among the excluded commercial rates are all of the elevator constructor rates. These rates were based on miscoded data and were later decertified.

²⁴ We cannot be more precise in these figures because some of the calculated prevailing wages that would have been different from the mode under an alternative calculation method might still have been certified at the same wage that was certified in 2005. This would happen if the certified prevailing wage rates were union rates and DLI determined that the new rates were also union rates. Although the calculated rate would be different, the wage would be certified at the same updated collectively bargained rate.

²⁵ Under all four alternative calculation methods, the size of the changes to commercial construction wages was greater than the changes to highway/heavy wages. Therefore, in the discussion, we focus on possible changes to commercial construction wages.

greater percentage of commercial and highway/heavy rates remained unchanged under this method than under the majority-average method. Over three-quarters of commercial prevailing wages and at least 71 percent of highway/heavy rates would have been the same. At the same time, 32 commercial prevailing wage rates could have been more than \$20 per hour less than the 2005 certified rates.

For a third alternative, we used the mode if it represented at least 30 percent of the reported wage rates, and the median if it did not. Like the first two options, this option used the mode as long as it represented at least a certain percentage of cases. Because this option used the highest mode even if it represented less than the majority of wages, it is not surprising that still fewer wages would be different under this method. At a minimum, 90 percent of commercial rates and 85 percent of highway/heavy rates would be the same under this option as under the current method.

The fourth option—using the 75th percentile of the wages reported—attempted to preserve the idea of selecting high wages so that prevailing wages would more likely reflect wages paid to skilled and experienced workers.²⁶ If this method were used, at least 82 percent of commercial construction prevailing wages and 75 percent of highway/heavy wages would not change. However, even using a prevailing wage that represented the 75th percentile could have resulted in one of the commercial rates being more than \$30.00 less than the 2005 rate. For Rock County, the adjacent-county wages for three heating and frost insulators were less than \$14.00, but the fourth worker was reportedly paid \$46.50 an hour. Up to 20 percent of highway/heavy prevailing wages would increase under this option.

These alternatives to the mode have some positive aspects. Under all of the alternatives, it is more likely that a reported wage has some influence on the prevailing wage. In addition, for the most part, the alternative methods moderated the examples of “unrepresentative” prevailing wages we showed in Table 2.2. As Table 2.3 shows, the prevailing wages for Le Sueur County pipefitters and steamfitters and Mahnomon County general laborers would have been lower under all four alternatives than they were using the mode. For these two groups, it also appears that the alternative methods would have resulted in prevailing wages based on nonunion wages instead of the union wages that prevailed using the mode. On the other hand, three of the four options would have led to higher prevailing wages for carpenters in Todd County, with at least the two highest rates being union rates.

However, the alternatives also have some shortcomings. For example, an average is based on all reported wages, but would be sensitive to very high or very low wages. The median is less sensitive than the average to extremes, but might result in prevailing wages that are dissimilar from all reported wages. For example, the reported wages of plumbers in Swift County included one earning \$16.05, one earning \$16.50, and two earning \$42.01. The median wage of

²⁶ We required the prevailing wage to be a wage that was actually reported. The 75th percentile is the lowest wage at which at least 75 percent of the reported wages are equal to or less than that wage.

Table 2.3: Examples of Commercial Prevailing Wages Using Alternative Calculation Methods, 2005

Le Sueur County Pipefitters and Steamfitters		Todd County Carpenters		Mahnomon County Common Laborers	
Reported Wages	Number of Workers	Reported Wages	Number of Workers	Reported Wages	Number of Workers
\$10.00	1	\$14.00	4	\$10.00	1
12.00	1	15.50	1	10.45	2
15.50	1	28.95	1	10.75	1
16.00	1	32.77	1	11.00	1
18.00	1	33.72	1	11.25	2
24.80	1	33.77	1	11.55	2
43.31	2	34.02	2	11.75	2
				12.10	1
				13.48	1
				24.24	2
Mode:	\$43.31	Mode:	\$14.00	Mode:	\$24.24
Majority/average:	22.87	Majority/average:	24.43	Majority/average:	13.05
Median:	17.00	Median:	28.95	Median:	11.55
30%-median:	17.00	30%-median:	14.00	30%-median:	11.55
75th percentile:	24.80	75th percentile:	33.77	75th percentile:	12.10

SOURCE: Office of the Legislative Auditor analysis of Department of Labor and Industry 2005 prevailing wage data.

\$29.26 is unlike all reported wages. The “30-percent/median” method, unlike these other options, does not resolve the concern that Minnesota’s prevailing wage rates are based on the highest mode when there is more than one mode. In 2005, there were over 200 cases in which there were multiple modes that each represented 30 percent or more of reported wages. In many cases, the 75th-percentile option could result in higher wages than resulted with the mode. Finally, under any alternative that results in a prevailing wage that is not equal to any reported wage, it could be difficult for DLI to identify prevailing wages that are union wages for the purpose of updating them to current collectively bargained rates for the geographic area.

SETTING PREVAILING HOURS OF LABOR

The Department of Labor and Industry is responsible for setting prevailing hours of labor. As we discussed in Chapter 1, contractors must pay workers overtime for hours worked in excess of the prevailing hours of labor. State law defines the prevailing hours of labor per day and per week as the hours worked by the largest number of workers in a job class in an area. State law limits the prevailing hours of labor to 8 hours per day or 40 hours per week. We found that:

- **The statutory limit on prevailing hours of labor prevents the Department of Labor and Industry from setting prevailing hours that reflect practices in the construction industry.**

State law's overtime pay requirements for prevailing wage projects no longer reflect construction practices for some job classes.

The Department of Labor and Industry does not conduct a survey to identify the prevailing hours of labor, largely because the Legislature has already set a maximum of 8 hours per day or 40 hours per week.

We question whether the limit on the prevailing hours of labor specified in statute is in the best interest of the state. First, it is not clear that limiting to eight the number of hours an employee may work before earning overtime results in better quality construction or more productive labor. The prevailing wage is justified as a means of obtaining high quality labor on construction projects. Paying the same workers time and one-half after eight hours per day will not necessarily improve their performance.

Second, limiting prevailing hours of labor might increase the state's labor costs on construction projects. Contractors work longer than eight-hour days to take advantage of longer daylight hours in the summer and to make up time lost due to bad weather. They sometimes use four-day weeks to limit commute-time and hotel costs for projects that are located far from workers' homes. These practices might be preferable to workers, too. Limiting prevailing hours of labor does not prevent contractors and workers from following these practices, it just requires that the state pay more for them than a private buyer would.

Third, it is not clear that a limit on prevailing hours of labor to eight hours a day is needed to guard against unfair compensation to workers. While some union contracts require overtime pay for any work in excess of 8 hours per day or 40 hours per week, others allow four-day weeks and do not require overtime pay unless the hours exceed 10 hours per day or 40 hours per week. It is hard to argue that allowing ten-hour workdays without overtime pay is unfair if collective bargaining agreements include this flexibility.

Other states with prevailing wage laws and the federal government address overtime pay in different ways. Some states have standards similar to Minnesota's, allowing only eight-hour workdays before overtime pay is required. Some states allow the option of a 10-hour workday, while continuing to limit the workweek to 40 hours. The federal government uses a 40-hour workweek but does not specify a daily limit.

RECOMMENDATION

The Legislature should consider options for changing the prevailing hours of labor for prevailing wage projects.

The Legislature could require that the prevailing hours of labor reflect work practices contained in collective bargaining agreements for a given job class and geographic area. For example, if a collective bargaining agreement for a particular job class allows ten-hour workdays before requiring overtime pay, contractors working on prevailing wage projects would not have to pay overtime pay to workers in that job class unless they exceeded ten hours of work in a day. This option has the benefit of more accurately reflecting the construction industry. However, it bases prevailing hours of labor entirely on union practices and would require the Department of Labor and Industry to establish different

DLI's computer program has incorrectly computed some prevailing wage rates.

prevailing hours of labor for the various job classes and, possibly, geographic areas.

Alternatively, the Legislature could increase the maximum prevailing hours of labor to 10 hours per day or 40 hours per week. If the Legislature changes the maximum prevailing hours of labor, it could direct the Department of Labor and Industry to adopt prevailing hours of labor that are less than the maximum if union contracts for a particular job class require overtime pay before workers reach ten hours of work in a day.

ADMINISTRATIVE ISSUES

During the course of our study, we reviewed the prevailing wage rates set by the Department of Labor and Industry in 2005. In particular, we were interested in whether the department was following state laws and administrative rules in setting prevailing wage rates. We also considered whether the department takes any steps to ensure the accuracy of the survey information it uses to set rates.

While the department generally calculates prevailing wage rates in accordance with state law and rules, we found some problems with the calculation of rates. These problems occur both because of programming errors in the department's computer program and human errors in properly identifying and updating collectively bargained rates. In addition, we raise some concerns about the lack of review or verification of the wage and benefit information received by the department during its annual survey.

Calculating Wage Rates

The Department of Labor and Industry uses a computer program to analyze reported wage data and identify the prevailing wage for each job class and geographic area. We identified three problems related to calculating prevailing wages.

First:

- **The department's computer program does not follow the required process for determining whether a prevailing wage rate may be set based on data from a county or from adjacent counties.**

Specifically, the department's administrative rules require that there be at least two projects reported for a county in order for the department to calculate prevailing wage rates based on the county's own projects for commercial construction.²⁷ In two counties, contractors reported only one commercial construction project during the 2005 survey. While the rules require the department to set rates for these counties based on adjacent-county information,

²⁷ *Minnesota Rules* 2005, 5200.1035, subp. 2, item A. There is also a similar requirement for highway/heavy construction. Two projects must be reported in a highway/heavy region in order to calculate rates based on a region's own projects. Otherwise, prior-year rates are used if available. See *Minnesota Rules* 2005, 5200.1030, subp. 2a, item A.

the department's computer program identified prevailing wages for these counties based on the single project reported.

Administrative rules also require that the department must have information from at least two projects using a particular job class in order to set rates using information from adjacent counties.²⁸ Otherwise, prior-year rates may be used. However, the department's computer program allows adjacent-county rates to be set with information from only one project. As a result, the department erroneously based over 300 prevailing wage rates on adjacent-county data in 2005.²⁹

While the department should be able to correct its computer program, strictly following its rules for setting adjacent county rates can result in a situation where relevant information on wages and benefits is ignored. The department's rules indicate that prevailing wage rates must be based solely upon adjacent-county projects if only one project is reported for a county.³⁰ In that case, the department would be ignoring a county's own data when setting rates for that county. This is not currently a problem because the department's computer program is not following the rules and sets prevailing wage rates based on only one project in a county. However, it could become a concern if the department corrects the computer program.

Second:

- **The department's computer program misidentifies adjacent counties for 11 counties.**

According to the department's administrative rules, adjacent counties must share a common border.³¹ Some of the counties that the computer program identifies as adjacent appear to have a border in common, but magnification of the map shows that they might not. Table 2.4 lists the counties that are incorrectly identified as adjacent to each other.

RECOMMENDATION

The Department of Labor and Industry should modify its computer program so that the calculation of prevailing wages complies with administrative rules. In addition, the department should revise its rules so that wage and fringe benefit information from a county is not ignored when prevailing wages in that county are based on adjacent-county information.

²⁸ [Minnesota Rules 2005, 5200.1035, subp. 2, item B.](#)

²⁹ Because the modes have been calculated incorrectly for three years, we did not attempt to reconstruct what the prevailing wage rates should have been. It is possible that rates based on prior-year data would have been the same as the rates based on adjacent-county data.

³⁰ [Minnesota Rules 2005, 5200.1035, subp. 2, item B.](#)

³¹ [Minnesota Rules 2005, 5200.1010, subp. 1a.](#)

Table 2.4: Incorrectly Identified Adjacent Counties

Primary County	County That Is Treated as Adjacent but Is Not
Anoka	Wright
Dodge	Freeborn
Freeborn	Dodge
Goodhue	Steele
Martin	Cottonwood
Nobles	Pipestone
Pipestone	Nobles
Pope	Todd
Steele	Goodhue
Todd	Pope
Wright	Anoka

NOTE: According to [Minnesota Rules 2005, 5200.1010, subp. 1a](#), adjacent counties must share a common border.

SOURCE: Office of the Legislative Auditor.

DLI's prevailing wage process should be consistent with the department's administrative rules.

The Department of Labor and Industry needs to identify prevailing wages in a manner that is consistent with its administrative rules. The prevailing wage issue is very political and subject to intense scrutiny from interested parties. It is important that the department's computer program correctly identifies adjacent counties and considers the number of projects reported for counties and highway/heavy regions before calculating prevailing wages. The department should also change its rules regarding the use of a county's reported wage information when calculating adjacent-county rates for the county.

Certifying Collectively Bargained Rates

We also have concerns about the process staff follow when updating union prevailing wage rates to current collectively bargained rates. According to department rules, if a prevailing wage is a union wage, it is certified at the current collectively bargained rate for the job class in the geographic area.³² The process DLI follows to identify and update collectively bargained rates is manual and provides opportunity for human error. We reviewed a sample of 66 rates that DLI certified as collectively bargained rates in 2005. We confirmed problems with at least 19 of the rates we reviewed.³³ We also looked for inconsistencies among rates identified as collectively bargained. We identified issues in two areas that are discussed below.

³² [Minnesota Rules 2005, 5200.1060, subp. 3](#).

³³ We selected 36 rates that we thought might be incorrect and 30 rates randomly. Sixteen of the problems were related to the 36 rates selected because we thought they might be incorrect. Three of the problems were with the 30 randomly selected rates.

Including Appropriate Fringe Benefits

First, the department did not consistently identify fringe benefits that may be included in prevailing wages. A single error of this type can affect multiple certified rates because collective bargaining agreements cover more than one geographic area. According to statutes, prevailing wages include “the contribution for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefit paid to . . . workers.”³⁴ At times, the department has included benefits that it should not or failed to include benefits that it should when it has certified union prevailing wages. For example, generally DLI does not include in fringe benefits contributions to industry promotion funds, but it has not been sufficiently careful to make sure that they are always excluded.³⁵ In addition, the department has not made the appropriate exclusion when collective bargaining agreements combine unallowable benefits and allowable benefits into one category. We also found that, while DLI generally includes contributions for training in certified union prevailing wage rates, it has not always done so.

RECOMMENDATION

The Department of Labor and Industry should include in certified prevailing wage rates those fringe benefits that are allowed under statute.

DLI needs to be consistent when identifying fringe benefits that are excluded from prevailing wage rates.

