



Members Only

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Prevailing Wage Laws*

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Prevailing wage laws require that workers on certain public construction projects be paid a specified minimum wage (typically termed in those laws the “prevailing wage”). Depending on the state, the wage rates used may be taken from local collective bargaining agreements or may be the result of calculations to determine what wage rates are “prevailing” in a given community. This Members Only Brief discusses the history and theory of prevailing wage laws in Ohio, in other states, and in the federal government, and provides an overview of the differing views on these laws.

A BRIEF HISTORY OF PREVAILING WAGE LAWS

State Laws

Enacted in 1891, the nation’s first prevailing wage law provided that “not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, and other persons so employed by or on behalf of the State of Kansas, or any county, city, township, or other municipality of said State.”¹

State prevailing wage laws, though dissimilar, share a common history. Many of these laws were enacted as part of general reform efforts to improve working conditions at the end of the 19th and the beginning of the 20th centuries.² Between 1891 and 1923, seven states adopted prevailing wage laws that required payment of specified hourly wages on government construction projects.³ Eighteen additional states,⁴ including Ohio, and the federal government adopted prevailing wage laws during the Great Depression of the 1930s amidst concern that acceptance of the low bid, a common requirement of government contracting for public projects, when government had become the major purchaser of construction, would operate to reduce the wages paid to workers on those projects to a level that would disrupt the local economy.⁵ As one commentator on prevailing wage laws notes:

Thirty-three states and the federal government have prevailing wage laws that require the payment of specified minimum wages to workers on public construction projects.

Most prevailing wage laws were enacted during the Great Depression in an attempt to prevent government from using its purchasing power to reduce the wages of its citizens.

* This Members Only Brief is an update of an earlier Brief on this subject dated November 20, 1998 (Volume 122 Issue 11).



[t]he proponents of prevailing wage legislation wanted to prevent the government from using its purchasing power to undermine the wages of its citizens. It was believed that the government should set an example, by paying the wages prevailing in a locality for each occupation hired by government contractors to build public projects.⁶

Thus, prevailing wage laws are meant to ensure that wages commonly paid to construction workers in a particular region will determine the minimum wage paid to the same type of workers employed on publicly funded construction projects. Most public construction projects contracted for or by the federal government or the District of Columbia are covered by the federal prevailing wage law, the Davis-Bacon Act,⁷ while 33 states have prevailing wage laws, often referred to as “little Davis-Bacon Acts,” that encompass projects financed by states and their political subdivisions.

The Davis-Bacon Act

The Davis-Bacon Act was enacted by Congress in 1931 and amended in 1935 to substantially its present form. The Act requires workers employed under public construction contracts of the federal government in excess of \$2,000 to be paid a minimum wage that the United States Department of Labor (USDOL) determines to be prevailing for corresponding classes of workers (such as plumber, electrician, carpenter, and

the like) in the civil subdivision where the contract is to be performed.⁸ Additionally, 60 separate federal laws currently specify the payment of Davis-Bacon wages for work prescribed.⁹ The United States Supreme Court has stated the public policy underlying the Davis-Bacon Act as one of “protecting local wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area . . . [and] giving local labor and the local contractor a fair opportunity to participate in this building program.”¹⁰

Since 1985, USDOL regulations have defined “prevailing wage” as the exact wage, to the penny, paid to at least 50% of the workers in the same job classification on similar projects in the civil subdivision during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage will be the average of the wages paid, weighted by the total employed in the classification.¹¹ To determine the prevailing wages and fringe benefits in various areas throughout the country, USDOL periodically surveys the wages paid to workers in building, residential, highway, and heavy construction. According to Peter Philips of the University of Utah, in 1994, 29% of all local-level federal Davis-Bacon prevailing wage rates were taken from collective bargaining agreements, 48% were based on average wages, and the remaining 23% were based on a mix of these two sources of wage rates depending on the occupation.¹²

The Davis-Bacon Act is the federal prevailing wage law, and it applies to public construction contracts of the federal government that cost more than \$2,000.



Different Meanings of “Prevailing”

The exact prevailing wage varies, depending on the classification of the worker, the geographic area where the project is located, and the type of construction. Since prevailing wage laws are intended to prevent the government from pulling down wages, the attempt to discern what is meant by “prevailing” creates a dilemma for policy makers:

The dilemma is that if the state pays the average wage, it will automatically undercut the most commonly found wage. Alternatively, if government pays the highest wage found, it will always be pulling the average wage up. When is the highest wage sufficiently common that it should be called the prevailing wage rate, even though it will never be the average wage?¹³

In the Davis-Bacon Act, this dilemma was resolved by use of the 50% rule described above. In Ohio, Massachusetts, New Jersey, and New

York, the dilemma was resolved by adopting the collectively bargained rate for a particular occupation as the prevailing wage. Other states use a variety of methods to determine what is meant by “prevailing.”

