



January 14, 2014

**Vermont Department of Labor: 2013 Study Report on Vermont’s Prevailing Wage**

Senator Peg Flory, Chair, Senate Institutions Committee, and Representative Alice Emmons, Chair, House Committee on Corrections and Institutions, by letter dated May 14, 2013 requested that the Vermont Department of Labor Commissioner, in consultation with the Department of Building and General Services (BGS) and interested stakeholders, examine and evaluate Vermont’s Prevailing Wage law data. Vermont’s Prevailing Wage rate is required to be paid when an employer is contracting with the State of Vermont for work paid with the State’s Capitol Construction fund and meets a monetary threshold of \$100,000.

Note: The federal Prevailing Wage rate is required to be paid when a project is subject to federal Davis-Bacon Act provisions; [http://edg1.vcall.com/DOL\\_Ondemand/DOL/Webcasts.htm](http://edg1.vcall.com/DOL_Ondemand/DOL/Webcasts.htm)

**Report Due:** December 15<sup>th</sup>, 2013; VDOL Commissioner Noonan requested from the Chairs an extension to January 15, 2014. Senator Flory responded affirmatively, and report was submitted on January 14, 2014.

**The Study Committee was tasked with examining the following:**

- The effectiveness of Vermont’s Prevailing Wage statutes
- How other Northeastern states determine their prevailing wage
- Research on the impact of prevailing wage legislation in other states
- How Vermont gathers data and how it enforces the State prevailing wage

**Members of the Study Committee Who Participated:**

<b>VDOL and BGS</b>	<b>Employer Representatives</b>	<b>Labor Representatives</b>
Anne M. Noonan, VDOL Commissioner, and Erika Wolffing, VDOL Deputy Commissioner	Bob Lord Jr., E.F. Wall Associates (large construction company)	Jeff Potvin, President of Vermont Building and Construction Trades
Wanda Minoli, Deputy Commissioner of BGS	Ernie Smalley - Smalley Construction	David Mickenburg, Working Vermont Coalition
Mathew Barewicz, VDOL Economic & Labor Market Chief	Jeff Luck, Luck Brothers Construction	Ron Rabideau - Teamsters, AFL-CIO
Matt Hill - VDOL Research Assistant	Cathy Voyer Lamberton, Assoc. General Contractors of VT	
Deborah Damore, BGS Purchasing and Contract Manager		*Other employer and labor reps were invited who did not attend any meetings

**Vermont's Existing Prevailing Wage Law:**

29 VSA §161 Requirements on state construction projects

(a) Bids; selection.

(1) When the construction cost of any state project exceeds the sum of \$50,000.00, the commissioner of buildings and general services shall publicly advertise or invite three or more bids. The contract for any such state project or improvement shall be awarded to one of the three lowest responsible bidders, conforming to specification, with consideration being given to quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, and his or her ability to render satisfactory service, but the commissioner of buildings and general services with the approval of the secretary of administration, shall have the right to reject any and all bids and to invite other bids.

(2) When using the design-build construction delivery process, the commissioner of buildings and general services shall publicly advertise or invite three or more bids. The award of a design-build contract shall be to the bidder determined by the commissioner to be most responsive to evaluation criteria established by the commissioner. Such criteria may include physical plant characteristics proposed, program response to space needs, ability of the design-build team, anticipated development schedule and overall cost considerations, including alternates, allowances and schedule of values.

(b) Each contract awarded under this section for any state project with a construction cost exceeding \$100,000.00 and which is authorized or funded in whole or in part by a capital construction act pursuant to 32 V.S.A. § 701a, including such a project of the University of Vermont and State Agricultural College and of the Vermont State Colleges, shall provide that all construction employees working on the project shall be paid no less than the mean prevailing wage published periodically by the department of labor in its occupational employment and wage survey.

(c) In the construction of any state project, local capable labor shall be utilized whenever practicable, but this section shall not be construed to compel any person to discharge or lay off any regular employee.

(d) Subsections (a) through (c) of this section shall not apply to maintenance or construction projects carried out by the agency of transportation and by the department of forests, parks and recreation.

(e) The agency of administration shall ensure that the state and any of its subdivisions do not contract, directly or indirectly, with employers who are prohibited from contracting by the commissioner of labor pursuant to 21 V.S.A. §§ 692, 708, and 1314a or the commissioner of financial regulation pursuant to 8 V.S.A. § 3661.