The department should be careful that it includes all allowable fringe benefits in certified prevailing wages and excludes other benefits. Administrative rules direct DLI to keep local union wage information “on forms provided or approved by the department.”³⁶ Instead of creating another reporting process, DLI uses copies of unions’ collective bargaining agreements. We think this makes administrative sense. However, when a collective bargaining agreement is not explicit in identifying amounts contributed for unallowable fringe benefits, DLI should require the union to file a supplemental form detailing the contributions for benefits that cannot be included in prevailing wages or attesting to the fact that there are no such benefits. In the absence of this information, DLI should exclude all categories of benefits that might include disallowed benefits. In addition, each year department staff should check a sample of union fringe benefit amounts prior to certification to make sure that the appropriate benefits have been included.

Updating and Identifying Collectively Bargained Rates

Second, the department made errors when it updated prevailing wages to the current collectively bargained rates. For example, the 2005 commercial construction prevailing wage for glaziers in Hennepin County was certified at the

³⁴ *Minnesota Statutes* 2006, 177.42, subd. 6. Contributions to apprenticeship programs are also counted as fringe benefits.

³⁵ Contractors using union labor make contributions as required by collective bargaining agreements to “industry promotion funds.” These contributions are sometimes indicated as part of workers’ hourly wage (such as \$.44 per hour), but are paid directly into the promotion fund. Unions use industry promotion funds to promote and support union labor in the relevant job class.

³⁶ *Minnesota Rules* 2005, 5200.1050, subp. 2a.

DLI needs to more carefully review prevailing wage rates before they are published.

collectively bargained rate for lathers. At the same time, DLI did not certify the lathers' rate at their updated collectively bargained rate.

In addition, it appears that DLI does not always correctly identify prevailing wages as collectively bargained. For example, painters in Blue Earth, Faribault, Le Sueur, Martin, and Watonwan counties are covered by Painters Local Union 681. The prevailing wage for commercial painters in all five counties was \$22.10. DLI certified the prevailing wage in Faribault, Martin, and Watonwan counties as collectively bargained rates, but not in Blue Earth and Le Sueur counties.³⁷

RECOMMENDATION

The Department of Labor and Industry should institute measures to review prevailing wages prior to their publication to ensure that they are accurate.

DLI should develop processes to review certified wages prior to their publication. An internal review prior to publication of rates would minimize errors detected by others and increase confidence in the rates that the department publishes. For example, the department could make sure that the job classification associated with a union prevailing wage is the same as the job classification associated with the current collectively bargained rate it certifies. DLI could also make sure that identical prevailing wages in job classifications and counties covered by the same collective bargaining agreement are appropriately and consistently handled.

Verifying Data

The last administrative concern has to do with the quality of reported wage data. According to DLI staff, they review surveys to make sure the projects are either commercial or highway/heavy construction, that they meet dollar thresholds for reporting, and that they occurred during the survey timeframe. Surveys that do not qualify are not included in the data analysis. In addition, the department's computer program highlights records with the same worker name, county, and job class as possible duplicate records. Staff review these records to identify ones that should be excluded from analysis. Finally, unions and other interested parties can challenge the prevailing wage rates if they believe them to be in error.

To discourage inaccurate reports, DLI has also added language to the prevailing wage survey that states that "willful falsification of any submitted information may result in civil or criminal prosecution" and will result in the company or organization being excluded from the survey for up to three years. These statements may have a deterrent effect on people considering supplying false information, although the department has never prosecuted or excluded anyone from future surveys for providing false information.

³⁷ The difference between the prevailing wage and union wage was sizable. As of May 2005, the collectively bargained rate for Painters Local Union 681 was \$33.35.

However, these measures do not completely ensure the accuracy of the survey data used to set prevailing wage rates. We found that:

- **The Department of Labor and Industry does little to verify the accuracy of the wage and fringe benefit information it receives.**

The department uses the wage and fringe benefit data it receives without requiring any supporting documentation or conducting audits of the data. We did not audit the department's data and do not have evidence of intentional misreporting. However, we think some projects reported in the 2005 survey are questionable. For example, some project descriptions indicated "single family home" or "private residence," although single-family residential construction should not be used in establishing prevailing wage rates. In addition, we found one highway project (and the workers associated with it) that appears to have been reported multiple times. We were unable to determine how frequently this occurs because it is difficult to tell when surveys that appear to report the same project are legitimate reports of separately contracted projects.

DLI should do more to verify the wage and benefit data received during its annual survey.

Besides misreported projects, contractors and other interested parties could incorrectly report workers and their wages. Reviews at the federal level have found problems over the years with the wage and fringe benefit data submitted to the U.S. Department of Labor for the purpose of setting Davis-Bacon prevailing wage rates.³⁸ For example, errors included misreported wages and benefits and incorrect job classifications.³⁹ In some sense, misreported wages are of less concern when the prevailing wage is a union wage and a current collective bargaining agreement is in place because DLI certifies the union wage in the collective bargaining agreement, not the reported wage. However, if a survey respondent lists too many workers or incorrect job classifications, the prevailing wage could be incorrect.

RECOMMENDATION

The Department of Labor and Industry should audit a sample of the 2006 prevailing wage data. If reporting problems are identified, the department should establish an ongoing audit strategy. In addition, the department should take steps to limit duplicate reporting and reporting of inappropriate projects.

Prevailing wages certified by the Department of Labor and Industry are a reflection of the data reported to DLI in its annual survey. To the extent that the data are inaccurate, certified wages could also be inaccurate. The Department of

³⁸ See, for example, U.S. Department of Labor, Office of Inspector General, *Inaccurate Data Were Frequently Used in Wage Determinations Made Under the Davis-Bacon Act* (Washington, D.C., March 1997), http://www.oig.dol.gov/public/reports/oa/pre_1998/04-97-013-04-420s.htm, accessed March 28, 2006; General Accounting Office, *Davis-Bacon Act: Labor Now Verifies Wage Data, but Verification Process Needs Improvement* (Washington, D.C., January 1999); and U.S. Department of Labor, Office of Inspector General, *Concerns Persist With The Integrity of Davis-Bacon Act Prevailing Wage Determinations* (Washington, D.C., March 2004), <http://www.oig.dol.gov/public/reports/oa/2004/04-04-003-04-420.pdf>, accessed November 3, 2006.

³⁹ U.S. Department of Labor, Office of Inspector General, *Concerns Persist*, 11-12.

Labor and Industry should audit a sample of the 2006 prevailing wage survey data. Reviews of data submitted to the U.S. Department of Labor for the purposes of Davis-Bacon wage determinations have found many errors.

If the Department of Labor and Industry finds problems with reported data, it should consider an ongoing audit strategy. For example, the U.S. Department of Labor reviews a sample of surveys that are most likely to affect prevailing wages. Although the process has had minimal impact on data quality, it could provide a deterrent effect on purposefully misreported data.⁴⁰ The Department of Labor and Industry is somewhat concerned about the chilling effect audits could have on people's desire to participate in the survey.

At a minimum, the department should take additional steps to review the surveys it receives and exclude inappropriately reported or duplicate projects. Staff could more thoroughly review surveys before they are entered into the computer and check batches of data electronically after surveys are entered. For example, we identified questionable projects by searching for key words in the project descriptions in the electronic survey file. We agree with the department that conclusively identifying duplicate project reports given the data submitted is difficult. Revising survey instructions to clearly identify what constitutes "a project" might help.

RECOMMENDATION

The Department of Labor and Industry should explore additional options for accepting electronic submissions of wage data.

DLI already accepts survey responses through its website. However, during our review, we noted that some contractors and unions submit wage information on forms that appear to have been completed on a computer and printed. If the department could accept these data electronically, the opportunity for departmental data entry errors would be reduced and staff resources devoted to data entry could possibly be redirected to auditing data or reviewing wages prior to certification. Staff would still need to review the projects to make sure that they fall within appropriate construction types, dollar values, and timeframes.

DLI should consider the amount of wage data it receives on these forms and determine whether people who use the forms would be interested in and capable of submitting the data in a single DLI-specified electronic file format. If interest exists and it appears that the benefits over the long-term would exceed the costs of development, DLI should develop its ability to accept data this way. Not only might this reduce the need for data entry, it might increase reporting if it makes reporting easier.

⁴⁰ General Accounting Office, *Davis-Bacon Act: Labor Now Verifies Wage Data*, 14-15, 27.

Enforcement

SUMMARY

Minnesota does not have an effective program for enforcing the state's prevailing wage law on state-funded building projects. State law assigns enforcement responsibility to the Department of Labor and Industry, but the department does not have sufficient authority or staff to effectively enforce the law. While agencies contracting for construction projects are in a better position to ensure compliance with the law, most of them assume the Department of Labor and Industry is responsible for enforcement. As a result, the state lacks clear procedures for monitoring compliance and handling complaints and inquiries.

In contrast, Minnesota has an organized program for enforcing the prevailing wage law on state highway projects. State law assigns enforcement responsibility on these projects to the Department of Transportation. The department is able to enforce the law because, as a contracting agency, it can better monitor compliance during construction and withhold contract funds from contractors who violate the law. The Department of Transportation monitors compliance by requiring contractors and subcontractors to submit biweekly payroll reports and by interviewing workers on state transportation projects. The department also has allocated resources to establish a team of investigators and other staff who are responsible for responding to complaints and inquiries.

Enforcement is a key component of an effective prevailing wage law.

As we saw in Chapter 2, surveying construction contractors and setting prevailing wage rates is a major part of the state's prevailing wage program. It is not sufficient, however, to set rates and assume that contractors and subcontractors will follow the law. An equally important component of an effective prevailing wage program is the effort to monitor and improve compliance with the law. Without adequate enforcement, some contractors and subcontractors could gain an unfair advantage over others by paying less than the required prevailing wage rates.

This chapter examines the state's efforts to monitor and improve compliance with the prevailing wage law. It specifically addresses the following issues:

- Do state agencies adequately monitor and enforce compliance with the prevailing wage law?
- Do state agencies respond appropriately to complaints and inquiries about noncompliance?
- Do state statutes and administrative rules provide clear direction and adequate tools for an effective enforcement program?
- Are the penalties for noncompliance adequate?

Enforcement helps ensure proper compensation for workers and equal treatment for contractors.

We first discuss the types of noncompliance that contracting agencies and regulators may face. We also examine the monitoring methods that public agencies often use to enforce state and federal prevailing wage laws. Second, we describe how Minnesota law assigns responsibility for enforcing the state's prevailing wage law. We also discuss the procedures currently used by Minnesota state agencies to monitor compliance with and enforce Minnesota's prevailing wage law. Third, we examine the problems with existing enforcement efforts, particularly for state-funded building projects. Finally, we present recommendations for strengthening enforcement.

COMPLIANCE MONITORING

There is a clear financial advantage for contractors and subcontractors who violate the state's prevailing wage law. They can obtain public contracts by bidding lower than competing firms that base their bids on prevailing wage requirements. In addition, noncompliant firms may be able to earn higher profits than could be earned if they paid the required wage and benefit rates.

As a result, it is important for public agencies to design a monitoring and enforcement program that encourages compliance with the prevailing wage law and swiftly and effectively penalizes noncompliant firms. In this section, we first discuss some of the ways in which contractors and subcontractors can violate prevailing wage requirements. Then, we examine the monitoring and enforcement methods typically used to enforce state and federal prevailing wage laws. We discuss how these methods attempt to detect noncompliance and encourage compliance.

Compliance Concerns

There are a number of ways in which contractors or subcontractors can evade prevailing wage requirements. First, a contractor or subcontractor could simply pay less than the prevailing wage rate. If the contracting government agency asks about the rate paid, the contractor could understate the hours worked by employees. By reporting fewer hours than were actually worked, the contractor could submit information that appears to show that the prevailing rate was paid.

Second, the contractor could claim to pay fringe benefits such as pension contributions but never actually contribute any funds on behalf of the employee. Alternatively, the contractor could deposit the funds in a contractor-controlled account but later withdraw them.

Third, a contractor could pay prevailing wage rates to his employees but have them "kick back" a portion of their wages or benefits. Construction employees may be willing to do this if the alternative is unemployment. Employees needing work might be willing to work for less than the prevailing wage.

Fourth, a contractor could misclassify an employee in order to pay the employee a lower prevailing wage rate. For example, an employee working at a highly skilled trade on a government project could be classified as a general laborer and paid the prevailing wage for a general laborer. State law requires, however, that an employee be paid no less than the prevailing wage rate for the trade or

occupation in which the employee worked.¹ Paying an employee the prevailing rate for the wrong job class is a violation of the state's prevailing wage requirements.

Finally, a contractor could fail to pay an employee the correct hourly rate for overtime work. State law requires that construction workers be paid at least one and one-half times the usual prevailing wage rate for any hours worked in excess of 8 hours in a day or 40 hours in a week.² If a government agency requires the contractor to report all hours worked by employees on the government project, the contractor can avoid paying the required overtime pay by not reporting the overtime hours. The employer may "bank" those overtime hours and pay them to the employees at the non-overtime rate at a later date. The delayed payments may come after the project has ended and the employees are out of work.

Monitoring Methods

There are three main ways in which government agencies may become aware of compliance problems. First, monitoring efforts by government agencies may provide evidence that a contractor or subcontractor is not paying the prevailing wage rate. Second, a construction worker may contact a government agency and file a complaint that the worker did not receive the prevailing wage rate. Finally, a third party, often a union official or competing contractor, may provide information to a government agency about possible noncompliance with the prevailing wage law.

Complaints from workers occur but are rare. Workers may be reluctant to file a complaint because they fear retaliation from their employer or potential future employers. In addition, union officials may suspect compliance problems but may not have access to a nonunion contractor's employees or payroll records. As a result, it may be difficult for union officials to uncover evidence of noncompliance. Government agencies may be in a better position to detect noncompliance since they can require access to employees and their payroll records through their construction contracts.

Certified Payroll Records

Obtaining certified payroll records from contractors and subcontractors is an important tool in monitoring construction work for compliance with prevailing wage requirements. Contracting agencies can require contractors and subcontractors to submit weekly or biweekly certified payroll records to the agency during the construction process. These records indicate the hours worked each day by each construction worker, as well as the worker's job classification and rate of pay. Certified payroll records provide documentation that contracting agencies can use to check to see if the correct prevailing wage rates are being paid.

Reviewing certified payroll records helps to ensure compliance with the prevailing wage law.

¹ *Minnesota Statutes* 2006, 177.43, subd. 1; 177.44, subd. 1.

² *Minnesota Statutes* 2006, 177.43, subd. 1; 177.44, subd. 1; 177.42, subd. 4.