Some states use the modal rate (the rate that occurs with the most frequency), the median rate (the rate that falls in the middle when all the rates are arrayed by increasing amount), the average rate (the sum of all rates divided by the number of different rates), the weighted average rate (the sum of all rates times the number of workers receiving that rate divided by the number of workers), or the plurality rate (the rate that occurs among 50, 40, or 30% of the applicable workers). The formulas are not meant to reach different results; rather they are attempts to identify what the legislature meant in enacting a law that requires payment of wages “prevailing” in a community.¹⁴ As the table shows, different formulations may yield different results from the same data.

States use different formulas to determine which wages are “prevailing” in a community. Ohio uses the wage rates in collective bargaining agreements for a particular occupation as the prevailing wage.

RESULTS OF DIFFERENT FORMULAS FOR CALCULATING PREVAILING WAGE RATES					
Hypothetical employee wage rates	Simple average (sum of diff. rates/# of diff. rates)	Median (middle number)	Mean (sum of all rates/total # of rates)	Modal digit (most common number)	Greatest number, but at least 40%
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



OHIO'S PREVAILING WAGE LAW

Ohio's Prevailing Wage Law (Chapter 4115. of the Revised Code) was enacted in 1931 by House Bill 3 of the 89th General Assembly. The Prevailing Wage Law requires that any public authority wishing to engage in construction of a public improvement that costs more than the statutory threshold amount ensure that the workers employed on the project are paid the prevailing wage. The prevailing wage is defined as the sum of the basic hourly rate of pay, certain employer contributions to funds, plans, and programs, and fringe benefit costs such as insurance and vacation leave.¹⁵ This requirement applies to any officer, board, or commission of the state, any political subdivision, any instrumentality of these governmental entities, and any institution supported in whole or in part by public funds.

The Director of Commerce administers and enforces the Prevailing Wage Law. The Ohio Supreme Court has declared that, "[a]bove all else, the primary purpose of the prevailing wage law is to support the integrity of the collective bargaining process by preventing the undercutting of employee wages in the private construction sector."¹⁶ The Court further has held that the Prevailing Wage Law preempts any state or local law to the contrary.¹⁷

The Ohio Prevailing Wage Law applies to the construction and renovation of public improvements that meet the following criteria:

- (1) The project must fall within the statutory definition of "public improvement."*
- (2) The total cost of the project must exceed the statutory threshold.*
- (3) The project, or the persons employed on the project, must not otherwise be exempt from the Law.*

According to the Ohio Supreme Court, the Prevailing Wage Law preempts any state or local law to the contrary.

Application

A construction project must satisfy three elements in order to be covered by the Prevailing Wage Law. First, the project must be a "public improvement" as defined in law, which includes all of the following:

- (1) All buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a public authority or a person who constructs a structure for a public authority pursuant to a contract with the public authority;¹⁸
- (2) When the public authority rents or leases a newly constructed structure within six months after completion of construction, all work performed on the structure to suit it for occupancy;¹⁹
- (3) Construction on certain projects and facilities specified in law, including projects undertaken by or through the Department of Development Financing Advisory Council, Minority Business Enterprise Loan Fund, industrial development bonds, and the economic development program.²⁰

The Prevailing Wage Law requires the threshold to be adjusted for inflation each January 1 of every even-numbered year, not to exceed 3% per biennium. As of January 1, 2004, the current thresholds are \$65,843 for new construction and \$19,752 for renovations.²¹



Second, a project's total cost must exceed the statutory threshold. As originally enacted, the threshold for all public improvement projects was \$4,000.²² In 1994, the threshold was raised to \$50,000 for new construction and \$15,000 for the reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement.²³ A public authority is prohibited from subdividing a project to circumvent the threshold amounts unless the projects are conceptually separate and unrelated to each other or encompass independent and unrelated needs of the public authority.²⁴

Finally, a project must not be specifically exempted from the Prevailing Wage Law. A variety of public

improvement projects are exempt, along with certain participants who are not paid the prevailing wage even if the project is covered under the Prevailing Wage Law. Public improvement projects that are exempt from the Law under Chapter 4115. of the Revised Code are:

(1) Public improvement projects subject to the Davis-Bacon Act;²⁵

(2) Participants in specified types of subsidized employment programs or work experience programs when a public authority uses a participant's labor to construct a public improvement;²⁶

(3) Public improvements undertaken by, or under contract for, the board of education of any school district or the governing board of any educational service center;²⁷

Ohio law generally prohibits a public authority from subdividing a project in order to circumvent the threshold amounts.

Recent legislation proposing changes to Ohio's Prevailing Wage Law

Considered but not enacted

Since 1993, several bills have been introduced to amend or repeal the Prevailing Wage Law. In the 120th General Assembly, bills were introduced to impose a statute of limitations for alleging violations of the Prevailing Wage Law and to exempt small townships from the Law.²⁸ The 121st General Assembly considered bills to subject all public improvements to that Law and to require the use of a blended rate of union and nonunion wages rather than the rate specified in collective bargaining agreements.²⁹ The 122nd General Assembly considered proposals to exempt the following from the law: (1) colleges and universities, (2) construction of an improvement by the armed forces reserves, and (3) state historical facilities constructed by an arts organization.³⁰ In the 123rd General Assembly, proposals were made to exempt contracts and projects of a transportation improvement district (TID) and construction of erosion control structures from the law.³¹ The 124th General Assembly considered a bill that limited the Prevailing Wage Law only to construction projects undertaken by or pursuant to a contract with the state on state-owned structures instead of also to construction projects undertaken by political subdivisions. Two bills sought to remove the statutory exemption for school facilities. The 125th General Assembly considered bills that removed the exemption for school facilities and exempted contracts and projects of a TID.³² Legislation to repeal the Prevailing Wage Law was introduced in the 120th, 121st, 122nd, and 123rd General Assemblies.³³

