City of Portland, Maine
Finance Committee Meeting Agenda
Monday, February 11, 2019
5:30 PM, City Hall, Council Chambers

AGENDA

1. Introductions

2. Public Hearing and Scheduled Vote: Proposed Amendments to City Contracting

On 9/12/18 the Committee received a memo from Mayor Strimling describing a proposal to make significant changes to City Contracting rules. At the 11/28/18 meeting Mayor Strimling presented a draft ordinance in the form of redlined City Code. An updated draft of redlines to City Code as well as a clean copy have been attached. All backup materials from the previous meeting are also attached. A Public Hearing is scheduled on this item and a vote on the proposal is scheduled to occur.

3. Next Meeting Date – March 7, 2019, 5:30PM in Room 209

4. Adjournment

Sec. 2-308. Contractor or consultant qualifications.

(a) The City Manager or the Finance Director may inspect or inquire into the qualifications of any bidder or proposer to determine whether they are qualified and responsible bidders or proposers. The failure of any bidder or proposer to promptly supply information or submit to such inspection shall be grounds for a determination that the bidder or offeror is not a qualified and responsible bidder or proposer. The right to inspect shall include the plant or business of a contractor, consultant or any subcontractor or subconsultant under any procurement contract awarded or to be awarded by the city and the right to audit the books and records of any person seeking to become a contractor, consultant or subcontractor or subconsultant under any procurement contract with the city. The City Manager or Finance Director may establish rules and regulations for the qualification or prequalification of bidders or proposers. Such rules and regulations may apply to any procurement methods as set forth in this section, or may be specifically promulgated for any particular procurement situation.

(b) In determining whether a bidder or proposer is a qualified and responsible bidder or proposer, in addition to price and compliance with all applicable bid specifications, the City Manager or Finance Director may consider:

(1) The documented quality of performance of other contracts or services for the city or for others;

(2) Whether the bidder or proposer can perform the contract or service within the time specified, without delay or interference;

(3) The past and current compliance with City laws and ordinances;

(4) Whether the bidder or proposer is current on its obligations to the City, including taxes, sewer assessments and any other City accounts receivable; and

(5) The sufficiency of the manpower and financial resources of the bidder or proposer to perform the contract or provide the service.

(c)Except as provided in Section (c)(10) below, in addition to the foregoing determination, for all work on public construction and maintenance contracts valued at over $50,000.00 on any public facility or public works project, including construction, demolition, alteration, renovation, repair and contract service or maintenance work, the Finance Director shall disqualify a bidder or proposer who fails to certify that it meets the following requirements:

(1) The bidder or proposer has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

(2) The bidder or proposer shall pay its employees, and shall require its subcontractors to pay their employees, for all work performed under a contract with the City pursuant to this subsection (c)(2), the prevailing wage rates determined pursuant to Title 26, Chapter 15 of the Maine Revised Statutes by the Maine Department of Labor for Cumberland County that are in effect at the time that a request for bids or request for proposals is published pursuant to section 2-302 above.

(3) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

(4) The bidder or proposer participates in a job training or apprenticeship program registered with and approved by the Maine or U.S. Departments of Labor and shall continue to participate in such program for the duration of the contract if the bidder or proposer employs apprentices.

(5) The bidder or proposer has not had two or more final judgments entered against it during the three year period prior to the date of the bid or proposal for violation of applicable federal, state, or municipal wage and hours or workplace safety laws. For purposes of this subsection, the term “final judgment” means that the bidder or proposer has been found to be in violation of such laws by a governmental body with authority to make such a finding and that the finding is not subject to appeal.

(6) The provisions of this Subsection (c) that are applicable to a bidder or proposer shall also apply to any subcontractor of such bidder or proposer.

(7) The provisions of this Subsection (c) shall not apply (1) to contracts where such requirements are preempted by applicable state or federal law, and (2) to bidders or proposers if such application is preempted by applicable state or federal law.

(d) In addition to the foregoing determination, the Finance Director may disqualify a bidder or proposer from contracting with the city for a period of time, up to and including two years, for good cause shown. Such cause shall include, but not be limited to, the foregoing factors used for determining the qualifications of a bidder or proposer.

Sec. 2-308. Contractor or consultant qualifications.

(a) The City Manager or the Finance Director may inspect or inquire into the qualifications of any bidder or proposer to determine whether they are qualified and responsible bidders or proposers. The failure of any bidder or proposer to promptly supply information or submit to such inspection shall be grounds for a determination that the bidder or offeror is not a qualified and responsible bidder or proposer. The right to inspect shall include the plant or business of a contractor, consultant or any subcontractor or subconsultant under any procurement contract awarded or to be awarded by the city and the right to audit the books and records of any person seeking to become a contractor, consultant or subcontractor or subconsultant under any procurement contract with the city. The City Manager or Finance Director may establish rules and regulations for the qualification or prequalification of bidders or proposers. Such rules and regulations may apply to any procurement methods as set forth in this section, or may be specifically promulgated for any particular procurement situation.

(b) In determining whether a bidder or proposer is a qualified and responsible bidder or proposer, in addition to price and compliance with all applicable bid specifications, the City Manager or Finance Director may consider:

(1) The documented quality of performance of other contracts or services for the city or for others;

(2) Whether the bidder or proposer can perform the contract or service within the time specified, without delay or interference;

(3) The past and current compliance with City laws and ordinances;

(4) Whether the bidder or proposer is current on its obligations to the City, including taxes, sewer assessments and any other City accounts receivable; and

(5) The sufficiency of the manpower and financial resources of the bidder or proposer to perform the contract or provide the service.

(c)Except as provided in Section (c)(10) below, in addition to the foregoing determination, for all work on public construction and maintenance contracts valued at over $50,000.00 on any public facility or public works project, including construction, demolition, alteration, renovation, repair and contract service or maintenance work, the Finance Director shall disqualify a bidder or proposer who fails to certify that it meets the following requirements:

(1) The bidder or proposer has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

(2) The bidder or proposer shall pay its employees, and shall require its subcontractors to pay their employees, for all work performed under a contract with the City pursuant to this subsection (c)(2), the prevailing wage rates determined pursuant to Title 26, Chapter 15 of the Maine Revised Statutes by the Maine Department of Labor for Cumberland County that are in effect at the time that a request for bids or request for proposals is published pursuant to section 2-302 above.

(3) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

(4) The bidder or proposer participates in a job training or apprenticeship program registered with and approved by the Maine or U.S. Departments of Labor and shall continue to participate in such program for the duration of the contract if the bidder or proposer employs apprentices.

~~(5) The bidder or proposer complies with all applicable requirements of the Maine Department of Labor's Unemployment Insurance progam.~~

~~(6) The bidder or proposer complies with all applicable requirements of the Social Security Act.~~

~~(7)~~(5) The bidder or proposer has not had two or more~~a~~ final judgments entered against it during the three year period prior to the date of the bid or proposal for violation of applicable federal, state, or municipal wage and hours or workplace safety laws. For purposes of this subsection, the term "final judgment" means that the bidder or proposer has been found to be in violation of such laws by a governmental body with authority to make such a finding and that the finding is not subject to appeal.

~~The bidder or proposer's employees who will perform work on the project are:~~

~~(i) Covered under a current worker's compensation policy; and properly classified under such policy; and~~

~~(ii) Covered by the bidder's or proposer's health insurance coverage.~~

~~(8)~~(6) The provisions of this Subsection (c) that are applicable to a bidder or proposer ~~(c)~~shall also apply to any subcontractor of such~~a~~ bidder or proposer ~~when such subcontractor will be paid more than $50,000~~.

~~(9)~~(7) The provisions of this Subsection (c) shall not apply (1) to contracts ~~for the construction, major alteration or repair of school buildings involving a total cost in excess of $250,000 or otherwise subject to the requirements of 5 M.R.S. § 1743-A, (2)to other contracts~~ where such requirements are ~~otherwise~~ preempted by applicable state or federal law, and (2~~3~~) to bidders or proposers if such application is preempted by applicable state or federal law.

(d~~c~~) In addition to the foregoing determination, the Finance Director may disqualify a bidder or proposer from contracting with the city for a period of time, up to and including two years, for good cause shown. Such cause shall include, but not be limited to, the foregoing factors used for determining the qualifications of a bidder or proposer.

Portland, Maine   Yes. Life's good here.

Office of the Mayor, Ethan K. Strimling

MEMORANDUM

To: Finance Committee

From: Ethan K. Strimling, Mayor

Date: Sept 6, 2018

Subject: Responsible Contracting

OBJECTIVE: The objective of this amendment is to strengthen the city purchasing policy to better reflect our values and to incentivize better outcomes for workers and Portland taxpayers, by adding and encouraging key components of what is commonly referred to as "responsible contracting." There are many components of responsible contracting, some of which the city already adheres to. The two areas that I am focused on at this time are (1): the payment of prevailing wages for building contracts that are funded by municipal funds; (2): requiring contractors who are awarded a municipally funded construction project to participate in a registered apprenticeship/job training program; (3) adding additional opportunities for contractors who treat their workers well to earn points toward the possible awarding of a contract. Each of these proposals will be taken up individually.

1. PREVAILING WAGE

BACKGROUND: The payment of prevailing wages by contractors to employees involved in government building contracts is not a new concept. The federal government requires contractors to pay prevailing wages to all workers employed in government construction projects.

Prevailing wage rates are also used by many states for state funded projects, including Maine. In Maine, construction projects funded and administered by a state agency that are over $50,000 must adhere to State of Maine prevailing wage and reporting guidelines.

Prevailing wage rates are also found at our municipal level. In 2017, the Portland City Council passed an ordinance requiring contractors working on any construction project receiving tax increment financing (TIF) from the City of Portland to pay its workers prevailing wages. Additionally, contractors who receive HUD and CDBG funding from the City of Portland must also adhere to federal prevailing wage reporting requirements.

RECOMMENDATION: ***Require building contractors using municipal funds to pay prevailing wages.***

Since it is imperative that workers in our city receive wages that allow them to be able to afford to live in our city, and since contractors working on federal and most state construction projects are already familiar with the payment and reporting of prevailing wages, it seems logical to extend such wage requirements to locally funded projects.

For purposes of consistency it is recommended that the minimum threshold for the prevailing wage requirement for municipally funded projects mirror the State of ME requirements of any project projected to cost over $50,000. It is further recommended that the City follow the prevailing wage construction categories already in place at the state level. These wage rates are adjusted every year, and are broken down by county to reflect local wage requirements. The wage rates are also broken down by construction category, including: 1. Building 1 - One or two family homes; 2. Building 2 - Other than one or two family homes; 3. Highway and Earthwork; 4. Heavy and Bridge.

Attachment 1 provides the 2018 prevailing wage rates for Cumberland County in these four construction categories. These are the rates I recommend we use (consistent with TIF and CDBG).

Critics will argue that such a mandate will add to the cost of municipally funded construction projects. However, construction companies working on state funded and managed projects over $50,000, as well as federal projects, are already in the habit of compensating at the prevailing wage rates as well as completing and submitting prevailing wage reports to the appropriate agencies. Plus, evidence shows that accurately tracking payroll and job classification is simply good business practice.

It is conceded that there will likely be an incremental increase in the city's cost of monitoring these projects. However, with the recent passage of TIFs for two local affordable housing projects, as well as the mechanism already in place to monitor such projects as those supported with CDBG funds, it is only a matter of time that a more fully robust reporting mechanism will be in place for monitoring of payment of prevailing wages at the city level. The expansion of prevailing wage requirements to all municipally funded construction contracts over $50,000 will only marginally increase these city costs.

Finally, the requirement for contractors to pay prevailing wage rates for all municipally funded building contracts over $50,000 will help ensure that all bidders are using similar wage rates, and that the historically awarded "low bidder" will not be cutting corners on his/her labor lines in order to achieve a competitive advantage. In fact, setting a wage floor will serve to encourage contractors to compete based on work product, creativity and ingenuity, rather than an artificially depressed wage line.

Put simply, if we as a City agree - as we have - that private companies such as the ones receiving support through a TIF should adhere to prevailing wage standards, the City then should follow its own example and adhere to the same standards on publicly-funded projects.

2. APPRENTICESHIP PROGRAM/JOB TRAINING REQUIREMENT

BACKGROUND: Presently, the bidding process and timely completion schedules for publicly funded construction projects in Southern Maine are strained by a shortage of skilled workers. Apprenticeship programs are recognized nationally and statewide as effective tools for creating pipelines of highly skilled local workers and propelling workers into secure, well-paying careers.

Currently, the State administers the Maine Apprenticeship Program which, in 2016, served 1220 apprentices across a wide range of trades. Along with quality trade-focused programming at our own Portland Arts & Technology High School and other local CTEs, community colleges such as Southern Maine Community College also offer an Associate Degree in Trade & Technical Occupations. There are also several union and non-union administered programs in occupations such as painting, masonry and carpentry. Further, there are currently apprenticeship programs in place for the state licensed trades such as plumbing and electrical.

