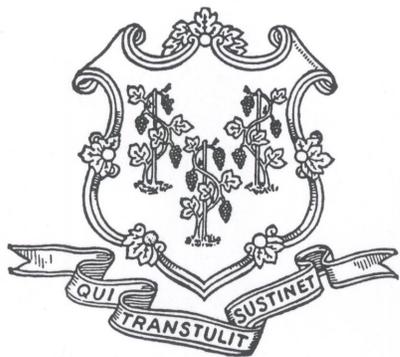


# **PREVAILING WAGE LAWS IN CONNECTICUT**

Connecticut

General Assembly



LEGISLATIVE  
PROGRAM REVIEW  
AND  
INVESTIGATIONS  
COMMITTEE

**December 1996**

**CONNECTICUT GENERAL ASSEMBLY  
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

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LEGISLATIVE PROGRAM REVIEW  
& INVESTIGATIONS COMMITTEE

**Prevailing Wage Laws  
in Connecticut**

DECEMBER 1996

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# Introduction

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Individual states began adopting prevailing wage laws in the 1890s. These laws were part of reform efforts to improve conditions in the workplace, including imposition of restrictions on child labor and the length of the workday. Between 1891 and 1923, seven states adopted prevailing wage statutes requiring payment of specified hourly wages on government construction projects.

The federal government and 18 additional states, including Connecticut, adopted construction related prevailing wage laws during the 1930s. At that time, governmental entities were often the major customers for construction work, and there was a concern the requirement that publicly funded projects be awarded to the lowest bidder would drive down the wages paid to construction workers. The prevailing wage laws were meant to ensure the hourly wages commonly paid construction workers in an area where a project was being constructed would be the minimum wage paid on government funded projects.

Today, most public construction projects contracted for or funded by the federal government are covered by the federal prevailing wage law, the Davis-Bacon Act. In addition, 30 states have prevailing wage laws that apply to state and municipal government construction projects within their borders. These laws are often called "little" Davis-Bacon acts.

Prevailing wage laws require the payment of a specified hourly wage to certain workers on certain government construction projects. This wage includes both a basic hourly rate of pay and an amount for benefits. The exact figure varies, depending on the classification of the worker, the geographical area where the project is located, and the type of construction.

The federal law applies to projects costing more than \$2,000. The Connecticut law currently applies to state and municipal public works projects valued at or above \$400,000 for new construction work and \$100,000 for renovation work. The same schedules of prevailing wage rates used in Connecticut for projects covered by the federal Davis-Bacon Act are used for projects covered by the state law.

The primary focus of the Legislative Program Review and Investigations Committee's study of prevailing wage laws was on the costs and benefits of the Connecticut law. The committee also reviewed processes and formulas used to establish prevailing wage rates, examined enforcement policies and activities, and analyzed the effects various changes would have on implementation of the law.

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## **Methodology**

The program review committee held a public hearing on August 20, 1996, at which representatives of municipalities, contractors, unions, and other parties interested in the law submitted testimony. Committee staff also met with or obtained data from many of those groups.

Program review staff interviewed Connecticut Department of Labor (DOL) staff involved with implementation of the prevailing wage law, examined monthly activity reports and records on construction activity at the department, and accompanied wage enforcement agents on site visits to construction projects in two regions of the state. Information was also obtained from the Department of Public Works (DPW) and the Department of Transportation (DOT) regarding enforcement activities and construction costs. Information regarding the process used to establish wage schedules was obtained from a review of federal documents and interviews with U.S. Department of Labor employees in several regional offices.

Current Connecticut prevailing wage rates for all established job classifications were reviewed. Twelve job titles were selected as a sample to examine in detail. For those jobs, prevailing wage rates from March 1996 were obtained for Connecticut and other nearby states. Additional wage information for Connecticut was obtained from private employers, state labor department survey reports, state contract agreements, and apprenticeship records.

The program review committee also sent a questionnaire to the chief executive officers of the state's 169 municipalities, regarding their experiences with recent public construction projects. After two requests for participation, 86 towns had returned surveys by the deadline for a final response rate of 51 percent. The responses are summarized in Appendix A.

## **Report Format**

Chapter One of this report describes the state and federal laws in detail and provides an overview of prevailing wage requirements in other states. Chapter Two explains the process for determining prevailing wages and provides examples of different rates. Chapter Three describes the roles and responsibilities of the Department of Labor and the other major parties involved with prevailing wage laws. Chapter Four presents an estimate of the cost of the state's prevailing wage law and the program review committee's findings and recommendations regarding the law.

## **Agency Response**

It is the policy of the Legislative Program Review and Investigations Committee to provide agencies subject to a study with an opportunity to review and comment on the recommendations prior to publication of the final report. The response from the Department of Labor is contained in Appendix D.

## CHAPTER ONE: PREVAILING WAGE LAWS

- Prevailing wage laws are aimed at preventing government low bid requirements from reducing the market price for labor to levels that would disrupt the local economy.
- Connecticut law currently applies to state and local government construction projects at or above \$100,000 for renovation work and \$400,000 for new construction.
- Federal Davis-Bacon Act applies to federally funded construction projects costing more than \$2,000.
- 30 states have active prevailing wage laws.
  - Threshold levels range from zero to \$500,000.
  - Processes used to set rates vary -- Connecticut is one of a few that uses federal rates as state rates.



## PREVAILING WAGE LAWS

All prevailing wage laws are based on the concept of establishing a minimum rate of pay for certain classes of workers on certain kinds of government projects. Although the specific details of the laws vary within the federal government and across states, the philosophical basis of the laws is the same. Specifically, prevailing wage laws are aimed at preventing the low bid requirements of government contracting from reducing the market price for labor to a level that would disrupt the local economy.

### Connecticut Law

Connecticut's principal prevailing wage law is C.G.S. Sec. 31-53. It applies to certain public works projects contracted for by the state, political subdivisions of the state, and agents of either. New construction projects costing \$400,000 or more and remodeling, refinishing, refurbishing, rehabilitation, alteration, and repair projects costing \$100,000 or more are covered. (If a governmental body uses its own employees to perform work on a construction project, the cost of their labor is not included in the cost of the project for purposes of determining the applicability of the law.)

The law requires contractors to pay "mechanics, laborers, or workmen" the wage that is customary or prevailing for the same work in the same trade or occupation in the town where the project is to be constructed. *Wage* is defined as the total cost of hourly wages and contributions to employee welfare funds.

The employee categories are not statutorily defined, but supervisory personnel and individuals who work as independent contractors are excluded from prevailing wage coverage. Certain other workers, such as truck drivers, are only covered by the law, if they spend a certain portion of the work day physically on the site of the project. Thus, only some employees on projects covered by the prevailing wage law must be paid at rates specified under the law.

The state commissioner of labor is responsible for designating the prevailing wage rates. This can be done either by holding a hearing in the locality where the project will occur or by adopting rates set for Connecticut by the U.S. secretary of labor under the federal Davis-Bacon Act. The latter method has been used since 1977, when it first became an option. Because Connecticut uses the federal wage schedules, the labor department relies on the federal regulations to guide its interpretation and enforcement of most aspects of the state law.

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Any state or municipal entity or its agent that will be contracting for a project covered by the state prevailing wage law must obtain the schedule of wages to be paid on that project from Connecticut's commissioner of labor prior to soliciting bids for the job. During the project, as part of its contract management responsibilities, the contracting entity should monitor contractor and subcontractor compliance with the law.

The statutory duties of contractors and subcontractors include posting wage schedules, making required prevailing wage payments at least weekly, and submitting certified payrolls to the contracting entity that indicate the wages received by each covered employee. Contracting agencies that find a contractor or subcontractor is not paying the required rates can terminate all or part of their contract upon written notice. The commissioner of labor must be notified of this action and the steps taken to collect the required wages. In such cases, the contracting agency is authorized to use payments owed to the contractor to pay employees wages they are due.

The Department of Labor has the authority to direct a contractor found in violation of the law to repay workers. Contractors and subcontractors who fail to comply with the prevailing wage law can be disqualified from bidding on future construction projects. Depending on the specific transgression, they can also be fined or imprisoned.

**Highway projects.** Although C.G.S. Sec. 31-53 is broad enough to cover all types of public construction projects, another statute mandates the payment of prevailing wages to employees on highway contracts. C.G.S. Sec. 31-54 applies specifically to "state highways and bridges on state highways." It contains no limiting threshold levels and requires the labor commissioner to set rates after holding a hearing at the relevant time. The penalty for violations of the section is \$100 per offense.

Connecticut Department of Transportation construction contracts contain language referencing both Sections 31-53 and 31-54. In addition, many DOT projects are federally funded, which means federal prevailing wage provisions are also included in their contracts.

**Historical changes.** Connecticut adopted its principal prevailing wage law in 1933, two years after the federal Davis-Bacon Act. The initial law only applied to the construction and repair of public buildings by the state. The law for state highway projects was adopted in 1935.

Subsequently, similar types of contracts entered into by other governmental entities were covered. In 1955, under C.G.S. Sec. 7-112, the requirements of both state prevailing wage laws were applied to work performed for any political subdivision of the state. (In 1961, the reference to political subdivisions was also placed directly in Sec. 31-53.) In addition, between 1950 and 1987, compliance with Sec. 31-53 was added to statutory sections affecting housing authorities and developers, community development program contractors, and the University of Connecticut Health Center Finance Corporation.

The specific requirements of Sec. 31-53 have been modified numerous times. Originally, the commissioner of labor and factory inspection was responsible for determining prevailing wages, but only in cases where there was a dispute. In 1937, a three-person board, representing labor, construction employers, and the state, was established to predetermine rates by holding hearings. In 1951, the board was eliminated, and the function was returned to the commissioner. In 1963, the scope of projects covered by the law was changed to “public works projects.”

The definition of *wage* was revised in 1961 to require the calculation of an hourly rate of pay as well as establishment of an amount for employee benefits. The types and dollar values of projects covered by the law have also been changed; Table I-1 lists the major revisions and the year each occurred. (Appendix B describes revisions to other sections of the law in detail.)

**Table I-1. Changes in the Projects Covered by Connecticut’s Prevailing Wage Law.**

<i>Year</i>	<i>Type of Project</i>	<i>Type of Work</i>	<i>Threshold</i>
1933	any public building	construction, remodeling, or repair	no limit
1961	any public building	construction, remodeling, or repair	<b>\$5,000+</b>
1963	<b>any public works project</b>	<b>construction, alteration, or repair</b>	\$5,000+
1975	any public works project	<b>construction, remodeling, refinishing, rehabilitation, refurbishing, alteration, or repair</b>	\$5,000+
1979	any public works project	<b>new construction</b>	<b>\$50,000+</b>
		<b>remodeling, refinishing, rehabilitation, refurbishing, alteration, or repair</b>	<b>\$10,000+</b>
1985	any public works project	new construction	<b>\$200,000+</b>
		remodeling, refinishing, rehabilitation, refurbishing, alteration, or repair	<b>\$50,000+</b>
1991	any public works project	new construction	<b>\$400,000+</b>
		remodeling, refinishing, rehabilitation, refurbishing, alteration, or repair	<b>\$100,000+</b>

Note: The 1933 language is the original law; subsequent changes are shown in bold type.

Sources of Data: Connecticut General Statutes and Public Acts

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The original fine for violating C.G.S. Sec. 31-53 remained \$100 per offense until 1991, when it was increased to between \$2,500 and \$5,000. A provision for terminating the contracts of violators was added in 1973. In 1993, penalties for filing false payrolls were adopted.

The statutory section regarding highway projects (C.G.S. Sec. 31-54) has remained nearly unchanged since its adoption. The authority for rate setting was changed from a three-person board to the commissioner of labor in 1951, and the definition of “wage” was revised during the 1960s to match the one contained in Sec. 31-53.

## **Federal Law**

Many discussions of federal prevailing wage law reference only the Davis-Bacon Act. In fact, there are a number of federal laws that contain prevailing wage requirements.

The Walsh-Healey Public Contracts Act of 1935 mandates minimum wage and other labor provisions for federal contracts over \$10,000 that involve the manufacture or furnishing of goods, supplies, or equipment. The McNamara-O’Hara Service Contract Act of 1965 requires the payment of prevailing minimum wages and fringe benefits on federal service contracts over \$2,500. Services covered by that law include janitorial, security, cafeteria, grounds maintenance, and laundry.

The program review study, however, was limited to construction related laws. Nearly 60 acts that provide federal assistance through grants, loans, loan guarantees, and insurance for construction purposes incorporate the provisions of the Davis-Bacon Act, although in some cases exemptions can be granted. These laws are referenced as Davis-Bacon Related Acts (DBRAs).

The Davis-Bacon Act and the DBRAs have similar, but not identical, requirements to Connecticut’s prevailing wage law. The federal laws apply to the construction, alteration, and repair of public buildings and public works, if the contracting party is the federal government or an entity receiving federal assistance and more than \$2,000 is being spent.

The federal laws cover laborers and mechanics, including workers whose duties are “manual or physical in nature,” but not those whose work is “mental or managerial.” The language in the Davis-Bacon Act describes prevailing wage as that received by workers on projects of a similar character in the city, town, village, or other subdivision of the state where the work is to be performed. The federal definition of “wage” includes both the basic hourly rate of pay and the cost of fringe benefits. The specific rates are determined by the secretary of labor.

Contracting agencies are responsible for ensuring the appropriate schedule of wages for a project is contained in the bid solicitation and the contract specifications. They also monitor

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day-to-day compliance with the law. The contractors and subcontractors on a project are responsible for making required payments and maintaining payroll records.