In addition, because construction firms certify these wage rates in writing, they may be subject to greater penalties if it is later discovered that they were not paying the wage rates they reported. In Minnesota, like in many other states, a violation of the prevailing wage law is a misdemeanor. Submitting false records to a government agency is, however, a felony offense in Minnesota and is subject to longer terms of imprisonment and greater fines.³ Submitting false records on a federally funded project can also lead to federal mail fraud charges.

By having certified payroll records in their possession, government agencies are also in a better position to respond to complaints or inquiries about compliance. They can use the records as a basis for asking additional questions of the contractors or employees. In addition, they can provide the records to those parties inquiring about compliance so that these parties can also make additional inquiries.⁴

The federal government has found it useful to require the submission of certified payroll records. On federally funded projects of more than \$2,000, the United States Department of Labor requires contractors and subcontractors to submit weekly statements of wages paid to a representative of the federal or state agency in charge at the site of the work.

Onsite Interviews

Site interviews are also useful in monitoring compliance.

A second method that contracting agencies can use to monitor compliance with prevailing wage requirements is onsite interviews of construction workers. Workers may be asked about their compensation rate, hours of work, and type of work. Information obtained from interviews helps the contracting agency verify whether the information provided in certified payroll records is correct. Interviews may also help contracting agencies determine if contractors are placing employees in the proper job classification and paying them correctly.

Onsite interviews are usually conducted no more than once or twice on a project. In addition, depending on resources, they may be targeted more toward new contractors or contractors who have failed to comply with wage requirements in the past.

Other Methods

Government agencies that supervise construction projects may also periodically inspect the progress on a construction project. Transportation agencies, in particular, may have inspectors that keep a daily diary of the work conducted on the project. Information from these inspections may also be useful in monitoring compliance with prevailing wage requirements. For example, inspectors may keep daily records of the type and number of workers on the job and the hours

³ According to *Minnesota Statutes* 2006, 609.63, subd. 1 (6), the felony offense of forgery includes submitting false records or documents to a public office. A person guilty of forgery may be sentenced to imprisonment for not more than three years, a fine of not more than \$5,000, or both.

⁴ Certain information on certified payrolls is considered nonpublic information in Minnesota and could not be provided to third parties. Nonpublic information includes the worker's social security number and home address.

State law assigns enforcement responsibility on state highway projects to MnDOT and on all other projects to the Department of Labor and Industry (DLI).

worked. These records can be useful in monitoring compliance with the prevailing wage and verifying certified payroll records.

MINNESOTA ENFORCEMENT PRACTICES

Minnesota's prevailing wage law distinguishes between state-funded building projects and state-funded highway projects. According to state law, the Minnesota Department of Transportation (MnDOT) is responsible for enforcing prevailing wage requirements for state-funded highway projects, while the Department of Labor and Industry (DLI) is responsible for enforcing requirements for all other state-funded projects.⁵

State law gives DLI the authority to demand that contractors and subcontractors working on state-funded building projects furnish copies of payroll records to verify the payment of prevailing wages. Similarly, MnDOT has the authority to demand payroll records from contractors and subcontractors working on state-funded highway projects. In addition, DLI has the authority to examine all payroll records on state-funded highway projects.

However, Minnesota's monitoring and enforcement practices vary greatly depending on the type of project. In this section, we discuss the fairly detailed program MnDOT has developed for monitoring compliance and enforcing prevailing wage requirements for state-funded highway projects. We then compare MnDOT's program with the relatively weak efforts made to enforce the state's prevailing wage law for other types of construction activity.

Highway Projects

For state or federally funded highway projects, we found that:

- **The Minnesota Department of Transportation has a comprehensive program that monitors and enforces compliance with state and federal prevailing wage requirements.**

MnDOT has made contractor compliance with state and federal prevailing wage laws a priority. The agency has established contract provisions designed to facilitate compliance and has developed procedures for project engineers and regional offices to follow in monitoring compliance. In addition, MnDOT has established fairly clear procedures for workers or others to follow in filing complaints about noncompliance with prevailing wage requirements.

To aid in monitoring compliance, MnDOT generally requires all contractors to submit certified payroll records on either a weekly or biweekly schedule.⁶ These records include information on the job classification, wage rate, and hours of

⁵ *Minnesota Statutes* 2006, 177.43, subd. 6; 177.44, subd. 7.

⁶ Federal rules generally require the submission of certified payroll records on federally funded projects. MnDOT allows contractors on state-funded projects without federal funding to submit these records on either a weekly or biweekly basis depending on the frequency with which they pay their employees.

work for each construction worker. Certified payroll records must also be accompanied by a statement of compliance that identifies the nature and amount of any fringe benefit contributions made on behalf of employees. MnDOT staff review the certified payroll records to check for compliance with prevailing wage requirements.

To assist in determining whether certified payroll records are accurate, MnDOT requires periodic onsite interviews of construction workers. In addition, MnDOT's project inspectors maintain daily diaries of construction activity. The interviews and diaries can help staff determine if the wage or fringe benefit information contained in certified payroll records is incorrect. For example, interviews and diaries may enable MnDOT staff to identify cases of noncompliance, such as job misclassifications or understating work hours that cannot be detected by simply looking at certified payroll records.

While MnDOT district offices perform much of the ongoing monitoring work, MnDOT also has a Labor Compliance Unit in its central offices in St. Paul. The Labor Compliance Unit provides investigatory and enforcement assistance to MnDOT staff, local government agencies, and consulting firms working on state-funded highway projects, including both state highways and local highways that received state aid. The unit also assists MnDOT in enforcing prevailing wage requirements on commercial building projects undertaken by the agency. The unit has five investigators, a unit supervisor, and an administrative assistant.

In addition to its compliance monitoring and enforcement activities, MnDOT has included language in its construction contracts that makes it easier to enforce prevailing wage requirements. Its contracts have fairly extensive language about the submission of certified payroll records and the consequences of not submitting them. MnDOT contracts also require contractors to allow MnDOT and DLI staff to interview workers during the working hours on a project. MnDOT contracts are very explicit about the types of fringe benefits that a contractor can count toward the payment of prevailing wage rates. Contracts for state-funded highway projects require the contractor to display a poster board on the jobsite that details the prevailing wages to be paid on a project. Finally, MnDOT contracts spell out the steps that can be taken if prevailing wages are not paid by the contractor or subcontractors, including withholding of payments, termination of the contract, prosecution for noncompliance, rejection of future bids, or debarment.

MnDOT actively monitors and enforces compliance on state highway projects.

In 2005, MnDOT's Labor Compliance Unit (LCU) closed 267 cases involving possible noncompliance with state or federal prevailing wage requirements. LCU recovered about \$1.25 million in unpaid wages for 1,344 construction workers. In addition, LCU successfully debarred two companies from working on Minnesota public works contracts for three years, and participated in two federal criminal investigations. In one of these cases, the Office of the United States Attorney prosecuted a contractor for underpaying employees by more than \$396,000. The contractor falsified payroll records submitted to MnDOT and failed to pay employees proper wages, fringe benefits, and overtime pay. In addition, the president of the contracting firm was ordered to make full restitution and was sentenced in United States District Court to 18 months in federal prison. In the other case, the contractor pled guilty to submitting false documents and embezzlement of pension fund monies.

These results indicate that there is noncompliance with prevailing wage requirements on MnDOT contracts even though MnDOT, unlike most other state agencies, is monitoring and enforcing compliance with state and federal laws. However, these results probably understate the amount of noncompliance on MnDOT projects because they only include the actions taken by MnDOT's Labor Compliance Unit. Much of the routine compliance monitoring and enforcement takes place in MnDOT district offices. The district offices only refer cases to LCU when they cannot achieve compliance.

Building and Heavy Construction Projects

In contrast to MnDOT's efforts on state-funded highway projects, we found that:

- **Minnesota does not have an effective program for enforcing the state's prevailing wage law for state-funded building or heavy construction projects.**

Enforcement efforts are primarily hampered by confusion about the responsibility for enforcement and a lack of resources allocated to enforcement efforts. As a result, few agencies monitor for compliance, and there is inadequate attention to the provisions placed in construction contracts.

DLI's authority and resources for enforcement are limited.

According to state law, the Department of Labor and Industry has the responsibility to enforce the state's prevailing wage law on all state-funded projects other than highway projects. However, the department has long maintained that it cannot effectively enforce the law on the many construction projects undertaken by state agencies and local governments across Minnesota. DLI does not have staff to effectively enforce the law and does not receive notification about the commencement and location of state-funded construction projects. The agencies undertaking state-funded projects include but are not limited to the University of Minnesota, Minnesota State Colleges and Universities (MnSCU), the Minnesota Zoo, the Pollution Control Agency, the Minnesota Historical Society, and the departments of Administration, Natural Resources, and Military Affairs. The Department of Employment and Economic Development also provides state funding to local governments that fund private development projects that are subject to the prevailing wage law. Some local governments—including cities, counties, and school districts—may also receive direct funding from the state for certain non-highway construction projects.

DLI is not in a good position to effectively enforce the state's prevailing wage law. Agencies and local governments contracting for construction work are in a better position to monitor and enforce compliance with the prevailing wage law. Compliance is most easily accomplished by staff familiar with the construction project and available to conduct onsite interviews. If noncompliance is detected, the best way to ensure compliance is to withhold payment from the contractor until compliance is achieved. Again, the agency or unit of government which has contracted for the work must withhold payment. DLI has no authority to withhold contract payments or to terminate a contract.

The problem with this situation is that it effectively leaves many building projects without any compliance monitoring and enforcement. Most agencies and local governments believe that the Department of Labor and Industry is

On state building projects, there is sometimes confusion about which agency is responsible for enforcing the prevailing wage law.

responsible for enforcement. As a result, they generally do little more than put language in their construction contracts that requires the payment of prevailing wages. Neither the contracting agency nor DLI requires the submission of certified payroll records. Onsite interviews of construction workers are rarely conducted. Most construction contracts for state-funded buildings do not include the detailed language on prevailing wage requirements and compliance monitoring that is contained in MnDOT's highway construction contracts.

There are also no written procedures for handling complaints or inquiries about compliance with the prevailing wage law for state-funded projects other than highway projects.⁷ The Department of Labor and Industry says that it advises complainants to contact the contracting agency first and to call DLI back if the contracting agency is not responsive. If there is no response from the contracting agency, DLI says it will contact the agency and advise agency staff on how to resolve the complaint. DLI also says it will review a contractor's payroll records when requested by a contracting agency.

However, because there is no written complaint procedure, it appears that some concerned workers and union officials have been given conflicting information about where to report complaints or make inquiries. In addition, some individuals who have inquired about the wages and benefits being paid on prevailing wage projects have been given the "bureaucratic runaround." When they have requested to see certified payroll records, the contracting agency tells them that DLI has these records, and then DLI staff tell the official to ask the contracting agency since DLI does not receive these records.

RECOMMENDATIONS

In this section, we discuss the various problems with current enforcement efforts and recommend changes for legislative and agency consideration.

Authority and Funding

As we saw above, Minnesota has an effective program for enforcing prevailing wage requirements on highway projects. Current laws assign enforcement authority in this area to the Department of Transportation. This situation works well because, for the most part, the Department of Transportation is responsible for enforcing the requirements on its own projects and it has adequate staff to carry out its enforcement responsibilities.⁸ To some extent, MnDOT's enforcement methods are influenced by the federal requirement that contractors submit certified payroll records on a weekly basis. Since many of MnDOT's highway projects receive federal funds, MnDOT has chosen to incorporate this federal requirement into its procedures on all projects. MnDOT has gone beyond

⁷ DLI staff do not maintain case files about complaints they have received. As a result, we were unable to examine their handling of complaints in detail.

⁸ MnDOT also helps to enforce the prevailing wage requirements on county and municipal state aid projects. Because MnDOT has a relationship with these local governments through its distribution of state aid for local highways, MnDOT is able to play an effective role in assisting local governments with prevailing wage enforcement activities.

federal requirements, however, to establish a program that incorporates many other important elements of a good enforcement program, including onsite interviews and extensive contract provisions.

In contrast, Minnesota does not have an organized program for enforcing the state's prevailing wage law for state-funded building and other non-highway projects. The lack of a program results from the confusion over responsibility for enforcement, the lack of funding for enforcement activities by DLI, and the difficulty of having DLI enforce the law on construction projects conducted under the authority of other agencies and local governments. This is not a new problem. The lack of adequate enforcement on state-funded building projects is a longstanding problem. A report by the Management Analysis Division of the Department of Administration found similar problems with enforcement in April 1991.⁹

The key to improving enforcement of the prevailing wage law is for the Legislature to provide clearer direction on the enforcement roles of DLI and the various public agencies contracting for construction work on public buildings and other non-highway projects. Unless the enforcement responsibilities are clearly laid out in statute and adequate funding is provided for enforcement activities, it is unlikely that there will be any significant improvement in enforcement.

RECOMMENDATION

The Legislature should make the agencies and local governments contracting for state-funded construction projects primarily responsible for enforcement of the state's prevailing wage law. The Legislature should direct the Department of Labor and Industry to provide training and technical assistance to contracting agencies and local governments.

The agencies issuing construction contracts should be responsible for prevailing wage enforcement.

We believe that contracting agencies are in the best position to enforce the prevailing wage law. They are generally located at or near the construction site and usually have staff or consultants that oversee construction activity. These individuals would be in the best position to conduct ongoing compliance monitoring. They would be more knowledgeable about the construction work and could conduct onsite interviews while overseeing other aspects of the construction process. In addition, they are best able to achieve compliance through withholding contract payments.

The Department of Labor and Industry is best suited to provide training and technical advice and assistance to contracting agencies. They should advise the agencies and local governments on compliance monitoring methods, contract provisions, and complaint handling, as well as the necessary details about the requirements of the prevailing wage law. DLI staff should also be available to provide agencies with assistance on more complicated enforcement actions.

⁹ Management Analysis Division, Minnesota Department of Administration, *A Study of the Determination and Enforcement of Prevailing Wage in Minnesota* (St. Paul, April 1991).

The Legislature should continue to give DLI authority to examine all payroll records of contractors and subcontractors on state-funded construction projects and pursue legal action against violators in the event that contracting agencies and local governments do not enforce the law. But the department should be the enforcer of last resort with the primary responsibility for enforcement in the hands of the contracting agency or local government.

RECOMMENDATION

The Legislature should examine the need for additional funding for compliance monitoring and enforcement activities.

Contracting agencies and local governments may need additional funds to provide effective compliance monitoring and enforcement of the prevailing wage law. For some, the additional funds could come out of the construction appropriation or funding much like the costs of other consultants such as architects or owner's representatives do. For others, it may not be possible to fund enforcement in that way since staff paid out of operational funds generally oversee construction work. For private development work such as JOBZ projects, local governments may need authorization to use a portion of the state funds for enforcement activities.