RECOMMENDATION: ***A requirement aimed at increasing contractor participation in registered apprenticeship programs.***

This recommendation could be executed in one of two ways:

1. *Requiring Contractor Participation in Registered Apprenticeship Programs as a Stipulation for Submitting a Bid*: If this option is chosen, it is recommended that all firm(s) utilized on municipally funded construction projects be required to participate in a registered apprenticeship program for each applicable occupation in which workers will be employed. The firms must continue such participation for the duration of the project. Currently, the State of Maine defines a registered apprenticeship as, "a formal, industry-led, nationally-recognized, workforce training program for employees that provides in-house skill development through structured on-the-job learning supplemented with technical and theoretical course work."

2. *Awarding Preference Points to Bids Submitted by Contractors Participating in Registered Apprenticeship Programs*: A less restrictive alternative would be to award preference points as a part of the bid process to contractors who meet the qualifications outlined in the first recommendation option. While not an absolute requirement, it will be a definite incentive for contractors to participate in order to gain an advantage in the bid process.

As with the proposed prevailing wage amendment, there will likely be an incremental increase in the city's cost of monitoring construction projects. Many municipalities that have local responsible contracting requirements have staff who are able to monitor and enforce both the prevailing wage requirements and the apprenticeship/job training requirements.

Since many responsible employers across Maine already participate in some variation of on-the-job training program, any additional cost to certify their training program through the Maine Apprenticeship Program would be negligible. In fact, the investment in increasing the availability of a highly skilled workforce allows for contractors to access the workers they need to bid on, compete for, win and complete their current and future projects.

3. OTHER BONUS POINT PROVISIONS

BACKGROUND: As an additional way to incentivize employers to spend taxpayer monies in a way that reflects Portland's values, and that will ultimately create a higher quality product for our taxpayers, bonus provisions could be placed in our RFP scoring process. Many cities utilize this tool and most recently, Maine State Housing used it successfully for years. Four specific incentives discussed below are OSHA 10, Health Care, SS/UEI/WC and wage/hour consistency.

RECOMMENDATION: ***A bonus provision that awards additional points to contractors who provide additional safety and health related benefits to their employees.***

1. *OSHA 10*: Provide up to 3 points in scoring an RFP for contractors who will ensure that all workers on the site have gone through full OSHA 10 Certification (can be provided on-line or in person) or better.

2. *Health Care Insurance*: Provide up to 3 points in scoring an RFP for contractors who provide health care benefits above and beyond the prevailing wage.

3. *Social Security, Workers Comp and Unemployment Insurance*: Provide up to 3 points in scoring an RFP for contractors who provide social security (or a similar retirement program), Unemployment, and Workers Comp above and beyond the prevailing wage.

4. *Wage and Hour Violations*: Provide up to 3 points in scoring an RFP for contractors who have not had a recorded wage and hour violation for a period of three consecutive years prior to the project bid due date.

As with the proposed prevailing wage and apprenticeship amendments, there will likely be an incremental increase in the city's cost of monitoring construction projects. However, with the other requirements in place, monitoring these additional items will be minimal. Likewise, providing Health Care benefits, SS/UEI/WC will most likely reduce costs to the city when and if someone falls on hard times or retires.

Additionally, since many, if not most, responsible employers across Maine already provide these benefits, any additional cost to most companies would be negligible. Plus, ensuring that workers in Portland are well trained in safety will ultimately reduce a company's Workers Compensation costs.

MAINE BUREAU OF LABOR STANDARDS

2018 CUMBERLAND COUNTY *B1* PREVAILING WAGE RATE

Occupation Title	Minimum Wage	Minimum Benefit	Total
Asbestos/Lead Removal Worker	$15.10	$0.42	$15.52
Backhoe Loader Operator	$20.00	$2.16	$22.16
Boom Truck (Truck Crane) Operator	$21.66	$6.86	$28.52
Bricklayer	$24.00	$3.99	$27.99
Bulldozer Operator	$20.00	$4.06	$24.06
Carpenter	$21.00	$1.84	$22.84
Carpenter - Rough	$16.00	$0.00	$16.00
Cement Mason/Finisher	$17.00	$0.00	$17.00
Communication Equip Installer	$13.50	$0.45	$13.95
Driller - Rock	$18.38	$2.60	$20.98
Dry-Wall Applicator	$22.00	$0.70	$22.70
Dry-Wall Taper & Finisher	$18.50	$0.45	$18.95
Electrician - Licensed	$23.50	$2.20	$25.70
Electrician Helper/Cable Puller	$16.50	$1.05	$17.55
Excavator Operator	$22.00	$1.94	$23.94
Fence Setter	$17.75	$2.89	$20.64
Floor Layer	$17.00	$0.00	$17.00
Furniture Installer/Assembler	$16.00	$1.22	$17.22
Glazier	$16.88	$1.12	$18.00
Grader/Scraper Operator	$21.33	$5.13	$26.46
HVAC	$20.50	$2.09	$22.59
Insulation Installer	$20.00	$2.91	$22.91

Occupation Title	Minimum Wage	Minimum Benefit	Total
Laborers (helper/tender)	$15.00	$0.33	$15.33
Laborer - Skilled	$17.00	$2.21	$19.21
Loader Operator - Front-End	$19.13	$2.95	$22.08
Mechanic- Maintenance	$21.00	$3.84	$24.84
Oil/Fuel Burner (Service/install)	$24.50	$4.52	$29.02
Painter	$16.00	$0.00	$16.00
Pipe/Steam/Sprinkler Fitter	$23.50	$4.54	$28.04
Pipelayer	$28.00	$12.54	$40.54
Plumber (Licensed)	$25.00	$3.44	$28.44
Plumber Helper/Trainee	$20.00	$3.01	$23.01
Propane & Natural Gas (Service/install)	$26.50	$1.97	$28.47
Pump Installer	$21.00	$3.73	$24.73
Roofer	$20.63	$3.85	$24.48
Sheet Metal Worker	$22.80	$4.60	$27.40
Stone Mason	$20.00	$0.00	$20.00
Tile Setter	$23.00	$4.26	$27.26
Truck Driver - Light	$18.15	$2.88	$21.03
Truck Driver - Medium	$17.75	$1.82	$19.57
Truck Driver - Heavy	$17.00	$0.38	$17.38
Truck Driver - Tractor Trailer	$17.50	$2.42	$19.92

IMPORTANT INFORMATION: This Rate Sheet is published for reference only. A formal project specific determination is issued to the agency soliciting bids.

The Prevailing Wage rates are set for all 16 counties with 4 categories coded as follows:
B1 = One or two family homes
B2 = Other than one or two family homes

MAINE DEPARTMENT OF LABOR STANDARDS

2018 CUMBERLAND COUNTY *B2* PREVAILING WAGE RATE

Occupation Title	Minimum Wage	Minimum Benefit	Total
Asbestos/Lead Removal Worker	$15.10	$0.55	$15.65
Backhoe Loader Operator	$20.00	$2.16	$22.16
Boom Truck (Truck Crane) Operator	$21.66	$6.86	$28.52
Bricklayer	$24.00	$3.43	$27.43
Bulldozer Operator	$20.00	$4.06	$24.06
Carpenter	$23.00	$4.10	$27.10
Carpenter - Acoustical	$17.00	$2.68	$19.68
Carpenter - Rough	$19.00	$2.40	$21.40
Cement Mason/Finisher	$17.00	$0.45	$17.45
Communication Equip Installer	$22.00	$2.98	$24.98
Comm Transmission Erector-Microw	$17.00	$0.00	$17.00
Crane Operator =>15 Tons)	$25.13	$5.94	$31.07
Driller - Rock	$18.38	$2.60	$20.98
Dry-Wall Applicator	$22.42	$0.92	$23.34
Dry-Wall Taper & Finisher	$23.25	$0.00	$23.25
Electrician - Licensed	$27.55	$4.90	$32.45
Electrician Helper/Cable Puller	$17.25	$3.30	$20.55
Elevator Constructor/Installer	$57.50	$24.42	$81.92
Excavator Operator	$22.00	$2.08	$24.08
Fence Setter	$16.00	$1.17	$17.17
Flagger	$12.00	$0.00	$12.00
Floor Layer	$18.75	$3.72	$22.47
Furniture Installer/Assembler	$16.00	$1.24	$17.24
Glazier	$21.00	$3.50	$24.50
Highway Worker/Guardrail Installer	$16.75	$0.80	$17.55
HVAC	$23.84	$3.86	$27.70
Insulation Installer	$19.75	$2.42	$22.17

Occupation Title	Minimum Wage	Minimum Benefit	Total
Ironworker - Ornamental	$22.85	$4.85	$27.70
Ironworker - Reinforcing	$24.79	$10.60	$35.39
Ironworker - Structural	$21.25	$3.25	$24.50
Laborers (Helper & Tenders)	$15.00	$1.08	$16.08
Laborer - Skilled	$17.00	$2.75	$19.75
Line Erector Power/Cable Splicer	$26.00	$7.59	$33.59
Loader Operator - Front-End	$19.13	$2.95	$22.08
Mechanic- Maintenance	$25.50	$3.77	$29.27
Mechanic – Refrigeration	$23.91	$4.76	$28.67
Millwright	$26.00	$11.58	$37.58
Oil/Fuel Burner Serv/Instlr(Lic)	$26.50	$2.19	$28.69
Painter	$17.00	$0.36	$17.36
Pipe/Steam/Sprinkler Fitter	$23.00	$4.49	$27.49
Pipelayer	$28.00	$12.54	$40.54
Plumber (Licensed)	$26.00	$4.13	$30.13
Plumber Helper/Trainee (Lic)	$17.57	$3.31	$20.88
Propane/Natural Gas Serv/ Inst	$26.55	$1.93	$28.48
Rigger	$20.00	$6.12	$26.12
Roofer	$16.00	$1.18	$17.18
Sheet Metal Worker	$20.50	$4.13	$24.63
Stone Mason	$20.00	$0.00	$20.00
Tile Setter	$22.00	$4.17	$26.17
Truck Driver - Light	$18.15	$2.88	$21.03
Truck Driver - Medium	$17.75	$1.82	$19.57
Truck Driver - Heavy	$16.00	$1.96	$17.96
Truck Driver - Tractor Trailer	$17.50	$2.42	$19.92

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The Prevailing Wage rates are set for all 16 counties with 4 categories coded as follows:

B1 = One or two family homes
B2 = Other than one or two family homes
HI = Highway and Earthwork
HB = Heavy Construction and Bridge

MAINE BUREAU OF LABOR STANDARDS 2018 CUMBERLAND COUNTY *HI* PREVAILING WAGE RATE

Occupation Title	Wage	Benefit	Total	Occupation Title	Wage	Benefit	Total
Asphalt Raker	$16.00	$0.44	$16.44	Ironworker – Ornamental	$23.13	$4.80	$27.93
Backhoe Loader Operator	$20.00	$2.23	$22.23	Ironworker - Reinforcing	$24.79	$10.60	$35.39
Boom Truck (Truck Crane) Operator	$21.66	$6.86	$28.52	Ironworker - Structural	$21.80	$4.88	$26.68
Bulldozer Operator	$22.30	$4.19	$26.49	Laborer (Includes Helper-Tender)	$14.50	$0.94	$15.44
Carpenter	$21.00	$2.36	$23.36	Laborer - Skilled	$17.00	$2.22	$19.22
Cement Mason/Finisher	$17.00	$0.56	$17.56	Line Erector-Power/Cable Splicer	$26.00	$7.59	$33.59
Crane Operator =>15 Tons)	$26.00	$5.97	$31.97	Loader Operator - Front-End	$19.88	$3.74	$23.62
Crusher Plant Operator	$17.75	$2.39	$20.14	Mechanic- Maintenance	$21.00	$3.15	$24.15
Diver	$28.50	$1.48	$29.98	Painter	$17.00	$0.00	$17.00
Driller -Rock	$18.38	$2.60	$20.98	Paver Operator	$18.00	$1.57	$19.57
Earth Auger Operator	$22.97	$6.17	$29.14	Pipelayer	$18.00	$3.16	$21.16
Electrician - Licensed	$26.00	$4.67	$30.67	Pump Installer	$21.00	$3.73	$24.73
Electrician Helper/Cable Puller (Licens	$17.00	$2.84	$19.84	Reclaimer Operator	$19.13	$2.98	$22.11
Elevator Constructor/Installer	$19.25	$1.62	$20.87	Roller Operator - Earth	$16.00	$1.89	$17.89
Excavator Operator	$21.54	$3.44	$24.98	Roller Operator - Pavement	$18.00	$2.07	$20.07
Fence Setter	$17.25	$1.72	$18.97	Screed/Wheelman	$22.88	$4.25	$27.13
Flagger	$12.50	$0.00	$12.50	Truck Driver - Light	$17.83	$3.74	$21.57
Grader/Scraper Operator	$21.33	$5.65	$26.98	Truck Driver - Medium	$18.00	$1.89	$19.89
Highway Worker/Guardrail Installer	$16.50	$0.79	$17.29	Truck Driver - Heavy	$16.50	$1.53	$18.03
Hot Top Plant Operator	$23.38	$5.55	$28.93	Truck Driver - Tractor Trailer	$19.00	$2.79	$21.79