Enacted

The 124th General Assembly passed a bill (effective on March 14, 2003) that exempts the construction of project facilities built under the Innovation Ohio Loan Program.³⁴ The 125th General Assembly passed H.B. 95 (effective on September 26, 2003), which requires an employee who files a written complaint with the Director alleging a violation of the law to include documented evidence to support the complaint. Additionally, H.B. 95 extends the time in which an employee may file a lawsuit before being barred from further action under the law from 60 days to 90 days from the date on which the Director determines that there has been a violation of the law.



(4) In certain circumstances, public improvements undertaken by, or under contract for, a county hospital;³⁵

(5) Certain improvements made pursuant to a contract with a soil and water conservation district and certain improvements concerning single county ditch projects where no less than 75% of the project is on private land and no less than 75% of the project's cost is paid by private property owners.³⁶

The exemptions explained above are just a few examples of those that exist throughout the Revised Code.

Administration

Determination

Before a public authority may advertise for bids for, award a contract for, or begin construction of a public improvement that is subject to the Prevailing Wage Law, it must have the Director of Commerce determine the prevailing rate of wages of workers for the class of work called for by the public improvement in the county where the work is to be performed.³⁷ If the contract is not awarded or construction not undertaken within 90 days after the prevailing wage for the project is determined, the Director must redetermine the prevailing wage.³⁸

The prevailing rate of wages may not be less at any time during a contract than the prevailing rate of wages then payable to persons in the same trade in the county in which the public work is being performed under collective

bargaining agreements relating to the particular trade. If there is no collective bargaining agreement in that county, the prevailing rate of wages becomes the rate in effect for a particular trade in the nearest county in which a collective bargaining agreement exists.³⁹

Wage Records

Contractors on public improvement projects are required to keep full and accurate payroll records for each employee and to report specified information from these records.⁴⁰ A public authority must appoint one of its employees as wage coordinator for each project to monitor compliance with the law or maintain a permanent employee to perform this function for all projects. If the public authority or its wage coordinator fails to monitor as required by law, the Director must notify the public authority or prevailing wage coordinator that compliance is required within a time the Director prescribes. If the public authority or wage coordinator still fails to comply, the Attorney General must bring suit to compel compliance.⁴¹

Enforcement and Penalties

Who May Bring an Action

An employee who has not been paid the prevailing wage may either file a suit or file a complaint with the Director to recover wages not paid and damages. The employee may file suit for recovery

A public authority must have the Director of Commerce determine the prevailing rate of wages for workers on a particular project before the public authority may advertise for bids or award a contract for the project.

Bidders, subcontractors, labor unions, employees, and the Director of Commerce may bring actions to enforce the Prevailing Wage Law.



within 90 days of the Director's determination that the employer violated the Prevailing Wage Law. If the employee does not file a suit, the employee may file a complaint with the Director. Upon receiving a written complaint, the Director must take an assignment of the employee's claim in trust and bring any legal action that is necessary to recover for the employee.⁴²

If the employee does not file a suit or file a complaint with the Director and the Director determines that an employer has violated the law, the Director must still bring any legal action necessary to recover for the employee and the Director.⁴³

The employee can recover the difference between the fixed rate and the amount paid to the employee, plus 25% of that difference. The Director also collects a penalty from the employer equaling 75% of the difference between the fixed rate and the amount paid to the employee. Additionally, the employer must pay the employee's or the Director's costs and reasonable attorney's fees. For actions brought by the Director and not the employee, the Director must collect the employee's recovery on the employee's behalf and pay that recovery amount to the employee.⁴⁴

An interested party also may file a complaint with the Director. An interested party is defined as a bidder on a project, a subcontractor of a bidder, a labor union authorized to represent employees of bidders or their subcontractors, or any association having as members bidders or their

subcontractors. Upon receipt of the complaint, the Director must determine whether the employer violated the Prevailing Wage Law. If the Director determines that no violation has occurred or that the violation was not intentional, then the interested party may appeal to the court of common pleas. If the Director does not rule on the merits of the complaint within 60 days after it is filed, the interested party may file a complaint with the court of common pleas. If the court finds a violation of the law, the court must award the relief specified under the Prevailing Wage Law as it applies to the interested party. If the court finds that no violation has occurred, the court may award court costs and attorney's fees to the prevailing party, other than the Director or a public authority, if the court finds the action brought was unreasonable or without foundation, even if the action was not brought in subjective bad faith.⁴⁵

Debarment

Contractors, subcontractors, and their officers who have been prosecuted and convicted for violations of or have been found to have intentionally violated the Prevailing Wage Law are prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement and from performing any work on a public improvement as a contractor, subcontractor, or officer for a one-year period from the expiration date for filing an appeal, or if there was an appeal,

An employee who is not paid the prevailing wage is entitled to recover the difference in the rates, 25% of that difference, and costs and reasonable attorney's fees.