Contractors found in violation of the law can be debarred from future federal work for up to three years. If employees are owed back wages and the contractor refuses to pay them, contract funds can be withheld to cover the amount owed. Depending on the characteristics of the particular violation, criminal prosecution may also be initiated.

### **Other States**

In all states, public construction projects that fall under the requirements of the Davis-Bacon Act or DBRAs must comply with the federal prevailing wage law. Other governmental projects in the individual states are covered by prevailing wage provisions only if the state has its own such law.

The number of states with prevailing wage laws has been shifting recently as court challenges and legislative changes have resulted in the suspension or elimination of such laws in several states. Appendix C describes the status of prevailing wage laws in each of the 50 states and the District of Columbia.

As of spring 1996, 30 states had active prevailing wage laws. Six applied the law to all covered projects regardless of the dollar value, and 18 states had thresholds of \$75,000 or less. Four states (Delaware, Kentucky, Nevada, and Wisconsin) had a limit equal to or higher than Connecticut's renovation threshold; only Maryland (\$500,000) had a higher limit for new construction.

The processes used by states to determine prevailing wage rates vary, both conceptually and in terms of specificity. Connecticut and Rhode Island use the rates established by the U.S. Department of Labor for Davis-Bacon projects, and this option recently became available in Kentucky. In other states, prevailing wage rates may be calculated from wage data collected through surveys, public hearings, or reference to collective bargaining agreements.

Specific wage rates are set based on the amount paid to a majority of the workers in each classification, an average (either the mean or median) of the wage rates paid by different employers, the rates established under collective bargaining agreements, or an unspecified method. Penalties for violating state prevailing wage laws include fines, bans on future contracts, and imprisonment.



## CHAPTER TWO: WAGE RATES

- Prevailing wage rates include an amount for basic hourly pay and benefits.
- Rates differ by category of worker, by location, and by type of work.
  - Dozens of different job classifications are specified.
  - Geographic boundaries are based on county lines, although in some cases smaller groups of towns are used.
  - Principal categories of construction are building, heavy, highway, and residential.
- Wage rates are established by the U.S. Department of Labor using surveys of contractors who have completed construction work in a particular area during a specified time period.
  - Project wage determinations apply to specific projects and expire after 180 days.
  - General wage determinations, used in Connecticut for projects covered by the state law, apply to projects in specified geographical areas and remain in effect until changed by U.S. secretary of labor.
- Prevailing wage rates are set to equal the majority wage (received by 50 percent plus one worker) or an average of the wages received by all workers in a classification, if there is no majority wage.
  - Rates based on collective bargaining agreements are updated when those agreements change, even if new survey not conducted.



## WAGE RATES

No single prevailing wage exists in Connecticut or any other state. Rates can differ across categories of workers, geographic regions, and types of construction. Once they are established, they can remain in effect for short, specified periods of time or indefinitely.

### Wage Components

The term “prevailing wage” means the total rate of hourly pay and benefits customary in a particular region. The wage schedules developed by the U.S. Department of Labor (and used by the Connecticut Department of Labor) indicate specific amounts for both components of the rate. The total of the two components equals the prevailing wage.

If benefits are not part of an occupation’s prevailing wage, the rate is set at the amount of hourly pay. Table II-1 displays a few of the nearly 100 prevailing wage rates for Hartford county. These examples indicate the diversity of rates, especially for fringe benefits.

**Table II-1. Sample Prevailing Wage Rates**

<i>Classification</i>	<i>Rate</i>	<i>Fringe</i>	<i>Total</i>
Sheetmetal Workers	\$21.56	\$11.36	\$32.92
Roofers: composition	\$17.65	\$7.475	\$25.125
Glaziers	\$18.88	\$4.58	\$23.46
Plasterers	\$17.00	--	\$17.00

Source of Data: U.S. Department of Labor, General Decision Number CT960004, March 15, 1996

Title 29, Part 5, Subpart B of the Code of Federal Regulations provides detailed information about the types of payments that can be used to meet prevailing wage requirements under the Davis-Bacon Act. These interpretations are also used by the Connecticut Department of Labor in its enforcement of the state’s prevailing wage law.

Benefits can include expenditures for medical or hospital care, compensation for occupational injuries or illnesses, unemployment benefits, life insurance, disability and sickness insurance, pensions, vacation and holiday pay, and defrayment of apprenticeship costs. However, these items only apply toward prevailing wage requirements, if the employer is not required by federal, state, or local law to provide the benefit.

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If a contractor selected for a prevailing wage project does not typically provide benefits equal to the mandated level, cash payments can be made to employees in amounts sufficient to meet the required total wage rate (hourly pay and benefits). An employee would then have the option of using the additional money to purchase the type of benefit not provided (e.g., medical or life insurance), if feasible given the cost and availability of the commodity. Federal regulations also allow an employer to pay less than the specified hourly pay component if the value of the fringe benefit component is high enough to produce a combined total equal to the required wage.

### **Classifications**

On any construction project, an assortment of workers are needed to carry out all of the required tasks. Employees include various skilled crafts people, machine operators, general laborers, and apprentices. Prevailing wage rate schedules identify the classes of workers likely to be employed on each of the four types of construction projects -- building, heavy, highway, and residential. (If a contractor wants to use a class of worker not listed in a wage determination, there is a process for requesting the U.S. Department of Labor to establish a prevailing wage rate for that additional classification.)

A single job category can include multiple subclassifications. For example, prevailing wage schedules for Connecticut include as many as six different kinds of laborer groups and 17 different kinds of power equipment operators. Similarly, different rates are set for painters in some wage schedules, depending on the mechanism or method used (e.g., brush, roller, spray, swing stage, etc.) and the item being painted (e.g., structural steel, vessels, etc.).

Apprentice is not a separate prevailing wage job classification, but the rate of pay for this type of work is set differently. Apprentices are paid a percentage of the full rate received by the craft that they are training to become. This percentage increases in steps, as the apprentice advances through the stages of the apprenticeship process.

### **Wage Determination Process**

The Davis-Bacon Act allows the U.S. secretary of labor to decide what method will be used to calculate the prevailing wage payable under the law. According to materials issued by the U.S. Department of Labor, the process used to determine rates is to survey contractors and subcontractors who have completed construction work in a particular geographic area during a particular time period regarding the wages they paid on those projects. Those surveyed are asked to indicate the hourly wages paid to designated classes of employees on specific types of projects completed during a specified time period (usually six to 12 months) preceding the survey.

Regional U.S. Department of Labor employees conduct the surveys and analyze the data. If a sufficient number of responses are received, the prevailing wage is calculated for the various

job classifications in the specified area. If a majority (i.e., 50 percent plus one) of the workers in a classification receive the same wage, that amount will become the prevailing wage. In such cases, that rate is usually the one contained in a collective bargaining agreement (CBA). This is because union workers are the ones most likely to earn exactly the same hourly pay to the penny.

If no single wage is received by a majority of the workers in the sample, a weighted average of the rates submitted for a specific classification will be used. After the regional office completes the new rate schedule, it is sent to the Wage and Hour Division in Washington. Once that office is satisfied with the validity of the work, the new schedule is released.

Two types of wage determinations can be issued. *Project wage determinations* are set for specific jobs and only apply to that project. Those rates expire 180 days after being issued. *General wage determinations* are set for geographic areas that have “well settled” wage patterns and are expected to have a large volume of construction work. They are published in the Federal Register and remain in effect until changed by the secretary of labor.

General wage determinations are more common, and they are the ones used by the Connecticut labor commissioner for the state’s prevailing wage law. Each schedule of rates applies to a specific location (often a county) and a type of construction.

Rate schedules are established for the different geographic areas and types of construction within a state. In some cases, the amounts to be paid for individual job classifications are the same statewide. For example, the prevailing wage rate for ironworkers throughout Connecticut is an hourly rate of \$22.25 plus a benefits rate of \$13.03, for a total rate of \$35.28.

Sometimes, the wage rates for an employee classification will differ by type of construction. Other times, they will differ by region. As a result, a number of different prevailing wage rates can exist within Connecticut for the same job classification.

Table II-2 presents an example of rates that differ among types of construction. Table II-3 provides an example of rates that differ among geographic areas of the state.

Two occurrences can cause general wage determinations to be modified. A schedule found to contain errors will be reissued in a corrected form, once the mistake is discovered. Determinations based on a collective bargaining agreement will be changed whenever the rates in that agreement change.

**Table II-2. Bricklayer Rates - Hartford County, March 1996.**

<i>Type</i>	<i>Rate</i>	<i>Fringe</i>	<i>Total</i>
Buildings	\$21.50	\$8.00	\$29.50
Heavy and Highway	\$16.75	\$7.85	\$24.60
Residential	\$12.55	\$1.50	\$14.05

Source of Data: U.S. Department of Labor, General Decision Numbers CT960004 and CT960009.

**Table II-3. Electrician Rates - Building Projects, March 1996.**

<i>County</i>	<i>Hourly Pay</i>	<i>Fringe Benefit</i>	<i>Total Wage</i>
Hartford (partial), NLondon (partial), Middlesex (partial), Tolland & Windham	\$22.00	\$9.82	\$31.82
Hartford (partial), Litchfield (partial), Middlesex (partial), NHaven (partial), & NLondon (partial),	\$21.20	\$9.07	\$30.27
Fairfield (partial), Hartford (partial), Litchfield (partial), & NHaven (partial)	\$22.00	\$9.38	\$31.38
Fairfield (partial)	\$28.00	28% (i.e., \$7.84)+\$.04+a	\$35.88+a
Fairfield (partial)	\$21.25	\$6.69+9.5% (i.e., \$2.02)	\$29.96

a = 7.44% (i.e., \$2.08) paid to Security Benefit Fund, not to exceed \$13.00 per day

Source of Data: U.S. Department of Labor, General Decision Numbers CT960001, CT960003, and CT960004.

The goal of the U.S. Department of Labor is to conduct wage surveys at least every two years, but the agency is not meeting that schedule. The most recent survey in Connecticut appears to have been about three years ago for residential rates and about six years ago for building rates.

However, this does not mean rates in the state have not changed since then. When the last surveys were done in Connecticut, many classifications for building and heavy rates were determined to be CBA rates. As a result, those rates have been updated whenever the relevant CBA rates changed. Rates for residential type construction projects have generally been set as non-CBA rates, and thus have not been revised as frequently.

**Alternative methods.** As mentioned previously, prevailing wage rates can be set in a variety of different ways. The two principal methods used to obtain the data needed to establish the rates are public hearings and surveys.

A problem with the hearing process is that it is dependent on those who choose to publicly present information about the wages they pay or receive. The experience in Connecticut when this method was still being used in the 1970s was that labor unions were the only parties that testified, and thus the union rates became the prevailing wage rates.

On the other hand, the survey process can be very time consuming. The agency conducting the survey must identify the parties who will receive data collection forms, confirm the accuracy of the information submitted, and ensure sufficient responses are obtained for a valid sample. Then, a mathematical formula must be applied to the data to determine the prevailing wage rates.

Depending on the formula used, the wage resulting from the same set of data can vary widely. Table II-4 displays the wages determined to be prevailing for two groups of hypothetical workers, using five different ways of calculating the rate.

<b>TABLE II-4. Results of Different Formulas for Calculating Prevailing Wage Rate.</b>					
<i>Sample employee wage rates</i>	<i>Simple average (sum of diff. rates/ # of diff. rates)</i>	<i>Median (middle number)</i>	<i>Mean (sum of all rates/total # of rates)</i>	<i>Modal digit (most common)</i>	<i>Greatest number, but at least 40%</i>
13, 13, 13, 17, 17, 18, 18, 19, 19	16.75	17	16.33	13	none
10.75, 11.25, 11.50, 11.90, 12.25, 12.25, 13.50, 13.75, 15.04, 15.04, 15.04, 15.04, 15.04, 15.04, 15.04	12.46	13.75	13.48	15.04	15.04

In the first example, the rates ranged from \$13.00 to \$17.00, and no value could be calculated for one formula. In the second example, the rates ranged from \$12.46 to \$15.04, with two formulas yielding the same value.

Majority rates (50 percent plus 1) could not be set for the data in either of these examples. Therefore, under the current system of setting Connecticut prevailing wage rates, the mean would be used. In the first example, this would result in a rate (\$16.33) at the upper end of the range. In the second example, the rate (\$13.48) would be the second lowest value.



### CHAPTER THREE: ROLES AND RESPONSIBILITIES

- U.S. Department of Labor determines wage rates and issues regulations and standards to implement federal Davis-Bacon Act.
- Connecticut Department of Labor has primary responsibility for enforcing state prevailing wage law.
  - Wage and Workplace Standards Division staff issue wage schedules, respond to inquiries about the law, investigate complaints, and conduct field audits.
  - In FY 96, 285 firms found in violation of the law, and \$1.4 million in back-wages recovered for 1,546 workers.
- State and local contracting agencies obtain wage schedules for covered projects and monitor day-to-day work, including contractor compliance with payment and record keeping requirements of the law.
- Contractors and subcontractors pay required wages and file certified payrolls on a weekly basis.
- Workers receiving incorrect wages facilitate compliance by preserving documentation and notifying appropriate parties of violations.



### ROLES AND RESPONSIBILITIES

Implementation of any prevailing wage law involves the parties required to comply with it, the beneficiaries of its provisions, and the entities responsible for administering it. All of these groups have specific functions to perform.

#### **U. S. Department of Labor**

The U. S. secretary of labor is statutorily responsible for determining specific wage rates and issuing regulations and standards to implement the Davis-Bacon Act. Day-to-day administration of the federal act involves the U.S. Department of Labor and the agencies who contract for or fund other parties to contract for projects covered by the law.