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HI = Highway and Earthwork
HB = Heavy Construction and Bridge

MAINE BUREAU OF LABOR STANDARDS 2018 CUMBERLAND COUNTY *HB* PREVAILING WAGE RATE

Occupation Title	Wage	Benefit	Total
Backhoe Loader Operator	$20.00	$2.16	$22.16
Boom Truck (Truck Crane)Operator	$21.66	$6.86	$28.52
Bricklayer	$24.00	$3.99	$27.99
Bulldozer Operator	$20.00	$4.06	$24.06
Carpenter	$24.31	$10.41	$34.72
Carpenter - Rough	$20.67	$5.49	$26.16
Cement Mason/Finisher	$17.00	$0.56	$17.56
Communication Equipment Installer	$21.50	$3.28	$24.78
Comm Transmission Erector Microwave	$19.00	$3.57	$22.57
Crane Operator =>15 Tons)	$28.00	$7.15	$35.15
Crusher Plant Operator	$17.75	$2.48	$20.23
Diver	$32.00	$0.00	$32.00
Driller -Rock	$18.38	$2.60	$20.98
Earth Auger Operator	$23.76	$6.31	$30.07
Electrician - Licensed	$28.83	$13.97	$42.80
Electrician Helper/Cable Puller (License	$26.00	$8.68	$34.68
Excavator Operator	$23.00	$3.68	$26.68
Fence Setter	$16.00	$1.17	$17.17
Flagger	$12.00	$0.00	$12.00
Grader/Scraper Operator	$21.33	$5.13	$26.46
HVAC (Heat-Vent-Air Conditioning)	$23.00	$3.05	$26.05
Ironworker – Ornamental	$22.85	$4.85	$27.70
Ironworker - Reinforcing	$26.20	$12.15	$38.35
Ironworker - Structural	$23.00	$6.26	$29.26

Occupation Title	Wage	Benefit	Total
Laborer (Includes Helper-Tender	$16.00	$1.64	$17.64
Laborer - Skilled	$20.55	$3.62	$24.17
Line Erector-Power/Cable Splicer	$25.75	$7.59	$33.34
Loader Operator - Front-End	$19.75	$2.82	$22.57
Mechanic- Maintenance	$20.00	$5.72	$25.72
Mechanic- Refrigeration	$24.88	$4.76	$29.64
Millwright	$28.90	$22.50	$51.40
Painter	$22.00	$3.06	$25.06
Paver Operator	$20.00	$3.78	$23.78
Pile Driver Operator	$25.00	$11.13	$36.13
Pipe/Steam/Sprinkler Fitter	$22.50	$8.53	$31.03
Pipe Layer	$28.00	$12.54	$40.54
Pump Installer	$21.00	$3.73	$24.73
Reclaimer Operator	$18.50	$2.85	$21.35
Rigger	$20.00	$6.12	$26.12
Roller Operator - Earth	$15.88	$1.76	$17.64
Roller Operator - Pavement	$18.30	$1.64	$19.94
Truck Driver - Light	$18.15	$2.88	$21.03
Truck Driver - Medium	$17.75	$1.82	$19.57
Truck Driver - Heavy	$19.00	$3.17	$22.17
Truck Driver - Tractor Trailer	$21.50	$5.59	$27.09

IMPORTANT INFORMATION: This Rate Sheet is published for reference only. A formal project specific determination is issued to the agency soliciting bids.

B1 = One or two family homes
B2 = Other than one or two family homes
HI = Highway and Earthwork
HB = Heavy Construction and Bridge

MEMO

TO: Jon P. Jennings, City Manager
Brendan T. O'Connell, Finance Director

FROM: Marguerite Fleming, Intern, Executive Department

CC: Mike Murray, Assistant to the City Manager

DATE: August 27, 2018

SUBJECT: Fiscal Impact of Mayor Strimling's Proposed Amendments to the City Purchasing Policy

OBJECTIVE: The Mayor has proposed amendments to the city purchasing policy which include two major changes to the City procurement policies (1): the payment of prevailing wages for building contracts that are funded by municipal funds, and (2): the requirement that contractors who are awarded municipally funded construction projects must participate in apprenticeship/job training programs. This memo addresses the fiscal impact of these two provisions.

1. PREVAILING WAGE

BACKGROUND: Requiring the payment of prevailing wages by contractors employed on public works projects is not a new concept at the federal and state levels. The Davis Bacon Act requires contractors employed on federally funded construction, alteration, repair projects in excess of $2,000 to pay their employees the prevailing wage and fringe benefits for their occupations. Prevailing wage rates are also used by 27 states for state funded projects. In Maine, with certain exceptions, construction projects administered by a state agency that are over $50,000 and funded with state funds must adhere to State of Maine prevailing wage and reporting guidelines. Several municipalities have instituted prevailing wage ordinances including Denver, CO, Springfield, MA, and Worcester, MA.

In 2017, the Portland City Council passed an ordinance requiring contractors working on any construction project receiving tax increment financing (TIF) from the City of Portland pay its workers prevailing wages as determined by the State of Maine for Cumberland County. This proposal is incredibly limited in scope and impacted a maximum of 1-3 developer funded TIF projects per year and did not impact any City projects. The Mayor's current proposal is to extend the State of Maine prevailing wage requirements to city funded projects projected to cost over $50,000.

FISCAL IMPACT: The key point of debate surrounding prevailing wage laws is whether requiring contractors to pay prevailing wage, thereby increasing labor costs, increases the total cost of construction projects. Advocacy by legislators and construction organizations concerned with potential cost increases has resulted in the repeal or invalidation by court decision of sixteen states' prevailing wage laws, most recently Michigan's in June 2018. Additionally, state laws and local prevailing wage ordinances regulating municipally funded projects have been challenged or repealed in Wisconsin, Ohio, Michigan, and California.

The attached bibliography includes several studies demonstrating that state and municipal prevailing wage laws/ordinances increase total project costs. Studies analyzing all construction projects funded by the selected states/localities determined that prevailing wage requirements increased total project costs by 10-30%. A group of studies specifically looking at housing development found that requiring prevailing wage on such projects increased housing construction costs by 9-37%. The last group of studies, focusing on school construction projects, found that prevailing wage laws cost the examined states an additional $127 to 480 million per year on school construction projects.
**It should be acknowledged that the generalizability of these studies is limited due to the difficulty of finding projects for comparison that are identical besides the payment of prevailing wages, disagreement amongst researchers on accepted methodology, and the fact that labor costs as a percentage of total project costs vary by project.*

The cost of prevailing wage ordinance compliance for both governments and contractors was also examined. The included notes are findings from cities with prevailing wage ordinances' websites and conversations with compliance staff. Adjusting for population and volume of ongoing construction projects, it can be assumed that, to monitor compliance with a prevailing wage ordinance, Portland would need to hire one or two staff members. Depending on the volume of future construction projects, it may also be necessary for the City to purchase compliance software. The cities of Denver and Seattle utilize LPCtracker software which costs $25,000 or $50,000 annually depending on the total value of ongoing construction projects. The reporting requirements that the City would need to institute to monitor compliance with a prevailing wage ordinance would likely impose an administrative burden on contractors. The examined cities require extensive reporting during the bid process as well as frequent payroll reporting for the project duration.

2. APPRENTICESHIP PROGRAM REQUIREMENT

BACKGROUND: There a several existing apprenticeship training options for individuals and employers who wish to participate. The State of Maine administers the Maine Apprenticeship Program which, in 2016, served 1,220 apprentices. Currently, contractor participation in the Program is on a voluntary basis. Southern Maine Community College (SMCC) also offers several Applied Technology Degrees. Additionally, there are several union administered programs in occupations such as masonry, carpentry, plumbing, and electrical.

In 2017, the Mayor proposed requiring contractors employed on any construction project receiving tax increment financing (TIF) from the City of Portland to participate in apprenticeship programs. The proposal was not passed by the City Council. The Mayor's current proposal is to require contractors employed on all city funded construction projects to participate in a registered apprenticeship program for each occupation in which workers will be employed. The firms would be required to participate in the programs for the duration of the project. The State of Maine defines a registered apprenticeship as, "a formal, industry-led, nationally-recognized, workforce training program for employees that provides in-house skill development through structured on-the-job learning supplemented with technical and theoretical course work."[1]

FISCAL IMPACT: As with the proposed prevailing wage provision, implementing the proposed apprenticeship training requirement will likely impose compliance costs on both the City and contractors. The included notes are findings from cities with apprenticeship training provisions' websites. Like the proposed prevailing wage provision, it will be necessary to devote city staff time to monitoring compliance, though, it seems that cities with ordinances including both prevailing wage and apprenticeship requirements use the same compliance staff to monitor both provisions. Seattle uses the aforementioned LPCtracker software to monitor its apprenticeship work hour reporting requirement.

Because specific contractor apprenticeship program participation requirements and reporting rules were found to differ between examined cities, the Maine Department of Labor Apprenticeship Specialist was consulted regarding the Maine Apprenticeship Program compliance requirements. The cost to contractors of sponsoring apprentices was stated to be minimal as apprentices can be made to self-fund their tuition which the State reimburses by up to 50%. However, participation in the program requires that contractors register as sponsors and keep records of apprentices' education, experiences and progress along with the additional responsibilities included in the attached form. It was ascertained from speaking with the Apprenticeship Specialist that, as a component of becoming well-versed with the reporting requirements, contractors' staff would need to develop an understanding of which occupations are apprenticable (essentially occupations requiring state licensure). Additionally, compliance with the required journeyman to apprentice ratios could require contractors to hire more employees than are needed for projects.

A final consideration is that the Applied Technology Degrees are core academic offerings at Southern Maine Community College (SMCC). SMCC and Contractors who support the degree programs may believe that the proposed apprenticeship provision undercuts SMCC's offerings.

[1] https://www.maine.gov/labor/jobs_training/apprenticeship.html

Studies Indicating Prevailing Wage Laws Increase Construction Project Costs

- Flaws in Determination of Prevailing Wage Rates
  - **2015, "Prevailing Wage Reform in Pennsylvania." Commonwealth Foundation. https://www.commonwealthfoundation.org/issues/detail/prevailing-wage-reform-in-pennsylvania.**

    Pennsylvania's Prevailing Wage Law was enacted in 1961, mandating that state and local governments pay construction contractors wages that "prevail" in each region on projects costing $25,000 or more.

    Despite what its name suggests, the "prevailing wage" is an artificially-inflated wage paid to those who work on government construction projects. It is usually set at the union-inflated wage (determined by collective bargaining agreements) and is higher than the rate for identical work on private projects. The Pennsylvania Association of Boroughs compared prevailing wage rates across the commonwealth's 67 counties and found they exceed market wages by 30 to 75 percent.

- Instituting Prevailing Wage Laws Increases Overall Construction Costs
  - **Mackinac Center for Public Policy-Michigan**

    * On June 6, 2018, Michigan's Prevailing Wages on State Projects law, Act 166 of 1965 was repealed as the result of a legislative initiative; the repeal was given immediate effect.

    Kersey, Paul. 2007. "Prevailing Wage, Productivity and Cost-effectiveness." https://www.mackinac.org/8923

    Census data indicates that payroll costs per construction worker are 19.2 percent higher in the strong prevailing wage states than in states with no prevailing wage laws. If one divides construction value-added by construction labor payroll, one finds that in strong prevailing wage states, each dollar paid for construction labor generates $4.27 in value-added, but in states without prevailing wage laws, a dollar of construction labor generates $4.54 in value-added. On a dollar-by-dollar basis, construction labor is 6.3 percent more productive in states without prevailing wage laws. In 18 states without prevailing wage laws, construction workers made up 5.3 percent of the work force in 2004, compared with only 4.2 percent for strong prevailing wage states, an indication of the possibility that prevailing wage laws limit opportunities in the construction industry.