RECOMMENDATION

The Legislature should also consider the need for additional funding for the Department of Labor and Industry to provide adequate training and technical assistance to contracting agencies responsible for enforcement.

DLI should provide training and technical assistance for contracting agencies.

The Department of Labor and Industry currently has only 2.1 full-time equivalent staff working in the prevailing wage area. They have the responsibilities of conducting the annual wage survey and setting the prevailing wage rates, as well as responding to complaints. Given the problems we found in Chapter 2 that need attention, we think the department needs additional staff to enable it to provide training and technical assistance.

RECOMMENDATION

The Department of Labor and Industry should develop written training materials for contracting agencies and local governments. These documents should provide needed technical information about the operation of the prevailing wage law, as well as guidance on how to monitor and enforce compliance.

With additional staff, we would expect the department to provide more than verbal advice to contracting agencies and local governments. The department should prepare written materials that agencies can use. Written materials are needed so agencies can refer to them as needed. In addition, the written materials will help maintain continuity in operations when there is turnover in the personnel who oversee construction activity.

Compliance Monitoring

The two key components of compliance monitoring are the submission of weekly or biweekly certified payroll records and onsite interviews of construction workers. Regarding certified payroll records, we think specific legislative direction is needed to get contracting agencies and local governments to begin enforcing the state's prevailing wage law.

RECOMMENDATION

The Legislature should require contractors and subcontractors on a construction project that is subject to the state's prevailing wage law to provide weekly or biweekly certified payroll records to the public agency contracting for the work.

Without this requirement, contracting agencies and local governments may not take their new responsibilities to enforce the law seriously. Implementing the requirement will also mean that unions and other third parties will have access to certain information on these payroll records.¹⁰ That access will put pressure on the contracting agencies to be more proactive in monitoring for compliance.

RECOMMENDATION

At a minimum, the Legislature should give agencies and local governments contracting for state-funded construction projects the authority to demand certified payroll records from contractors and subcontractors and examine their records of hours, wages, and benefits.

Contractors should be required to submit certified payroll records to contracting agencies.

If the Legislature is reluctant to require the submission of certified payroll records, the Legislature should at a minimum give contracting agencies and local governments the authority to require their submission. In that way, agencies wishing to be more proactive would have the ability to monitor for compliance.

Regarding onsite interviews, we are somewhat reluctant to recommend a rigid rule as to how often these interviews should be conducted and how extensive they should be. We suggest that these decisions be left to contracting agencies with advice provided to them by the Department of Labor and Industry.

RECOMMENDATION

The Department of Labor and Industry should provide contracting agencies and local governments with suggested guidelines on the frequency and nature of onsite interviews of construction workers.

¹⁰ Unions and other third parties currently have access to certified payroll records provided by contractors to MnDOT. Certain employee information on these records—such as social security numbers and home addresses—must be redacted, however, since they are nonpublic information.

If these changes do not result in improved compliance monitoring, subsequent legislatures could consider stronger steps. These measures could include minimum requirements for onsite interviews. Alternatively, the Legislature could provide DLI with additional funds to conduct onsite interviews of a selected number of construction projects. The projects could be selected so as to target those agencies that are not doing effective compliance monitoring.

Handling Complaints and Inquiries

Currently, the Department of Labor and Industry does not have written procedures for handling complaints and inquiries about noncompliance. Concerned workers and third parties are sometimes given conflicting information about where to report complaints or receive additional information.

RECOMMENDATION

The Department of Labor and Industry should establish written procedures for the filing and handling of complaints and inquiries regarding possible noncompliance with the state's prevailing wage law.

Contract Provisions

More attention should be paid to developing construction contract language that supports enforcement efforts.

Most contracting agencies believe that their only responsibility under the state's prevailing wage law is to place language in their construction contracts that requires the payment of prevailing wages. As a result, very few agencies except the Department of Transportation have developed adequate contract provisions for enforcement purposes. In addition, the Department of Labor and Industry has not generally provided written guidance to agencies about the language to include in construction contracts relating to compliance monitoring and the enforcement of prevailing wage requirements.

At some time in the past, DLI advised agencies to include in each contract the specific prevailing wage rates and hours that should be paid by contractors and subcontractors working on the project rather than simply referring to the DLI website. It is important to include the specific rates in effect at the time a contract is bid since rates can change and may no longer be on the website. In addition, specific rates remove any possible confusion for contractors about the rates required to be paid. State law also requires contracts to “specifically state the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay.”¹¹

However, DLI has not regularly provided such advice to agencies. With changes in personnel at various state agencies, this advice is no longer being followed in some agencies. For example, MnSCU no longer includes pages with the specific prevailing wages or prevailing hours and instead references the DLI website. As a result, we think that contracting agencies and local governments need explicit written guidance on the contract provisions needed for effective enforcement of the state's prevailing wage law.

¹¹ [Minnesota Statutes 2006, 177.43, subd. 3.](#)

RECOMMENDATION

The Department of Labor and Industry should develop model language on prevailing wages for contracting agencies and local governments to use in their construction contracts.

Definition of Job Classes

One of the ways in which the prevailing wage law can be evaded is by using common laborers or skilled laborers to do the work of a more skilled tradesman such as an electrician or a roofer. Usually, the prevailing wage for a common or skilled laborer is less than that for a more skilled tradesman. As a result, some contractors or subcontractors may find it financially advantageous to call a worker a common or skilled laborer rather than a skilled tradesman.

For example, roofing union officials have complained that nonunion roofing subcontractors are able to classify more than 50 percent of the workers on a job as laborers although some of them are probably on the roof doing tear down work or installing roofing materials. In contrast, union contracts define all workers on a roofing job including those doing cleanup work on the ground as roofers. Union officials feel that union contractors are being subjected to unfair competition and that the state should enforce the prevailing wage requirements for roofers on all employees doing a roofing job.

Enforcement is more difficult because the responsibilities of construction job classes are not clearly defined.

The source of the problem is that the rules promulgated by the Department of Labor and Industry do not define the job responsibilities of the various job classes for either commercial or highway/heavy construction. In particular, there is no definition of the responsibilities of common or skilled laborers in comparison to those of skilled tradesmen. Current rules refer to work classifications in collective bargaining agreements, the United States Department of Labor's Dictionary of Occupational Titles, and custom and usage applicable to the construction industry. But the rules do not say how these references are to be used. Any controversy about job class responsibilities is left to a case-by-case determination by the Department of Labor and Industry and the courts.

RECOMMENDATION

The Department of Labor and Industry should promulgate rules that define the job responsibilities of workers in the various construction job classes listed in the department's rules.

In defining the job responsibilities of common and skilled laborers, DLI should consider how union contracts, the United States Department of Labor, and other states define the responsibilities of these job classes. DLI should use a common sense approach that considers how much training is needed to perform an activity such as cleanup in roofing jobs. If the need for training is minimal for certain tasks, then common or skilled laborers should be allowed to perform them.

The department's rules should not interfere with union contractual requirements, if possible. If union contracts require the use of skilled tradesmen (roofers) for

cleanup, union contractors should be permitted to use them for those responsibilities. However, the rule would only require contractors to pay the laborer's prevailing wage rate for that type of work. This is similar to the current law which allows contractors to pay a higher, but not a lower, wage rate than the prevailing wage rate.

Penalties

There is some concern that penalties for noncompliance are not strong enough to deter violations of the prevailing wage law. The penalties differ somewhat for building and highway projects but are all misdemeanors.

For example, for state-funded building projects, it is a misdemeanor for an "officer or employee of the state" to execute a construction contract without complying with the prevailing wage law. It is also a misdemeanor for a contractor or subcontractor to pay a worker less than the prevailing wage rate stated in the construction contract. Each day a violation continues is considered a separate offense. These misdemeanor offenses are punishable by a fine of not more than \$1,000, imprisonment for not more than 90 days, or both.¹²

For state-funded highway projects, a contractor or subcontractor who fails to pay the prevailing wage may be charged with a misdemeanor. The offense is punishable by a fine of \$300, imprisonment of 90 days, or both. Each day a violation continues is considered a separate offense. In addition, it is a misdemeanor for anyone to induce a job applicant or employee to give up any part of the wages to which they are entitled by threat not to employ, threat to dismiss, or any other means. Such an offense is punishable by a fine of up to \$1,000, imprisonment up to one year, or both. Any employee who knowingly permits a contractor or subcontractor to pay less than the prevailing wage or who gives up any portion of the required compensation may be fined up to \$40 and imprisoned not more than 30 days. The employee may be charged with a separate offense for each day that the violation continues.¹³

Minnesota's penalties do not seem out of line with those in other states. Although penalties for noncompliance in other states vary widely, violations of prevailing wage laws are generally misdemeanor offenses throughout the nation. However, some states have additional features in their laws or rules. For example, statutes or administrative rules in some states list the conditions under which contractors and subcontractors will be debarred from further state construction work.

**Withholding
contract funds is
the most effective
means of
enforcement.**

However, we think the main problem with enforcement is not the severity of the penalty but rather the lack of effort made by public agencies to monitor compliance. As we pointed out earlier, the penalty for a prevailing wage offense can be turned into a more serious charge simply by requiring contractors and subcontractors to submit certified payroll records. The records serve as a basis for monitoring compliance and can be used as evidence of forgery if the contractor has supplied false information. The payroll records and other

¹² [Minnesota Statutes 2006, 177.43, subd. 5.](#)

¹³ [Minnesota Statutes 2006, 177.44, subd. 6.](#)

Because violating the prevailing wage law is a misdemeanor, it can be very difficult to convince a prosecutor to file charges.

monitoring techniques can also serve to identify noncompliance problems early during a construction project. The first method of enforcement should always be the withholding of contract payments from the contractor by the contracting agency. Another method would be to include a provision in construction contracts that allows the contracting agency to retain a portion of the contract funds as liquidated damages for any serious violation of the prevailing wage law.¹⁴

Another problem with current enforcement efforts is the difficulty of persuading local prosecutors to file misdemeanor charges against violators of the prevailing wage law. Some local prosecutors may deal with more serious offenses and may not consider violations of the prevailing wage law a high priority. In addition, prosecutors in some parts of the state may not be supportive of the prevailing wage law. As a result, it has been extremely difficult to get a case involving a prevailing wage violation into court. Over the history of the prevailing wage law, there have been very few prosecutions of prevailing wage violations in Minnesota courts. One way to encourage more prosecutions would be to allow the Attorney General to prosecute cases when local prosecutors decline to bring action.

RECOMMENDATION

The Legislature should consider allowing the Attorney General to prosecute a suspected violation of the prevailing wage law if the local prosecutor declines to file charges.

Another option for the Legislature to consider would be to allow employees a right to private action. In a number of states, employees have a private right to sue contractors or subcontractors who fail to pay them the prevailing wage. Depending on the state, employees who successfully sue their employers may recover two to three times the underpayment of wages plus reasonable attorney's fees. Twelve of the 32 states with prevailing wage laws allow construction employees a private right of action. About four or five states allow employees to recover between two to three times the amount of disputed wages. In addition, seven states allow the recovery of reasonable attorney's fees if the employee prevails in the court case. The additional damages and attorney fees that can be recovered from a violator provide additional incentives for contractors to comply with the law.

RECOMMENDATION

The Legislature should consider giving construction employees a private right of action to sue their employer if they are not paid the prevailing wage rate on a state-funded construction project. Consideration should also be given to allowing the recovery of damages and reasonable attorney's fees, in addition to unpaid wages.

¹⁴ Construction contracts at the University of Minnesota allow the University to withhold 5 percent of the contract total if a contractor or subcontractor has failed to pay the prevailing wage due to intentional misconduct or gross negligence.

Economic Impact

SUMMARY

Studies have found that prevailing wage laws result in a modest improvement in the wages of construction workers throughout the industry and a more significant increase in their fringe benefits. But research fails to provide a clear answer about the impact of prevailing wage laws on public construction costs. Studies of the impact on construction costs have produced mixed results. While some studies have found a small impact on costs, more comprehensive studies have not found that the impact is statistically significant.

In addition, some studies have claimed that prevailing wage laws increase state tax collections more than public construction costs, but these studies fail to consider the impacts of higher wages and benefits on the costs of private sector construction projects. Finally, there is little evidence from existing studies on the impact of prevailing wage laws on construction quality.

In Minnesota and elsewhere, prevailing wage requirements have been controversial. Between 1979 and 1988, nine states repealed their prevailing wage laws.¹ Laws in other states have also been periodically debated.

There are competing claims about the economic impacts of prevailing wage laws.

The main criticism of prevailing wage laws is that they raise the costs of government construction projects. According to critics, prevailing wage rates are too often set at the union wage and fringe benefit rate, which is generally the highest rate earned by construction workers in a particular area. Critics allege that if the prevailing wage rate were set at a rate more typical of that earned by construction workers, then labor costs would be lower on government projects and so would total project costs.

Supporters of prevailing wage laws claim that the higher wages do not generally result in higher construction costs. They say that the laws promote greater training in the construction industry, reduce construction injuries, and result in the use of more productive workers. In their view, the hiring of employees at higher wage rates results in greater on-the-job productivity. That additional productivity may offset the higher wages and fringe benefits and enable government construction projects to be completed at lower costs or at least costs no higher than would be incurred in the absence of a prevailing wage law.

Supporters also suggest that state governments receive other financial benefits from prevailing wage laws. Several studies have claimed that prevailing wage laws increase government tax collections because of the higher wages received by workers. These studies maintain that the increased tax collections are likely to

¹ In addition, the Oklahoma Supreme Court ruled in 1995 that Oklahoma's prevailing wage law was unconstitutional based on the provisions of the state's constitution.

exceed any additional construction costs resulting from a prevailing wage requirement. In addition, it is sometimes suggested that state economies benefit from the payment of higher wages and benefits. Supporters have also claimed that prevailing wage laws result in better quality construction work and lower long-term maintenance and repair costs. Finally, supporters have also suggested that prevailing wage laws reduce the costs of uncompensated health care by providing health insurance to more construction workers. The reduction in these costs may benefit taxpayers and other purchasers of health care services.

This chapter examines the arguments made by both critics and supporters about the economic impacts of prevailing wage laws. In particular, we address the following questions:

- **How do prevailing wage laws affect construction workers?**
- **How do prevailing wage laws affect the cost and quality of publicly financed construction projects?**
- **How do prevailing wage laws affect state tax collections and state economies?**

This chapter provides a critical review of existing studies.