The primary function of the U.S. DOL with respect to the law is oversight, but the department also has independent authority to investigate matters connected with the act. As part of its duties, the department answers questions regarding interpretation of the law, including, for example, whether workers are covered by the law.

Parties that disagree with a decision of U.S. DOL regarding prevailing wage matters can appeal an initial decision to the wage and hour administrator in Washington. If that decision is not favorable, the party can appeal to the Wage Appeals Board, also located in Washington.

Complaints about prevailing wage violations received by the department are handled by wage and hour investigators, who also have enforcement responsibilities for other federal laws. During their inquiries into a complaint, they interview workers and employers as well as examine construction project wage records. Time permitting, investigators may conduct directed reviews of randomly selected projects to confirm compliance with the law.

#### **Connecticut Department of Labor**

The Connecticut Department of Labor has primary responsibility for enforcement of the state's prevailing wage law, although other governmental entities and private parties also have roles. The department encourages voluntary compliance with the law, and enforcement activities are focused on bringing violators into compliance rather than punishing them.

The state commissioner of labor is responsible for determining the prevailing wages to be paid under the law. For nearly 20 years, as allowed by state law, the commissioner has been reissuing the federal Davis-Bacon rates set for Connecticut as the state prevailing wage rates.

The Department of Labor has statutory authority to investigate and ascertain wages paid to workers in the state, including entering a workplace to examine records. This authority has been extended to include employees covered by the state prevailing wage law.

The Wage and Workplace Standards Division handles oversight of the law. One supervisor and six wage enforcement agents are currently assigned to prevailing wage activities. They respond to telephone inquiries regarding the law, investigate complaints, conduct routine field audits, and participate in educational activities aimed at improving public understanding of the law. Each agent is assigned to a specific geographic area.

A secretary in the division compiles reports and maintains the wage schedule database. Information from the federal wage determinations for Connecticut is entered into a computer system whenever new rates or updates are issued by U.S. DOL. The system is set up so a separate schedule of rates can be printed for each town in the state. Wage schedules are generated upon receipt of a request from an agency that expects to put a construction project out for bid. The division receives nearly 1,400 requests a year for schedules.

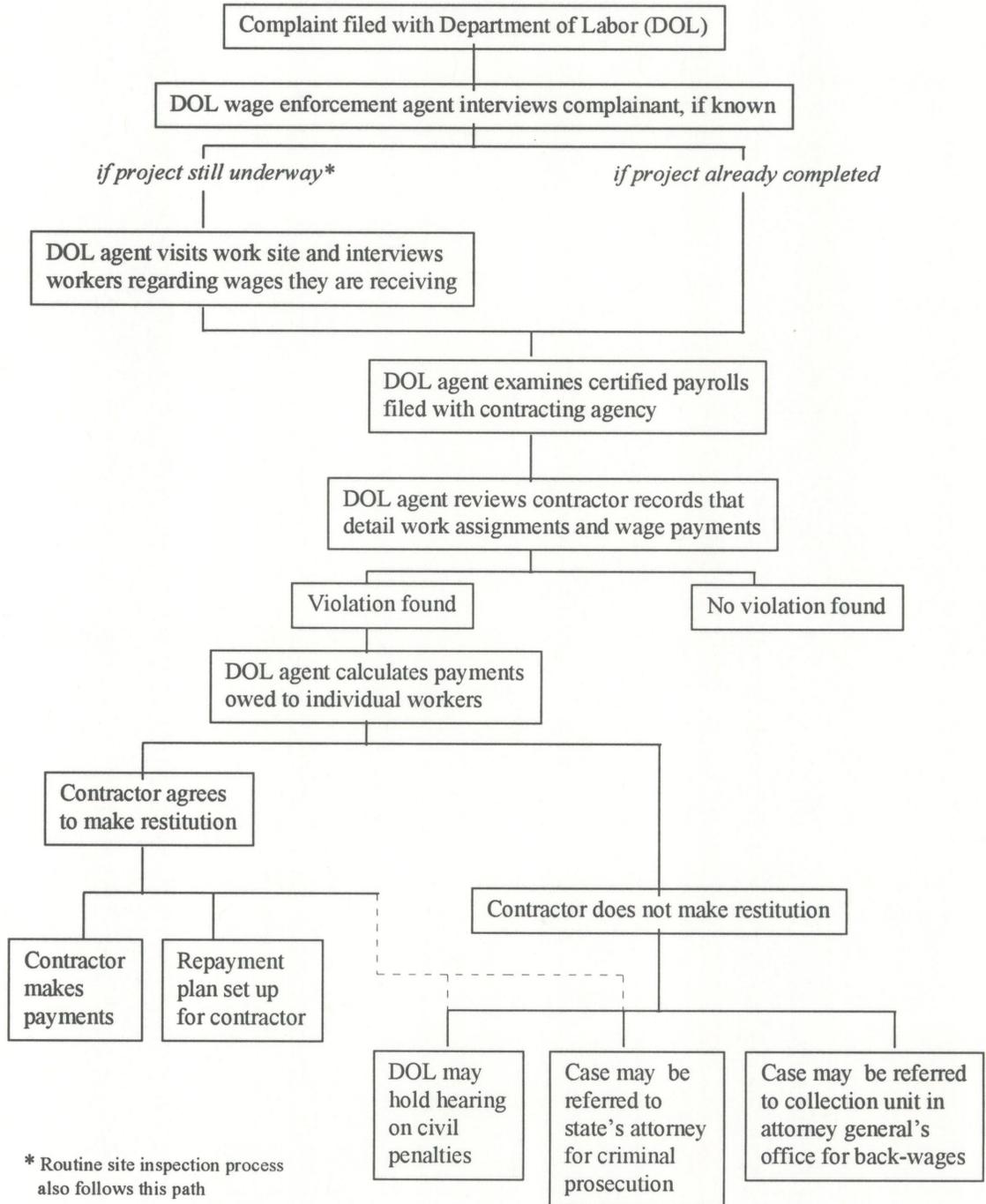
If time permits, wage enforcement agents conduct random, routine visits to construction projects to ascertain whether prevailing wage requirements are being met. More commonly, field work is focused on gathering information to resolve complaints received by the department. Table III-1 shows the number of prevailing wage audits and site inspections conducted by division staff annually since state FY 91.

<i>Activity</i>	<i>FY91</i>	<i>FY92</i>	<i>FY93</i>	<i>FY94</i>	<i>FY95</i>	<i>FY96</i>
Routine audits/site inspections	141	86	232	315	285	116
Complaint related audits/site inspections	236	230	349	301	193	241

Source of Data: Connecticut Department of Labor

During an investigation, wage enforcement agents interview workers, employers, and others connected with a project. They also examine payroll records and other documents either at the job site or at the location where the party named in a complaint maintains the employment records for the business. Most of the same steps are also followed by DOL agents when they conduct a routine inspection. Figure III-1 summarizes the investigation process.

**Figure III-1. Complaint Investigation Process**



If a violation of the law is found, the DOL agent calculates the amount of back-pay owed individual workers. If the contractor or subcontractor is willing to reimburse the workers but cannot pay the entire amount immediately, the agent will develop a repayment plan and monitor adherence to that plan.

If a contractor or subcontractor refuses to make restitution, the options available depend on whether or not the project has been completed. If the project is still active and the party violating the law is owed money, the contracting agency or the general contractor on the project, if there is one, can be asked to pay the workers out of those funds. (However, state legal advisors are divided on the authority of agencies to take this action without actually terminating the party's contract.) If the project has been completed, the Department of Labor can refer the case to the collections unit in the Office of the Attorney General, which will pursue repayment.

The department can also seek imposition of civil and criminal penalties on employers that violate the prevailing wage law. Paying the back-wages owed to employees does not preclude other penalties, but the department is more likely to pursue legal action against businesses that refuse to provide restitution to workers who were underpaid. The imposition of civil penalties is handled directly by the Department of Labor. Cases for criminal prosecution are referred to the Office of the Chief State's Attorney.

Both the number of firms found in violation of the payment provisions of the state's prevailing wage law and the number of employees receiving back-wages as a result have more than doubled during the 1990s. Table III-2 presents year-by-year data for each as well as the total value of the wages recovered by the department since state fiscal year 1991.

**Table III-2. Enforcement Data, FY91 - FY96.**

	<i>FY91</i>	<i>FY92</i>	<i>FY93</i>	<i>FY94</i>	<i>FY95</i>	<i>FY96</i>
Firms found in violation of law	125	187	159	235	300	285
Employees receiving payments from employers for past underpayments	887	588	854	724	1,931	1,546
Total wages recovered	\$0.6M	\$0.5M	\$1.0M	\$1.3M	\$1.8M	\$1.4M

Source of Data: Connecticut Department of Labor

### **Contracting Agencies**

On the federal, state, and municipal level, the requirements placed on entities that contract for projects covered by the federal or Connecticut's state prevailing wage law are similar. All have responsibilities with respect to determining whether a project is covered by the provisions

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of the law, obtaining appropriate wage schedules prior to the project being put out to bid, and including relevant language in the project contract to achieve compliance with the law.

Entities planning projects covered by the state law are supposed to contact the Department of Labor at least 10 but not more than 20 days in advance of putting out a request for bids. The agencies are also supposed to monitor day-to-day work on projects covered by the law, including verification that required forms are being filed by the contractors on the job and that the information contained in the certified payrolls is correct.

The Department of Transportation is the state agency with the largest volume of contract work affected by prevailing wage laws. In FY 95, DOT spent \$358 million on construction work. Nearly all of the major projects it undertakes include federal funding, meaning provisions of the federal, the state, or both prevailing wage laws may apply. Staff from the DOT district offices handle on-site monitoring and management of active construction projects. The department's operating procedures with respect to prevailing wage laws specify the duties of agency inspectors include bi-weekly examination of contractor employment records and periodic wage checks, including interviews with project employees.

The Department of Public Works is the other state agency with major, ongoing prevailing wage oversight responsibilities. During FY 95, the department completed an estimated \$230 million in construction work. Since the projects overseen by DPW are primarily state funded, it is more likely to be involved with enforcement of the state prevailing wage law. Agency field staff are responsible for ensuring contractor compliance with the requirements of the law. A specific form exists to record information obtained during spot check interviews with workers

### **Contractors and Subcontractors**

Once a contractor is selected for a project covered by the state's prevailing wage law, he or she is supposed to submit a certified oath to the commissioner of labor regarding the wages employees on the job will be paid. During the course of a project, prevailing wage rates must be posted at the work site, and all contractors and subcontractors on the project must maintain detailed records regarding the hours, duties, and hourly wages of employees working on the project as well as fringe benefit payments made on their behalf. Workers must be paid at least weekly, and certified payrolls must be filed weekly with the contracting agency.

### **Workers**

Employees on a prevailing wage project also have a role in the implementation of prevailing wage laws. If workers believe they are not receiving the wages they are entitled to, they facilitate compliance efforts by preserving any supporting documentation they have (e.g., pay stubs) and notifying those responsible for enforcement on a timely basis.



### CHAPTER FOUR: FINDINGS AND RECOMMENDATIONS

- Construction costs vary, depending on the type of project, whether work is new or renovation, size of job, weather, types of materials and equipment, labor, overhead, and profit.
- On average, portion of public construction project consumed by labor costs affected by the state prevailing wage law is 25%.
  - Supervisory personnel and individuals working as independent contractors excluded from coverage.
  - Some worker expenses change only partially or not at all when prevailing wage rates applied.
- Difference in wages received by workers on prevailing wage jobs versus nonprevailing wage jobs assumed to range between 20% and 40%.
- Key difference distinguishing public and private construction projects is requirement contractors on most public projects be selected through competitive bidding process.
- Existence of a prevailing wage law is one of several factors, including size of project, that affect number of bidders.
- Portion of cost of Connecticut prevailing wage project attributable to the law is lower than many previous estimates.
  - Based on labor portion affected being equal to 25% and hourly pay differential of 20 to 40%, portion of total cost due to law is 4% to 7%.
- Current system of separate threshold levels for renovation and new projects leads to disputes about what projects are covered by the law.
- Threshold levels set too high negate point of having prevailing wage law.
  - No relationship exists between rate of inflation and changes made in threshold levels in the past.

## Key Points

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- Connecticut Department of Labor takes pragmatic approach toward enforcement of state prevailing wage law.
- Contracting agencies have important role to play in successful implementation of the state law.
- Workers facilitate enforcement of law by preserving documentation of improper wage payments.

### *Committee Recommendations:*

- Retain state prevailing wage law (C.G.S. Sec. 31-53).
- Establish single threshold of \$250,000 for public construction projects.
- Specify any person “performing the duties of a mechanic, laborer, or workman” is covered by the law.
- Expand definition of sponsoring entities for employee welfare funds.
- Require Connecticut Department of Labor to monitor timing of prevailing wage surveys and request reconsideration if wages out of line.
- Prevent contractors violating law from bidding on new projects for specified periods -- on first violation, for six months after restitution of back-wages; on subsequent violations, for two years after restitution.
- Make penalty for failure to file certified payroll same as filing false one.
- Allow certified payrolls to be filed on monthly basis.
- Require prevailing wage rates be posted on all prevailing wage projects.
- Allow contracting agencies to withhold money for violations of the law without first terminating contract.
- Reduce state bond money for construction projects (by \$2,500 per violation) to contracting entity failing to perform its duties under state prevailing wage law.
- Repeal C.G.S. Sec. 31-54.