    Vedder, Richard. 1999. "Michigan's Prevailing Wage Law and Its Effect on Government Spending and Construction Employment." https://www.mackinac.org/S1999-07

    ***study's methodology has been criticized**

    Between 1994 and 1997, Michigan's prevailing wage law was not enforced, was reinstated by court decision in 1997. This study examined the performance of Michigan's economy for two 30-month periods prior to and during the law's suspension by a federal district court.
    Findings:

- Michigan's prevailing wage law reduces employment in construction: During the 30 months (December 1994 - June 1997) when the law was ruled invalid, more than 11,000 new jobs were created as a consequence of the law's invalidation
- Michigan's prevailing wage law adds at least $275 million annually to the cost of governmental capital outlays
- States without prevailing wage laws had net in-migration of over 2.5 million persons from 1990 to 1996, while strong prevailing wage law states like Michigan had out-migration of 2.7 million
- nationally, poverty rates are higher in prevailing wage law states
- Nationally, worker productivity appears to be lower in construction in states with strong prevailing wage laws, and construction costs are higher in public (prevailing wage) construction than in the private sector where market forces prevail

- **Gardner, Kent and McMahon, E.J. 2017. "Prevailing Waste: New York's Costly Public Works Mandate." The Empire Center. https://www.empirecenter.org/publications/prevailing-waste/**

Study draws attention to the fact that the terms mandating how localities set prevailing wage rates essentially ensures that rates are based upon union wages- "Prevailing rates in a locality are determined by virtue of collective bargaining agreements (CBA) between bona fide labor organizations and employers of the private sector, provided that said employers employ at least 30% of workers in the same trade or occupation in the locality where the work is being performed. "Locality" means areas of the state described and defined for a trade or occupation in the current CBAs between bona fide labor organizations and employers of the private sector." The study also points out that New York's law requires the payment of fringe benefits. If the wage rate is based off of union wages then so are the fringe benefits, by extension. The report calculated total building construction costs at prevailing union pay rates, compared to median private-sector construction wages in major metro areas of New York State. Findings: New York's prevailing wage law increases total construction costs by 13 to 25 percent. Used IMPLAN to develop an estimate of the labor component of total project cost. IMPLAN model estimates that labor is 44 percent of total cost of nonresidential construction in New York City. The more labor intensive the project, the greater the cost impact of the prevailing wage mandate.

- **San Diego**
  - The San Diego City Council initially considered including prevailing wage requirements in all City Projects in 2003. (California has a prevailing wage law but San Diego passed an

ordinance approved by the court to free the city from having to pay prevailing wage on local construction projects.)

- **2003 Study**-Utilized certified payroll data from city projects- broke out labor cost and applied prevailing wage rates to those projects where they were not required and non-prevailing wage rates to projects that had required prevailing wage rates.
  Findings: Buildings projects – Labor cost increase of 20% resulting in total construction cost increase of 7.5%. Pipeline projects – Labor costs increase 20-40% resulting in increased total construction cost as high as 17%. Road projects – Labor increases from 20-35% resulting in increase of 16% for total construction costs.

- Issue came back up in 2013
  - **2013 Study**-Office of the Independent Budge Analyst updated 2003 study to compare 26 project line items applying both prevailing wages and non-prevailing wages using RS Means software (leading tool used by professional engineers to estimate construction costs).
    Findings: the average percentage increase for total construction costs was 12% when prevailing wages were applied and compared to line items when non-prevailing wages were applied.

- **2015, "Prevailing Wage Reform in Pennsylvania." Commonwealth Foundation. https://www.commonwealthfoundation.org/issues/detail/prevailing-wage-reform-in-pennsylvania.**

  A survey conducted by the Local Government Commission found municipalities rank the prevailing wage as one of the most burdensome mandates in the state. Based on Pennsylvania wage data, prevailing wage raises the total cost of construction projects by an estimated 10 to 30 percent. This represents upwards of $1 to $3 billion in extra costs for Pennsylvania taxpayers annually. Effect has been that Local governments frequently defer routine repair and construction projects because they exceed the prevailing wage threshold, making them too expensive. Ex. In Ferguson Township, the prevailing wage increased the cost of one road maintenance project by 57 percent from $20,990 to $32,890.

- **Older Studies**
  - **Thiebolt (1975)-**cost increase of about .5% on prevailing wage projects.
  - **Gold and Bittlingmayer (1980)-**estimated cost increase resulting from prevailing wage laws to be 4-7%.
  - **Fraundorft et. al (1984)-**collected construction data in 1977 and 1978 through inperson interviews with contractors of 215 new

non-residential buildings in rural areas throughout the U.S. Half were subject to prevailing wage laws, half were private. The Davis-Bacon Act requirements were found to increase costs by an average of 26.1.

- **Bilginsoy and Philips (2000)-**conducted a six-year analysis of the British Columbia prevailing wage law-prevailing wages appeared to raise construction costs by 16%.

- Housing
  - **California**

California requires that all workers employed on public works projects (construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds) must be paid the prevailing wage determined by the Director of the Department of Industrial Relations, according to the type of work and location of the project. The prevailing wage rates are usually based on rates specified in collective bargaining

The below studies indicate that increased wages have created in increased costs for developers' resulting in a reduction in the number of new homes under construction.

- **2017. "Regulation & Housing Effects on Housing Supply, Costs & Poverty." California Center for Jobs & the Economy. https://centerforjobs.org/ca/special-reports/regulation-housing-effects-on-housing-supply-costs-poverty**

Findings: Requiring builders to pay government-determined prevailing wage rates would raise the median price of a new home by $42,900 to $79,000, the price of a unit in a new multi-family development by $47,000 to $86,500, and the monthly rent for those units by $250 to $460. Over time, this factor alone would push housing prices up overall by about 13% primarily in inland regions, but much higher in coastal areas with significant historical building shortfalls. Combining both direct and indirect effects, the annual drop in home construction would produce a loss of $20.9 billion to total state incomes, 372,700 fewer jobs, and a $34.2 billion reduction in total California GDP.

- **Dunn, S, Quigley, J, and Rosenthal, L. 2005. "The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing." Berkeley Program on Housing and Urban Policy. https://urbanpolicy.berkeley.edu/pdf/DQR_ILRR05.pdf**

Econometric evidence based on the micro data covering 205 residential projects subsidized by the California Low Income Housing Tax Credit since 1996 and completed by mid-2002 demonstrates that construction costs increased substantially under prevailing wage requirements. Analysis controls for variations in cost by geographical location and for difference in project characteristics, financing, and developer attributes. Estimates of additional construction costs in the most extensive models range from 9% to 37%. These additional costs are associated with an estimated 3,100 unit decrease in number of new dwellings for low-income households produced under the tax credit program in California.

- **2016. "The Impact of Prevailing Wage Requirements on Affordable Housing Construction in New York City." New York City Independent Budget Office. http://www.ibo.nyc.ny.us/iboreports/the-impact-of-prevailing-wage-requirement-on-affordable-housing-construction-in-new-york-city.pdf**
  IBO compared the construction budgets of projects that were subject to federal prevailing wage requirements with other publicly subsidized affordable housing projects that were not required to pay prevailing wages while controlling for various project characteristics. Findings: IBO estimates that the average total construction costs for a project requiring prevailing wages is 23 percent higher than a project where prevailing wages are not required. This percentage cost difference translates into an estimated per unit cost increase of nearly $80,000.

- **2017. "Impacts of a Prevailing Wage Requirement for Market Rate Housing in California." Blue Sky Consulting Group. http://www.mychf.org/uploads/5/1/5/0/51506457/prevailing_wage_20170824.pdf**
  Study was done to assess impacts of proposed California legislation aimed at expanding prevailing wage requirements to include most of the new market rate housing produced throughout the state. Findings: Estimated an increase in total hourly rates ranging from a low of 39% for electricians up to a high of 116% for construction laborers Overall, estimated that hourly labor costs for residential construction statewide would be on average 89% higher if builders were to pay prevailing wage rates for all residential construction Labor currently accounts for approximately 41% of the construction costs for a typical single family home in California-estimated 89% increase in hourly labor costs would result in a 37% increase in total construction costs.

- School Construction
  - **Rosaen, Alex and Taylor, Traci. 2015. "The Impact of Michigan's Prevailing Wage Law on Education Construction Expenditures." Anderson Economic Group. http://www.andersoneconomicgroup.com/Portals/0/upload/AEG%20Prevailing%20Wage%20Update%209-17-2015.pdf**
    Purpose of the study was to estimate the average annual expenditures made for construction of public K-12 and higher education facilities in Michigan over the past 10 years as a result of Michigan's

prevailing wage law-estimated what cost savings could have been realized by state and local governments had the construction contracts for the dame education buildings not been subject to the prevailing wage law.
Findings: From 2003 through 2012, $21 billion in school construction and repair projects was subject to Michigan's prevailing wage law. Estimated that Michigan's prevailing wage law increased the financial obligations for education construction by an average of $127 million per year for the last 10 years.

- **2014. "Illinois' Prevailing Wage Law and the Cost of Education Construction." Anderson Economic Group. http://www.andersoneconomicgroup.com/Publications/Detail/tabid/125/articleType/ArticleView/articleId/8099/Illinois-Prevailing-Wage-Law-and-the-Cost-of-Education-Construction.aspx**

  Purpose of study was to estimate the portion of construction expenditures by school districts and higher education institutions in Illinois that are attributable to the state's prevailing wage law. Estimated increase in annual cost due to prevailing wage based on an estimate of the average annual increase in costs on construction projects performed in the years 2002 to 2011. Modeled construction costs subject to prevailing wage rates and assumed that those costs are passed on to the clients...assumed that there will not be a substantial change in raw material costs in the absence of a prevailing wage...did not attempt to project the behavioral responses of the client.
  Findings: In the absence of the state's prevailing wage law, estimate that Illinois state and local governments could have saved $158 million on average each of the past ten years. Total of $1.6 billion from 2002 to 2011. $124 million would have been realized by K-12 schools and $34 million by community colleges and public universities.

- **2015, "Prevailing Wage Reform in Pennsylvania." Commonwealth Foundation. https://www.commonwealthfoundation.org/issues/detail/prevailing-wage-reform-in-pennsylvania.**

  Allowing schools to opt out of the prevailing wage mandate could save taxpayers between $160 and $480 million each year. Ex. In 2011, Southwestern School District in York County, PA needed to fix a leaky roof in one of its schools. The project was originally bid out for $84,000 without the prevailing wage mandate. The district bid out the project again with the prevailing wage mandate resulting in a cost of $125,000—a 49 percent increase.

- **2002. “The Effects of the Exemption of School Construction Projects from Ohio’s Prevailing Wage Law.” Ohio Legislative Service Commission.** [**https://www.lsc.ohio.gov/documents/reference/archives/specialreports/srr149.pdf**](https://www.lsc.ohio.gov/documents/reference/archives/specialreports/srr149.pdf)

  Asked contractors on prior school projects to come up with hypothetical bids applying prevailing wage to bids that were submitted for past projects. The difference between the bid price and the estimate of the bid price had the project been bid with prevailing wages was calculated for each respondent to provide an estimate of the savings resulting from the exemption of school districts from the state's prevailing wage laws. For most union contractors both the estimated savings and the percentage savings were zero. The contractor surveys indicate a range of savings of 5-10%. Estimated savings were slightly higher in rural counties than in urban counties. One reason for this is that under prevailing wage laws, wages from urban areas are often "imported" into rural areas. Urban wages tend to be higher than rural wages, so when the prevailing wage requirement is removed, lower rural wages may be used, resulting in savings.

Findings-Prevailing Wage Ordinance Compliance Costs

- Denver
    - Ordinance requires the payment of prevailing wages on city funded construction repair, and/or maintenance projects in excess of $2,000. https://www.denvergov.org/content/denvergov/en/denver-human-resources/search-jobs/prevailing-wage-rates.html
    - Compliance Monitoring
        - The Denver Auditor’s Prevailing Wage Section is responsible for monitoring and enforcement.
        - Denver currently has $4.3 billion in ongoing construction projects (2,000-4,000 projects)
        - 12 compliance staff members (Director of Contracts & Accountability, Administrative Assistant, Supervisor, and nine investigators)
            - For reference, one investigator can manage 200-400 projects
        - Prevailing Wage Section of Auditor’s Office has a $800,000 budget
        - Denver utilizes LPCTracker compliance software (contractors submit payroll through software)
            - The software cost is incremental based on the total value of contracts or how many payrolls are entered into the system
                - Under $2 billion in contracts is $25,000 a year, Over $2 billion is $50,000 a year
    - Contractor Reporting
        - Contractors or subcontractors must provide the Auditor’s Office with payroll records of all workers, laborers, and mechanics employed to work on the city project.
- Worcester, MA
    - Worcester’s Responsible Employer Ordinance includes prevailing wage. http://www.worcesterma.gov/uploads/f7/4d/f74d0ed6c2889010b39dfdaca0bab343/responsible-employer-ordinance.pdf
    - Compliance Monitoring
        - The city purchasing division includes 3 staff members who all work on Responsible Employer Ordinance Compliance.
        - Worcester does not use compliance software.
- Springfield, MA
    - Springfield’s Responsible Employer Ordinance includes prevailing wage https://ecode360.com/14657966
    - Compliance Monitoring
        - City Compliance Officer
        - A media article from March 2018 states that the city council approved funding for a two-person compliance unit.
            - https://www.masslive.com/news/index.ssf/2018/03/springfield_hiring_staff_to_pu.html?%25%25STOP%25%25ath=%25%25eval%20lower%20$md5_email%25%25
        - Monitoring Committee
    - Contractor Reporting

        - The contractor who has been awarded a contract for public construction by the bidding authority shall complete the Springfield construction employee reporting form and submit the same to the bidding authority and monitoring committee no later than 30 calendar days before commencement of work under the contract.
        - All contractors shall maintain a weekly Springfield public construction employee tracking, keeping track on a weekly basis of the contractors' employees that are working on the project for the entire duration of their work on the project. Such records from this tracking system shall be submitted weekly to the Springfield compliance officer or his/her designee and the monitoring committee, and shall be submitted with certified payroll records.
        - An officer of each such contractor or subcontractor shall certify under oath and in writing on a weekly basis that they are in compliance with the ordinance.
- Seattle, WA does not have a municipal prevailing wage ordinance but, due to ongoing construction volume, has compliance staff in the Seattle Housing Authority and City Purchasing offices to monitor state and federal prevailing wage laws.
    - Compliance Monitoring
        - Seattle currently has $120 million in ongoing construction projects which amounts to an estimate $5,000 certified payrolls to review per year
        - The Seattle Housing Authority employs a Labor Compliance Officer, five contract administrators, and a half-time assistant (**A call has been scheduled with the City Contract Compliance Manager).*
        - Seattle has utilized compliance monitoring software for seven years. The City is currently using LPCtracker but until this year used MyLCM.
            - MyLCM cost $23,000 a year.
            - LCPtracker is incremental based on the total value of contracts or how many payrolls are entered into the system
                - Seattle will pay the $25,000 a year rate but because of additional costs related to migrating data MyLCM, Seattle paid $45,000 for the program this year.