A contractor who violates the Prevailing Wage Law is subject to debarment, which prohibits the contractor from contracting for public improvements for a specified period of time.



from the date of the final court judgment. If the same person is found to have intentionally violated the law another time within five years after the first violation, that person is prohibited from contracting or performing work for a three-year period from the expiration date for filing an appeal, or if there was an appeal, from the date of the final court judgment. Additionally, public authorities may not award contracts for public improvements to any such person during the time that the contractor's, subcontractor's, or officer's name appears on a list of defaulting contractors, subcontractors, and officers which the Director must file with the Secretary of State.⁴⁶

Stop work orders and injunctions

If the Director determines that a contractor or subcontractor has failed to pay the prevailing wage rate, the contracting public authority or the Director, after notice of noncompliance and a hearing, may order work halted on that part of the contract for which less than the prevailing wage rate has been paid. Work must be halted until the defaulting contractor has filed a bond with the Director in an amount set by the Director, conditioned upon paying the prevailing wage rate.⁴⁷

If a public authority, contractor, subcontractor, or prevailing wage coordinator violates the Prevailing Wage Law and the Director gives notice of noncompliance, the Director must inform the Attorney General if that notice was given but the person, public authority, or prevailing wage coordinator has not complied with the notice. The Attorney

General must then bring suit against the person, public authority, or prevailing wage coordinator to enjoin awarding the contract for the public improvement, or if the contract has already been awarded, to enjoin further work under the contract until the person, public authority, or prevailing wage coordinator complies with the notice.⁴⁸

Criminal penalties and additional fines

In the following circumstances, the person or entity listed below is guilty of a misdemeanor of the second degree for the first offense and a misdemeanor of the first degree for each subsequent offense:

- (1) If a public authority, contractor, or subcontractor does not pay the prevailing wage rate as required by law;
- (2) If a contractor or subcontractor does not provide a prevailing wage coordinator with a pay schedule and other specified payroll information;
- (3) If an employer does not pay employees in cash, but this applies only if that employer does not have a financial responsibility plan that is communicated in writing to employees.

If a public official advertises for bids for, awards a contract for, or begins construction of a public improvement that is subject to the Prevailing Wage Law before having the Director determine the prevailing wage rate of workers for the class of work called for by the public improvement in the locality where the work is to be performed, then the public official must be fined not less than \$25 nor more than \$500.⁴⁹

Under specified circumstances, violations of the Prevailing Wage Law can cause all work on a public improvement to cease until the violations are corrected.



COMMON ARGUMENTS SURROUNDING PREVAILING WAGE LAWS

The prevailing wage issue is complex, for it often involves a balancing of sometimes competing interests and philosophies. The Kentucky Legislative Service Commission, in its 1981 study of Kentucky's prevailing wage law, gave the following evaluation of the then-existing literature on the subject:

This is not to suggest that for every point raised regarding prevailing wage there is a counter-point, or that the points made on either side of the issue are equally valid. Many of the points made on the issue are totally devoid of real world validity. The intent here is to underscore the fact that it is extremely difficult to obtain objective information on a subject as controversial as prevailing wage.⁵⁰

It is reasonable to say that this evaluation has not changed in the intervening years. In the 1988 debate to repeal the Massachusetts prevailing wage law, for example, proponents of the repeal issued a report that said "in 1987, the prevailing wage law cost Massachusetts at least \$212 million." Opponents countered that a repeal would result in "a total wage loss of \$196 million and a net employment loss of 600."⁵¹ While a portion of the discussion below centers on arguments for and against the Davis-Bacon Act, the same arguments have been raised in support and opposition of state prevailing wage laws.

Opponents of Prevailing Wage Laws

Those opposed to the Davis-Bacon Act argue that the federal law (1) is a Depression-era measure that has long since outlived its usefulness, (2) interferes with the workings of a free competitive market, (3) is inflationary because it results in federal and federally assisted construction contracts costing more than other construction contracts, (4) gives an unfair advantage to union employers over nonunion employers in bidding for government construction contracts, and (5) impedes entry of minority groups into the construction industry because they are disproportionately represented among the low-skilled labor force.⁵² Advocates of the repeal of Kentucky's prevailing wage law testified that a repeal would permit greater participation by small and local contractors in the public works market and, in response to concerns that a repeal would reduce the quality of workmanship on public works, opined that increased inspections would have more effect on the quality of work than the wage rates workers are paid.⁵³

Advocates of Prevailing Wage Laws

Supporters of the Davis-Bacon Act argue that (1) the law is more than a Depression-era measure and is needed now as much as ever, (2) it prevents cutthroat competition and promotes fair competition based on decent labor standards, (3) it follows established

The prevailing wage has been a contentious and controversial issue at both the state and federal levels. Proponents and opponents often draw different conclusions from the same data.



federal government policy to pay prevailing wages, (4) it is not inflationary and in the long run it may reduce costs, and (5) its repeal or weakening would adversely affect apprenticeship programs in the construction industry and hurt minority groups.⁵⁴ Proponents of Kentucky's prevailing wage law similarly argued that the construction industry is very seasonal and highly volatile and the law provides stability. A repeal would permit large itinerant contractors to take advantage of local contractors by bringing into the state cheap unskilled or unqualified labor for local projects.⁵⁵

OTHER STATES' PREVAILING WAGE LAWS

The following table gives information commonly requested by legislators about other states' prevailing wage laws.