## FINDINGS AND RECOMMENDATIONS

The provision of governmental safeguards for workers in Connecticut is not new nor is it without cost. The decision to retain or eliminate the state's prevailing wage law must take into consideration the difference between the value received from the protections provided under the law and the expenses incurred as a result of the law.

This chapter presents the factors involved in making such an assessment and includes an estimate of the annual cost to the state and local governments of the Connecticut law. It also discusses why the committee believes the state prevailing wage law should be continued and describes the modifications it believes should be made to improve implementation and compliance.

### Construction Costs

The cost of construction work is highly variable, whether it is performed for a private or public customer. In order to determine the cost prevailing wage laws add to the price of public works projects, the components of construction work typically performed for governmental agencies need to be understood.

No single formula exists to estimate the price of a proposed construction project since a number of elements can affect the final cost. The most common variables are listed in Table IV-1. An amount must also be included for profit. In addition, unforeseen field conditions and design changes during construction can affect the final price of a project.

All of the factors in Table IV-1 are interactive. For example, the "labor" portion varies on any given job depending on decisions made regarding other components. The two major factors affecting

**Table IV-1. Factors Affecting Cost.**

Type of project -- e.g., road, bridge, sewer, office, classroom, dormitory

New or renovation work

Size of project -- total quantity of work

Environmental -- soil conditions & the weather (temperature/precipitation)

Workmanship -- detail of specifications

Materials -- types needed & availability

Equipment -- availability & price

Labor -- quantity & wage rates

Overhead --e.g., office space, insurance

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“labor” are the type of project and whether the work involves the renovation of an existing facility or the creation of something new.

The percentage of the total cost of any construction project consumed by labor can range from almost nothing to three-quarters of the cost. On new building and subsurface projects, approximately one-quarter of the total cost of a project will be labor, while one-third or more of the price of a building renovation job may be labor.

On certain types of highway projects, labor costs may be considerably lower. An examination of 28 Department of Transportation projects completed in 1994 and 1995 showed the portion of total cost attributable to labor on road jobs ranged from 5 percent to 39 percent, with the majority under 20 percent. On bridge projects, labor ranged from 14 percent to 43 percent, with the majority under 25 percent.

Although prevailing wage laws apply to the cost of “labor,” not all components of that cost are actually affected by the existence of such laws. Supervisory personnel and individuals working as independent contractors are excluded from coverage. In addition, other types of workers, such as truck drivers, are only covered by the law if they spend more than a certain portion of the work day physically at the project site.

Testimony from the Associated General Contractors of Connecticut at the program review committee’s August 20, 1996, public hearing noted a survey of its members indicated that, on average, 8 percent of the cost of a new building project is attributable to supervisory costs, while on heavy/highway projects, it is 7 percent. The survey found the portion of total cost consumed by on-site labor costs is, on average, 25 percent for new buildings and 23.2 percent for heavy/highway projects.

Taking all of this information into consideration, the program review committee believes it is reasonable to assume, on average, that the portion of a public construction project consumed by labor that is affected by the state’s prevailing wage law is 25 percent.

It is worth noting that some expenses incurred for workers covered by prevailing wage law do not change even if specified prevailing rates are higher than a worker’s normal wage rate. For example, unemployment taxes are capped at \$11,000 per employee, and no further payments are made once the maximum has been reached. Although the cap may be reached sooner in the tax year if a worker’s wage rate is increased as a result of paying the prevailing rate, the added expense to a contractor for workers who normally earn more than \$11,000 annually is zero.

In other cases, the impact of the change will be less than 100 percent. Social security taxes are also capped, but the ceiling for covered wages is currently \$62,700. Since labor department data indicate the average annual salary for Connecticut construction workers in 1996

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was less than \$40,000, there would be some additional expense if prevailing wage rates increase the amount of an employer's payroll subject to those taxes.

Another labor cost related to the total amount of wages paid by an employer is workers' compensation, which is calculated per \$100 of payroll. An employer's expenses in this area will increase for workers whose usual hourly wages are less than the prevailing wage rate.

Figures released by the U.S. Department of Labor's Bureau of Labor Statistics indicated one-third of the average hourly cost for private industry construction workers in March 1996 was for benefits as opposed to direct pay. Legally required benefits (e.g., social security, workers' compensation, and unemployment insurance), which are not included in the calculation of fringe benefits for purposes of the prevailing wage law, comprised 13.2 percent of the total hourly cost.

### **Public Construction Activity**

In order to evaluate the impact of the state's prevailing wage law, the amount of public construction must be identified. Because the law has thresholds below which projects are exempt, it is also important to know how many projects fall within various size categories.

Due to the nature of public construction activity, data for a single year could be misleading. Work on many large projects, which are the ones likely to be most affected by prevailing wage laws, is often spread over several years. Examining expenditures from a portion of a job can overestimate or underestimate the cost of labor since different stages of a project require different amounts of labor.

Taking these factors into consideration, the program review committee staff compiled data on actual and planned state and municipal spending for the two-year period from July 1, 1994 through June 30, 1996. Two sources of data were used -- responses to the program review committee's survey of towns and announcements of public construction bid solicitations and awards. The latter information was contained in F.W. Dodge reports issued by the McGraw-Hill Publishing Company and retained at the Connecticut Department of Labor.

The program review committee sent a survey to all 169 municipalities, and 51 percent responded. One of the questions asked them to indicate how many *new* versus *renovation* projects each had undertaken in seven different price categories during FY 95 and FY 96.

Of the 86 towns responding, 19 percent had no projects during that period, 7 percent had a single project, and 15 percent had two projects. Only one-third undertook more than five projects during the two years. Table IV-2 presents the number of towns undertaking a specified number of projects within each cost range.

**Table IV-2. Projects Undertaken by Towns, State FY 95 and FY 96.**

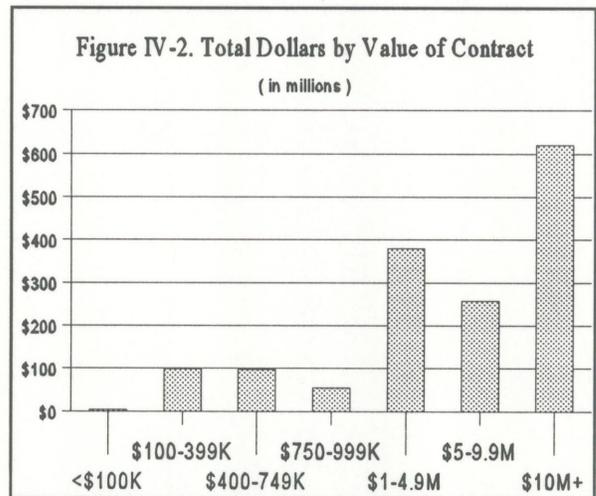
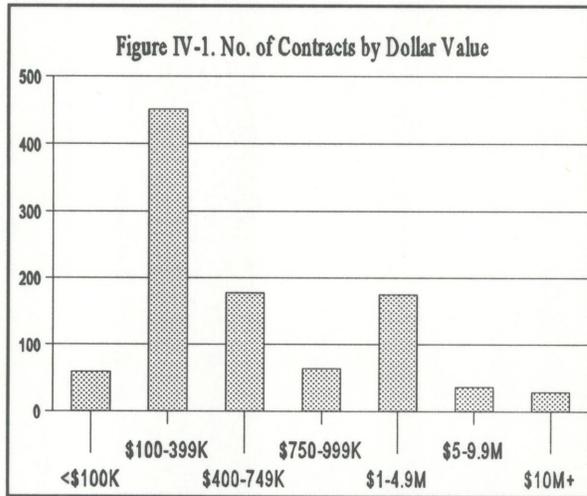
<i>Approximate Cost of Project</i>	<i>No. of respondents with specified number of NEW projects</i>				<i>No. of respondents with specified number of RENOVATION projects</i>			
	1	2 - 4	5 - 7	8+	1	2 - 4	5 - 7	8+
<\$100,000	14	11	4	2	9	17	4	15
\$100K-\$399K	19	5	3		8	21	3	2
\$400K-\$749K	12	4			9	5	1	1
\$750K-\$999K	4	2			4	3		
\$1M-\$4.99M	11	4			6	4		
\$5M-\$9.99M	3				2			
\$10Million+	6				1			

Source of Data: Responses to LPR&IC survey of Connecticut towns

The announcements' information database examined by committee staff covered more than 1,000 government projects that went out to bid during FY 95 and FY 96. Of those, 991 listed a specific bid amount for a total estimated value of \$1.5 billion. (Data on actual expenditures were not available.) Three-quarters of the projects involved renovations, an additional 14 percent combined new and renovation work, and 11 percent were new construction. One-third of the projects were being awarded by the state and 61 percent by municipal agencies.

The estimated dollar values of the contracts were grouped into the same seven ranges used in the committee's survey to the towns. The number of contracts within each dollar range is presented in Figure IV-1, while the total value of the contracts in each range is presented in Figure IV-2. As can be seen in comparing the two graphs, although there were a large number of smaller contracts, the bulk of the expenditures occurred among the higher valued contracts.

The number of projects costing less than \$100,000 that were actually undertaken is greater than the number shown in Figure IV-1. Records were unavailable for some projects, including a number that were performed by town employees and thus not put out to bid. Many of these projects would cost far less than \$100,000 even if completed by an outside contractor.



It is not necessary to know the exact number of additional projects costing less than \$100,000 that may have been undertaken in order to calculate the cost effect of the state's prevailing wage law since such projects are exempt from the law. In fact, \$5 million should be deducted from the \$1.5 billion estimate of Connecticut FYs 95 and 96 projects for the known contracts in that price range. In addition, \$10 million should be deducted from the total value of the projects costing between \$100,000 and \$399,999 for the new construction projects contained in that category because those projects are also exempt from the law.

**Federal coverage.** To properly estimate the effects of the state's prevailing wage law, projects covered by the federal Davis-Bacon Act should be excluded from the evaluation. All federal agency projects fall into this category as well as most Connecticut Department of Transportation projects. Those contracts represented approximately \$309 million of the estimated \$1.5 billion in projects being undertaken during fiscal years 1995 and 1996. Some local projects also receive federal funding, but it appears to be more limited, based on the committee's survey of the towns.

### Hourly Wage Differentials

The next factor needed to develop an estimate of the cost of the state's prevailing wage law is the difference in wages received by workers on prevailing wage projects versus those on nonprevailing wage projects. Both the direct hourly pay and the value of fringe benefits that are not legally required must be considered.

Since prevailing wage schedules may contain dozens of job classifications, 12 job titles were selected for detailed analysis. Table IV-3 lists the classifications chosen.

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**Table IV-3. Job Classifications Selected for Detailed Analysis**

Brick mason	Glazier	Laborer	Iron/steelworker	Electrician
Carpenter	Roofer	Painter	Sheetmetal worker	Plumber
Power equipment operator (bulldozer)		Truck driver (three-axle)		

For the 12 sample job classifications, committee staff examined existing prevailing wage rates and pay schedules from a number of sources, including open shop employers, statewide average wages as determined by the Department of Labor, apprenticeship records, bids on state construction projects, and union collective bargaining agreements. The intent was not to perform a full wage survey of the type used to establish prevailing wage rate schedules, but to assess in general the differences in hourly pay and fringe benefits that exist between prevailing wage rates and nonprevailing wage pay.

Like many of the other aspects of construction work, the range of wages paid specific classifications of workers varies considerably, depending on the employer and geographic location. For example, the data sources examined by program review committee staff revealed differences between the lowest and the highest hourly pay rates for bricklayers, carpenters, and ironworkers of approximately \$11-12 within each trade, while the difference between the highest and lowest hourly pay rate for electricians was nearly \$21. The ranges for glaziers, power equipment operators (bulldozer), and roofers differed by around \$14-15. Similar differences occur whether the work is being performed on a prevailing wage or nonprevailing wage project.

The *hourly pay* portion of the prevailing wage rates and the amounts paid by a sample of open shop Connecticut companies for the 12 jobs shown in Table IV-3 were compared at the upper and lower ends of their respective wage ranges. At the high end, for six of the 12 job titles, the prevailing wage rates were 3 percent to 19 percent greater, and for two jobs the prevailing hourly pay rates were 35 to 40 percent higher. For four job titles, the prevailing wage hourly rates at the upper end were as much as 11 percent lower than the highest open shop rates.

At the bottom end of the pay ranges, the lowest prevailing wage hourly pay rates for two job titles were 100 percent greater than the lowest open shop rate; two other job titles were about 40 percent higher. For eight job titles, the lowest prevailing wage hourly pay rates were 5 percent to 44 percent lower than the open shop rates provided to the program review committee. However, those prevailing wage rates were all for residential projects. (If the lowest building, heavy, and highway rates were compared instead, six of the eight jobs would be 40 to 80 percent higher than the lowest open shop rate, and two would be more than 100 percent greater.)

The differences between the prevailing wage and open shop categories for *fringe benefits* were greater than the gap in wages, but less data were available. At the high end, the prevailing

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wage fringe benefit values ranged from almost the same to nearly double the open shop rates. At the low end, the prevailing wage fringe benefits for residential rates were very close to the open shop rates, while the building, heavy, and highway rates were generally more than double.

Of course, a number of nonprevailing wage projects are built by union workers. A comparison of the union rates for the job classes in Table IV-3 shows most are the same as the nonresidential prevailing wage rates in terms of both hourly pay and fringe benefits. On the other hand, many residential prevailing wage rates are lower than the union rates.

