



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

Prevailing Wages

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PROGRAM EVALUATION DIVISION
Centennial Building – Suite 140
658 Cedar Street – St. Paul, MN 55155
Telephone: 651-296-4708 • Fax: 651-296-4712
E-mail: auditor@state.mn.us • Web site: <http://www.auditor.leg.state.mn.us>
Through Minnesota Relay: 1-800-627-3529 or 7-1-1

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Evaluation Staff

James Nobles, *Legislative Auditor*

Joel Alter
Valerie Bombach
David Chein
Catherine Dvoracek
Jody Hauer
Daniel Jacobson
Deborah Parker Junod
Carrie Meyerhoff
Judith Randall
Jan Sandberg
Jo Vos
John Yunker

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February 2007

Members of the Legislative Audit Commission:

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

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

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Jim Nobles".

James Nobles
Legislative Auditor

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Introduction

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

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

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

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

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

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

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

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

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

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

Background

SUMMARY

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

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

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

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

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

¹ *Minnesota Statutes* 2006, 177.41.

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

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

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

MINNESOTA’S PREVAILING WAGE LAW

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

Covered Projects and Workers

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

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

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

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

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

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

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

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

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

Requirements for Contractors

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

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

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

⁶ *Ibid.*

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

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

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

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

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

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

Types of Rates

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

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

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

¹⁰ *Minnesota Rules* 2005, 5200.1110.

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

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

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

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

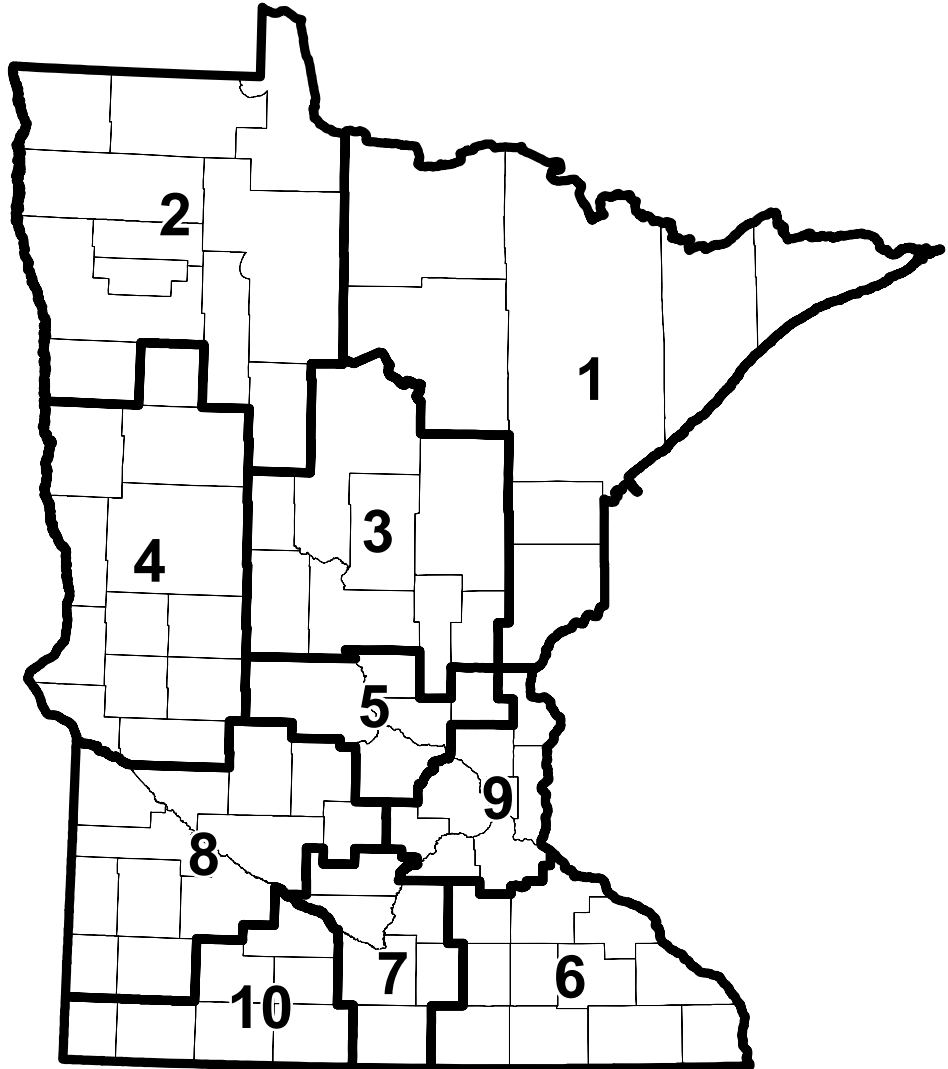
¹⁵ *Minnesota Statutes* 2006, 177.43, subd. 5. It is also a misdemeanor for an employee of the state to execute a contract for a project without complying with the prevailing wage law.