Findings-Apprenticeship Training Provision Compliance Costs

- Worcester, MA previously included an apprenticeship training provision as a component of its Responsible Employer Ordinance, however, the provision was suspended after it was challenged in court by the Merit Construction Alliance.
- Springfield, MA
  - Springfield's Responsible Employer Ordinance includes apprenticeship training requirements. https://ecode360.com/14657966
    - "The contractor and all trade contractors and subcontractors under the contractor must, at the time of bidding, maintain or participate in a bona fide apprentice training program as defined by MGL c. 23, §§ 11H and 11I for each apprenticeable trade or occupation represented in their workforce that is approved by the Division of Apprentice Standards of the Department of Labor and Workforce Development, regardless of whether or not the program qualifies as an employee welfare benefit plan under ERISA, and must register all apprentices with the Division and abide by the apprentice-to-journeyman ratio for each trade prescribed therein in the performance of any work on the project."
  - Compliance Monitoring
    - The city appears to employ the same compliance staff and monitoring committee to monitor all the provisions in the ordinance.
  - Contractor Reporting
    - Same reporting requirements as for prevailing wage provision
    - Additionally, contractors must submit with their bid a sponsor verification letter from the Commonwealth of Massachusetts, Department of Labor and Workforce Development — Division of Apprentice Standards, issued within the past 90 calendar days, evidencing that at the time of submitting a bid or proposal, the bidder or proposer is currently an approved sponsor of apprentices
    - Contractors also must register all apprentices with the City.
- Seattle, WA
  - The City requires apprentice labor on construction projects estimated to cost $1 million or greater. Contractors must ensure that up to 15 percent of the total contract labor hours are worked by apprentices enrolled in an apprenticeship program approved or recognized by the Washington State Apprenticeship and Training Council. https://www.seattle.gov/city-purchasing-and-contracting/social-equity/apprenticeships
  - Compliance Monitoring
    - City Purchasing and Contracting Services monitors compliance with the apprenticeship requirements. **A call has been scheduled with the City Contract Compliance Manager.*
  - Contractor Reporting
    - An apprentice Utilization Plan, outlining how the requirements will be met, must be submitted at the pre-construction meeting, with revisions submitted by the prime contractor to CPCS as necessary throughout the life of the project.
    - Must submit apprenticeship hours through LCPtracker.

- Spokane, WA
    - Public Works Apprentice Program
        - On public works construction projects with an estimated cost of six hundred thousand dollars ($600,000) or more, at least fifteen (15) percent of the labor hours of each project shall be performed by apprentices enrolled in a State-approved apprenticeship program. The utilization percentages for apprenticeship labor for public works construction contracts shall also apply to all subcontracts of one hundred thousand dollars ($100,000) or more within those contracts provided there is a state-approved apprenticeship training programs for the trade of which a subcontract is issued.
          https://static.spokanecity.org/documents/business/apprentice-program/apprentice-program-faqs-022017.pdf
          https://my.spokanecity.org/smc/?Chapter=07.06
    - Compliance Monitoring
        - Unclear from website.
    - Contractor Reporting
        - Unclear from website.
- Rochester, NY
    - Apprenticeship Training Program
        - Prior to entering public works contracts in excess of $250,000, contractors must have apprenticeship agreements, appropriate to the type and scope of work to be performed, which have been registered with and approved by the New York State Commissioner of Labor
          http://www.cityofrochester.gov/apprenticeshiptraining/
          file:///C:/Users/maggi/Downloads/Apprenticeship%20Training%20Program%20for%20Construction%20Contracts%2011282012%20(2).pdf
    - Compliance Monitoring
        - Commissioner of Environmental Services monitors compliance with the apprenticeship requirements. **Plan to schedule a call with a city representative.*
    - Contractor Reporting
        - A contractor who submits a bid for a City contract for which the contract amount exceeds $250,000 shall submit with the bid package a copy of the following for each apprentice agreement intended to meet the requirements of this regulation:
            - The current New York State Department of Labor Form AT-10, “Apprentice Training Program Registration Agreement,” issued to the contractor or other sponsor of the apprentice training program; and if the apprentice training program is not sponsored by the contractor, an executed copy of City Apprenticeship Training Program Form AP3, “Agreement to Utilize Apprentices on a City of Rochester Construction Contract.”
            - The Contractor shall also submit with the bid package the following:

- A listing of any contractor proposed to hold subcontract that exceeds $100,000 in value, including the name of the subcontractor, the scope and value of work proposed to be performed, and the name of any apprenticeship trade for which an approved apprenticeship agreement will be submitted and, copies of approved apprenticeship agreements intended to meet the requirements of this regulation

Portland, Maine — Yes. Life's good here.

Office of the Mayor, Ethan K. Strimling

MEMORANDUM

To: Finance Committee

From: Ethan K. Strimling, Mayor

Date: October 31, 2018

Subject: Responsible Contracting Cost Analysis

On October 4, the city manager presented an analysis to the Finance Committee on the financial impact of ensuring that workers on city construction contracts receive a reasonable wage, health care, safety protocols and high quality training. The analysis claimed that implementing such provisions could increase costs on taxpayers by a remarkable 30-37%, depending on the type of construction.

Not surprisingly, upon closer examination of the actual data reviewed, and as reported by Maine Public Radio reporter Fred Bever, the memo relied "heavily on consultant studies from other states that were conducted by free-market think-tanks with ties to conservative funders, including the Koch Brothers."

In my review of the 14 "studies" cited by the administration, it appears that at least 80% were commissioned by conservative free-market think tanks/lobbyist organizations, right-wing policy networks and/or right wing funders like the Koch Brothers and the Bradley Foundation. Many of the others have apparent flaws in their methodology or were analyzing very different ordinances than the one being considered by us.

Unfortunately, despite numerous studies (I have found close to 40 so far, including the ones Drummond Woodsum cited in their presentation) showing that prevailing wage has little to no impact on overall construction costs for states or municipalities, none of those studies was included in the administration's memo.

Specifically what I found in the studies cited by the administration is as follows:

- Three of the "studies" were from the Commonwealth Foundation [TCF]. TCF is described as a "right-wing pressure group" by SourchWatch, and they are a member of the State Policy Network [SPN], "a web of right wing think-tanks" funded by the Koch Brothers, among others. SPN is also closely connected to the American Legislative

Exchange Council [ALEC], a network of conservative legislators and businesses promoting right-wing policies, which also receives direct funding from the Koch Brothers.

- Three of the "studies" cited were from the Mackinac Center, also described as a right-wing "think tank" and also a member of the SPN. Mackinac also receives direct funding from the Koch brothers, among others.

- One of the "studies" cited, published by the Mackinac Center, was written by Paul Kersey, who spent three years as the National Right to Work Committee's [NRWC] Director of State Legislation. Besides being an organization that openly fights against responsible contracting legislation, they also appear to have deep funding ties to the Koch brothers.

- One of the "studies" cited was from the The Empire Center [TEC]. TEC is also a member of the SPN and receives extensive funding from the Bradley Foundation, one of America's largest right-wing foundations. It also has ties to ALEC and it also appears to receive direct funding from the Koch brothers.

- One of the "studies" was done by The California Center for Jobs and the Economy [CCJE]. CCJE is the research arm of the California Business Roundtable, a lobbying group made up exclusively of senior executives of major California corporations.

- One of the "studies" was funded by the California Homebuilding Foundation [CHF], a pro-business lobbying group. Additionally, the study is speculative, not studying actual impacts, and was commissioned to lobby the CA legislature against expanding their responsible contractor ordinance.

- Another "study," which is an updated version from a deeply flawed and highly criticized first draft, acknowledges that it does not consider variables such as "changes in worker productivity, material costs, or labor share that may occur in the absence of a prevailing wage." The study also appears to be of a prevailing wage law that is based on collectively bargained wages, not the prevailing wage rates of all industry workers (as is being proposed for Portland).

In light of this information, I hope the City Manager will withdraw his memo. Council committees and the public must always be provided with information from staff that is truly neutral, or, at a minimum, that is transparent about the data. Should the committee decide it needs further data to determine if implementing RC will increase costs, I would suggest we ask the Muskie School to review the literature.

Portland, Maine — Yes. Life's good here.

MEMORANDUM

TO: Members of the Finance Committee

FROM: Jon P. Jennings - City Manager

DATE: November 28, 2018

SUBJECT: Re: Responsible Contracting Cost Analysis

At several occasions over the past several Finance Committee meetings Mayor Strimling has called into question my neutrality in regards to information being presented on the costs of his proposed changes to City contracting. His accusations have no basis and this memo is intended to repeat my position, which I stated in my April 2017 memo to the Economic Development Committee. It is my responsibility to ensure the City Council has all relevant information on which to make their decisions. To make it absolutely clear, my concerns around the proposed contracting changes simply relate to those requirements which would increase the cost of future City public infrastructure investment. It is likely that some requirements in the current proposal would result in future property tax increases and/or limit the available funding for the City's capital needs. The proposal in front of Finance Committee would add eleven amended and new requirements to the ordinance on City contracting and several have already been shown to increase costs. Several others have not yet been investigated in detail to determine impact to the City.

I was incredibly concerned after hearing about presentations being made to the School Board asserting that there would be no cost increases to their projects as a result of these proposed changes. Several school staff and elected officials came away with the impression that there was no potential downside risk related to these proposals. In recent meetings and in his introductory memo the Mayor himself noted there will be cost increases related to a prevailing wage requirement - which is just one of approximately eleven amended and new requirements within the proposal in front of Finance Committee. I concede that there is debate to how large the cost increases may be and that further investigation would be necessary to determine the range of potential cost increases related to each requirement. However, if the City's already small pool of vendors is further limited by any of the new requirements (most notably the apprenticeship program requirement, which would preclude nearly 95% of all current vendors bidding on projects over $50k) bid award prices would be significantly higher. In most cases, there would be no bidders who could meet the proposed requirements. In one recent example these requirements would have resulted in a bid award price of nearly 30% higher vs current City contracting rules and in many instances there would have been City projects with no bids.

In regards to the August 2018 memo *Fiscal Impact of Mayor Strimling's Proposed Amendments to the City Purchasing Policy,* I requested that staff add a backup memo on the potential downside and costs of the proposed changes in City contracting to be considered alongside the materials being prepared by Mayor Strimling and other advocates for the current proposed changes. Any questions on the memo can be routed through me. The memo focused on only two requirements of the current proposal, the prevailing wage requirement and the apprenticeship requirement. The memo fairly presented the conclusions of several studies indicating a range of between 10-30% in cost increases on construction projects and this data cannot simply be ignored. I agree that many studies on the impact of prevailing wage have been performed or funded by the "pro" prevailing wage advocates or the "con" prevailing wage advocates and there could be an endless debate and research on which data sources were or were not biased. The August 2018 memo is by no means comprehensive and is certainly not an indicator of actual market conditions here in Maine, where our pool of potential bidders is significantly smaller than those in most of the other survey areas. However, I certainly do not think 10-30% cost increases on City projects are out of the question should these propose contracting changes move forward.

If the next City Council chooses to make this topic a collective priority in their 2019 goal setting, each requirement of the current proposal should be reviewed in more detail in future Finance Committee meetings. Local data must be gathered and considered, and the real need for each requirement (i.e. whether there is currently a "problem" with contractors and contracting in Portland that needs to be corrected) should be investigated thoroughly and compared with the cost implications fully before any action is taken. Our Corporation Counsel has noted the changes could be (and have been in other municipalities) subject to costly legal challenges, particularly when such changes have been moved forward without any basis. The proposed changes could be very costly to the City budget and the City capital program, as well as damaging to our pool of local vendors, all of whom have largely done excellent work over the past several decades for the City.

Prevailing Wage Laws: What Do We Know?

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Prevailing Wage Laws:
What Do We Know?

Presented by:

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Prevailing Wage Laws: What Do We Know?