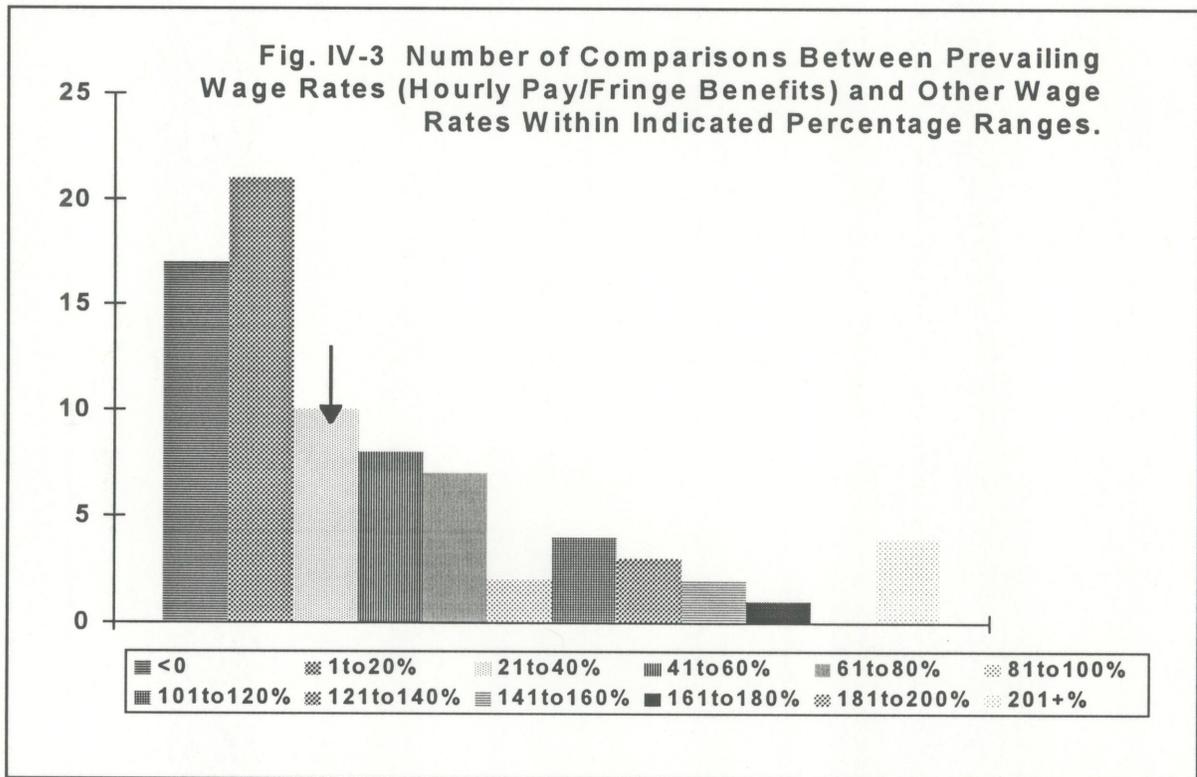
Another resource examined to assess pay differentials between prevailing and nonprevailing wage projects was a set of bids received by DOT for four types of road repairs. Contractors were asked to submit separate bids for the work, based on total contract values under the \$100,000 prevailing wage threshold and for more than \$100,000.

Although unit prices were used in the bids, making it impossible to know what the hourly pay per worker would be, differences in cost per unit could be identified. Among the bidders who increased prices on the prevailing wage jobs, the increases ranged from 2 percent to 21 percent. A third of the increases were 5 percent or less, a third were between 6 percent and 15 percent more, and the final third were between 16 percent and 21 percent higher. For three types of work, one contractor bid the same price on both the nonprevailing and the prevailing wage projects; for the other type of work, three contractors bid the same prices. One bidder decreased the price in one category.

In general, many of the hourly rate differences identified by program review committee staff were below 20 percent, including a number that were zero or less. Clusters of rate differences were found in the 30 to 40 percent range and the 50 to 70 percent range. There were also several rate differences in the 100 to 150 percent range.

The fringe benefit differences were more widely dispersed. The lowest residential prevailing wage rates were generally similar to or lower than other workers with the same job title, while the lowest building, heavy, and highway prevailing wage fringe rates were more than 150 percent higher.

Given the broad range of wage rates that exist in the Connecticut marketplace, the amount the prevailing wage rate varies from other rates will fluctuate, depending on the nature of a particular project and the classifications of workers employed. However, based on the data found in the sample jobs examined, except for a few outlying cases, the differences between the rates appear to fall within clusters. Figure IV-3 presents that data and shows the median value of the observations falls within the 21 to 40 percent category. For analytical purposes, the program review committee believes it is appropriate to assume a range of 20 to 40 percent as the estimate of the hourly differential resulting from the prevailing wage law.



### Administrative Costs

The Connecticut commissioner of labor, as allowed by state law, reissues the federal Davis-Bacon rates as the state's prevailing wage rates. Although up-to-date wage schedules must be issued to contracting agencies, use of the federal rates means the department does not incur expenses to determine the rates.

Day-to-day enforcement of the state law is handled by six Department of Labor wage enforcement agents and a supervisor. They answer questions, investigate complaints, and conduct field inspections. During the course of efforts related to the prevailing wage law, they also monitor compliance with other labor laws, including apprenticeship requirements and general wage standards related to payrolls and overtime.

The cost for department staff assigned to prevailing wage activities during FY 95 was about \$525,000 (including payroll, other expenses, and fringe benefits). That same year the unit recovered \$1.8 million in back-wages for workers underpaid on prevailing wage projects.

Staff from contracting agencies must contact DOL to obtain wage schedules before a project is put out to bid. Once a contractor is selected, the contracting entity must ensure

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appropriate prevailing wage language is included in the contract for the project. During the course of the project, the agency is supposed to monitor the contractor to verify workers are receiving the correct wages and that all required documents, including certified payrolls, are filed on time. This responsibility would be part of the agency's overall contract management function.

Contractors awarded prevailing wage jobs may incur additional administrative costs for submission of required paperwork. This expense will vary, depending on how similar the contractor's normal payroll practices are to those that have to be followed on a prevailing wage job. For example, a contractor who is paying additional fringe benefits to workers only for the hours they work on a prevailing wage project will have to keep additional records solely for that project. As a result, he or she will be faced with a greater increase in paperwork than a contractor whose employees routinely earn the prevailing wage rate.

### **Other Considerations**

If wages on construction projects were based solely on the law of supply and demand, wages would rise in times of high activity because of the limited number of skilled workers available and would decline in times of low activity when a large pool of workers is available. In fact, there are certain characteristics of publicly funded construction that alter this effect.

One of the key characteristics distinguishing public and private construction is the requirement that contractors for most public projects be selected through a competitive bidding process. In the private sector, the customer for whom work will be done can limit bidding to invited parties or can deal solely with a firm that has done work for it before.

Governmental entities can establish a prequalification process to ensure bidders meet certain minimum qualifications, including a standard of past performance. However, the final criterion for selection among the qualified bidders is largely the amount bid on a specific project, and the award goes to the lowest responsible bidder.

A consequence of the public bidding system is the likelihood construction companies with a more widely varied performance record will compete for the same project. This is particularly true during slow economic periods when governmental agencies may be among the few entities undertaking construction projects.

Under those circumstances, contractors from a broad geographic territory may bid on the work. To bid more competitively, outlying contractors may seek to bring in workers from their area at their pay rather than the wages from the area where the work is to be performed. If such a contractor is awarded the project, the direct cost to the contracting agency might be reduced, but it may also result in a portion of the money paid in wages to the workers leaving the area.

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In addition, local construction workers, citizens for whom in part the government may be undertaking the project, could find themselves out of work. Counteracting situations of this nature was one of the reasons the federal Davis-Bacon Act was originally adopted.

**Productivity.** No definitive data existed on the effect of worker productivity on the cost of prevailing wage projects. Some studies found union workers, who could be used as a proxy for workers on prevailing wage jobs, more productive than nonunion workers. Other studies found no difference, and still others found nonunion workers more productive, especially when union work rules were considered. In any event, the same wage rates are paid to workers on prevailing wage jobs whether or not they belong to a union.

**Number of bidders.** The existence of a prevailing wage law appears to be only one of several factors that affect how many bids are received on a project. Development of an accurate bid, particularly on a large project, is time-consuming. As a result, contractors who submit bids incur costs even if they are not awarded a contract. Small companies that cannot handle large jobs, and large companies that are not interested in very small jobs will not bid on such projects.

The previously described DOT jobs that were bid at both prevailing and nonprevailing wage rates received similar numbers of bids. For three types of repairs, the number of bidders was the same (four), although one contractor only bid on the nonprevailing projects and another only bid on the prevailing wage projects. For the other type of repair, there were seven nonprevailing wage bidders and six prevailing wage bidders (all of whom bid on both jobs).

### **Estimated Cost of Connecticut Law**

It is clearly difficult to identify a single, precise number as the definitive answer to the question of how much prevailing wage laws add to the cost of public construction projects. However, it is reasonable to suggest an estimate of the average cost of the law. This number will not be accurate for every specific project, but it should provide a fair estimate of the effects of the law, particularly if it is applied to a range of projects carried out over time.

As discussed previously, the program review committee is basing its cost analysis on the assumptions that:

- the portion of “labor” affected by the state’s prevailing wage law represents approximately 25 percent of the total cost of a project; and
- the hourly differential between prevailing wages and nonprevailing wages for covered workers falls within the range of 20 to 40 percent.

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To determine the portion of a prevailing wage project's cost that is a result of the law, these estimates have to be applied against the total cost of a project. Figure IV-4 illustrates the calculations for a hypothetical \$1 million prevailing wage project, using 25 percent as the covered labor portion and 20 percent as the wage differential. The result is a 4.2 percent increase due to the effects of the prevailing wage law.

**Fig. IV-4. Sample Calculation To Determine the Cost Effect  
of the State's Prevailing Wage Law**

Presume a prevailing wage project with a total cost = \$1,000,000

If the portion of "labor" on the project covered by the state's prevailing wage law = 25%,  
then the cost of "labor" = \$250,000

$$\$1,000,000 \times 0.25 = \$250,000$$

If the hourly wage differential of the workers covered by the law = 20%,  
then the portion of the labor cost attributable to the law = \$41,667

$$\begin{aligned} \$250,000 / 1.2 &= \$208,333 \\ \$250,000 - 208,333 &= \$41,667 \end{aligned}$$

Then the portion of the cost attributable to the prevailing wage law = 4.2%

$$\begin{aligned} \$41,667 / 1,000,000 &= 0.0417 \\ 0.0417 \times 100 &= 4.17 = 4.2\% \end{aligned}$$

Since this example is based on the low end of the estimated range for the hourly wage differential, the committee also looked at the effect other percentage estimates for the pay differential would have. Table IV-4 presents the results of holding the rate of covered labor constant at 25 percent and changing the percentage of the pay differential by increments of 10.

**Table IV-4. Effects of Varied Hourly Differentials.**

<i>Assuming the amount of "labor" covered by the law is 25 percent of the total cost</i>	<i>The portion of total project cost resulting from the law would be:</i>
with a 20% hourly differential	4.2 percent
with a 30% hourly differential	5.8 percent
with a 40% hourly differential	7.1 percent
with a 50% hourly differential	8.3 percent
with a 60% hourly differential	9.4 percent
with a 70% hourly differential	10.3 percent
with a 80% hourly differential	11.1 percent

The effect of changing the portion of "labor" covered by prevailing wage schedules is presented in Figure IV-5. In that case, labor is increased to 35 percent, but the pay differential is kept at 20 percent. The result is an estimate of about 6 percent as the portion of total project cost due to the law.

Figure IV-6 shows the effect of increasing *both* variables by 10 percent. If labor equals 35 percent and the pay differential is 30 percent, 8 percent of the total cost would have resulted from the law.

**Figure IV-5. Increased "Labor"**

Total project cost = \$1,000,000

If "labor" covered by law = 35%,  
then cost of "labor" = \$350,000

$$[\$1,000,000 \times 0.35 = \$350,000]$$

If hourly differential = 20%,  
then cost attributable to law = \$58,333

$$[\$350,000 / 1.2 = \$291,667 \text{ and} \\ \$350,000 - 291,667 = \$58,333]$$

Then cost resulting from law = 5.8%

$$[\$58,333 / 1,000,000 = 0.0583]$$

**Figure IV-6. Increased "Labor" and Increased Hourly Differential**

Total project cost = \$1,000,000

If "labor" covered by law = 35%,  
then cost of "labor" = \$350,000

$$[\$1,000,000 \times 0.35 = \$350,000]$$

If hourly differential = 30%,  
then cost attributable to law = \$80,769

$$[\$350,000 / 1.3 = \$269,231 \text{ and} \\ \$350,000 - 269,231 = \$80,769]$$

Then cost resulting from law = 8.1%

$$[\$80,769 / 1,000,000 = 0.0808]$$

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Considering the nature of the public bidding process and the small proportion of total project cost expenditures estimated as the cost required to continue Connecticut's tradition of providing labor-related protections for construction workers, **the program review committee recommends:**

**Connecticut retain its prevailing wage law (C.G.S. Sec. 31-53).**

Certain provisions of the law should be revised, however, and the specific changes are described throughout the remainder of this chapter.

**Threshold Revisions**

Connecticut's initial prevailing wage law in 1933 applied to all public building projects, regardless of cost. An exemption for projects costing less than \$5,000 was adopted in 1961. In 1979, a two-tier system was introduced, setting separate thresholds for renovation projects (\$10,000) and new construction (\$50,000). Those rates were increased in 1985 to \$50,000 and \$200,000 respectively. Currently, renovation projects under \$100,000 and new construction projects under \$400,000 are exempt from the law. These thresholds were adopted in 1991.