(f) The agency of administration shall maintain a current list of employers that have been prohibited from contracting with the state or any of its subdivisions, and the agencies of administration and of transportation shall publish that list on their websites.

**Prevailing Wage Methodology** (Information provided by ELMI Director Mathew Barewicz, VDOL)

The Prevailing Wage is calculated by the Vermont Department of Labor's Economic and Labor Market Information Division (LMI). The resource used to collect wage data is called the "Occupational Employment and Wage Survey", and is produced by the Occupational Employment Statistics program (OES). This is a federal program funded by the United States Department of Labor.

The survey is issued every six months (to a sample of the Vermont employers, and each six-month survey is called a "Panel". The sample is stratified so some panels will focus on certain industries, employers and region; and the next scheduled survey will cover other industries, employers and regions different from the previous survey. Eventually, the survey will produce an accurate measure of employee wages, cover as many occupations as possible, and will capture data from the entire state. There are two panels each year - one in May and one in November. Each panel is approximately 800 businesses. It takes 6 panels - or three years - worth of data to produce one year's estimates. As new panels are added on to the estimates, the oldest panels are dropped from the estimates.<sup>1</sup>

Vermont has an outstanding return on the surveys with approximately 90% compliance. The survey covers only wages, and does not ask for information on any type of fringe benefits (Note: VDOL conducts a separate Fringe Benefit survey). VDOL's LMI Division updates the Mean Prevailing Wage Study yearly and it is published by the Department in a report, as well as posted online at VTLMI.info.

**Prevailing Wage Practices in Other States:**

Maine uses their own survey to determine the wage for specific occupations and industries. The survey is yearly and the Maine Department of Labor publishes the results. Maine also requires a certified payroll to be submitted each pay period along with a "Statement of Compliance."

New Hampshire has repealed their prevailing wage for state-funded construction contracts. NH must still follow the federal Prevailing Wage set by the Davis-Bacon Act provisions.

Connecticut and Rhode Island use the federal Davis Bacon wage determination, and would be referred to as a "mini-Davis Bacon state". These rates include a base wage with the addition of fringe benefits. These states have different project-cost thresholds.

Massachusetts, New York and Pennsylvania determine the Prevailing Wage based on the (relevant) Industry Collective Bargaining agreement (for example, with Building Trades for carpenters, plumbers, pipefitters, steelworkers, etc.). These states have different project-cost thresholds.

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<sup>1</sup> Reference Appendix A for a more detailed description of the survey process.

New Jersey determines wage and fringe benefit rates are based on collective bargaining agreements established for a particular craft or trade in the locality in which the public work is performed.

Some states have lowered or eliminated the monetary threshold at which point an employer must pay Prevailing Wages. Under current Vermont law, with Capitol Construction projects, an employer is not required to pay the State Prevailing Wage unless the project costs over \$100,000. Massachusetts and New York both have a \$0 dollar threshold on Prevailing Wage projects.

### **Enforcement of Vermont's Prevailing Wage Law**

Enforcement of the Prevailing Wage law is shared by the State of Vermont's Building and General Services (BGS) and the Vermont Department of Labor (VDOL).

BGS is required to inform the contractors whether or not to apply the Prevailing Wage rate (based upon the funding source and the project cost threshold).

If an employee is not being paid the Prevailing Wage rate under the law, they can file a wage claim with the Vermont Department of Labor Wage and Hour Division for enforcement action to recover the improperly paid wages.

### **Views of the Workgroup**

After 4 meetings held at the Vermont Department of Labor, the workgroup did not come to a consensus on any of the major factors of reforming the prevailing wage law.

Jeff Potvin, President of the Vermont Building and Construction Trades, argued for a system to set the State's Prevailing Wage rates by conforming to the industry collective bargaining agreements. Mr. Potvin stated that with the inclusion of fringe benefits to their bids, unionized companies are not able to compete with non-union contractors for state projects. Therefore, he believes that the inclusion of a fringe benefit rate derived from collective bargaining agreements to establish the Prevailing Wage based on union contracts that incorporate fringe benefits is a more equitable rate as it would "level the playing field" for union contractors versus non-union contractors when bidding. The labor representatives also noted that the increased wages are put back into the Vermont economy by the workers through taxes and purchases.

Cathy Voyer Lamberton, of Associated General Contractors (AGC), pointed out that using collective bargaining units to determine wages is not representative of the industry which she believes has little union density; (Ms. Lamberton stated that she believes 90% of the Vermont contractors are non-union). Ms. Lamberton and Mr. Bob Lord Jr., of E.F. Wall & Associates, stated that the current law works and employers are used to the current system. In addition, they stated that the contractors provide additional benefits than those calculated into the fringe benefit rate, and that employers provide benefits 'that fit the needs of their employees'.