SELECTED INFORMATION ABOUT STATE PREVAILING WAGE LAWS			
State	Year Adopted	Threshold	Definition of "prevailing wage"
Alabama	1969; repealed 1980	NA	NA
Alaska (Alaska Stat. §§ 36.05.010 to 36.05.110 (Michie 2004).)	1931	\$2,000 <i>(Id. § 36.05.070.)</i>	Wage paid for work of similar nature in region where public work to be done. <i>(Id. § 36.05.010.)</i>
Arizona	1912; repealed 1984	NA	NA
Arkansas (Ark. Code Ann. §§ 22-9-301 to 22-9-315 (Michie 2004).)	1955	\$75,000 <i>(Id. § 22-9-302.)</i>	Minimum wage rate prevailing in county or locality where work is to be performed, for workers in work of a similar character. <i>(Id. § 22-9-301.)</i>
California (Cal. Lab. Code §§ 1771 to 1781 (West 2004).)	1931	\$1,000 <i>(Id. § 1771.)</i>	Not less than prevailing per diem wages for work of similar character in same locality. <i>(Id.)</i>
Colorado	1933; repealed 1985	NA	NA
Connecticut (Conn. Gen. Stat. §§ 31-53 to 31-55a (2003).)	1933	\$400,000 new \$100,000 remodeling <i>(Id. § 31-53.)</i>	Customary or prevailing wage for same work in same trade or occupation in town where project is being constructed. <i>(Id.)</i>

SELECTED INFORMATION ABOUT STATE PREVAILING WAGE LAWS			
State	Year Adopted	Threshold	Definition of "prevailing wage"
Delaware (Del. Code Ann. tit. 29, § 6960 (2004).)	1962	\$100,000 new \$15,000 remodeling (<i>Id.</i>)	Wages paid to a majority of employees performing similar work, or in the absence of a majority, the average wages paid to all employees. (<i>Id.</i>)
District of Columbia (Davis-Bacon Act §§ 276a to 276a-7, 40 U.S.C. §§ 3141-3148.)	1931	\$2,000 (<i>Id.</i> § 3142.)	Prevailing wage for corresponding classes of workers (50% rule) employed on projects similar to the work in the area where it is to be performed. (29 C.F.R. § 1.2 (a) (1).)
Florida	1933; repealed 1979	NA	NA
Georgia	NA	NA	NA
Hawaii (Haw. Rev. Stat. §§ 104-1 to 104-34 (2003).)	1955	\$2,000 (<i>Id.</i> § 104-2.)	Not less than the wages for corresponding classes of laborers and mechanics on projects of similar character in the state and not less than the rate paid under the Davis-Bacon Act. (<i>Id.</i>)
Idaho	1911; repealed 1985	NA	NA
Illinois (820 Ill. Comp. Stat. 130/1 to 130/12 (West 2004).)	1931	None	Prevailing hourly rate including fringe benefits for work of similar character in same locality. (<i>Id.</i> 130/2.)
Indiana (Ind. Code §§ 5-16-7-1 to 5-16-7-5 (2004).)	1935	\$150,000 (<i>Id.</i> § 5-16-7-1.)	Not less than the common construction wage for each class of workers in the county. (<i>Id.</i>)
Iowa	NA	NA	NA
Kansas (Kan. Stat. Ann. §§ 19-1417, 68-110, 68-2317, 17-4748 (2004).)	1891; repealed 1987	NA	The Kansas wage-hour law makes no reference to prevailing wages, but the concept of a prevailing wage does appear in several instances under the law that concerns public contracts. (Kansas Construction Law 17.28 (1998).)
Kentucky (Ky. Rev. Stat. Ann. §§ 337.010, 337.505 to 337.550, 337.990 (Michie 2004).)	1982	\$250,000 (<i>Id.</i> § 337.010.)	Basic hourly rate paid majority of workers employed in each class in locality where work is to be performed; if no majority rate, then the average rate. (<i>Id.</i> § 337.505.)
Louisiana	1968; repealed 1988	NA	NA
Maine (Me. Rev. Stat. Ann. tit. 26, §§ 1303 to 1315 (West 2003).)	1933	\$10,000 (<i>Id.</i> § 1304.)	Hourly wage paid to median number of workers employed in same trade or occupation in the second/third week of September. (<i>Id.</i>)