By Kevin Duncan and Russell Ormiston

Introduction

In recent years, states and municipalities have been increasingly engaged in heated, often partisan, debates over the future of prevailing wage laws. In addition to the repeal of state prevailing wage laws in West Virginia and Kentucky, there have been high-profile political challenges in several states including Wisconsin and Nevada. Numerous city councils and county commissioners have been concurrently engaged in similar debates regarding local prevailing wage ordinances. References to economic studies often accompany these calls for legislative action, as advocates on both sides of the debate can point to papers supporting their position. The lack of consensus among researchers, however, is mostly attributable to differences in empirical methodology and scientific rigor. To improve the clarity of future public policy debates on prevailing wage laws, this paper summarizes the current state of research on these policies, highlighting recent academic findings and identifying empirical shortcomings inherent in a number of oft-cited non-academic studies.

Federal prevailing wage laws are governed by the Davis-Bacon Act of 1931, which mandates that construction contractors and subcontractors hired on federally funded or assisted contracts valued at $2,000 or more "must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area," (U.S. Department of Labor, n.d.). The primary, long-standing goal of the Davis-Bacon Act has been to protect communities from the deterioration of local labor standards that may occur if large government projects—often awarded to the lowest bidder—attract contractors from lower-wage areas (U.S. Department of Labor, 2015). In addition to federal contracts, 29 states and numerous cities and counties have enacted similar ordinances to cover corresponding state and local projects. The goals of these regional regulations are varied, from preserving local labor standards to ensuring a qualified and safe workforce on public projects through the promotion of apprenticeship training.

While prevailing wage laws are present across federal, state and local jurisdictions, there are considerable differences in how each determines a local area's "prevailing wage." For federal projects, the Davis-Bacon Act requires the U.S. Department of Labor to conduct wage surveys for detailed job classifications and type of work. Similar wage surveys are used in a majority of states with prevailing wage laws, however some exceptions exist. For example, Vermont bases its prevailing wage on the Bureau of Labor Statistics' Occupational Employment Statistics and requires an additional 42.5 percent in fringe benefits. Other states, such as Massachusetts, Pennsylvania and New Jersey, establish wage and benefits rates in accordance with local collective bargaining agreements. Whether labor union compensation rates directly establish a locality's prevailing wage or merely influence it through the calculation of an average rate, organized labor's influence has resulted in clear fault lines between prevailing wage's strongest advocates (union contractors and employees) and opponents (select non-union contractors).

The ongoing political dialogue on prevailing wage laws requires a comprehensive research review to inform debate and guide future legislative action. Focusing on research published since 2000, this paper summarizes research studies that address the four most debated issues surrounding the effects of prevailing wage laws: (a) construction costs, (b) education and training, (c) workplace safety, and (d) the racial composition of the labor force. This study will prioritize research published in academic journals or working papers, as these studies represent the most thoughtful and rigorous analyses. Published academic papers have been through the peer-review process where anonymous independent experts critically evaluate the methodologies and conclusions of each study before it can be accepted for publication. In contrast, unpublished studies and advocacy research—often cited in public debates over prevailing wage laws—can suffer from undetected or unexplained methodological defects that produce inaccurate or misleading conclusions.

Construction Costs

Among policymakers and researchers, the predominant interest in prevailing wage laws has been in understanding their effect on public construction costs. The most common public argument supporting the repeal of existing prevailing wage laws has been that doing so will save taxpayers money. This logic assumes that repeal will lead to lower wages and, as a result, lower labor costs on public projects. However, this argument ignores fundamental differences between high-wage and low-wage construction. This includes skill and productivity differences between high-wage and low-wage workers, greater use of capital as labor costs increase, increased rates of training and safety among high-wage workers, and other issues tied to variations in the quality of labor, capital and management. These effects have the potential to offset some, if not all, of the cost increases associated with higher wage and benefit rates.

The potential of cost offsets in the presence of higher wages in the construction industry renders simple arguments inconclusive in predicting the impact of prevailing wage laws on the cost of public projects. As a result, researchers must address this question empirically. The most credible approach to estimate the cost impact of prevailing wage laws has been to examine the effects on a project-by-project basis. By identifying a pool of public construction projects with common features across jurisdictions and years, researchers can use regression analysis to control for many of the differences inherent in unique projects (e.g., square feet, number of stories) and therefore isolate the cost differential attributable to the presence of a prevailing wage law.

Regression analysis represents the dominant empirical tool in economists' toolbox for a reason: it allows researchers to separate the effects of multiple variables on a singular outcome (e.g., construction costs). However, accurate estimation of these effects requires particular attention paid to the variables included in the empirical model and overall study design. As demonstrated in Belman et al. (2010), regression models that do not adequately account for critical physical differences between construction projects will result in inaccurate estimates of the cost effects of regulation (i.e., omitted variable bias). Researchers have addressed these concerns by analyzing three narrow classifications of public projects—public schools, highways and public housing—that minimize the inherent differences between projects and, as a result, produce more unbiased estimates of the cost effects of prevailing wage laws.

School Construction

Public school construction has been the primary focus of academic and non-academic studies on the cost effect of prevailing wage laws. In addition to providing researchers with a considerable volume of projects to study over time, public school construction features substantial commonality in their characteristics (e.g., classroom space, gymnasiums) across jurisdictions, allowing the potential cost impact of prevailing wage laws to be isolated more easily. The two most extensive studies examined public school construction in the United States between 1991 and 1999. Azari-Rad, Philips and Prus (2002) used data from F.W. Dodge data to examine the accepted bid costs for 4,974 public and private schools across the country, building a regression model that controls for school size, type (elementary/middle/high), season in which construction started, local market conditions, and a series of variables to isolate the effects of state prevailing wage laws from the potential cost differences between public and private schools.[1] The results indicated that prevailing wage laws do not have a statistically significant impact on construction costs.

In a follow-up study, Azari-Rad, Philips and Prus (2003) augmented their analysis of school construction costs by examining how they may be affected by the "strength" of a respective state's prevailing wage law. These regulations differ across states on the basis of the minimum contract threshold, the breadth of work and occupations covered, the enforced wage rate, and a variety of other factors. To those ends, Thieblot (1995) developed a scoring system for state

[1] The use of accepted bid costs from F.W. Dodge—instead of collecting data on final costs—is common practice within construction research. Given that bid costs do not include potential change orders or cost overruns, the use of bid costs instead of actual costs represents a potential shortcoming of these studies. However, in the absence of evidence that these would differ across jurisdictions on the basis of prevailing wage laws, there is no reason to assume that the use of bid costs would bias the results.

prevailing wage laws that allowed the authors to categorize a state's policy as "strong" or "weak." Analyzing 4,653 public schools built between 1991 and 1999, Azari-Rad, Philips and Prus (2003) demonstrated that the presence of state prevailing wage laws, whether they be strong or weak, have no statistically significant impact on school construction costs.

Vincent and Monkkonen (2010) followed a similar approach in a study of the effect of state regulations on school construction costs. Analyzing final bid costs for 2,645 public schools built between 1995 and 2004, the authors used a regression model to estimate the cost impact of state prevailing wage laws, state siting regulations and the availability of state funds for school construction. Controlling for size, number of stories, type of school, and local conditions, the authors estimated that state prevailing wage laws raised school construction costs by 8-13 percent, an effect that was statistically significant. In addition to finding results contrary to previous research, the study also contended that state policies were additive, as school construction in states with three regulations was estimated to cost nearly 30 percent more than in states with no policies.

Duncan, Philips and Prus (2014) examined the relationship between school construction costs in British Columbia and the Skill Development and Fair Wage Policy. Enacted in 1992, the policy represented a *de facto* prevailing wage law by establishing a wage and benefit floor for large construction projects funded by the provincial government. Using bid cost data on 498 schools built between 1989 and 1995, the authors developed a regression model that controlled for school size, number of stories, location in Vancouver, and a number of other variables. The results indicated that, after controlling for these factors, there was no statistically significant difference in the construction costs of public schools in British Columbia before and after the policy was enacted. In an earlier study, Bilginsoy and Philips (2000) also examined the effects of Skill Development and Fair Wage Policy on school construction costs in British Columbia between 1989 and 1995. In a sample of 54 schools located within close geographical proximity, the study demonstrated that the enactment of the policy had no statistically significant effect on school construction costs in the area.

While the papers summarized above were published in academic journals, three other oft-cited, non-peer reviewed studies have employed a regression approach and F.W. Dodge data to examine the effects of prevailing wage laws on school construction costs; none of them found statistically significant cost effects. Examining 358 schools built in the Mid-Atlantic Region of the United States between 1991 and 1997, Prus (1999) did not find statistically significant differences between school construction costs between states with and without a prevailing wage law; the author also found no significant difference in bid costs between 124 Maryland schools based on the presence of local prevailing wage laws. The Ohio Legislative Service Commission (2002) examined the 1997 exemption of school construction from Ohio's prevailing wage law by investigating school construction costs within the state between 1992 and 2001. Separate regressions on large new projects (n=256), small new projects (n=194) and additions (n=646) failed to uncover any statistically significant difference in bid costs before and after the exemption.[2] Kelsay (2015) studied 266 schools built in West Virginia and five neighboring states

[2] The Ohio Legislative Service Commission (2002) report posited that the school construction exemption in the state's prevailing wage law saved the state 10.7 percent; however this estimate was derived from three regression models in which none of the prevailing wage coefficients were even close to statistical significance. The decision to explicitly dismiss concerns over statistical significance (p. 60) is at odds with normal statistical practice as found in peer-reviewed journals or introductory econometrics textbooks.

between 2006 and 2013 and, using regression analysis, also found that the presence of a state prevailing wage law had no significant impact on the construction costs of new public schools.[3,4]

The use of regression analysis to model school construction costs is not without methodological concerns.[5] However, it is revealing that every academic study of the cost effects of prevailing wage laws in the last 15 years has employed regression analysis. It is additionally compelling that seven of the eight studies that examined public school construction using this approach failed to uncover a statistically significant link between prevailing wage laws and school construction costs; this includes four of five peer-reviewed articles. However, the narrative of prevailing wage laws raising school construction costs persists due to the pervasiveness of non-academic research that relies on a simplistic empirical approach that produces upward-biased estimates: the "wage differential" method.

A recent example of this approach, Rosaen and Taylor (2015), estimated the cost impact of Michigan's prevailing wage law by multiplying (a) the wage premium associated with prevailing wages relative to lower-cost market alternatives (25 percent) and (b) the percentage of construction costs attributable to wages and benefits (24 percent). The subsequent product—6.1

[3] In addition to his analysis of the effects of state prevailing wage laws on the cost of public school construction, Kelsay (2015) expanded his analysis to the construction of all non-residential buildings (n=1082) for which data was available through F.W. Dodge in a six-state area between 2006 and 2013. After controlling for building types and public construction, the study found that the presence of a state prevailing wage law had no statistically significant effect on public construction costs. Kelsay, Wray and Pinkham (2004) employed a comparable methodology in an examination of construction costs of 3,082 projects built across a 12-state area between 1993 and 2002, with results similarly finding no significant difference in construction costs based on the presence of a state prevailing wage law.
[4] In an examination of school construction costs in Pennsylvania, Wial (1999) also used regression modeling to indicate that changes in the calculation of the state's prevailing wage had no statistically significant cost effects. While the model specification mirrored those used in later studies, the paper buried this discussion in a footnote and did not present the results of the model's estimation.
[5] In addition to omitted variable bias identified by Belman et al. (2010), Dickson-Queada et al. (2015) also suggests that causality may be a concern in studies of prevailing wage as these policies are more prevalent in higher-cost markets (i.e., endogeneity bias).

percent—is touted as the increase in public construction costs attributable to the presence of a prevailing wage law; multiplying that by the $21 billion spent by the state of Michigan on applicable school construction between 2003 and 2012, the authors posit that the state's prevailing wage law cost taxpayers an additional $1.267 billion over those ten years. A number of other non-academic studies utilize variants on this approach; they typically report that state and federal prevailing wage laws increase public construction costs on all projects by 8-36 percent (Vedder, 1999; Kersey, 2007; Gardner and Ruffner, 2008; Glassman et al., 2008; Vermont Legislative Joint Fiscal Office, 2014). The most recent academic study to employ this method—Keller and Hartman (2001)—suggested that Pennsylvania's prevailing wage law increased public school construction by 2.25 percent.

Studies relying on the wage differential approach, however, suffer from methodological defects that render them misleading as critical analyses of the cost impact of prevailing wage laws. First, by simply comparing the prevailing wage to some arbitrary lower rate, this method is built upon the assumption that prevailing wage laws *must* increase construction costs. However, as described above, most academic studies fail to find statistically significant evidence supporting that position. As a result, the wage differential approach rules out the potential cost offsets attributable to contractors hiring fewer and more skilled workers or substituting capital for more expensive labor.