The statutory language concerning renovations actually references "remodeling, refinishing, refurbishing, rehabilitation, alteration or repair." There is no definition of new construction. As a result, a number of disputes have arisen between contracting agencies and the Connecticut Department of Labor about what constitutes a new project subject to the higher threshold.

The program review committee believes a concise, but comprehensive definition of the term *new* would be difficult to craft. Instead, a simpler solution would be to return to a single threshold for projects of all types.

The specific reasons the amounts chosen as thresholds in the past were actually selected is unclear from the legislative record. *However, the program review committee finds no relationship between the thresholds and the rate of inflation.*

For example, when the dual threshold levels were established in 1979 at \$10,000 for renovation projects and \$50,000 for new construction, the inflation adjusted value of the existing threshold, which had been adopted in 1961, would have been about \$12,000. Similarly, when the current limits of \$100,000 and \$400,000 took effect in 1991, the inflation adjusted value of the thresholds being replaced would have been \$63,000 and \$253,000 respectively.

In order to estimate how different threshold levels would change the amount of public construction covered by the law, the data collected on the number and total dollar value of the

projects put out to bid during FYs 95 and 96 were grouped within a variety of threshold ranges. Table IV-5 presents the number and dollar value of the projects in each range.

**Table IV-5. Estimated Effect of Threshold Changes on FYs 95 and 96 Projects.**

<i>Dollar Value</i>	<i>Renovation</i>		<i>Mixed Reno. &amp; New</i>		<i>New</i>	
	<i>Dollars</i>	<i>No.</i>	<i>Dollars</i>	<i>No.</i>	<i>Dollars</i>	<i>No.</i>
\$100,000 - \$249,999	\$39.7M	239	\$2.6M	15	\$5.8M	35
\$250,000 - \$399,999	\$40.1M	129	\$6.7M	21	\$3.6M	12
\$400,000 - \$749,999	\$70.6M	127	\$13.6M	24	\$14.4M	26
\$750,000 - \$999,999	\$40.9M	48	\$11.8M	13	\$2.8M	3
\$1M - \$4.99M	\$233.6M	117	\$96.5M	35	\$51.3M	23
\$5M - \$9.99M	\$122.0M	17	\$120.5M	17	\$14.0M	2
\$10Million +	\$174.6M	12	\$321.9M	11	\$123.5M	6

Source of Data: LPR&IC Data Sample from 1994-1996 F.W. Dodge Reports ( McGraw-Hill Companies).

Ultimately, the program review committee considered five alternative threshold levels. First, Connecticut could tie the threshold for its prevailing wage law to the federal threshold since the state parallels the federal Davis-Bacon Act in terms of job classifications, rate schedules, and other rules. Given the current federal limit of only \$2,000, however, this choice seemed almost the same as returning to the time when the state had no threshold.

Second, the state could select a multimillion dollar figure, as had been suggested by some of the speakers at the program review committee's public hearing in August. Given the large number of projects that would be excluded under such a scenario, however, that choice seemed contrary to the determination that the state should continue to have a prevailing wage law.

Third, the \$100,000 threshold level currently applied to renovation projects could be used for all types of projects. Since the number and value of the new construction projects that fall within the \$100,000 to \$399,999 range is low, the major effect of this choice would be to end confusion about the definitions.

Fourth, the \$400,000 threshold level currently applied to new projects could be used for all types of projects. This option would provide some of the relief requested by smaller contractors and towns. However, during FYs 95 and 96, it would have reduced applicability of

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the law by about 400 projects or nearly 40 percent of the projects in the program review database. (The estimated value of those projects was \$90 million, about 6 percent of total estimated costs.)

Fifth, an amount within the range of the two existing thresholds could be selected. This option, a variation of the one above, would have similar results in terms of providing some relief, but it would eliminate fewer projects from the protections of the law. A figure used as a threshold for several other construction related requirements, including approval of contractor affirmative action plans by the Commission on Human Rights and Opportunities, is \$250,000.

If that amount is used as the threshold for the prevailing wage law, some renovation projects will be excluded and a few new projects that are currently exempt will be covered. This would have meant about 200 projects or approximately 21 percent of the projects in the FYs 95 and 96 database would have been exempt from the law. (The estimated value of those projects was less than \$30 million or about 2 percent of total estimated costs.)

Based on the analysis presented above, **the program review committee recommends:**

**the current practice of separate threshold levels for *new* versus *renovation* projects be eliminated, and C.G.S. Sec. 31-53 be amended to establish a single threshold of \$250,000 for all types of public construction projects.**

### **Definitions**

Determining which workers on a project are covered by the prevailing wage law can be confusing. The Connecticut law applies to “any mechanic, laborer, or workmen employed upon the work herein contracted to be done . . .” without defining those terms. In some cases, contractors will attempt to designate workers as independent contractors, who are exempt from the law, in an effort to avoid paying them prevailing wages.

The federal law is more specific. Regulations state “the terms ‘laborer’ or ‘mechanic’ includes at least those workers whose duties are manual or physical in nature . . . as distinguished from mental or managerial.” The regulations also note anyone performing such duties is considered to be “‘employed’ regardless of any contractual relationship alleged to exist between the contractor and such person.” [U.S. CFR, Title 29, Part 5, Subpart A, Sec. 5.2(m) and (o)]

Mirroring the federal language in this area would clarify considerably which workers are covered by the state’s prevailing wage law. Therefore, **the program review committee recommends:**

**C.G.S. Sec. 31-53 be amended to specify that any person “performing the duties of a mechanic, laborer, or workman” is covered by the law.**

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The term "employee welfare fund" is defined in C.G.S. Sec. 31-53(h) as "any trust fund established by one or more employers and one or more labor organizations ...." It has not been changed since being adopted in 1967. In practice, the section is interpreted broadly by the Connecticut Department of Labor in keeping with the federal law in order to encompass other types of benefit plans.

The program review committee believes it is important the statutes clearly reflect this practice is legal. Continuing to reference only union-sponsored plans fails to take into consideration the growing number of open shop contractors offering a range of benefits, including private benefit retirement funds. **The program review committee recommends:**

**C.G.S. Sec. 31-53(h) be amended to expand the definition of an "employee welfare fund" to include a wider range of sponsoring entities.**

The new wording should make it clear that funds sponsored by groups other than labor organizations are allowed. Language in the federal regulations can be used as a model in drafting this change.

#### **Rate Setting**

In order for Connecticut to promulgate its own prevailing wage schedules, additional staff would have to be hired by the Department of Labor to analyze and establish job classifications, identify relevant geographic regions, conduct wage surveys, and respond to appeals of the rates established from the surveys. In addition, Connecticut could end up with two different wage rate schedules for the exact same job -- one federal and one state.

The program review committee does not believe the state should set up its own system for developing wage schedules at this time. However, **the committee recommends:**

**the Connecticut Department of Labor monitor the U.S. Department of Labor's conduct of prevailing wage surveys in Connecticut. If no survey has been conducted in at least three years in a given geographic region for any of the four types of construction (building, heavy, highway, and residential), the Connecticut agency should examine local construction wage data and request reconsideration by the federal agency of any general wage determinations that appear out of line with the marketplace.**

This proposal will not bring about the updating of Connecticut prevailing wage schedules immediately, but it will establish a system that could result in schedules being reviewed more frequently in the future.

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## Enforcement Efforts

The value of a law is diminished when its provisions are intentionally or unintentionally ignored. In the case of the state prevailing wage law, noncompliance can result in lost wages for workers and an unfair competitive advantage for unscrupulous contractors. Responsibility for enforcement is shared by the Connecticut DOL, state and local governmental entities contracting for construction work, contractors and subcontractors doing the work, and workers themselves.

**Department of Labor.** The labor department's general statutory authority to investigate and ascertain wages paid to workers in the state extends to include employees covered by the state prevailing wage law. Wage enforcement agents conducted at least 350 prevailing wage audits and site inspections during each of the past four years.

When a violation of the law is found, the DOL agent calculates the amount of back-pay owed to workers. If the contractor is willing to reimburse the workers but cannot pay the entire amount immediately, a repayment plan is developed. According to data prepared by the department, in two-thirds of the cases handled between January 1995 and July 1996, wages were paid and closed out within 180 days of receipt of a complaint.

If a contractor or subcontractor refuses to make restitution and the project has not been completed, the department may seek the money from other sources connected with the project. Otherwise, the case can be referred to the collections unit in the Office of the Attorney General. The department has recovered at least \$1 million in wages each of the past four years.

The Department of Labor can also seek civil and criminal penalties against employers that violate the prevailing wage law. Generally, the department is more likely to pursue legal action against businesses that refuse to provide restitution, but paying the back-wages does not preclude other penalties. The imposition of civil penalties is handled directly by the Department of Labor. Cases for criminal prosecution are referred to the Office of the Chief State's Attorney.

*The program review committee finds the Department of Labor takes a pragmatic approach toward enforcement of the state's prevailing wage law.*

The department's implementation of the law involves a combination of education and enforcement. Representatives of the department have indicated the agency is willing to be conciliatory and work with violators, unless they are completely uncooperative. The department does not worry about whether someone intended to violate the law. Its goal is to recover what is feasible, given the resources it has available.

The program review committee is aware that great effort can be required to develop the evidence needed to prove a contractor has violated the provisions of the law. Further, when a

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case goes to court, the final resolution (including the amount of restitution required and whether fines or a jail sentence will be imposed) is out of the hands of the department. However, this practical approach may be interpreted by some parties as less than full support for the law.

One mechanism that might strengthen the ability of the department to enforce the law is to statutorily mandate additional penalties for violators of the law. Accordingly, **the program review committee recommends:**

**any contractor or subcontractor found in violation of the state's prevailing wage laws be prevented from bidding on new projects for at least a minimum period of time, depending on whether the violation is a first or subsequent violation.**

**On a first violation, a contractor or subcontractor shall be barred from bidding throughout the period leading to complete restitution of the back-wages owed to workers and for an additional six months from that date. On all subsequent violations, the party shall be barred from bidding throughout the period leading to complete restitution of the back-pay and for at least an additional two years from that date.**

A contractor who is going to bid on public construction projects has a responsibility to know and comply with the laws that govern such work. Prevailing wage laws are not new, and those operating construction businesses should be aware of their existence. Although the value of the projects covered and the exact wages to be paid may differ from state to state, the general provisions of all such laws are similar. In addition, references to the law should appear in the contract given to the contractor awarded a project, providing further notice to the contractor.

Some people have argued that barring contractors from receiving additional contract awards until the money is paid backed prevents them from earning the money they need to pay back the wages owed to workers. The proposed recommendation only prohibits contractors from working on public construction projects. If a business cannot secure private work, it does not seem appropriate for the government to give a firm that is out of compliance with the law more work at the expense of businesses that comply with the law.

The adoption of this proposal will send a message to contractors and subcontractors that the state intends to enforce compliance with its prevailing wage law. It also ensures firms that repeatedly violate the law are punished more severely.

**Contractors.** On every prevailing wage project, contractors must submit weekly certified payrolls, indicating the work performed by and the wages received by each covered employee.

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Under current state law, a contractor who files a false certified payroll is guilty of a felony. A contractor who fails to file a report at all is only guilty of a misdemeanor.

Payroll records are an important source of information as well as evidence in cases of nonpayment, but these unequal penalties discourage the submission of the forms. **The program review committee recommends:**

**the penalty for the failure of a contractor or subcontractor to file certified payroll forms as required under C.G.S. Sec. 31-53 be the same as the penalty for filing a false certified payroll.**

Increasing the penalty for failure to submit payrolls will reinforce the importance of this requirement.

With respect to the frequency that certified payrolls must be filed, less frequent filings could reduce the amount of paperwork for contractors. The same information would still have to be provided, but the contractor would have additional time to prepare fewer submissions. **The program review committee recommends:**

**C.G.S. Sec. 31-53(f)(2) be amended to allow contractors to file certified payrolls with the contracting agency on a monthly basis.**

The data in the reports will still have to be reported for the same time period used to pay workers, which will generally be weekly.

Contractors on state prevailing wage projects are statutorily required to post the prevailing wage rate schedules at the site of work. Although the Department of Labor enforces this provision at all prevailing wage jobs, the statutes do not mandate it on municipal projects. **The program review committee recommends:**

**C.G.S. Sec. 31-55 be amended to specify contractors and subcontractors working for the state “or any political subdivision of the state” be required to post the prevailing wage rates.**

**Contracting agencies.** With respect to the prevailing wage law, agencies planning projects covered by the law are supposed to contact the Department of Labor before putting out a request for bids in order to obtain the current prevailing wage schedule. The agencies are also supposed to monitor day-to-day work on such projects, including verification required forms are being filed by the contractors on the job and the information in the certified payrolls is correct.

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To help the contracting agencies pursue contractors found in violation of the state's prevailing wage law, **the program review committee recommends:**

**C.G.S. Sec. 31-53(b) be amended to allow contracting entities to withhold money from a contractor or subcontractor found in violation of the prevailing wage law without first terminating the contract.**

Based on conversations with representatives of towns and state agencies, not all contracting agencies are familiar with the provisions of the law and their responsibilities. Even worse, several entities have admitted taking steps to avoid compliance with the law by splitting project into multiple jobs to avoid the threshold limits.