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

Commercial rates are set for each county.

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

Figure 1.1: Prevailing Wage Highway/Heavy Regions



Highway/heavy rates are set for ten regions.

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

SOURCE: Office of the Legislative Auditor.

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

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

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

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

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

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

RATE SETTING PROCESS

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

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

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

²¹ *Minnesota Rules 2005, 5200.1105.*

Table 1.1: Prevailing Wage Master Job Classifications

Laborers

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

Power Equipment Operators

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

Truck Drivers

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

Special Crafts

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

Prevailing wage rates cover 147 job classifications.

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

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

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

Prevailing Wages for Construction Workers

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

Wage Survey

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

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

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

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

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

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

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

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

Determination of Prevailing Wage Rates

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

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

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

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

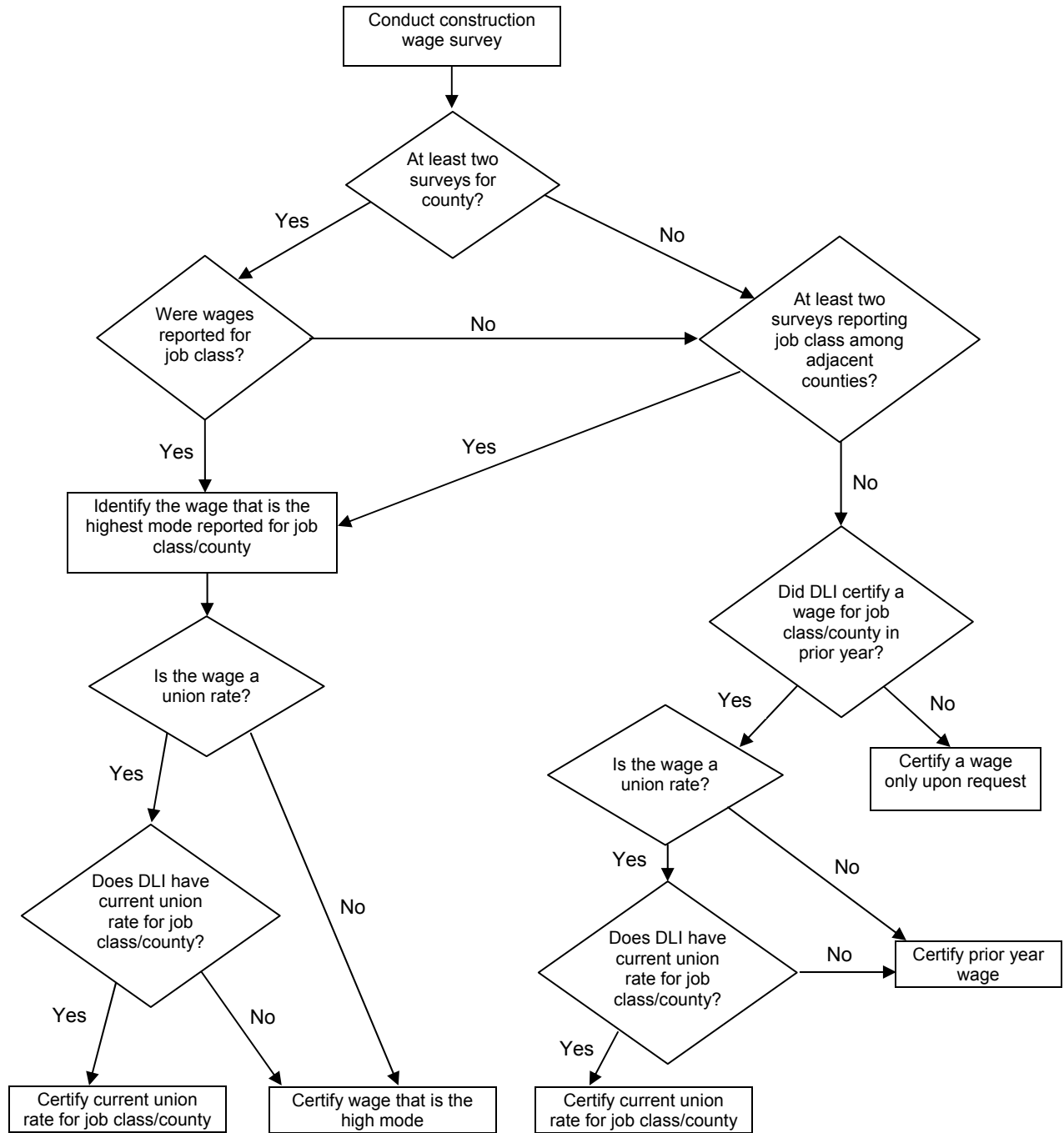
²⁵ Contractors may use any of the 147 job classes identified by DLI. According to [Minnesota Rules 2005, 5200.1050, subp. 2](#), only employees who worked 24 hours or more on highway/heavy projects or 8 hours or more on commercial projects should be reported.