Overlooking these cost offsets is misguided given the results of Atalah (2012, 2013), which offer evidence that contractors bidding on school construction projects are able to offset higher wages with increased capital substitution and a more-skilled workforce. In the former study, the author examined 8,093 bids on public school construction projects in Ohio between 2000 and 2007 following the 1997 exemption of public school construction from the state's prevailing wage law. Comparing the bid cost per square foot between union contractors—who presumably pay the highest local wage rates—and non-union contractors, the author found no statistically significant difference between the bids statewide. The only significant difference occurred in an examination of Southern Ohio, with the author finding that bids from non-union contractors were significantly *higher* than their union counterparts. In the latter study, the author employed the same data set and approach but instead compared union and non-union bids within each trade. While within-trade samples tended to be small, the study found no statistically significant difference between bids from union and non-union contractors for most trades.[6]

A second methodological defect of the wage differential method is that most studies compare prevailing wages to the average wage for all construction workers in a state, including those working in residential construction. But residential construction workers are typically drawn from a different subset of craft workers—who are typically less skilled and earn less—than those employed elsewhere in the construction industry. As a result, an analysis of this issue by the Minnesota Office of the Legislative Auditor (2007) led it to conclude that the wage differential method "may overstate the possible savings from repeal of state prevailing wage laws," (p. 77).

Finally, the starting assumption of the wage differential method also implicitly presumes that any construction cost increases are necessarily and completely borne by taxpayers. In contrast,

[6] Of the 18 trades examined, Atalah (2013) did find statistically significant differences between the bids of union and non-union contractors in five trades: plumbing, HVAC, existing conditions, earthwork and electrical. However, there was not uniformity in the direction of the difference, as non-union contractors exhibited higher bids in two trades while union contractors offered higher bids in three trades.

Duncan and Lantsberg (2015) demonstrate that contractor profits and material costs are lower in states with prevailing wage laws, offering a reminder that the burden of cost increases—if they exist—may be shared between contractors and the government. Previous studies relying on the wage differential method have ignored this outcome, further overstating the presumed cost effects of prevailing wage laws. Taken together, it is clear that the methodological defects of the wage differential method demonstrate an incomplete understanding of construction labor markets that produces inaccurate estimates of the cost effects of prevailing wage laws.

In sum, the most advanced studies published in recent years offer limited evidence supporting the hypothesis that prevailing wage laws increase school construction costs. A review of the literature demonstrates a clear dichotomy in empirical methodologies utilized across studies. The differences between these approaches are critical. While there have been numerous non-academic studies touting substantial cost effects of prevailing wage laws, they rely on a simplistic approach—the wage differential method—that demonstrates a deficient understanding of construction markets that renders them ineffective at best and, at worst, misleading. More rigorous analyses using the preferred method of economists—regression—is far more tempered, as seven of eight studies utilizing this approach have failed to find statistically significant evidence indicating that prevailing wage laws have any effect on school construction costs.

Highway Maintenance

While research examining the cost effects of prevailing wage laws has primarily focused on public school construction, Vitaliano (2002) analyzed the effect of these regulations on highway expenditures in a study on the economic efficiency of state departments of transportation. Using data from 1996, the author built a six-variable regression model of highway costs that included an indicator of whether the state had a prevailing wage law. The results demonstrated that prevailing wage law increased overall state costs by 8 percent, an effect that was statistically significant. However, total state-level expenditures on highways depend on a number of important factors not included into the regression model, including the amount of new highway construction ordered and the level of law enforcement staffing on the roadways. Without these critical variables, the resulting omitted variable bias substantially weakens the credibility of the established link between prevailing wage laws and increased costs.

To resolve the omitted variable problem, Duncan (2015a, 2015b) examined the cost impact of the federal Davis-Bacon Act on highway maintenance in Colorado between 2000 and 2011. Resurfacing projects on state highways (state funding) and interstate highways (federal funding) in Colorado are built according to the same standards, using the same material, employ the same types of workers, and feature the same requirements of contractors except for two additional policies that govern federal projects: the Davis-Bacon Act and the Disadvantaged Business Enterprise Program. Using a regression model to control for a variety of other factors—such as location, year and type of terrain—that may affect project cost, the author found no statistically significant evidence suggesting that these two federal policies had any impact on project bid cost or the number of bidders. Duncan (2015b) expanded the analysis to examine whether bids were more aggressive when contractors switched from federal projects to less-regulated state projects; the results again failed to find any indication suggesting that the two federal policies had any statistically significant impact on contractor bids.

Public Housing Construction

As the single academic study examining the cost effect of prevailing wage laws on public housing construction, Dunn, Quigley and Rosenthal (2005) analyzed the construction of 205 new public housing projects that were approved and completed between 1997 and 2002. Applications for projects subsidized by the California Low Income Housing Tax Credit offered detailed information on project costs and characteristics, including a question that allowed the authors to confirm that a contractor was required to pay prevailing wages on account of governmental subsidies. Building extensive regression models, the authors estimated that prevailing wage laws increased project costs by 9 to 11 percent using ordinary least squares and, further demonstrating the importance of methodological choice, 19 to 37 percent when using an instrumental variables approach.

Multiple California government agencies prepared a more recent, unpublished study that examined the factors that influence the cost of building affordable rental housing in the state (California Department of Housing and Community Development et al., 2014). Collecting data from 400 applications to the California Tax Credit Allocation Committee of projects that were completed between 2001 and 2011, the study estimated a substantial regression model of project costs that included the numerous characteristics of the project—including housing type, number of units, parking space and other variables—and an indicator of whether the contractor declared that they had paid prevailing wages on the project. The results suggest that prevailing wage laws increased project costs by 11 percent, an outcome that was statistically significant with 95 percent confidence. However, the authors noted that the magnitude and statistical significance of the prevailing wage variable was particularly sensitive to the specification of the model.[7]

There are a number of reasons potentially explaining the divergence of the results on public housing from research on school construction and highway maintenance that failed to find any cost effects of prevailing wage laws on public projects. First, as outlined in Dunn, Quigley and Rosenthal (2005), the results may be California-specific given that the state has among the most stringent—and most well-enforced—prevailing wage laws in the country. Second, residential construction projects are predominantly the domain of non-union contractors. Given that labor costs as a proportion of total costs were calculated to be 43 to 44 percent on these California projects—significantly higher than the industry average—it may be that the absence of certain types of contractors from the bidding process (e.g., more capital-intensive) led to statistically significant cost effects of prevailing wage regulations. Finally, complicating the narrative, the Minnesota Office of the Legislative Auditor (2007) noted that during the time of the first study, some affordable housing projects covered by prevailing wage laws were also covered by additional requirements of the Department of Housing and Urban Development (HUD). If HUD requirements are associated with increased construction costs and omitted from the models employed, then these studies may overstate the cost impact of prevailing wages.[8]

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[7] While the study's primary regression results indicate that prevailing wages increased construction costs by 11 percent, the paper indicated that alternative regression specifications featured decreased magnitude and statistical significance of the prevailing wage variable (California Department of Housing and Community Development et al., 2014; p. 32). Further, the prevailing wage effect "varied very widely" across regions, leading the authors to contend that the prevailing wage effect across regions was "inconclusive" and may be influenced by omitted variable bias (p.37).

[8] Another potential complication in these California studies is that prevailing wage laws reqnire weekly payroll certification. This type of state vigilance and enforcement may, by itself, represent an adequate deterrent for contractors who lower costs by engaging in illegal labor practices such as worker misclassification, wage theft, or the hiring of undocumented laborers. If the residential sector of the construction industry featnres a disproportionate

Summary

The analysis of academic and non-academic research on the cost effects of prevailing wage laws reveals two critical findings. First, a majority of the most credible studies indicate that prevailing wage regulations do not have a statistically significant impact on construction costs for two of the largest areas of public construction: schools and highways. However, as evidenced by the California studies on public housing, exceptions may exist. Second, this review has demonstrated the importance of study methodology in developing accurate cost estimates of prevailing wage laws. Analyses relying on the wage differential method, in particular, feature debilitating methodological defects that yield inaccurate and potentially misleading conclusions about the cost impact of prevailing wage laws in construction markets. In contrast, it is revealing that every article on this subject that has been published in an academic journal within the past 15 years has used a regression-based empirical approach.

The use of regression, however, is not without its potential pitfalls. Estimating accurate cost effects of prevailing wage laws requires that the empirical model sufficiently control for variables that may conflate with the presence of government regulations. As an example, the study by Fraundorf, Farrell and Mason (1984) is often referenced in public debates to assert that prevailing wage laws increase public construction costs. However, their regression analysis of the costs of 215 diverse projects built in 1977-78 implicitly attributed the *entire* cost differential between public and private construction to the presence of prevailing wage. In a similar, more

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number of such contractors, then at least part of the increased cost effects found in these studies would likely be attributable to the decline in cost-saving, but illegal, employment practices.

recent analysis of 3,120 projects built in the Midwest in 1993-2001, Kaboub and Kelsay (2014) correct this specification error and isolate the cost effects of prevailing wage laws from the cost premium attached to public construction projects. Their results suggest that while public projects cost 20-30 percent more to construct than private projects, prevailing wage laws did not have a statistically significant impact. Concerns in both studies, however, arise when using only a limited number of explanatory variables to explain construction costs of widely-dissimilar projects; this increases the likelihood that the results suffer from omitted variable bias. These types of concerns are minimized when examining narrow classifications of public projects, which likely explain why researchers have predominantly examined this question using this approach over the past 15 years.

Educatiou and Training

Construction costs on public works are dependent on market conditions. In addition to changes in the price of raw materials (e.g., asphalt, wood), construction costs are contingent on the state of construction markets overall. For example, Azari-Rad, Philips and Prus (2002) demonstrated that an increase in the number of active construction projects in a city raises construction costs on public projects. This "bidding up" process of contractor services extends to the availability of skilled laborers in a region, as skill shortages can increase construction costs and create delays on time-sensitive projects (Shane, Molenaar, Anderson and Schexnayder, 2009). Despite these distortions, skill shortages in construction have persisted as a public policy concern for decades (e.g., Weinberg, 1969). These shortages largely occur due to structural disincentives for training among many contractors given the transitory nature of employment of their workers.[9]

Prevailing wage laws, however, represent one of the few public policies that incentivizes worker training in the construction industry. First, these regulations allow for employer contributions to training funds to be counted as a part of the compensation required under the law. Second, these regulations promote apprenticeship programs by allowing enrolled workers to be paid at rates less than the prevailing wage during their apprenticeships. In the lone academic study dedicated to this issue, Bilginsoy (2005) examined the impact of state prevailing wage laws on apprenticeship training between 1989 and 1995 across the 36 states for which data was available through the U.S. Bureau of Apprenticeship Training. Employing regression analysis, the study found that apprenticeship enrollment was 6 to 8 percent higher in states with prevailing wage laws, a statistically significant outcome. The results also indicated that apprenticeship enrollment was higher as the 'strength' of the prevailing wage law increased. Further, the author demonstrated that apprenticeship program completion rates were significantly higher in states with prevailing wage laws.

While a positive relationship between prevailing wage laws and apprenticeship opportunities was expected, disentangling the magnitude of the policy impact is more complicated. Prevailing wage laws are more prevalent in states with higher unionization rates (Dickson-Queada et al., 2013). The enrollment model utilized by Bilginsoy (2005) excluded controls for state union density

[9] While concerns about skill shortages have been prevalent in construction for decades, the damage wrought by the Great Recession on the construction industry has greatly exacerbated the problem. A steep decline in construction demand caused industry employment to decline by 25 percent between 2006 and 2010 (Paciorek, 2015), with contractors responding to economic instability by retaining older, more experienced and skilled workers while demonstrating a reluctance to hire and train younger workers (Janicki and McEntarfer, 2015).

rates by trade; as a result, the prevailing wage variable represents a partial proxy for a state's increased unionization rate.[10] Given that union training programs enroll significantly more apprentices than their non-union counterparts (Bilginsoy and Glover, 2005), some portion of the estimated impact of state prevailing wage laws on apprenticeship enrollment is more likely a reflection of a state's increased union density. While this methodological argument intimates that the size of the policy impact is overstated in Bilginsoy (2005), an older unpublished study—Philips et al. (1995)—suggests that the effect may, in fact, be much larger. Using a state-level regression approach, this previous study demonstrated that the repeal of state prevailing wage laws was associated with a 44 percent decrease in the ratio of apprentices to journeyworkers in the 1970s and 1980s.

Workplace Safety

The debate over public policy in the construction industry is complicated by its high rates of workplace injuries and jobsite fatalities; the industry was responsible for one in five job-related deaths in the United States in 2014.[11] Policymakers, therefore, have a responsibility to consider how the rules that govern the construction of a public project may imperil the workforce tasked with its completion. To be clear, prevailing wage laws typically do not include safety requirements. However, such regulations may indirectly improve safety at the jobsite by facilitating collective bargaining and, subsequently, apprenticeship training.

[10] Bilginsoy (2005) acknowledged this shortcoming, noting that data on state union density rates by trade is simply not available to researchers. The data from the U.S. Bureau of Apprenticeship Training also did not signify whether an apprentice was enrolled in a union or non-union apprenticeship program, further weakening the author's ability to infer causality.