In the first section of this chapter, we examine how prevailing wage laws affect the wages and fringe benefits of construction workers on both government and private construction projects. We also consider how prevailing wage laws affect training and workplace injuries. The second section examines in detail those studies that have analyzed the impact of prevailing wage requirements on government construction costs. We also discuss the potential impact of prevailing wage laws on construction quality. Finally, we review the studies that have examined the effect of prevailing wage laws on state tax collections.

In this chapter, we provide a critical review of the prevailing wage literature. We believe a critical review is needed because many of the studies—including some written by academics—have been funded by business organizations or labor unions that have a vested interest in the results. It is important to discuss the shortcomings of these studies, not just present their conclusions.

CONSTRUCTION WORKERS

Research has suggested that construction workers are affected by prevailing wage laws in a number of ways. These laws affect their financial compensation and may also impact their training opportunities and safety in the workplace.

Wages and Benefits

A number of studies have examined the impact of prevailing wage laws on wages and benefits earned by construction workers. We found that:

- **Research suggests that prevailing wage laws increase the wages and fringe benefits received by construction workers throughout the construction industry.**

Studies have found that prevailing wage laws increase construction wages and fringe benefits.

These increases appear to apply not only to projects covered by prevailing wage laws but also to other construction work. Prevailing wage laws increase the market share of union contractors and thus increase their willingness to pay higher wages and benefits. Wages and benefits may also increase for nonunion workers since nonunion contractors compete with union contractors in hiring employees. When union contractors pay higher wages and benefits, nonunion contractors find it necessary to pay more in order to hire employees.

Estimates of the increase in average construction worker wages resulting from prevailing wage laws vary from 1 to 15 percent. Studies that examined data on individuals produced results ranging from 1 to 4 percent, while studies using statewide data showed increases of 5 to 15 percent. The studies that used data on individual workers may be more accurate due to their ability to take differences in worker characteristics into account.

For example, in 1995, a group of economists from the University of Utah estimated that the repeal of a prevailing wage law reduced average annual earnings of construction workers by 5 percent.² Their estimate was based on a regression analysis of wage data by state and type of contractor from 1975 through 1991. They were able to estimate the impact of the repeal of a prevailing wage law because their data included information from states with prevailing wage laws, states that repealed their prevailing wage laws, and states that never had prevailing wage laws.

A 2000 study expanded upon this earlier research by examining the impact on benefits as well as wages.³ The study also attempted to control for additional factors such as the percentage of union membership in a state and the percentage of a state's construction spending that is publicly financed. This study found that having a prevailing wage law increased total compensation to construction workers by 12 to 14 percent, increased wages by 11 to 15 percent, and more than doubled pension benefits.

A 2001 study took a different approach and used data on individual workers.⁴ This approach enabled the study's authors to control for the age, educational attainment, marital status, gender, race, and occupational classification of construction workers. This study found that the repeal of a prevailing wage law would reduce average wages in the construction industry by an estimated 2 to 4 percent. Most, if not all, of this decline was in the wages of union members. They estimated that a repeal would reduce the difference between union and nonunion wages by 10 percentage points, or about half of the wage difference prior to repeal.

² Peter Philips, Garth Mangum, Norm Waitzman, and Anne Yeagle, "[Losing Ground: Lessons from the Repeal of Nine 'Little Davis-Bacon' Acts](#)," Working Paper, University of Utah Department of Economics (February 1995), 21-24.

³ Jeffrey S. Petersen, "Health Care and Pension Benefits for Construction Workers: The Role of Prevailing Wage Laws," *Industrial Relations* 39, no. 2 (April 2000), 246-264.

⁴ Daniel P. Kessler and Lawrence F. Katz, "Prevailing Wage Laws and Construction Labor Markets," *Industrial and Labor Relations Review* 54, no. 2 (January 2001), 259-274.

A 2005 study expanded upon the 2001 study by examining the results by the skill level of construction occupations.⁵ This study found that the repeal of a prevailing wage law was associated with a 1 to 2 percent drop in average hourly wages for construction workers. Wages of union members were expected to fall by 3 to 5 percent, or more than those of the average construction worker. But this study also found that the wages of workers in less skilled construction occupations—namely construction laborers—would also be more affected than those of more skilled workers. The wages of less skilled workers were estimated to fall by 3 to 4 percent as a result of the repeal of a prevailing wage law.

The 2005 study also found that repeal was associated with an 11 to 16 percent decline in the percentage of workers with pension coverage and an 11 to 14 percent drop in the percentage with health insurance coverage. As a result of repeal, the percentage of workers with both types of coverage decreased by 16 to 24 percent. The study's author concluded that this latter decline was most likely due to a decrease in the percentage of workers that were union members following repeal.

It has also been argued that prevailing wage laws decrease the costs of uncompensated health care and thus reduce the burden on taxpayers and other purchasers of health care. A 2005 study found that construction workers accounted for a disproportionate share of uncompensated health care costs in Clark County, Nevada.⁶ This occurred because employer-paid health insurance covered a smaller percentage of nonunion workers in the construction industry than in other industries. The implication is that prevailing wage laws would increase the percentage of construction workers that are covered by union benefits such as health care. However, it is unclear from this study how much prevailing wage laws would impact uncompensated health care costs since Nevada has a prevailing wage law. In addition, workers in residential construction, which is mostly not unionized and unregulated by prevailing wage laws, may account for a significant share of these costs.

Training

Some studies suggest that prevailing wage laws increase training among construction workers.

Supporters of prevailing wage laws argue that requiring higher compensation encourages the hiring of more experienced and skilled workers. They also suggest that such laws support the efforts of unions and union contractors, which have an incentive to invest in jointly sponsored training programs. Supporters claim that, in contrast, nonunion contractors do not invest enough in training because they stand to lose that investment if an employee leaves for another employer.

Studies of the impact of prevailing wage laws on training are not able to directly measure the amount of training and skills obtained by construction workers in different states. The studies attempt to address this issue in other ways. For

⁵ Mark Price, "State Prevailing Wage Laws and Construction Labor Markets," Ph.D. thesis, University of Utah, Department of Economics (December 2005).

⁶ C. Jeffrey Waddoups, "Health Care Subsidies in Construction: Does the Public Sector Subsidize Low Wage Contractors?" in Hamid Azari-Rad, Peter Philips, and Mark J. Prus, eds., *The Economics of Prevailing Wage Laws* (Aldershot, England: Ashgate, 2005), 205-224.

example, some studies have examined the number of individuals in formal apprentice training programs. Another study has examined the number of high school dropouts doing construction work. Overall, we found that:

- **Research suggests that prevailing wage laws have a positive impact on training levels as measured by participation in formal training programs. However, studies have made widely varying estimates of the impact of prevailing wage laws.**

For example, the 1995 study by University of Utah economists referred to earlier found that the repeal of a prevailing wage law was associated with a 44 percent decline in the number of apprentices receiving training as a percentage of all construction workers in a state.⁷ The study also found that states that never had a prevailing wage law had lower training rates than states with those laws, but the relationship was not statistically significant.

A 2005 study found that completion rates for apprentices were higher in states with prevailing wage laws than in other states.⁸ The study also concluded that the number of apprentices is about 6 to 8 percent higher in states with prevailing wage laws than in states without these laws. However, this conclusion is inconsistent with the statistical analyses in the study. In those analyses, the estimated impact of prevailing wage laws on the number of apprentices depended on the size of the construction sector in a state. A proper interpretation of the results suggests the impact of prevailing wage laws was even more modest than reported in the study. For example, at the average value for the size of the construction sector, a prevailing wage law increased the supply of apprentices by only 1 percent rather than 6 percent.

Finally, another 2005 study reported that the relative odds of employing high school dropouts among construction workers increased 12 to 21 percent as a result of the repeal of prevailing wage laws.⁹ For all states, the percentage of dropouts employed in construction declined significantly from 1977 to 2002. But there was a smaller decline in states without a prevailing wage law.

Injuries

Several studies have linked prevailing wage laws with lower rates of construction injuries.

Supporters of prevailing wage laws claim that these laws reduce construction injuries. Prevailing wage laws are expected to increase the use of higher-paid workers with greater skills and thus improve safety conditions on the worksite.

Several studies have used regression analysis to estimate the impact of prevailing wage laws on construction injury rates. A 1995 study of injury rates for plumbers and pipefitters found that the repeal of a prevailing wage law was

⁷ Philips, Mangum, Waitzman, and Yeagle, “[Losing Ground](#),” 47-52.

⁸ Cihan Bilginsoy, “Wage Regulation and Training: The Impact of State Prevailing Wage Laws on Apprenticeship” in Hamid Azari-Rad, Peter Philips, and Mark J. Prus, eds., *The Economics of Prevailing Wage Laws* (Aldershot, England: Ashgate, 2005), 149-168.

⁹ Price, “State Prevailing Wage Laws,” 205-206.

associated with a 12 to 15 percent increase in injury rates.¹⁰ The analysis also estimated that injury rates were 0 to 9 percent higher in states that never had a prevailing wage law compared with states that had such laws and never repealed them.¹¹

A 2005 study expanded on this earlier work by examining injury rates for all construction workers. The study concluded that prevailing wage laws reduce construction injury rates by 7 to 10 percent.¹² Like the earlier report, this study found that unemployment rates play a significant role in injury rates. Injury rates are lower during periods of higher unemployment because less experienced and younger workers are less likely to be employed at these times.

Despite the results from these studies:

- **It is not entirely clear how prevailing wage laws affect injury rates.**

However, it is unclear whether prevailing wage laws cause a reduction in construction injuries.

There is some reason to question the results from these studies. For example, other factors associated with prevailing wage requirements may explain the results of these studies. States with higher union membership and a stronger interest in job safety may have lower injury rates. These states may also be prevailing wage states. The underlying demographics and culture of these states may result in greater emphasis on safety and stronger enforcement of safety requirements. These factors—not the enactment of prevailing wage laws—may explain the tendency of these states toward lower injury rates. Unfortunately, it is difficult to disentangle these factors and isolate the real causes of lower injury rates.

In addition, it is important to note that states with prevailing wage laws do not necessarily have lower injury rates than states without such laws. We examined rates for the most serious injuries and found that the rate for all construction workers was 25 to 27 percent higher in states with a prevailing wage law during 2003 and 2004.¹³ Serious injury rates for the various major sectors of the construction industry ranged from 1 to 63 percent higher in prevailing wage states compared with states without a prevailing wage requirement.

It is not clear why the studies mentioned above found the opposite effect. Lower unemployment rates in prevailing wage states could result in higher injury rates despite their prevailing wage requirements. There was not enough information contained in these studies to determine whether this is a valid explanation.

¹⁰ Philips, Mangum, Waitzman, and Yeagle, “[Losing Ground](#),” 60.

¹¹ The range in estimates reflects the estimates obtained for three different measures of injury rates. For states that never had a prevailing wage requirement, the estimates ranged from 5 to 9 percent. The estimate of 5 percent was, however, not statistically significant.

¹² Hamid Azari-Rad, “Prevailing Wage Laws and Injury Rates in Construction” in Hamid Azari-Rad, Peter Philips, and Mark J. Prus, eds., *The Economics of Prevailing Wage Laws* (Aldershot, England: Ashgate, 2005), 169-187.

¹³ We examined the injury rate for injuries resulting in days away from work.

The impact of prevailing wage laws on construction costs depends on how the laws affect worker productivity.

CONSTRUCTION COSTS AND QUALITY

The main argument made by critics of prevailing wage laws is that they increase the costs on public construction projects. In response, supporters claim that there is little or no increase in costs because higher-paid workers are more productive. Supporters also suggest that a prevailing wage requirement improves construction quality.

This section examines these competing claims by reviewing previous studies. We first discuss those studies that have directly calculated the relative productivity of union and nonunion labor in the construction industry. Second, we review the various types of studies that have examined the impact of prevailing wage laws on public construction costs. Finally, we consider whether there is any comprehensive evidence to support the claims about construction quality.

Productivity

Supporters of prevailing wage laws have generally maintained that union labor has a productivity advantage over nonunion labor.¹⁴ A productivity advantage would mean that union laborers, because of their greater training and skills, could complete a job in fewer person-hours than nonunion laborers. If the productivity advantage was larger than the wage and benefit difference between union and nonunion labor, then the overall cost of a construction job would be lower using union labor.

However, we found that:

- **There is no direct evidence currently available on the relative productivity of union and nonunion labor in the United States construction industry.**

Prevailing wage supporters have often pointed to a 1984 article by economist Steven Allen as evidence that unions have a productivity advantage.¹⁵ They often cite Allen's finding that "...union productivity, measured by value added per employee, is 44 to 52 percent higher than nonunion."¹⁶ This finding applied, however, to construction work in the early to mid-1970s. There has been very little research produced since the 1980s that has directly compared union and nonunion productivity in the United States construction industry. We cannot rule out the possibility that unions have a current productivity advantage, but there is no direct evidence to support that claim.

¹⁴ Prevailing wage laws are presumed to result in higher wages that are more often at union levels and result in the more frequent use of union labor. Thus, a focus on the productivity differences between union and nonunion labor is appropriate for this debate about productivity under prevailing wage requirements.

¹⁵ Steven G. Allen, "Unionized Construction Workers Are More Productive," *Quarterly Journal of Economics* (May 1984), 251-274.

¹⁶ *Ibid.*, 251.

Researchers have produced little direct evidence on productivity in recent decades.

In addition, citing this particular quote from Allen's 1984 study is misleading for a number of reasons. First, supporters of prevailing wage laws fail to provide the full context of the findings in Allen's 1984 article. Allen pointed out that his estimate of the union productivity advantage dropped to 17 to 22 percent when adjusted for differences in construction prices across the nation.¹⁷ In addition, Allen found that his estimates of a union productivity advantage were less than the wage gap between union and nonunion labor.¹⁸ In other words, while union labor was more productive, it was also more expensive than nonunion labor even when the productivity advantage was taken into account.

Second, Allen's subsequent work showed that the union productivity advantage did not extend to public sector work.¹⁹ He found that unions had a productivity advantage in private sector construction that was large enough to offset the higher wages paid to union workers. However, he also found that there was no union productivity advantage in government construction and that the higher union wages resulted in higher construction costs for public agencies. Allen concluded that "...government managers lack adequate incentives to take steps which would change the behavior of unions and unionized contractors, and that prevailing wage laws prevent the market from creating those incentives by effectively banning nonunion contractors from public sector projects in many areas."²⁰

Finally, another publication from Allen pointed out that the union productivity advantage that existed in 1972 had declined substantially by 1977 and vanished by 1982.²¹ Allen cited the elimination of the productivity advantage for union contractors as a key reason for the decline in union membership among construction workers after 1973 and the increase in work done by nonunion contractors.