²⁶ The number of workers includes workers reported multiple times.

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

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

Figure 1.2: Prevailing Wage Certification Process for Commercial Construction



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

SOURCE: Office of the Legislative Auditor.

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

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

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

Table 1.2: Certification of 2005 Prevailing Wages

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

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

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

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

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

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

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

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

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

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

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

³³ *Minnesota Rules* 2005, 5200.1090.

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

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

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

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

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

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

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

Wage Rates for Individual Workers and Projects

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

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

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

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

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

Table 1.4: Prevailing Wage When More Than One Rate Applies

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

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

SOURCE: Office of the Legislative Auditor.

Truck Rental Rates

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

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

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

³⁶ *Ibid.*

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

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

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

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

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

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

³⁷ *Minnesota Rules* 2005, 5200.1105.

³⁸ *Minnesota Rules* 2005, 5200.1120.

³⁹ *Minnesota Rules* 2005, 5200.1105.

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

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

FEDERAL AND OTHER STATES' LAWS

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

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

Project Size Thresholds

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

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

⁴¹ *Ibid.*

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

⁴³ *40 U. S. Code, sec. 3142* (2005).

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

Table 1.5: State Thresholds for Prevailing Wage Projects

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

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

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

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

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

Rate Calculation Methods

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

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

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

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

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

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

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

Table 1.6: State Methods for Calculating Prevailing Wages

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

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

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

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

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

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

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

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

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

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

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

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

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

Setting Rates

SUMMARY

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

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

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

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

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

Survey Process

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

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

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

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

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

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

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

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

Survey Responses

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

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

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

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

Survey Response Rate

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

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

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

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

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

Reporting of Union Wages

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Survey Options

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

Alternatives

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

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

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

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

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

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

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

Improving the Existing Survey

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

RECOMMENDATION

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

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

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

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

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

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

Reflection of Community Wages

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

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

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

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

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

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

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

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