The committee also discussed the merits of following the federal prevailing wages set for the states. One of the issues relating to the federal prevailing wage noted by the group is that not every occupation is listed in the federal reports. New Hampshire has solved this issue by paying the “single rate paid to the greatest number of workers,” i.e., paying the mode<sup>2</sup> wage of a specific occupation.

The Workgroup also discussed the Capitol Construction \$100,000 threshold for projects. This issue was less controversial among the committee members. Ms. Damore of BGS said if the threshold was to change it should be set to \$0 dollars, as that would be a much easier transition, and changing it to some other number might result in unnecessary confusion in the administration of the law.

While the committee members did not reach any consensus on the merits of Vermont changing its current statute to model a “Mini Davis Bacon” state, the group did agree that if that were to occur, BGS and VDOL would not require their contractors to fill out the “normal” paperwork associated with Davis Bacon, but simply to pay the federal Prevailing Wage set for a specific occupation(s) under that law.

**Summary of the Committee Opinions:**

The Labor representatives explained that they strongly believe that unionized-employers are significantly disadvantaged in bidding for State contracts since their personnel costs/rates include both wages and fringe benefits normally afforded under union contracts, such as medical and dental insurance and pension, etc. They believe that the State has the opportunity to “level the playing field” when utilizing State Capitol Construction dollars, to further an agenda of improved wages and equity for unionized contractors and their workforce, by moving to an industry-based CBA rate or the federal Prevailing Wage rate set under the Davis Bacon Act, which does include fringe benefit costs.

The Business representatives explained that they believe the current system of utilizing the State Prevailing Wage is working fine, and that they believe the State PW survey has a strong relationship to actual wage rates paid since the survey has high participation from the Vermont employer community.

The committee members seemed less at odds over the lowering or elimination of the current \$100,000 Capitol Construction threshold.

Submitted by: Anne M. Noonan, Commissioner  
Vermont Department of Labor

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<sup>2</sup> Mode is the value that appears most often in a set of data.

## Appendix A:

The Vermont statute identifies the source of the wage data used to administer the Vermont State Construction as the “occupational employment and wage survey”. The official title of this program is the Occupational Employment Statistics (OES) program. It is a federal program funded by the US Department of Labor’s Bureau of Labor Statistics (BLS). The Vermont Department of Labor’s (VDOL) Economic & Labor Market Information (E&LMI) division is the state partner to the federal government and is the primary collector of OES data. As the OES program is a federal program, the program’s materials, schedule, publication requirements, confidentiality standards and definitions are all federally defined. The purpose of this document is to summarize how wage estimates by occupation are derived via the OES program. For greater detail on the technical aspects of the program, please visit: <http://www.bls.gov/oes/home.htm>.

E&LMI OES staff is required by the federal-state Cooperative Agreement to meet federally defined performance measures. Though participation in the OES program is not federally mandated, participation can be required at the state level. Vermont is one of a small number of states who make participation in the OES survey mandatory. This makes the data collection portion of the process easier allowing E&LMI OES staff to focus their scarce resources on data quality. As such, E&LMI OES staff is frequently recognized by their federal partners in Boston for the quality and quantity (i.e. response rates) of the data. In 2012, the overall state response rate was: 87.5% of units were collected equating to 71.1% of calculated employment. For comparison, within the Construction sector the response rates were higher: 89.4% of units representing 96.6% of employment. This is significant because of the overlap between trades related occupations and the construction sector. Like the healthcare industry and healthcare related occupations, the industry and the occupational definitions for construction are nearly synonymous. (This is not the case for all occupational families; for example Sales or Office Support occupations which can be found in nearly every industry). All else equal, more collected data will produce better quality estimates.

The questionnaire asks businesses to list all the different types of jobs within the company, the number of people in those jobs and the wage range of each position. E&LMI OES staff code each job into an occupation based on the Standard Occupational Classification (SOC) system. (More information about the SOC system can be found at: <http://www.bls.gov/soc/>.) On an annual basis, E&LMI produces wage estimates by occupation. These wage estimates for construction and construction related occupations are the wage rates published in the annual State Construction Prevailing Wage report. The most recent report can be found at: <http://www.vtlmi.info/stateconstrprevailwage.pdf>.