As we mentioned earlier, there has been little analysis of productivity in the construction industry since Allen's work in the 1980s.²² One exception is a 2004 report from the Construction Labor Research Council.²³ This report compared the number of hours of labor per mile of highway construction work and the total

¹⁷ *Ibid.*, 251.

¹⁸ *Ibid.*, 273.

¹⁹ Steven G. Allen, "Further Evidence on Union Efficiency in Construction," *Industrial Relations* 27, no. 2 (Spring 1988), 232-240.

²⁰ *Ibid.*, 240.

²¹ Steven G. Allen, "Declining Unionization in Construction: The Facts and the Reasons," *Industrial and Labor Relations Review* 41, no. 3 (April 1988), 343-359.

²² The lack of research may be due in large part to the lack of available data. According to a report from the University of Texas, the Bureau of Labor Statistics does not publish productivity indexes for the construction industry due to a lack of "suitable data." See Carl T. Haas, John D. Borcharding, Eric Allmon, and Paul M. Goodrum, "U.S. Construction Labor Productivity Trends, 1970-1998," University of Texas at Austin, Center for Construction Industry Studies, Report No. 7, 1.

²³ Construction Labor Research Council, "Wages, Productivity, and Highway Construction Costs, Updated Analysis 1994-2002," prepared for the Construction Industry Labor-Management Trust, March 2004. A similar report was prepared by the National Alliance for Fair Contracting in March 1995 for the period 1980-1993.

costs of highway projects per mile in high-wage states with low-wage states.²⁴ The report concluded that wages were a poor indicator of the total cost per mile. In high-wage states, average hourly wages were 68 percent higher than in low-wage states, but total costs per mile were 4 percent lower. The study also purports to show that labor productivity was greater in high-wage states, because the average number of labor hours per mile of highway work was 32 percent lower in those states.

There are several problems with this study of highway construction work. First, the numbers reported in the study show that labor costs per mile were still 14 percent higher in high-wage states. While labor productivity appeared to be greater in high-wage states, it did not fully offset the difference in wages. Second, because labor costs were only about 20 percent of total costs for highway projects, other factors may explain the difference in total costs between high- and low-wage states. For example, the study made no effort to adjust for the differences in highway projects across states. Labor and total costs per mile may vary considerably depending on whether a highway project is a reconstruction, repaving, or crack filling project. In addition, these costs may also vary depending on the number of lanes and a project's location. The lack of consideration of these factors calls into question the validity of the results of this study. The differences in labor productivity and total costs could be due to differences in the types of highways being constructed or repaired and the nature of the construction work.

Construction Costs

The impact of prevailing wage laws on construction costs is unclear.

Estimating the impact of prevailing wage laws on public construction costs is difficult. It is not entirely clear how contractors react to a requirement to pay a minimum rate of compensation. Contractors may employ fewer workers, hire more productive workers, or use more labor-saving equipment. These actions could partly or fully offset the increase in compensation rates.

Studies have produced estimates of the impact of prevailing wage laws ranging from no effect to a 26 percent increase in total construction costs. In this section, we review the various types of studies, their estimates of the impact on construction costs, and their strengths and weaknesses. Three types of studies are examined: 1) wage differential studies, 2) studies of project rebids, and 3) regression analyses.

Overall, we found that:

- **Studies that have examined the impact of prevailing wage laws on public construction costs have produced mixed results.**

While some studies have found that prevailing wage laws increase public construction costs, most regression studies have found that the impact is not statistically significant. The results range from a finding of no impact to a 26

²⁴ Although the high-wage states are not necessarily prevailing wage states, the intent of the report was to demonstrate that the payment of a higher wage, as would be the case with a prevailing wage requirement, may not result in higher construction costs.

percent increase. However, the results from most studies range from no impact to an increase of 5 percent.

Wage Differential Studies

Wage differential studies first attempt to estimate how much a prevailing wage requirement increases the hourly compensation rates for construction workers. Second, they estimate the percentage of total construction costs typically represented by labor. Finally, these two estimates are multiplied together to obtain an estimate of the impact of the prevailing wage requirement. The main assumption of these studies is that prevailing wage laws increase the compensation rate paid by contractors but do not change the amount of labor used by contractors.

Two studies have produced estimates for Minnesota using this method. In 1992, a study from the Industrial Relations Center at the University of Minnesota estimated that the repeal of Minnesota's prevailing wage law would save no more than 1.8 percent of public construction costs.²⁵ This figure was based on an estimate that prevailing wage rates were about 6.6 percent higher than the average compensation rate in Minnesota's construction industry. The 6.6 percent figure was then multiplied by 27.3 percent—a number representing the costs of labor as a percentage of total construction costs from the last United States Census of Construction Industries.

“Wage differential” studies fail to directly measure the impact of prevailing wage laws on construction costs.

A 2005 study by the Minnesota Taxpayers Association estimated that total public construction costs would be 7.4 to 10.0 percent lower if Minnesota used the median construction wage from Occupational Employment Statistics (OES) surveys to set prevailing wage rates instead of the current method.²⁶ This study increased median construction wages from OES surveys by 22 percent to account for fringe benefits and then calculated the differences between those figures and current prevailing wage rates. The percentage differences were then multiplied times a percentage that was intended to reflect labor's share of total costs in public construction projects. The study used percentages ranging from 21 to 45 percent of total costs depending on the type of project.

At the national level, most of the estimates of this type have concluded that the Davis-Bacon Act increases the cost of federal construction projects by 1.5 to 3

²⁵ The author of this study did not, however, agree with the notion that costs are necessarily higher with a prevailing wage requirement. He argued that wage differential studies are flawed because they do not take the increased productivity of union labor into account. He made this estimate for the purpose of demonstrating that higher estimates offered by critics of prevailing wage laws are unrealistic. See Mike Walter, “The Economic Impact of Prevailing Wage Requirements in Minnesota,” (Minneapolis: Industrial Relations Center, University of Minnesota, January 1992), 8-9.

²⁶ This study also found that using federal prevailing wage rates rather than Minnesota's prevailing wage rates would reduce total construction costs for transportation projects by about 1 percent. However, costs of building projects would increase by 1 or 2 percent. See Minnesota Taxpayers Association, *Prevailing Wage Rates in Minnesota: An Examination of Alternative Calculation Methods and Their Effects on Public Construction Wages* (St. Paul, February 2005).

percent.²⁷ For example, in 1982, the United States Department of Labor estimated that the Davis-Bacon Act increased the cost of federal construction projects by 1.9 percent.²⁸ A few studies have found either no impact or a more modest impact of 0.3 to 0.4 percent.²⁹

There are a number of problems with the wage differential method. First, and most importantly, this method does not really measure the actual impact of prevailing wage laws on total construction costs. The wage differential method estimates the maximum change in total construction costs, assuming no change in the behavior of contractors. However, as we mentioned earlier, contractors, when faced with a requirement to pay a higher compensation rate, may adjust the amount of labor they use by hiring fewer and more skilled workers or by using labor-saving equipment. This method makes no allowance for the possibility that a prevailing wage requirement could result in increased labor productivity.

Second, the estimated increase in average wages and benefits resulting from a prevailing wage requirement may be suspect. Some of these studies assume that, in the absence of a prevailing wage requirement, wages and benefits would fall to the current average for all construction workers including those working on residential construction. Because residential construction workers typically earn less than workers on commercial and highway projects and state laws often do not cover residential work, these studies may overstate the possible savings from repeal of state prevailing wage laws.

Finally, some studies may overstate the share of total construction costs represented by labor. Based on the 2002 Economic Census, we estimate labor costs to be about 25 to 27 percent of total construction costs nationwide. This share has been declining over time. Recent studies using a higher share may overstate the possible savings from repeal or changes in prevailing wage calculation methods.

Studies that have examined new bids following a suspension or implementation of prevailing wage requirements have found that prevailing wage requirements increase construction costs.

Studies of Rebidding

Several studies have examined the impact of prevailing wage laws by analyzing the rebidding that resulted from changes in federal or state prevailing wage requirements. For example, in 1971, President Nixon declared an emergency and suspended the operation of the Davis-Bacon Act for 35 days. Some federal construction contracts that had been bid but not awarded had to be rebid as a result. A 1975 examination of the difference in the low bids showed that the

²⁷ Cihan Bilginsoy and Peter Philips, “[Prevailing Wage Regulations and School Construction Costs: Evidence from British Columbia](#),” *Journal of Education Finance* 24 (Winter 2000), 415-432.

²⁸ Congressional Budget Office, *Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget* (Washington, D.C., July 1983). The Congressional Budget Office (CBO) added estimates of the costs of the federal paperwork required of contractors and the possible savings from modifying federal restrictions on the use of construction helpers to the Department of Labor’s estimate. Overall, CBO estimated that the federal prevailing wage law increases public construction costs by 3.7 percent.

²⁹ Bilginsoy and Philips, “Prevailing Wage Regulations,” 5.

Regression analysis directly measures the impact of prevailing wage laws on construction costs, while controlling for the impact of other factors.

absence of the prevailing wage requirement lowered bids by less than 1 percent.³⁰ A subsequent reexamination of that study suggested that the savings could be closer to 5 percent of construction costs.³¹

In Minnesota, eight school districts had to rebid construction projects in response to a 1997 law that extended the state's prevailing wage requirement to educational projects exceeding \$100,000 in cost.³² The Minnesota Taxpayers Association reported that the costs in five of these districts increased between 4 and 9 percent.³³ The Association used that information to estimate the additional costs imposed by the new law.

Studies of rebidding have several potential problems. A simple comparison of the difference in low bids may be misleading if market conditions have changed between the time of the initial bids and the time of the second round of bids. Analysts need to consider the extent to which inflation has affected the latter round of bids. In addition, market conditions or the availability of contractors to perform the work may have changed in the meantime. There may also have been changes in other important factors such as the specifications of the projects. Finally, the results could have been affected if the policy change was expected to be temporary or if the results of the first bidding process were publicly released as was the case with the 1971 suspension of federal policy.

Regression Studies

A number of studies have used regression analysis in an attempt to statistically isolate the impact of prevailing wage laws on public construction costs. Regression analysis has several advantages over other methods. Unlike the wage differential method, regression analysis does not ignore the potential adjustments that contractors make in response to a prevailing wage requirement. Regression analysis can be used to examine whether prevailing wage laws have a direct effect on total project costs and whether that impact is statistically significant. Regression analysis is also able to take the impact of other factors into account. However, like any type of analysis, the results of regression analysis need to be carefully interpreted.

One of the first regression analyses to examine the impact of prevailing wage laws on construction costs was published in 1984.³⁴ This study analyzed the

³⁰ Armand J. Thieblot, Jr., *The Davis-Bacon Act* (Philadelphia: Industrial Research Unit, The Wharton School, University of Pennsylvania, 1975), 89-94.

³¹ Armand J. Thieblot, Jr., *Prevailing Wage Legislation: The Davis-Bacon Act, State 'Little Davis-Bacon' Acts, the Walsh-Healey Act, and the Service Contract Act* (Philadelphia: Industrial Research Unit, The Wharton School, University of Pennsylvania, 1986), 104-107.

³² This 1997 requirement was overturned in 2000 by the courts, which ruled that its inclusion in an omnibus tax bill violated the Single Subject and Title Clause of the Minnesota Constitution. See *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293 (Minn. 2000).

³³ Minnesota Taxpayers Association, *The Fiscal Impacts of Prevailing Wage Law on Minnesota School Districts* (St. Paul, November 1997).

³⁴ Martha Norby Fraundorf, John P. Farrell, and Robert Mason, "The Effect of the Davis-Bacon Act on Construction Costs in Rural Areas," *Review of Economics and Statistics* 66, no. 1 (February 1984), 142-146.

impact of federal prevailing wage requirements by examining the costs of public and private nonresidential building projects constructed in rural areas in 1977 and 1978. The study found that the costs of public projects were 26 percent higher than those of private projects and concluded that the prevailing wage requirement substantially increased the costs of public projects.

However, the results of this study are questionable. The finding that the prevailing wage increased costs by 26 percent greatly exceeded any estimates made using other methods. In addition, the study did not isolate the impact of prevailing wage requirements from other factors that might explain why public projects cost more than private projects. The study simply assumed that the only difference between public and private projects of the same type and size was the requirement that public projects comply with prevailing wage requirements.

Most of the subsequent research suggests that, while public construction projects cost more than private projects, the impact of prevailing wage requirements on total costs is not statistically significant. For example, a 2003 study estimated that prevailing wage laws increased school construction costs in the United States by 0.8 to 1.6 percent but found that this impact was statistically insignificant.³⁵ The study also found that construction costs for public schools were about 16 percent higher than those for private schools in both states with prevailing wage laws and states without such laws. This latter finding strongly suggests that the findings of the 1984 study were not due to prevailing wage requirements but instead due to inherent differences between public and private construction projects.

Similarly, a 1996 study of various building projects in the United States found that public projects were more expensive than private projects regardless of whether a state had a prevailing wage law.³⁶ The study found that public projects were 28 percent more expensive than private projects in states with prevailing wage laws, but 32 percent more expensive in states without these laws. In a separate analysis, the study estimated that prevailing wage laws had a positive, but statistically insignificant, impact on total construction costs.

Several other studies have also reported that prevailing wage requirements do not have statistically significant impacts on total construction costs. For example, a 2004 study examined nonresidential construction costs in a 12-state region including Minnesota.³⁷ Eight of the states in that area had prevailing wage laws while four did not. The study reported that there were significant differences in costs between public and private building projects but that prevailing wage laws did not have a statistically significant impact on total construction costs. In

Most regression studies have found that prevailing wage laws do not have a statistically significant impact on overall construction costs.

³⁵ This study found that the impact of prevailing wage laws on construction costs was statistically insignificant at the 10 percent level. This means that there was more than a 10 percent chance that the researchers would have been incorrect if they had concluded that the impact on costs was greater than zero. See Hamid Azari-Rad, Peter Philips, and Mark J. Prus, "State Prevailing Wage Laws and School Construction Costs," *Industrial Relations* 42, no. 3 (July 2003), 445-457.

³⁶ Mark J. Prus, "The Effect of State Prevailing Wage Laws on Total Construction Costs," unpublished paper (January 1996).