SELECTED INFORMATION ABOUT STATE PREVAILING WAGE LAWS			
State	Year Adopted	Threshold	Definition of "prevailing wage"
Maryland <small>(Md. Code Ann. State Fin. & Proc. §§ 17-201 to 17-226 (2004).)</small>	1945	\$500,000 <small>(Id. § 17-202.)</small>	Hourly rate, including fringe benefits, paid to 50% or more workers in same class for projects similar to proposed public work in the locality where work is to be performed. <small>(Id. § 17-208.)</small>
Massachusetts <small>(Mass. Gen. Laws ch. 149, §§ 26 to 27H (2004).)</small>	1914	None	For laborers, at least the wages paid to laborers employed by town (or highest of the towns, if applicable) where construction taking place, unless a collective bargaining agreement specifies otherwise. For craftsmen, at least rate under collective bargaining agreement, if any; otherwise wages paid to unspecified plurality or majority by private employers. <small>(Id. § 26.)</small>
Michigan <small>(Mich. Comp. Laws §§ 408.551 to 408.558 (2004).)</small>	1965	None	Wages and fringe benefits prevailing in locality where work is to be performed. <small>(Id. § 408.552.)</small>
Minnesota <small>(Minn. Stat. §§ 177.42 to 177.44 (Supp. 2003).)</small>	1973	\$2,500 if one trade \$25,000 if more than one trade <small>(Id. § 177.43.)</small>	Prevailing hourly rates including fringe benefits paid to largest number of workers in the same class of labor in the area. <small>(Id. § 177.42.)</small>
Mississippi	NA	NA	NA
Missouri <small>(Mo. Rev. Stat. §§ 290.210 to 290.340 (2003).)</small>	1957	None	Hourly wages plus fringe benefits prevailing for workers engaged in work of a similar character in the locality where work is to be performed. <small>(Id. § 290.210.)</small>
Montana <small>(Mont. Code Ann. §§ 18-2-401 to 18-2-432 (2004).)</small>	1931	\$25,000 <small>(Id. § 18-2-401.)</small>	Prevailing wages including fringe benefits for similar work in district where work is to be performed. <small>(Id.)</small>
Nebraska <small>(Neb. Rev. Stat. §§ 73-101 to 73-106 (2004).)</small>	1923	None (except for school districts, \$40,000) <small>(Id. § 73-106.)</small>	Wages paid by at least 50% of contractors in same business or field of endeavor. <small>(Id. § 73-104.)</small>
Nevada <small>(Nev. Rev. Stat. §§ 338.010 to 338.645 (2004).)</small>	1937	\$100,000 <small>(Id. § 338.080.)</small>	Hourly or daily rate prevailing in county where work is to be performed. <small>(Id. § 338.020.)</small>
New Hampshire	1941; repealed 1985	NA	NA
New Jersey <small>(N.J. Stat. Ann. §§ 34:11-56.25 to 34:11-56.47 (West 2004).)</small>	1913	\$2,000 \$9,850 for cities (adjusted every five years) <small>(Id. § 34:11-56.26.)</small>	Wage rate determined by collective bargaining agreements paid by employers employing a majority of workers subject to the collective bargaining agreement in the locality where work is to be performed. <small>(Id.)</small>

SELECTED INFORMATION ABOUT STATE PREVAILING WAGE LAWS			
State	Year Adopted	Threshold	Definition of “prevailing wage”
New Mexico (N.M. Stat. Ann. §§ 13-4-11 to 13-4-17 (Michie 2004).)	1937	\$20,000 (<i>Id.</i> § 13-4-11.)	Prevailing wages of those employed on similar projects in state or locality. (<i>Id.</i>)
New York (N.Y. Lab. §§ 220 to 220-g (McKinney 2004).)	1897	None	Rates prescribed under collective bargaining agreements if those rates apply to 30% or more of workers in same trade in locality; if less than 30%, average wages paid to trade in locality in last 12 months. (<i>Id.</i> § 330.)
North Carolina	NA	NA	NA
North Dakota	NA	NA	NA
Ohio (Ohio Rev. Code Ann. §§ 4115.03 to 4115.16; 4115.99.)	1931	\$65,843 for new construction \$19,752 for renovations (adjusted biennially) School districts are exempt (<i>Id.</i> § 4115.03.)	Basic hourly wage, including fringe benefits, paid in same trade in same county under collective bargaining agreements; if there is no collective bargaining agreement in the county, the wage described above for the nearest county with a collective bargaining agreement. (<i>Id.</i> § 4115.05.)
Oklahoma	1965; invalidated by court in 1995 ⁵⁶	NA	NA
Oregon (Or. Rev. Stat. §§ 279.348 to 279.380 (2003).)	1959; will be repealed effective March 1, 2005	\$25,000 (<i>Id.</i> § 279.357.)	Hourly wage and fringe benefits paid a majority of workers employed in same trade on similar projects in locality where work is to be performed. (<i>Id.</i> § 279.348.)
Pennsylvania (43 Pa. Cons. Stat. §§ 165-1 to 165-17 (2004).)	1961	\$25,000 (<i>Id.</i> § 165-2.)	Prevailing minimum rate in locality where public work performed for workers in the same class during the term the work is performed, as determined by state labor secretary. (<i>Id.</i> § 165-7.)
Rhode Island (R.I. Gen. Laws §§ 37-13-1 to 37-13-17 (2004).)	1935	\$1,000 (<i>Id.</i> § 37-13-3.)	Hourly rate and fringe benefits paid in appropriate political subdivision to corresponding types of employees on similar projects. (<i>Id.</i> § 37-13-6.)
South Carolina	NA	NA	NA
South Dakota	NA	NA	NA
Tennessee (Tenn. Code Ann. §§ 12-4-401 to 12-4-415 (2004).)	1975	\$50,000 (<i>Id.</i> § 12-4-402.)	Prevailing wage for same work in same district. (<i>Id.</i> § 12-4-405.)