Given the important role of contracting agencies in successful implementation of the state prevailing wage law, and in recognition of the increased threshold being proposed, disregard for the law by these entities should be penalized. **The program review committee recommends:**

**any contracting entity that has failed to perform its responsibilities under the state's prevailing wage law have the next allocation it receives in state bond money for construction projects reduced by \$2,500 for each violation.**

**Workers.** The program review committee does not believe it is appropriate to mandate that workers provide physical evidence of an alleged violation in order to have a complaint investigated. However, workers should be more mindful of the provisions of the prevailing wage law and the types of information that will be helpful to the Department of Labor in its pursuit of a claim on their behalf. Workers receiving wages at a rate below what they are entitled to can facilitate enforcement efforts by preserving supporting documentation such as pay stubs and notifying those responsible for enforcement on a timely basis.

### **The "Other" Prevailing Wage Law**

Although C.G.S. Sec. 31-53 covers all types of public construction projects, another prevailing wage law also exists. C.G.S. Sec. 31-54, adopted in 1935, applies to "state highways and bridges on state highways." It contains no limiting threshold levels, requires the labor commissioner to set rates after holding a hearing, and imposes only a \$100 penalty for violations. These provisions are inconsistent with the language in Section 31-53. Further, the rate setting method is inconsistent with actual practice.

DOT continues to reference both laws in its contracts, citing a concern that the existence of Sec. 31-54 limits the scope of Sec. 31-53. The program review committee believes this other prevailing wage law is unnecessary. Without it, the applicability of the primary prevailing wage law should be clear. Therefore, **the committee recommends C.G.S. Sec. 31-54 be repealed.**

**APPENDIX A**  
**SURVEY OF MUNICIPALITIES**



**APPENDIX A**

**Results of LPR&IC Survey of Towns Regarding Public Construction Projects**

Name of your town \_\_\_\_\_ **N=86 towns** (unless otherwise noted)

Respondents by size of population:

17% 4,000 or less      20% 8,601 - 16,000      16% More than 30,000  
24% 4,001 - 8,600      22% 16,001 - 30,000

1. During the past two fiscal years (July 1, 1994 through June 30, 1996), how many public works projects has your town undertaken in each of the categories listed below? (If your town did not begin any projects during this period, place a check mark here , and go to Question 4.)

	Approximate cost of public works project	Number of <i>new construction</i> projects undertaken during past two years				Number of <i>renovation/repair/alteration</i> projects undertaken during past two years			
		1	2-4	5-7	8+	1	2-4	5-7	8+
A	Less than \$100,000	16%	13%	5%	2%	11%	20%	5%	17%
B	\$100,000 to \$399,999	22%	6%	4%		9%	24%	4%	2%
C	\$400,000 to \$749,999	14%	5%			11%	6%	1%	1%
D	\$750,000 to \$999,999	5%	2%			5%	4%		
E	\$1 million to \$4.99 million	13%	5%			7%	5%		
F	\$5 million to \$9.99 million	4%				2%			
G	\$10 million or more	7%				1%			

2. During the past two fiscal years, approximately how many times has your town had a public works project that went out to bid as a *nonprevailing wage* project end up exceeding the prevailing wage threshold during the course of the project due to change orders?

**N=68**      85% (a) zero    13% (b) once or twice    2% (c) three or more times

3. During the past two fiscal years, approximately how many times has your town had a public works project that went out to bid as a *prevailing wage* project end up costing less than the threshold for a prevailing wage project?

**N=68**      85% (a) zero    13% (b) once or twice    2% (c) three or more times

4. For the last completed construction project in your town that required the payment of prevailing wage rates (even if it was more than two years ago), please provide the following information:

(a) Brief description of project (e.g., new school constructed, office space remodeled, road repaved, etc.) \_\_\_\_\_

<u>26%</u> not filled in	<u>7%</u> other (library, police/fire, maintenance building, etc.)
<u>20%</u> school	<u>6%</u> community/senior center
<u>14%</u> sewer	<u>4%</u> town offices building
<u>12%</u> road/bridge	<u>4%</u> recreation
<u>7%</u> sidewalks	<u>2%</u> landfill

(b) Date project began (month and year): \_\_ (c) Date project ended (month and year): \_\_

N= 53 Length of project: 28% ≤6 months 21% 7-12 months 42% 13-24 months 9% >2 years

(d) Was the length of the project:

N=62 5% shorter than expected 66% as expected 29% longer than expected

(e) Number of bids received for the project:

N=56 14% 1-3 bids 38% 4-6 bids 25% 7-9 bids 18% 10-12 bids 5% 13+ bids

(f) Original bid submitted by contractor awarded the project: \$ \_\_\_\_\_

(g) Actual final cost of the project: \$ \_\_\_\_\_

N= 48 Cost: 19% below estimate 10% same as estimate  
27% 1 to 5 percent higher than estimate 23% 6 to 10 percent higher than estimate  
4% 11 to 15 percent higher than estimate 13% 16 to 20 percent higher than estimate  
4% 21 to 33 percent higher than estimate

(h) Were any federal funds used on this project?

N=64 42% Yes 58% No

5. For the prevailing wage project described in Question 4, how would you rate the contractor's performance of each of the following tasks, using a scale of 1 to 4, with 1 = poor and 4 = excellent. (Please circle the appropriate response for each item.)

	Poor	Fair	Good	Excellent
N=60 (a) complying with specifications for materials	3%	13%	55%	28%
N=60 (b) complying with specifications for workmanship	3%	23%	48%	25%
N=60 (c) keeping project on schedule	15%	18%	43%	23%
N=59 (d) keeping project on budget	5%	20%	49%	25%
N=59 (e) minimizing change orders that added time/cost to the project	5%	24%	51%	20%
N=60 (f) correcting deficiencies identified during final inspection	12%	23%	38%	27%
N=55 (g) filing required certified payrolls on time	9%	22%	47%	22%
N=55 (h) paying required hourly wages to workers	9%	11%	47%	33%
N=60 (i) overall performance on the project	8%	20%	48%	23%

6. For the last completed construction project in your town **that did NOT require the payment of prevailing wage rates** (even if it was more than two years ago), please provide the following information:

(a) Brief description of project (e.g., new school constructed, office space remodeled, road repaved, etc.) \_\_\_\_\_

<u>24%</u> not filled in	<u>8%</u> other (library, police/fire, maintenance building, etc.)
<u>21%</u> road/bridge	<u>7%</u> town offices building
<u>12%</u> recreation	<u>7%</u> sidewalks
<u>8%</u> school	<u>4%</u> community/senior center
<u>8%</u> sewer	<u>1%</u> landfill

(b) Date project began (month and year): \_\_ (c) Date project ended (month and year): \_\_

N= 56 Length of project: 68% ≤6 months 18% 7-12 months 14% 13-24 months

(d) Was the length of the project:

N=63 10% shorter than expected 71% as expected 19% longer than expected

(e) Number of bids received for the project:

N=59      34% 1-3 bids      42% 4-6 bids      15% 7-9 bids      7% 10-12 bids      2% 13+ bids

(f) Original bid submitted by contractor awarded the project: \$ \_\_\_\_\_

(g) Actual final cost of the project: \$ \_\_\_\_\_

N= 55 Cost: 11% below estimate      47% same as estimate  
9% 1 to 5 percent higher than estimate      5% 6 to 10 percent higher than estimate  
9% 11 to 15 percent higher than estimate      5% 6 to 20 percent higher than estimate  
8% 21 to 33 percent higher than estimate      4% 34 to 100 percent higher than estimate  
2% >100 percent higher than estimate

(h) Were any federal funds used on this project?

N=64      5% Yes      95% No

7. For the nonprevailing wage project described in Question 6, how would you rate the contractor's performance of each of the following tasks, using a scale of 1 to 4, with 1 = poor and 4 = excellent. (Please circle the appropriate response for each item.)

	Poor	Fair	Good	Excellent
N=62 (a) complying with specifications for materials	--	3%	50%	47%
N=62 (b) complying with specifications for workmanship	2%	2%	61%	36%
N=62 (c) keeping project on schedule	3%	16%	40%	40%
N=62 (d) keeping project on budget	3%	10%	32%	55%
N=61 (e) minimizing change orders that added time/cost to the project	2%	10%	38%	51%
N=60 (f) correcting deficiencies identified during final inspection	3%	7%	48%	42%
N=62 (g) overall performance on the project	3%	3%	55%	39%

8. Are there any comments you would like to add regarding the state's prevailing wage laws?

[Total exceeds 86 because some respondents had multiple comments]

no comments = 60

increase threshold = 6

eliminate law or increase threshold = 2

eliminate law = 2

specify percentage increases that are due to the law = 6

no impact on quality, but adds approximately 10% to cost of project (1)

legalized price fixing -- cost rises 10-20% (1)

artificially inflates bids by up to 20% (1)

28% increase on one job due to prevailing wage law (1)

costs town at least 50% more (2)

adds to project costs and administration requirements = 6

paper work and record keeping requirements for municipalities are onerous = 3

hampers small towns from getting more for its tax dollar = 2

*new* and *rehab/repair* definitions and thresholds are confusing = 2

possibly maintains a standard of trained and qualified tradespersons = 1

miscellaneous information = 3



**APPENDIX B**

**HISTORY OF STATUTORY PROVISIONS**



**APPENDIX B-1. Dates Specific Projects First Covered by Connecticut Prevailing Wage Law (C.G.S. Sec. 31-53)**

<b>C.G.S. Sec.</b>	<b>Entities Affected</b>	<b>Projects Covered by the Law</b>	<b>Effective Date</b>
7-112	any political subdivision of Conn. (or its agents)	construction, remodeling, or repair of any public building	1955
7-502(a)	governmental units, primarily municipalities	construction, reconstruction, or rehabilitation of development property as defined in Chap. 114 (City/Town Development Act)	1975
8-74	eligible developers*	moderate rental housing projects constructed under Chap. 128 Part II	1955
8-94	eligible developers*	homes constructed/rehabilitated under Chap. 128 Part III (if 10+ units)	1950
8-117a	housing authorities*	housing for elderly persons under Chap. 128 Part VI	1959
8-169d(c)(6)	contractors or subcontractors	construction or rehabilitation work for most community development plan programs	1975
10a-255(a)	Univ. of Conn. Health Center Finance Corp. or subsidiary hosp. facility	contracts for construction	1987
31-53 re prevailing wage rates	the state or any political subdivision of it (or their agents)	construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project where total cost of work is: \$400,000+ for new construction \$100,000+ for other categories	1933 - the state 1961 - political subdivision

\* Terminology of contracting party modified over the years -- entity listed is current language.

Effective date listed is first reference to provisions of Section 31-53.

**APPENDIX B-2. Penalties for Failure to Comply with Components of Connecticut's Prevailing Wage Law**

<b>Statutory Section</b>	<b>Nature of Violation</b>	<b>Current Penalty</b>	<b>History</b>
31-53(b) re prevailing wage (hourly rate and employee fund contributions) on public works projects	knowingly and willfully employing persons at wages below customary or prevailing	\$2,500 - \$5,000 for each offense; contract can be terminated	established in 1933 as \$100 for each offense; termination option added in 1973; current fines adopted in 1991
31-54 re prevailing wage (hourly rate and employee fund contributions) on state highways/bridges	paying persons at rate of wage lower than customary or prevailing	\$100 for each offense	adopted in 1935
31-69a re state contracts	additional penalties for violating Chap. 557, Part III	\$150 for each violation of chapter	adopted in 1993
31-69b re employee protection	discriminating against employee(s) for providing info re Chap. 557	appropriate relief (job, back wages, benefits, atty. fees, etc.)	adopted in 1993
53a-119 re larceny	knowingly filing a false payroll under Sec. 31-53 and failing to pay welfare fund amounts	varies, depending on amount of underpayment involved	adopted in 1993
53a-157a re false statement in first degree	intentionally making false written statement on certified payroll filed under 31-53 with intent to deceive	Class D felony (up to \$5,000 fine and/or 5 years jail)	adopted in 1993

**APPENDIX B-3. Changes in Process for Determining Prevailing Wage Rates Under C. G. S. Sec. 31-53.**

<b>Year</b>	<b>Party Setting Rate</b>	<b>Nature of Responsibility</b>	<b>Tasks</b>
1933	commissioner of labor and factory inspection	in case of dispute as to "customary or prevailing rate of wage in any town ... after proper investigation, determine the customary or prevailing rate of wage in such town"	if "no direct data available," commissioner "may make investigation and obtain data from towns adjoining thereto"
1937	three-person labor board (representing labor, construction employers, and the state)	"predetermining the prevailing rate of wage in each town where such [construction, remodeling, or repair] contract is to be performed"	"hold a hearing at any required time to determine the prevailing rate of wages upon any public work within any specified area, and shall establish classifications of skilled, semi-skilled and ordinary labor"  "determine the prevailing rate of wages in each locality where any such public work is to be constructed"
1950	labor commissioner	same as above	same as above
1961	labor commissioner	"predetermining the prevailing rate of wage on an hourly basis and the amount of payment or contributions paid or payable on behalf of each employee to any employee welfare fund, as defined in section 31-78, in each town where such contract is to be performed"	"hold a hearing at any required time to determine the prevailing rate of wages on an hourly basis and the amount of payment or contributions paid or payable on behalf of each employee to any employee welfare fund, as defined in section 31-78, upon any public work within any specified area, and shall establish classifications of skilled, semi-skilled and ordinary labor"  "determine the prevailing rate of wages on an hourly basis and the amount of payment or contributions paid or payable on behalf of each employee to any employee welfare fund, as defined in section 31-78, in each locality where any such public work is to be constructed"
1967	labor commissioner	same as above, except reference to Sec. 31-78 replaced with Sec. 31-53(h)	same as above, except reference to Sec. 31-78 replaced with Sec. 31-53(h)
1977	labor commissioner	same as above	same as above re holding hearing, but also have option to: "adopt and use such appropriate and applicable prevailing wage rate determinations as have been made by the Secretary of Labor of the United States under the provisions of the Davis-Bacon Act, as amended"