³⁷ Michael P. Kelsay, L. Randall Wray, and Kelly D. Pinkham, *The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri* (Kansas City: University of Missouri-Kansas City Department of Economics, January 2004).

addition, a 2005 study found similar results for building projects in British Columbia.³⁸ That study examined public and private projects that were built both before and after the implementation of a prevailing wage requirement in British Columbia. A 1997 study also found no statistically significant relationship between prevailing wage requirements and school construction costs in Ohio.³⁹ The Ohio study, which examined projects before and after school construction was exempted from Ohio's prevailing wage requirements, estimated savings of 10.7 percent from the exemption even though its analysis showed no statistically significant impact due to the prevailing wage requirement.⁴⁰

There has been only one study that has found a significant relationship between prevailing wage requirements and total construction costs. A study published in 2005 estimated that prevailing wage requirements increased construction costs by 9 to 37 percent for low-income housing projects in California.⁴¹ It is unclear why the results of this study differ from those of other studies. One possibility is that the construction of low-income housing is affected more by prevailing wage requirements because housing is more typically built with nonunion labor. Another possibility is that California has a fairly strong prevailing wage law and may enforce it more aggressively than other states. Finally, it is possible that part or all of the cost impact attributed to prevailing wage requirements is due to other factors not considered in the regression analysis.⁴²

While methodologically superior to other studies, regression analyses still have some weaknesses.

As we have seen, most researchers using regression analysis have not found that prevailing wage requirements have a statistically significant impact on construction costs. While regression studies are better suited to examining the construction cost impact than other types of studies, they also have some weaknesses. For example, the inability of some studies to find a statistically significant impact of prevailing wage laws on construction costs may result because there is not very good information on the relative strength of prevailing wage laws and their enforcement. State laws vary in terms of the types of public construction covered by the prevailing wage law, as well as the survey and

³⁸ Kevin Duncan and Mark J. Prus, "Prevailing Wage Laws and Construction Costs: Evidence from British Columbia's Skills Development and Fair Wage Policy," in Hamid Azari-Rad, Peter Philips, and Mark J. Prus, eds., *The Economics of Prevailing Wage Laws* (Aldershot, England: Ashgate, 2005), 123-148.

³⁹ Ohio Legislative Service Commission, *S.B. 102 Report: The Effects of the Exemption of School Construction Projects from Ohio's Prevailing Wage Law*, Staff Research Report No. 149 (Columbus, Ohio, May 2002), 54-60.

⁴⁰ In addition, the regression equations used in the Ohio study did a poor job of explaining the variation in construction costs. The adjusted R-squared in the three relevant regressions was between .01 and .03—indicating that the variables in the regression equations explained only a small percentage of the variation in construction costs.

⁴¹ Sarah Dunn, John M. Quigley, and Larry A. Rosenthal, "The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing," *Industrial and Labor Relations Review* 59, no. 1 (October 2005), 141-157.

⁴² During the time period examined in the study, prevailing wages were paid on low-income projects sponsored directly by the United States Department of Housing and Urban Development (HUD) but not on housing projects subsidized through tax credits or through federal grants to lower levels of government. If, for example, the projects sponsored by HUD were subject to more exacting construction standards than other subsidized projects, then the cost impact attributed to prevailing wage requirements may have been due instead to these higher standards.

calculation methods used to determine prevailing wage rates. In addition, states may vary significantly in their enforcement efforts. Because there is not a good way to measure some of these differences, studies that have examined the impact of prevailing wage laws across the United States have not taken differences in the strength of the laws and enforcement efforts into account. Prevailing wage laws in states with weak laws or widespread noncompliance may have little or no impact on public construction costs, while these laws may have a significant impact in states with strong laws and effective enforcement efforts. Studies may not find a statistically significant impact on public construction costs because states with weak laws or substantial noncompliance with their laws are included with other states with prevailing wage laws.

It is also possible that the impact of prevailing wage laws varies by the size or type of construction project. While regression studies have attempted to control for some of these factors, the impact may not be easy to isolate. Earlier in this chapter, we discussed some evidence that prevailing wage laws have greater impacts on the wages of less-skilled laborers than they do on the wages of highly skilled workers like electricians or plumbers. It is possible that prevailing wage laws have impacts on the costs of projects with relatively larger shares of less-skilled laborers. Regression studies may not have found a statistically significant impact on construction costs because they were not able to distinguish projects by the share of less-skilled labor used on the projects.

We have additional technical concerns about two of the studies that found no statistically significant impact on public construction costs. Both the 1996 study and the 2004 study imposed a stricter burden of proof than is usually the case in regression studies. These studies reported whether the variables in their regression equations were statistically significant at the .01 level, but they did not provide that information for the .05 or .10 levels. As a result, they imposed a stricter burden of proof than is usually done in regression analyses.⁴³ In addition, these two studies failed to properly interpret the results of their regressions and properly test for statistical significance.⁴⁴ These problems do not necessarily

⁴³ These studies found that the impact of prevailing wage laws on construction costs was not statistically significant at the .01 level. This means that there was a more than 1 percent chance that the authors of these studies would have been wrong if they had concluded that the impact on costs was greater than zero. However, most studies using regression analysis typically report statistical significance at the .01 and .05 level, and some report statistical significance at the .10 level. Thus, the usual standard is to allow for up to a 5 percent (and sometimes 10 percent) chance that a researcher would be wrong in concluding that there was an impact. These two studies also failed to provide information that would have enabled readers to determine statistical significance at the .05 or .10 levels. Most studies report either the standard errors or t-scores for the estimated coefficients of each variable. This information enables a reader to determine statistical significance at levels other than those reported in a study.

⁴⁴ Both studies used a prevailing wage variable, a public/private project variable, and an interaction variable in their regression equations. When an interaction variable is used, care must be used in interpreting the regression coefficients of these variables and in testing for statistical significance. For example, the impact of prevailing wage laws on public projects is measured not just by the estimated coefficient on the interaction variable but by the sum of the coefficients on the interaction and prevailing wage variables. In addition, the test for statistical significance of prevailing wage laws is more complicated than the usual test for a regression coefficient. See James Jaccard and Robert Turrisi, *Interaction Effects in Multiple Regression*, Second Edition (Thousand Oaks, California: Sage Publications, 2003), 23-27.

mean that the conclusions reached in these two studies are incorrect. However, the analyses need to be revisited and revised if necessary.

Other Studies

In this section, we discuss evidence from other studies that suggests a link between prevailing wage laws and public construction costs. These studies do not directly estimate the cost impact of prevailing wage laws. But their findings may provide some insight into the relationship between such laws and construction costs.

Evidence from other studies indirectly suggests that prevailing wage laws may increase construction costs on some public projects.

As discussed earlier, the repeal of prevailing wage laws appears to reduce the wages and fringe benefits of workers throughout the construction industry and, in particular, those of union members. This evidence suggests that union firms are less competitive without a prevailing wage law because they are no longer the low-cost alternative for some construction projects. If, as some supporters of prevailing wage laws suggest, union labor were always sufficiently more productive than nonunion labor, it would always be the low-cost alternative for all construction projects. In that case, repealing the prevailing wage law would not affect union labor's cost advantage or union wages and benefits. Because the evidence indicates that wages and benefits decline as a result of repeal, it also suggests that unions are not the low-cost alternative for some construction projects. Furthermore, it suggests that the costs of at least some public construction projects would decline with repeal of the prevailing wage law.

One of the studies we examined earlier also indicated that the wages of lower-skilled workers declined more as a result of repeal than the wages of other construction workers. This evidence indirectly suggests that projects requiring more lower-skilled labor may be among those projects most likely to cost more as a result of prevailing wage laws. Even without a prevailing wage requirement, union labor and union contractors may be able to compete well with nonunion contractors on jobs requiring greater skill levels. But they may not be as competitive, without a prevailing wage requirement, on jobs requiring fewer skilled laborers.

Indirect evidence also comes from a 2001 Kentucky study that examined how a worker's wages on public projects differed from those on private construction projects.⁴⁵ The study's authors received information from contractors on the wages they paid workers on public projects that required the payment of prevailing wages. Using a random sample of these workers, the study's authors then asked contractors to report the wages earned by the workers on private construction projects. The study reported that 60 percent of the workers earned less on private jobs and that the wages paid to all of the workers in the sample were 24 percent lower on private jobs.

The Kentucky study provides some evidence that prevailing wage laws increase construction costs. Unlike the wage differential studies which fail to consider

⁴⁵ Program Review and Investigations Committee, Legislative Research Commission, *An Analysis of Kentucky's Prevailing Wage Laws and Procedures*, Research Report No. 304 (Frankfurt, Kentucky, December 2001).

productivity differences, it controls for productivity differences, to some extent, by examining the same workers on both public and private projects.⁴⁶ However, the study did not analyze fringe benefits, and its conclusions were based on a relatively small percentage of those surveyed. Only 15 percent of the surveyed contractors with public projects responded with information about the wages they paid on private projects. It is unclear whether the results from this small sample of contractors are representative of all contractors working on public projects in Kentucky.

A different sort of evidence was provided by a study of the effect of Utah's repeal of its prevailing wage law.⁴⁷ This study found that, while construction contract awards may have decreased slightly after repeal, overall construction costs including the costs of change orders increased. Prior to repeal, contract awards on road construction projects averaged about 91 percent of the state engineer's estimated project cost. After repeal, the awards fell to 89 percent of estimated costs. However, total costs, including the costs of change orders during the construction process, increased from 93 to 95 percent of the estimated project cost. The authors of the study were unable to directly measure the impact of repeal on construction costs, but they concluded that repeal of prevailing wage laws would result in expensive change orders and cost overruns.

While the Utah study provides information worth considering, it is unclear whether these results are typical. No other study has examined the impact of repeal on change orders. For example, all of the regression studies use the initial contract award amount and do not include the cost of change orders. In addition, it is unclear whether other factors besides the repeal of Utah's prevailing wage law might explain the increased use of change orders.

Construction Quality

Supporters of prevailing wage laws claim that these laws improve the quality of public construction projects. They argue that contractors, when required to pay a higher compensation rate, employ workers with greater skills and expertise. It is assumed that higher quality labor will result in higher quality construction work. For example, a 1995 report cited evidence from a report by the Inspector General of the United States Department of Housing and Urban Development showing a relationship between labor violations and poor quality construction.⁴⁸ The Inspector General's report found that the use of workers paid less than the prevailing wage led to poor quality construction work on 17 projects.⁴⁹

⁴⁶ While the Kentucky study examined the same workers on both public and private projects, it is not clear whether the work they performed on private projects was comparable to that performed on the public projects. In addition, their productivity could have been higher on public projects if more labor-saving equipment was used on public projects.

⁴⁷ Philips, Mangum, Waitzman, and Yeagle, "[Losing Ground](#)," 13-15.

⁴⁸ Dale Belman and Paula B. Voos, "[Prevailing Wage Laws in Construction: The Costs of Repeal to Wisconsin](#)," (Milwaukee: The Institute for Wisconsin's Future, October 1995), 10.

⁴⁹ Unfortunately, Belman and Voos did not provide a complete reference for the Inspector General's report including the year of publication. As a result, we have been unable to review the report.

There is insufficient evidence to assess the claim that prevailing wage laws improve construction quality.

This link between higher paid workers and better quality construction has some intuitive appeal. But economic theory does not necessarily link pay and quality work. For example, a 1983 paper showed that hiring more expensive labor does not necessarily result in higher quality construction work.⁵⁰ Contractors may respond to higher wage rates by substituting materials or other inputs of lesser quality and using fewer workers. The final construction product may be of higher or lower quality depending on the response of contractors.

As a result, economic theory cannot resolve the issue of how prevailing wage requirements affect construction quality. Research that analyzes the difference in construction quality associated with prevailing wage requirements is needed. Unfortunately:

- **There has been little or no comprehensive research on the issue of whether prevailing wage laws have resulted in better quality construction.**

Consequently, we are unable to draw any conclusions about the effect of prevailing wage requirements on the quality of construction work.

The lack of research in this area probably reflects the unavailability of information on construction quality and the difficulty of isolating the impact of labor on the quality of the final product. In order to address this issue, one would need to examine the quality of public construction work in states before and after they either implemented or repealed a prevailing wage requirement. Some data sources provide information on the cost of construction projects, and this information has been used by researchers to examine the impact of prevailing wage laws on construction costs. But information is not available on the quality of construction work.

In addition, a useful study would also have to be able to isolate the impact of labor on construction quality. This may be difficult since quality may be affected not only by the skills of construction workers but also by the construction materials used on the project and the skills of the architects and engineers in designing the project.

BROADER ECONOMIC IMPACTS

A number of studies have examined the broader economic impacts of prevailing wage laws. Three of these studies focused on the net impact on a state's budget from a repeal or weakening of the state's prevailing wage requirement. The net impact includes the impact on state taxes from reduced income earned by construction workers as well as cost savings to state government from lower construction costs. Two additional studies examined not only the impact on state tax collections but also the impact on other state economic indicators such as employment, personal income, or gross state product.

⁵⁰ Michael R. Metzger and Robert S. Goldfarb, "Do Davis-Bacon Minimum Wages Raise Product Quality?" *Journal of Labor Research* 4, no. 3 (Summer 1983), 265-272.

A number of studies have estimated that prevailing wage laws increase state tax revenues more than they increase the costs of public construction projects.

Net Impact on State Budgets

In the mid-1990s, three separate studies in Utah, Wisconsin, and California calculated the impact on state budgets from the repeal or weakening of state prevailing wage requirements. Each study concluded that it may be financially advantageous for a state to require the payment of prevailing wages even if the costs of state-financed construction projects are higher. These studies claimed that state tax collections would be higher if prevailing wages were paid and that the additional state revenues would likely offset the increased costs of construction.

As mentioned earlier, the authors of a 1995 study estimated that the repeal of Utah's prevailing wage law reduced the wages of construction workers by about 5 percent throughout the construction industry.⁵¹ Based on that reduction in construction wages, they calculated that the repeal would not save Utah any money unless it reduced state construction costs by more than 3 percent. The authors concluded that, without larger construction cost savings, Utah would lose more in tax revenues from repeal than it gained in construction cost savings. The authors also calculated that the federal budget would lose more in tax revenues than it would gain in construction cost savings from the repeal of the federal Davis-Bacon Act. They estimated net losses for the federal budget at all levels of construction cost savings up to 11 percent.

Similarly, a 1995 Wisconsin study concluded that a repeal of the state's prevailing wage law would reduce state income and sales tax revenues by about \$11.6 million annually.⁵² That loss due to lower construction worker income would more than offset an estimated \$4.8 million savings in public construction costs. The authors of the study estimated identical revenue losses and savings in Wisconsin from a repeal of the federal prevailing wage requirements, as well as a \$1 billion increase in the federal budget deficit.

A 1996 study concluded that a proposed change in California's method of calculating prevailing wages would reduce state income and sales tax revenues by far more than would be saved in lower construction costs.⁵³ In this case, the California Department of Industrial Relations had proposed changing from calculating prevailing wages based on the mode to calculating them using a majority/average method.⁵⁴ The author of this study assumed that the department's estimate of a 20 percent reduction in prevailing wage rates would spill over to the entire construction industry and reduce all construction workers' wages by 20 percent. Based on that assumption, he estimated revenue losses of

⁵¹ Philips, Mangum, Waitzman, and Yeagle, "[Losing Ground](#)."