SELECTED INFORMATION ABOUT STATE PREVAILING WAGE LAWS			
State	Year Adopted	Threshold	Definition of "prevailing wage"
Texas (Tex. Gov't Code §§ 2258.001 to 2258.058 (West 2003).)	1933	None	Daily rates for similar work in same locality. (<i>Id.</i> § 2258.021.)
Utah	1933; repealed 1981	NA	NA
Vermont (Vt. Stat. Ann. tit. 29, § 161 (2004).)	1973	\$100,000	Mean prevailing wage published periodically by the department of employment and training. (<i>Id.</i>)
Virginia	NA	NA	NA
Washington (Wash. Rev. Code §§ 39.12.010 to 39.12.900 (2004).)	1945	None	Hourly rate, benefits, and overtime paid majority of workers in same trade in same locality; if no majority, then the average hourly rate. (<i>Id.</i> § 39.12.010.)
West Virginia (W. Va. Code §§ 21-5A-1 to 21-5A-11 (2004).)	1935	None	Prevailing hourly rate for work of similar character in the locality where work is to be performed. (<i>Id.</i> § 21-5A-2.)
Wisconsin (Wis. Stat. § 103.49 (2004).)	1931	\$30,000 if one trade \$150,000 if more than one trade None for state highway projects	Hourly wage and fringe benefits paid majority of workers employed in same trade in same area where work is to be performed.
Wyoming (Wyo. Stat. Ann. §§ 27-4-401 to 27-4-413 (2004).)	1967	\$25,000 (<i>Id.</i> § 27-4-402.)	Wages and benefits of workers engaged in work of a similar character. (<i>Id.</i> § 27-4-402.)

Citations

¹ Kan. Stat. ch. 114 (1891).

² Early labor reformers typically sought to (1) standardize an eight-hour work day instead of the prevailing ten-hour day, (2) provide that overtime, when authorized at all, was to be paid on the basis of an eight-hour day, and (3) promote child labor legislation. *See* PREVAILING WAGE LAWS IN CONNECTICUT, LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE, Connecticut General Assembly i, 5 (December 1996) (advocating changes to Connecticut's prevailing wage law); Peter Philips, et al., LOSING GROUND: LESSONS FROM THE REPEAL OF NINE "LITTLE DAVIS-BACON ACTS," University of Utah 1-3 (February 1995) (supporting prevailing wage laws); Armand J. Theiblot, Jr., PREVAILING WAGE LEGISLATION: THE DAVIS-BACON ACT, STATE "LITTLE DAVIS-BACON" ACTS, THE WALSH-HEALY ACT, AND THE SERVICE CONTRACT ACT, Industrial



Research Unit, University of Pennsylvania 25-27, 137-39 (1986) (advocating repeal of prevailing wage laws); CAPITAL CONSTRUCTION AND EQUIPMENT PURCHASE OVERSIGHT COMMITTEE, THE ECONOMIC IMPACT OF THE KENTUCKY PREVAILING WAGE LAW, Kentucky Legislative Research Commission Research Report No. 185, 1-2 (October 1981) (advocating modification or, alternatively, repeal of Kentucky's prevailing wage law).

³ Arizona (1912), Idaho (1911), Kansas (1891), Massachusetts (1914), Nebraska (1923), New Jersey (1913), and New York (1897).

⁴ Alaska (1931), California (1931), Colorado (1933), Connecticut (1933), District of Columbia (1931), Florida (1933), Illinois (1931) Indiana (1935), Maine (1933), Montana (1931), Nevada (1937), New Mexico (1937), Ohio (1931), Rhode Island (1935), Texas (1933), Utah (1933), West Virginia (1933), and Wisconsin (1931).

⁵ Between 1929 and 1935, for example, publicly financed construction rose from less than 25% of the nation's total construction to more than 50% of the total construction. UNITED STATES GENERAL ACCOUNTING OFFICE, THE DAVIS-BACON ACT SHOULD BE REPEALED 8 (1979). Competitive bidding laws generally require that public contracts be awarded to the "lowest and best" bidder. Ohio law, for example, generally provides that a competitively bid contract be awarded to the lowest responsive and responsible bidder. See Ohio Rev. Code Ann. § 9.312 (contracts of state agencies and political subdivisions) and § 125.11 (awarding of same) (Anderson 2004). In some instances, competitively bid contracts are awarded to the lowest and best bidder. See, e.g., Ohio Rev. Code Ann. § 153.51 (contracts for certain construction projects of townships, municipal corporations, and school districts).