**APPENDIX C**

**INFORMATION ABOUT OTHER STATES**



**APPENDIX C. Status of Prevailing Wage Laws in Individual States.**

<i>State</i>	<i>Year Adopted</i>	<i>Threshold (Nov. 1995)</i>	<i>Definition of prevailing wage</i>	<i>Penalties</i>
Ala	1969	repealed 1980	--	--
Alas	1931	\$2,000	wage paid for work of similar nature in region where public work to be done	\$100-\$1,000 fine and/or 90 days jail
Ariz	1912	repealed 1984	--	--
Ark	1955	\$75,000	minimum wage rate prevailing in county where work to be performed	\$500-\$1,000 fine, ≤6 mo.s jail, +/- 10% of grtr. of contract value/wages due
Calif	1931	\$1,000	not less than prevailing per diem wages for work of similar character in same locality	1-3 yr. ban on bidding public works contracts
Colo	1933	repealed 1985	--	--
CT	1933	\$400,000 new \$100,000 remod	customary or prevailing for same work in same trade or occupation in town where project being constructed	\$2,500-\$5,000 fine and/or 5 yrs. jail; contract termination; ≤3-yr. ban on bidding
Del	1962	\$100,000 new \$15,000 remod	prevailing minimum for similar work based on average actual wages paid majority of laborers and mechanics on similar construction work in same county	\$500-\$2,000 fine; 3-yr. ban from working on public works projects
D.C.	1931	\$2,000 (federal Davis-Bacon Act)	prevailing for corresponding classes of workers employed on projects similar to contract work in area where work to be performed	termination of contract; up to 3-yr. ban on bidding; possible criminal prosecution
Fla	1933	repealed 1979	--	--
Ga	NA	--	--	--
Ha	1955	\$2,000	not less than rate paid under federal Davis-Bacon Act	\$1,000 fine, 10% of contract amount, or 3-yr. suspension (depending on offense number)
Id	1911	repealed 1985	--	--

<i>State</i>	<i>Year Adopted</i>	<i>Threshold (Nov. 1995)</i>	<i>Definition of prevailing wage</i>	<i>Penalties</i>
Ill	1931	None	prevailing hourly rate including fringe benefits for work of similar character in same locality	2-yr. ban from public works jobs; class B misd. for records violations
Ind	1935	\$5,000 (law for \$150,000 in court)	not less than prevailing scale for each class of workers in immediate locality	class B misd.; forfeit contract and pymts. on second offense
Ia	NA	--	--	--
Kan	1891	repealed 1987	--	--
Ky	1982	\$398,760 (will be reduced to \$250,000 later in 1996)	basic hourly rate paid majority of workers employed in each class in county where work to be performed (if no majority rate, then the average rate)	\$100-\$1,000 fine; 2-yr. ban from public works jobs
La	1968	repealed 1988	--	--
Me	1933	\$10,000	hourly wage paid median number of workers employed in same trade/occupation in second/third wk. of Sept.	\$50-\$250 fine
Md	1945	\$500,000	hourly rate, including fringe benefits, paid 50% or more workers in same class in locality where work to be performed	restitution; \$10/day/underpaid employee fine; 1-yr. ban from public works jobs
Mass	1914	None	at least rate paid laborers who work for municipality where construction taking place	\$1,000-\$10,000 fine
Mich	1965	invalidated by court 1994; on appeal	wage and fringe benefits prevailing in locality where work to be performed	misdemeanor
Minn	1973	\$2,500 1 trade involved; \$25,000 if >1	prevailing hourly rates including fringe benefits	≤\$700 fine and/or ≤90 days jail
Miss	NA	--	--	--
Mo	1957	None	hourly wages plus fringe benefits prevailing in county where work to be performed	\$10/day/underpaid worker; ≤\$500 fine and/or ≤6 mo.s jail

<i>State</i>	<i>Year Adopted</i>	<i>Threshold (Nov. 1995)</i>	<i>Definition of prevailing wage</i>	<i>Penalties</i>
Mon	1931	\$25,000	prevailing wages including fringe benefits paid for similar work in district where work to be performed	\$25/day/underpaid worker + 20% of delinquent wages and other costs
Neb	1923	None (except public sch dist.\$40,000)	wages paid by at least 50% of contractors in same business or field	\$25-\$200 fine
Nev	1937	\$100,000	hourly or daily rate prevailing in county where work performed	misdemeanor; restitution; fine $\leq$ cost of prosecution
NH	1941	repealed 1985	--	--
NJ	1913	\$2,000	wage and fringe benefits prevailing in locality where work performed	\$100-\$1,000 fine, 10-90 days jail and/or admin. penalty; 3-yr. ban from public works jobs
NM	1937	\$20,000	prevailing wages of those employed in similar projects in state or locality	\$10/day/underpaid worker; 3-yr. ban from public works jobs
NY	1897	None	rates prescribed in union contracts if apply to 30%+ workers in same trade or occupation in locality (if <30%, average wages paid occupation/trade in locality in last 12 months)	\$500 fine and 30 days jail; \$1,000 fine and forfeit contract on second offense
NC	NA	--	--	--
ND	NA	--	--	--
Oh	1931	\$50,000 new \$15,000 remod (adjusted per const. price deflator $\pm$ 6%)	prevailing wage including fringe benefits payable in same trade or occupation in same locality under union contracts (if no contract, union rate in nearest locality where there is contract)	\$25-\$500 fine
Okla	1965	invalidated by court 1995	[had used federal Davis-Bacon rates]	--
Ore	1959	\$25,000	hourly wage with fringe benefits paid majority of workers employed in same occupation or trade on similar projects in locality where work to be performed	fine = double the amount of unpaid wages

<i>State</i>	<i>Year Adopted</i>	<i>Threshold (Nov. 1995)</i>	<i>Definition of prevailing wage</i>	<i>Penalties</i>
Pa	1961	\$25,000	determined by labor secretary	3-yr. ban on public works jobs; damages equal to underpayment
RI	1935	\$1,000	hourly rate + fringe benefits paid in appropriate political subdivision of state to corresponding types of employees on similar projects	\$100/day/noncompliance and next lowest bidder may sue for damages
SC	NA	--	--	--
SD	NA	--	--	--
Tenn	1953	\$50,000	prevailing wage for same work in same district	suit by employee or labor cmsr; forfeit contract
Tex	1933	None	daily rates for similar work in same locality	\$60/day/employee
Ut	1933	repealed 1981	--	--
Vt	NA	--	--	--
Va	NA	--	--	--
Wash	1945	None (separate law for higher ed is \$17,500)	hourly rate paid majority of workers in same trade in same locality (if no majority, avg. rate)	\$500 fine; 1-2 yr. ban from public works jobs (depending on offense #)
WVa	1933	None	wage paid workers in same trade or occupation in county where work performed	\$50-\$250 fine
Wis	1931	\$11,000 1trade & \$110,000 >1 trade for state & munic; None for st. highway	hourly wage including fringe benefits paid majority of workers employed in same occupation/ trade in same area where work performed	\$50-\$200 fine and/or ≤6-18 mo.s jail; employee knowingly accepting less \$20 fine and/or 30 days jail
Wy	1967	\$25,000	local prevailing hourly rate paid construction workers	\$500 fine and/or ≤6 months jail

NA = not applicable (because state never had a prevailing wage law)

Sources of Data: Col. 2 -- 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*, Labor Relations and Public Policy Series, No. 27 (Philadelphia: University of Pennsylvania, 1986), p. 140; Col. 3 -- correspondence from Wage and Hour Division, U.S. Dept. of Labor, Washington, D.C., June 7, 1996; Col. 4 & 5 -- Office of Legislative Research, Memo 96-R-0357, February 13, 1996; all Connecticut data from state statutes

**APPENDIX D**  
**AGENCY RESPONSE**



# Connecticut Department of Labor

*Working with you for a better future.*

James P. Butler  
Commissioner

January 16, 1997

Mr. Michael L. Nauer  
Director, Legislative Program Review  
and Investigations Committee  
State Capitol - Room 506  
Hartford, CT 06106

Dear Mr. Nauer:

I am writing to provide the formal response of the Department of Labor to the Committee's Report and to your letter of January 3, 1997. I would also like to thank the Committee for its exhaustive examination of such complex issues and commend the Committee for its obvious hard work and the accuracy of the underlying facts upon which the report is based.

Specifically, I would like to speak to three areas mentioned in the Committee's Staff Findings and Recommendations.

#### **Committee Recommendation #4 - Definition of "Employee Welfare Fund"**

The Department of Labor has interpreted this section broadly in keeping with the federal law's recognition of a wide range of employee benefits sponsored not only by labor unions, but also by open shop contractors who provide fringe benefits to their employees. The Department stresses that many employers do not have benefit plans or may provide varying levels of benefits. In no way does the existence of a fringe benefit rate and the crediting of employee benefit plan contributions towards that rate, preclude the employer from paying the benefit rate either wholly or partially in cash. Full compliance with the law may be achieved by paying the benefit portion of the prevailing rate in cash, in kind or both.

The Department of Labor has always looked to the federal Davis Bacon Act and related federal laws for guidance. As mentioned in

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January 15, 1997  
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the recommendations, federal law may be used as a model in including a wider range of sponsoring entities of "employee welfare funds".

#### **Committee Recommendation #6 - Prevention of bidding**

Program Review Committee recommends that any contractor or subcontractor found in violation of the state's prevailing wage laws be prevented from bidding on new projects for at least a minimum period of time depending on whether the violation is a first or subsequent violation. The Committee also recommends that on a first violation, a contractor or subcontractor be barred from bidding throughout the period leading to complete restitution of the back wages owed to workers and for an additional six months from that date. Finally, the Committee recommends that on all subsequent violations, the party shall be barred from bidding until there is complete restitution of the back-pay and for at least an additional two years from that date.

Presently, the only available mechanism to the Department of Labor which prevents contractors from bidding on prevailing rate jobs is the debarment procedure specified in Connecticut General Statutes Section 31-53a and Section 31-53a-1 **et seq.** of the Regulations of Connecticut State Agencies. This procedure includes use of the Department's contested case regulations which are modeled upon and incorporate provisions of the Uniform Administrative Procedures Act (UAPA). Presently, the statute provides the Labor Commissioner with authority to publish a list of the names of persons or firms whom he has found to have disregarded their obligations under Connecticut General Statutes Section 31-53 to employees and subcontractors or to have been barred from federal government contracts. No contract shall be awarded by the State or any of its political subdivisions to any such person or firm for a period of up to three years. The Connecticut Supreme Court has confirmed the Department's interpretation of the meaning of "disregard of obligations" to include unintentional violations of the law.

In 1993, the legislature amended the period of debarment from a mandatory five years to a period of "up to three years". The purpose of this change was to provide flexibility to the Labor

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Commissioner in recognition of the many varying degrees of "disregard of obligations". Contractors may make restitution of back wages, but still have disregarded their obligations with respect to either timely payment or record keeping violations. Some contractors fraudulently mis-classify employees, alter pay records or intimidate employees into accepting less than the prevailing rate of pay. Conversely, contractors may have in good faith attempted to comply with the law, but committed bookkeeping errors or relied on erroneous information from the contracting agency with respect to whether or not the project was covered by the prevailing rate law.

The 1993 amendment to Conn. Gen. Stat. Section 31-53 gives the Labor Commissioner the ability to take into consideration whether or not the contractor is a repeat offender and whether employees received the outstanding back pay. Since there are various degrees of "disregard of obligations", it is important for the Commissioner to retain flexibility in the imposition of penalties. We believe that it is important that the Department of Labor retain the flexibility to differentiate between technical non-compliance and repeated or intentional violation.

**Committee Recommendation # 10 - Ability of Contracting Agencies to withhold payment**

The Committee recommended that Connecticut General Statutes Section 31-53(b) be amended to allow contracting entities to withhold money from a contractor or subcontractor found in violation of the prevailing wage law without first terminating the contract. While the Department supports this amendment to Connecticut General Statutes Section 31-53(b), withholding of payment should not be required if the contracting agency can take lesser steps to bring the contractor or subcontractor into compliance, including the payment of all back wages owed.

Also, it is suggested that Connecticut General Statutes Section 31-53(b) be amended within the already existing framework of the contracting agency having responsibility to find that the workers are being paid a rate of wages less than the rate of wages required by the contract. It is important that the contracting

Mr. Michael L. Nauer

January 15, 1997

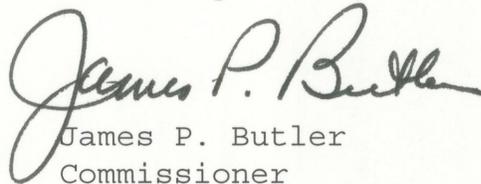
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agency be permitted to act speedily in these circumstances so that in the event the parties cannot quickly make payment of the proper contractual rate, funds still exist under the contract to withhold.

The Committee recommendation uses the term "found to be in violation". The contracting agency should not have to wait for the Department of Labor to either issue a notice of violation or debar a company before it is allowed to withhold funds under the contract. A finding that a worker is not being paid the contractual rate may be made by the contracting agency at a much earlier time and the agency should be able to act at that time. The Department of Labor will continue to quickly notify contracting agencies of the receipt of complaints on projects which are ongoing in an attempt to resolve matters while funds still exist under such contracts.

Thank you for your consideration of these comments.

Sincerely,



James P. Butler  
Commissioner