⁵² Belman and Voos, "[Prevailing Wage Laws in Construction](#)."

⁵³ Michael Reich, "Prevailing Wage Laws and the California Economy," (Berkeley: Institute of Industrial Relations, University of California at Berkeley, February 1996).

⁵⁴ Under the majority/average method, the prevailing wage rate equals the mode as long as the mode represents a majority of the reported compensation rates. Otherwise, the prevailing wage rate is the average reported rate. Along with a change to the majority/average method, the department also proposed discontinuing the practice of updating prevailing wage rates based on union rates as union contract rates change.

Several studies have also claimed broad economic benefits for prevailing wage laws.

about \$800 million annually, which were well in excess of the department's estimate of an annual construction cost savings of \$200 million.

Impact on State Economies

Two studies have suggested that prevailing wage laws have even broader economic benefits for states. For example, a 2004 study concluded that a repeal of Missouri's prevailing wage law would result in a statewide loss of income and revenue of between about \$318 million and \$384 million annually.⁵⁵ These figures included an annual reduction in state tax revenues of between \$23 million and \$28 million. In addition, the totals included a reduction in income for Missouri residents of between \$294 million and \$356 million. Slightly less than half of the overall reduction in income was due to direct income losses for construction workers, while the remainder was due to losses for other state residents. The latter losses were expected to occur as construction workers had less money to purchase goods and services produced by other Missouri residents.

Unlike the studies mentioned above, the authors of the Missouri study did not directly compare the estimated loss in state tax revenues with an estimate of construction cost savings. Instead, they compared the overall reduction in incomes and tax revenues of \$318 million to \$384 million with a hypothetical 5 percent construction cost savings of \$54 million annually. Elsewhere in the study, the authors presented an analysis suggesting that repeal would not reduce construction costs.

A 2005 study examined the economic impacts of requiring the payment of prevailing wages on a \$10 billion school construction program in New Jersey.⁵⁶ The study estimated the economic consequences of a scenario in which 100 percent of the construction work was compliant with prevailing wage requirements and 10 percent of the work was completed by out-of-state contractors. This scenario was compared with a second and third scenario in which only 50 percent of the work was compliant with prevailing wage requirements. For the second scenario, the authors of the study assumed that 25 percent of the income and taxes generated by noncompliant contractors would not benefit New Jersey, while they assumed the loss would be 75 percent for the third scenario. The authors justified these assumptions based on information suggesting that a majority of the workers hired by noncompliant firms were recent immigrants. Anecdotal sources suggested to them that workers of noncompliant firms spend between 25 and 75 percent of their earnings outside New Jersey and that between 25 and 75 percent of the workers of noncompliant firms pay no state income taxes.

Despite the authors' assumptions about workers not receiving the prevailing wage, the results of the New Jersey study were not quite as favorable for prevailing wage supporters as the studies previously mentioned. The New Jersey study found that the growth in state and local income taxes over a 17-year period

⁵⁵ Kelsay, Wray, and Pinkham, *The Adverse Economic Impact*, 56.

⁵⁶ Michael Greenberg, Nancy Mantell, Michael Lahr, Michael Frisch, Keith White, and David Kehler, "Evaluating the Economic Effects of a New State-Funded School Building Program: The Prevailing Wage Issue," *Evaluation and Program Planning* 28, no. 1 (February 2005), 33-45.

would be roughly \$200 to \$400 million, or 18 to 35 percent, less under the second and third scenarios compared with the fully compliant scenario. In addition, the growth in state personal income would be between 1 and 23 percent less under the second and third scenarios, respectively. However, the study found that the growth in gross state product would be 4 percent higher under the second scenario than for the fully compliant scenario, while the growth would be 4 percent lower for the third scenario. Furthermore, the growth in non-agricultural employment would be between 32 and 40 percent more under the less compliant scenarios.

Analysis

These studies raise an interesting issue as to the broader economic impacts of prevailing wage requirements. Policy makers should be concerned not only with the impact of prevailing wage laws on public construction costs but also with the broader impacts on state budgets and economies. However, we believe that these studies make some inappropriate assumptions. We conclude that:

- **Existing research has not provided convincing evidence about the financial impact of prevailing wage laws on state budgets or state economies.**

In our view, the impact of prevailing wage laws on state budgets and economies is unclear.

Our primary concern about these studies is that they make different assumptions about the impact of prevailing wage laws on wages and construction costs. On the one hand, the four studies that looked at the impact of repealing or weakening prevailing wage laws assume that wages would decline for all construction workers, including those doing work on residential and other private construction work not affected by prevailing wage requirements. This reduction in wages is used to calculate the estimated reduction in state tax collections. But, on the other hand, these studies assume that the only purchasers of construction services that benefit from lower prices are government agencies. If wages decline for construction workers on private construction projects, it seems possible that prices paid by private businesses and individuals might decline as well. Lower private construction prices might in turn result in greater spending by private businesses and individuals that provides a stimulus to a state's economy. Yet these studies ignore any impact that lower wages might have on the private sector.

There is not enough information contained in the New Jersey study to determine whether it suffers from a similar problem. But we have other concerns about this study. For example, a key assumption made in the study relied on unspecified anecdotal sources. It is unclear whether the assumptions made about out-of-state spending and nonpayment of taxes by workers of noncompliant firms are reasonable for New Jersey or applicable to other states like Minnesota. In addition, tables in the study appear to use assumptions about wages and benefits that are questionable or at least not applicable to Minnesota.⁵⁷ The study appears to assume that workers receiving the prevailing wage earn fringe benefits that are 22 percent higher than their wages. As a result, while workers not earning the

⁵⁷ Greenberg et al., 43-44.

prevailing wage are assumed to earn a wage that is 30 percent lower than that earned by those receiving the prevailing wage, they receive overall compensation that is 65 percent lower. This fringe benefit assumption for prevailing wage earners is not consistent with any union compensation package for construction workers in Minnesota.

List of Recommendations

- The Department of Labor and Industry should develop and implement options to increase contractors' responses to the prevailing wage survey ([p. 30](#)).
- The Legislature should consider options for changing the prevailing hours of labor for prevailing wage projects ([p. 43](#)).
- The Department of Labor and Industry should modify its computer program so that the calculation of prevailing wages complies with administrative rules. In addition, the department should revise its rules so that wage and fringe benefit information from a county is not ignored when prevailing wages in that county are based on adjacent-county information ([p. 45](#)).
- The Department of Labor and Industry should include in certified prevailing wage rates those fringe benefits that are allowed under statute ([p. 47](#)).
- The Department of Labor and Industry should institute measures to review prevailing wages prior to their publication to ensure that they are accurate ([p. 48](#)).
- The Department of Labor and Industry should audit a sample of the 2006 prevailing wage data. If reporting problems are identified, the department should establish an ongoing audit strategy. In addition, the department should take steps to limit duplicate reporting and reporting of inappropriate projects ([p. 49](#)).
- The Department of Labor and Industry should explore additional options for accepting electronic submissions of wage data ([p. 50](#)).
- The Legislature should make the agencies and local governments contracting for state-funded construction projects primarily responsible for enforcement of the state's prevailing wage law. The Legislature should direct the Department of Labor and Industry to provide training and technical assistance to contracting agencies and local governments ([p. 59](#)).
- The Legislature should examine the need for additional funding for compliance monitoring and enforcement activities ([p. 60](#)).
- The Legislature should also consider the need for additional funding for the Department of Labor and Industry to provide adequate training and technical assistance to contracting agencies responsible for enforcement ([p. 60](#)).

- The Department of Labor and Industry should develop written training materials for contracting agencies and local governments. These documents should provide needed technical information about the operation of the prevailing wage law, as well as guidance on how to monitor and enforce compliance (p. 60).
- The Legislature should require contractors and subcontractors on a construction project that is subject to the state's prevailing wage law to provide weekly or biweekly certified payroll records to the public agency contracting for the work (p. 61).
- At a minimum, the Legislature should give agencies and local governments contracting for state-funded construction projects the authority to demand certified payroll records from contractors and subcontractors and examine their records of hours, wages, and benefits (p. 61).
- The Department of Labor and Industry should provide contracting agencies and local governments with suggested guidelines on the frequency and nature of onsite interviews of construction workers (p. 61).
- The Department of Labor and Industry should establish written procedures for the filing and handling of complaints and inquiries regarding possible noncompliance with the state's prevailing wage law (p. 62).
- The Department of Labor and Industry should develop model language on prevailing wages for contracting agencies and local governments to use in their construction contracts (p. 63).
- The Department of Labor and Industry should promulgate rules that define the job responsibilities of workers in the various construction job classes listed in the department's rules (p. 63).
- The Legislature should consider allowing the Attorney General to prosecute a suspected violation of the prevailing wage law if the local prosecutor declines to file charges (p. 65).
- The Legislature should consider giving construction employees a private right of action to sue their employer if they are not paid the prevailing wage rate on a state-funded construction project. Consideration should also be given to allowing the recovery of damages and reasonable attorney's fees, in addition to unpaid wages (p. 65).



January 23, 2007

Mr. James Nobles, Legislative Auditor
Office of the Legislative Auditor
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: Report entitled *Prevailing Wages*

Dear Mr. Nobles:

Thank you for the opportunity to respond to your report on prevailing wages. 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.

We are in general agreement with all of the Major Findings outlined on the summary page of the report. Specifically, we are in agreement with the two major Key Recommendations of the report directed to the department, also found on the summary page.

We concur with the Key Recommendation of taking steps to improve the number of responses to the annual survey. We are increasing the number of contractors surveyed from those currently in our data base by comparing to a commercially available data base of contractors, as suggested by one of your auditors. Further, the Governor's budget recommends an increase for the department to assist with improving the number of responses. If approved, this will allow us to engage in additional outreach and education targeted to the counties and area where the response rate has been low.

The process of implementing the second Key Recommendation to the department has already begun. We concur with the recommendation to revise our computer program, and our internal review process to assure accurate rates in accordance with the law and rules. The first revision to the computer program to correct the 11 counties misidentified as adjacent has been completed, and the other revisions are under way. The internal quality review process has already been bolstered to provide a double check on each rate.

Upon the more specific recommendations of the report directed to the department identified in the body of your report:

- The department has adopted the recommendation to increase participation in the annual survey found on page 30 of the report by using the larger list of contractors suggested by one of your auditors and, to the extent funding is made available, will increase outreach and education, targeted to counties and areas where participation has been low.
- The department has corrected the identification of adjacent counties as recommended on page 45 of the report, for the purpose of setting wage rates using adjacent county data when the survey data produces insufficient data for the subject county to set a rate.
- The department has been in discussions with its IT personnel on how modify the computer program to reflect the rule requirement of two projects reported per county as outlined at the bottom of page 44 and top of page 45 in the report.
- The department rules are being reviewed to determine how to resolve the current apparent anomaly that, if only one project is reported in a county, and therefore adjacent county data is utilized to set a rate, the wage rates from the one project in the subject county must be disregarded and the rate set solely on data from adjacent counties. We would expect that to be a non-controversial rule that could be adopted without a hearing.
- The department has initiated corrective action to insure that proper data is included in Fringe Benefit calculations which in some cases may have been misidentified. The first step, which we will adopt, is to take the recommendation of the report at page 47 to use a supplemental form when a union contact does not specifically identify amounts that might be for an unallowable fringe benefit.
- The department has already initiated a more effective system of reviewing determined wage rates prior to certification as recommended on page 48 of the report. Now there is a manual double checking of each rate to determine whether it is a union rate, and therefore might require adjustment if it is not a current, local rate.
- The department will take the steps to limit duplicate reporting and reporting of inappropriate projects recommended on page 49 of the report. This will occur before the 2007 survey by revising the instructions on the survey to more clearly identify what constitutes a project and by searching the survey data for key words that tend to identify questionable projects and resolving those questioned projects prior to determining wage rates. The department also concurs with the recommendation that an audit of 2006 data should be conducted, also on page 49 of the report, but current staffing resources do not allow an extensive audit.
- The department concurs with the recommendation on page 50 of the report that we should explore expanding the current options for accepting electronic submission of wage data. We will do so as our resources allow, but we do not currently have the capabilities to go beyond accepting survey responses through our website as we do now.

As a point of clarification, the report refers to 48 classifications of Labor (on page X Report Summary). Some Job classifications are grouped so the actual number of covered Job classifications is 147.

With respect to enforcement, in your findings and several other portions of the report, you state the law provides we are to enforce the law on state building projects, but the report also accurately states that the law does not provide this department with the necessary authority to do enforcement. We have consistently believed the statute leaves us with no effective means of enforcement, a position supported over the years by our assigned assistant attorney generals. Specifically, as we are not the owners of projects, we are not authorized to withhold payments or terminate contracts, which is the primary method of enforcement. Your report also does a good job of addressing that we do not have the staff resources to engage in enforcement.

The report makes a series of recommendations to the legislature that the law be amended to clarify that enforcement of the law on building projects lies with the owners or contracting agencies. In conjunction with the legislative recommendations, your report recommends certain advisory and technical assistance roles for the department to help contracting agencies in enforcement. We concur with those recommendations and will follow them to the extent the legislature enacts your recommendations and we have the resources to do so. In fact, we have provided advice and technical assistance to contracting agencies and owners as requested over the years and continue to do so.

The report accurately summarizes our procedure for handling complaints on page 58 and notes that the procedure used is not written. The department concurs with the recommendation on page 62 that the procedure be written and clear. The department will place the complaint filing and handling procedure in writing, along with some other prevailing wage procedures, prior to the retirement of its most experienced senior labor investigator later this year.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Brener", written over a light blue horizontal line.

Scott Brener
Commissioner

MSB/WAB/sb

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Tax Compliance, March 2006

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State Archaeologist, April 2001

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9-1-1 Dispatching: A Best Practices Review, March 1998

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Economic Status of Welfare Recipients, January 2002

Juvenile Out-of-Home Placement, January 1999

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Preserving Housing: A Best Practices Review, April 2003

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Practices Review, April 2002

Local E-Government: A Best Practices Review, April 2002

Affordable Housing, January 2001

Preventive Maintenance for Local Government Buildings:

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Jobs, Training, and Labor

Prevailing Wages, February 2007

Workforce Development Services, February 2005

Financing Unemployment Insurance, January 2002

Miscellaneous

Economic Impact of Immigrants, May 2006

Gambling Regulation and Oversight, January 2005

Minnesota State Lottery, February 2004

Transportation

Metropolitan Airports Commission, January 2003

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