⁶ Philips, at 65. See also Theiblot, at 28 ("The actual purpose of prevailing wage legislation can safely be characterized as that of protecting local wage scales from the consequences of competitive pressures on contractors to submit the low bid.").

⁷ Davis-Bacon Act §§ 276a-276a-7, 40 U.S.C. §§ 3141-3148 (2004). The federal government has two additional prevailing wage laws: the Walsh-Healy Public Contracts Act of 1935, which applies to employers in manufacturing and supply industries, and the O'Hara-McNamara Services Act of 1965 (the "Service Contract Act"), which applies to suppliers of personal and business services. 41 U.S.C. §§ 35 to 45 and 41 U.S.C. §§ 351 to 358. This Members Only Brief discusses only the Davis-Bacon Act.

⁸ *Id.* § 3142.

⁹ See 29 C.F.R. § 5.1 (2004).

¹⁰ *Universities Research Ass'n. Inc. v. Coutu* (1981), 450 U.S. 754, 773-774; see *North Georgia Building & Construction Trades Coun. v. Goldschmidt* (5th Cir. 1980), 621 F.2d 697, 702 ("The purposes of the Davis-Bacon Act are to protect the employees of Government of the contractors from substandard wages and to promote the hiring of local labor rather than cheap labor from distant sources.").

¹¹ 29 C.F.R. § 1.2(a)(1). As originally enacted, USDOL regulations provided for a "30% rule" that operated in the same manner as the 50% rule.

¹² Philips, at 5.

¹³ *Id.* at 66. It is possible to develop a hypothetical example that disproves the first sentence of this quotation. However, according to Dr. Philips, this statement accurately depicts the situations that actually occur in the construction industry.

¹⁴ See Theiblot, at 16-18; PREVAILING WAGE LAWS IN CONNECTICUT, at 17.

¹⁵ Ohio Rev. Code Ann. § 4115.03(E).

¹⁶ *State ex rel. Evans v. Moore* (1982), 69 Ohio St.2d 88.



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¹⁷ *Id.* at 91. In *Evans*, the Supreme Court held that a city ordinance of Upper Arlington, which exempted city contracts from the Prevailing Wage Law, was unconstitutional-- “[A] city’s attempt to nullify the prevailing wage law is beyond even the outer limits of a municipality’s local self-government or police powers.”

¹⁸ Ohio Rev. Code Ann. § 4115.03(C).

¹⁹ *Id.*

²⁰ *Id.* § 4115.032.

²¹ *Id.* § 4115.034.

²² Gen. Code § 17-3 (now Ohio Rev. Code Ann. § 4115.03(B)).

²³ Ohio Rev. Code Ann. § 4115.03(B).

²⁴ *Id.* § 4115.033.

²⁵ *Id.* § 4115.04.

²⁶ *Id.*

²⁷ *Id.*

²⁸ S.B. 297 and H.B. 139 from the 120th General Assembly.

²⁹ H.B. 397, H.B. 297, and H.B. 241 from the 121st General Assembly.

³⁰ H.B. 58, H.B. 215, H.B. 468, and S.B. 9 from the 122nd General Assembly.

³¹ S.B. 43 and S.B. 83 from the 123rd General Assembly.

³² H.B. 45, H.B. 95, and H.B. 194 from the 125th General Assembly.

³³ H.B. 276 from the 120th, S.B. 243 from the 121st, H.B. 168 from the 122nd, and H.B. 30 from the 123rd General Assemblies.

³⁴ S.B. 114, S.B. 300, H.B. 239, H.B. 252, H.B. 649, and H.B. 675 of the 124th General Assembly.

³⁵ *Id.* § 4115.04.

³⁶ *Id.* § 4115.03.

³⁷ Ohio Rev. Code Ann. §§ 4115.04, 4115.08, and 4115.09.

³⁸ *Id.* § 4115.05.

³⁹ *Id.*

⁴⁰ *Id.* § 4115.07.

⁴¹ *Id.* § 4115.071.

⁴² *Id.* § 4115.10.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* § 4115.16.

⁴⁶ *Id.* § 4115.133.

⁴⁷ *Id.* § 4115.15.

⁴⁸ *Id.* § 4115.14.

⁴⁹ *Id.* § 4115.99.

⁵⁰ Kentucky Legislative Research Commission Research Report, at 37.

⁵¹ Phillips, at 8.

⁵² *Id.* at 8-9.

⁵³ Kentucky Legislative Research Commission Research Report, at 51.

⁵⁴ *Id.* at 1-2.

⁵⁵ *Id.* at 50.

⁵⁶ *City of Oklahoma v. Oklahoma Dept. of Labor* (Okla. 1995), 918 P.2d 26 (prevailing wage statute held unconstitutional because it delegated to the federal government the power to determine prevailing wage rates, through the state’s adoption of the Davis-Bacon rates, without setting a standard for the exercise of that power).