[11] See "Fatal Occupational Injuries by Industry and Event or Exposure, all United States, 2014" via the Bureau of Labor Statistics at http://www.bls.gov/iif/oshwc/cfoi/cftb0286.pdf.

While research on this topic has been limited, the evidence to date generally suggests that prevailing wage laws are associated with improved workplace safety. Among the few published studies on the topic, Azari-Rad (2005) represents the most empirically rigorous to date. In an analysis of the construction industry between 1976 and 1999, the study indicates that non-fatal injury rates were 7 to 10 percent lower in states with a prevailing wage law. This conclusion mirrors the findings of a pair of recent studies that have yet to be published in academic circles. Most prominently, Dickson-Queada, et al. (2013) showed that, between 2008 and 2010, the average fatality rate in construction was lower in states with strong prevailing wage laws (8.53 deaths per 100,000 workers) when compared to states that never had such a policy (12.67 deaths). Philips (2014) found that construction workers reported 12 percent more disabilities (hearing, vision, memory loss, etc.) in states without prevailing wage laws compared to states with such a policy between 2009 and 2011. While these latter two studies did not employ a regression approach, it is telling that every study within the past 20 years point to the same conclusion: prevailing wage laws are empirically associated with decreased injury and fatality rates.

Given the paucity of recent research in this area, debate over the impact of prevailing wage laws on workplace safety continues to be shaped by a pair of older studies that are rooted in analyses of the 1981 repeal of Utah's prevailing wage law. Philips et al. (1995) employed a regression model to examine injury rates for plumbers and pipefitters in the United States between 1978 and 1991. The results demonstrated that states with prevailing wage laws had lower rates of total workplace injuries—and lower rates of serious injuries—compared to states that had either never had the law or had repealed their law, effects that were statistically significant. While that outcome is consistent with more recent studies, Thieblot (1996) attempted to explicitly refute Philips et al. (1995) by citing summary statistics from the construction industry as a whole from 1975-1978 to suggest that states without prevailing wage laws had lower injury rates than states with the regulation. However, in addition to relying on older data, Thieblot (1996) did not allow for regional and economic differences that were demonstrated to be important influences on safety in the multivariate approach (i.e., regression) used by Philips et al. (1995).

The more recent consensus that prevailing wage laws are empirically associated with improved workplace safety is unsurprising. Prevailing wage laws are more prevalent in states that have higher union densities in construction (Dickson-Queada et al., 2013). As demonstrated in the academic research, union construction firms feature significantly lower injury and fatality rates than their non-union counterparts (Donado, 2015; Zullo, 2011).[12] There are myriad reasons that union contractors have better safety records, including higher training and apprenticeship rates (Bilginsoy, 2005), an increased willingness of union workers to report OSHA violations (Weil, 1991a, 1991b), and a workplace culture that more greatly emphasizes safety concerns (Gillen et al., 2002). Therefore, even in the absence of required safety regulations, there is strong evidence that prevailing wage laws support practices and institutions that contribute to lower injury and

[12] As a potential counterpoint, Roistacher, Perine and Shulz (2008) compared fatal injuries between union and non-union workers at building sites in New York City. In this non-pnblished study, the authors found that 29 percent of fatalities were union members. Given that this was approximately equal to the nnionization rate of the city's construction workforce (30 percent), the authors argued that unions failed to adequately promote safety. A clear shortcoming in this approach, however, is that it ignores differences in occnpation. If union workers are more likely to be in perilous occupations—snch as ironworkers—this may explain the larger number of fatalities in the organized sector. The importance of occupation was controlled for in Miller et al. (2013), which limited its focns to carpentry contractors in St. Louis, Mo. The study demonstrated that there were, on average, 4.77 OSHA violations per non-nnion worksite compared to 1.57 violations at union sites; the difference is statistically significant.

fatality rates, in part, by advantaging relatively safer union and non-union contractors in the bidding process.

Racial Composition of the Construction Workforce

During a time when policymakers were most concerned with ensuring workers' purchasing power, the Davis-Bacon Act of 1931 was originally advanced as a policy designed to protect local contractors and workers from being undercut by low-wage, outside competitors. Thieblot (1975), however, inferred an alternative motivation. Citing Congressional testimony, the author suggested that the Davis-Bacon Act was also motivated by the racial animus of Northern legislators who were trying to prohibit out-of-state contractors—featuring African-Americans in their employ—from competing with local contractors and their higher-cost white employees on federally funded construction projects. This hypothesis has been the subject of fierce debate within academic and non-academic circles without a clear consensus (Gallaway and Vedder, 1999; Azari-Rad and Philips, 2002; Bernstein and Leonard, 2009).

Although the original *intent* of the federal law remains an open question—and an issue that is outside the scope of this paper—the academic debate on the existence of any current discriminatory *effect* was stimulated by an exchange between Thieblot (1999, 2003) and Azari-Rad and Philips (2003). In the first study, Thieblot (1999) used state-level employment data from the 1990 U.S. Census to compare state ratios of (a) the proportion of the construction sector composed of African-Americans to (b) the proportion of all workers who were African-American. The results, based entirely on summary statistics, indicated that African-Americans were more underrepresented in the construction labor force in states with a prevailing wage law compared to states without such regulations.[13] In a direct challenge to this study, Azari-Rad and Philips (2003) used the same methodology and data to demonstrate that racial difference between "have law" and "no law" states was entirely driven by regional differences; after removing Southern states from the analysis, the results demonstrated no difference in African-American representation in construction on the basis of state prevailing wage laws. While Thieblot (2003) reiterated his initial conclusions, the lesson drawn from this exchange was clear: any rigorous analysis of the issue must control for differences between states—and workers—that may distort the empirical relationship between prevailing wage laws and African-American employment in construction.

In order to control for differences between states and potentially affected workers, two emerging, yet-to-be-published studies utilize individual-level data from the Current Population Survey (CPS) to offer potentially definitive evidence suggesting that prevailing wage laws have not had a discriminatory *effect* on construction labor markets within the last 30+ years.[14,15] Belman,

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[13] Thieblot (1999) also suggested that African-Americans were more underrepresented in states with "strong" prevailing wage law (ratio=0.69) when compared to states with an "average" (0.65) or "weak" law (0.62). The author, however, does not test for the statistical significance of these differences; given that the miniscule gaps between these categories occur within a small sample, it is extraordinarily unlikely that these differences are significant at any reasonable level. As a result, the study's stated conclusion on this issue is, at best, misrepresented.

[14] Keyes (1982) compared the minority unemployment rate in the eight states without a prevailing wage law (at the time) to the national minority unemployment rate for January 1982. Curiously, while the study contends that the results show the discriminatory effect of state prevailing wage laws, the data indicate that half of the states have an unemployment rate above the national average and half have a rate below the national mark. Given the inconsistency between the study's results and conclusions, the arbitrary selection of states and its other empirical shortcomings—it ignores all other differences between states—this study offers more questions than answers regarding the effect of prevailing wage laws on minority employment.

[15] Vedder and Gallaway (1999) used summary statistics from the U.S. Census to claim that Davis-Bacon Act decreased opportunities for African-American employment in construction between the 1920s and 1930s, however their approach ignored all other factors that may explain employment changes, including the Great Depression. The study also uses a summary approach to assert discriminatory effects of prevailing wage laws due to lower underrepresentation of African-Americans in higher-paying construction occupations in 1960 when compared in 1990, however the latter period was characterized by a considerable *weakening* of state prevailing wage laws—nine

Ormiston and Petty (2016) analyze worker-level data from the Current Population Survey between 1977 and 2006 to examine how state prevailing wage laws affect African-American employment in the construction industry. This study investigates the issue from two perspectives. The authors first explore how state prevailing wage laws affect the racial composition of the construction industry. Alternatively, the authors also examine how the presence and relative strength of prevailing wage regulations influence the industrial choice of African-American workers within a state. The results across both regression models provide a consistent story: perceived discrimination attributable to state prevailing wage laws in simple models completely dissipates in regression estimates that control for a state's racial composition and economic conditions of its construction industry.

Manzo, Lantsberg and Duncan (2015) reach even stronger conclusions. In an analysis of worker-level data from the Current Population Survey between 2004 and 2013, the authors build a two-step regression model of respondents' occupational choice. The authors find that, after controlling for individual demographics, strong or average state prevailing wage laws *increase* the likelihood that non-Latino minority workers enter a blue-collar construction occupation by 5.6 percentage points, a value that is statistically significant. While these two recent papers have yet to be published in academic journals and use different model specifications, it is revealing that neither found evidence suggesting that prevailing wage laws have a discriminatory *effect* against African-Americans.

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states repealed theirs between 1979 to 1988—implying that the decline in status was attributable to something besides prevailing wage laws.

Conclusion

The debate over prevailing wage laws has been fueled, in part, by the conflicting conclusions presented by a stream of academic and non-academic studies published over the past 15 years. A number of these studies, however, suffer from methodological shortcomings that offer, at best, misguided interpretations of the economic effects of prevailing wage laws. Through a critical analysis of the literature, this paper concludes that:

- The most methodologically advanced studies indicate that prevailing wage laws do not increase public construction costs, although some exceptions—such as public housing in California—may exist.

- Although the number of studies is limited, recent research indicates that prevailing wage laws promote worker training and increased safety.

- While the original *intent* of prevailing wage laws remains open for debate, the most advanced studies on the topic indicate that these regulations do not currently have a discriminatory *effect* against African-Americans.

In addition to summarizing the recent literature on prevailing wage laws, this study also highlights the fundamental importance of analyzing these issues using the most appropriate empirical methodologies. For instance, while numerous studies claim that prevailing wage laws substantially increase public construction costs, most of the papers arriving at this conclusion rely on a flawed empirical approach—the "wage differential" method—that demonstrates a clear misunderstanding of construction labor markets. Further, studies that depend entirely on summary statistics—such as Thieblot (1999)—ignore other socioeconomic and public policy factors; this empirical oversimplification leads to an increased likelihood of misinterpreting the economic impact of prevailing wage laws. These concerns are largely mitigated—if not completely resolved—by more careful studies that feature properly specified multivariate empirical approaches; the importance of empirical methodology cannot be understated.

While the primary goal of this paper was to provide a critical summary of the most credible and up-to-date research on prevailing wage laws, this literature review also was designed to provide a road map to present and future researchers interested in this topic. Prevailing wage analyses in recent decades have largely been the domain of a narrow group of economists; additional voices offering new insights are encouraged to join the discussion. In addition to strengthening existing areas of research, there are numerous unexplored research topics that could significantly expand the collective wisdom about the impact of prevailing wage laws. Most prominently, research has yet to examine the effect of prevailing wage laws on the on-time completion of public projects, an area of critical concern for policymakers. For instance, if a school construction project is not completed before the start of an academic year, this can impose a significant cost on a school district in a way that is not captured in the calculation of the explicit costs of construction. Another unexplored research area is that of downstream maintenance, including the costs of tear-outs or required renovations attributable to poor initial construction quality. Because the issue of prevailing wage laws is intimately tied to the questions of labor, capital, and management quality, these regulations may (or may not) promote on-time, high-quality construction.

References

Atalah, Alan. 2012. "Comparison of Union and Non-Union Bids on Ohio School Facilities Commission Construction Projects," *International Journal of Economics and Management Engineering*, Vol. 3, Issue 1, pp. 29-35.

Atalah, Alan. 2013. "Impact of Prevailing Wages on the Cost among the Various Construction Trades,' *Journal of Civil Engineering and Architecture*, Vol. 7, No. 4, pp. 670-676.

Azari-Rad, Hamid. 2005. "Prevailing wage laws and Injury Rates in Construction." In Hamid Azari-Rad, Peter Philips, and Mark Prus (Eds.), *The Economics of Prevailing Wage Laws*, pp. 123–148. Aldershot, UK: Ashgate.

Azari-Rad, Hamid, and Philips, Peter. 2002. "Origins of a Factoid: Prevailing Wage Laws are Remnant Jim Crow Laws," *Review of Radical Political Economics*, Vol. 34, No. 3, pp. 275-284.

Azari-Rad, Hamid and Philips, Peter. 2003. "Race and Prevailing Wage Laws in the Construction Industry: Comment on Thieblot," *Journal of Labor Research*, Vol. 24, No. 1, pp. 161-168.

Azari-Rad, Hamid, Philips, Peter, and Prus, Mark. 2003 'State Prevailing Wage Laws and School Construction Costs.' *Industrial Relations*, Vol. 42, No. 3, pp. 445-457.

Azari-Rad, Hamid, Philips, Peter, and Prus, Mark. 2002. "Making Hay When It Rains: The Effect Prevailing Wage Regulations, Scale Economies, Seasonal, Cyclical and Local Business Patterns Have On School Construction Costs." *Journal of Education Finance*, Vol.27, pp. 997-1012.

Belman, Dale, Ormiston, Russell, Kelso, Richard, Schriver, William and Frank, Kenneth A. 2010. "Project Labor Agreements' Effect on School Construction Costs in Massachusetts," *Industrial Relations*, Vol. 49, No. 1, pp. 44-60.

Belman, Dale, Ormiston, Russell, and Petty, Ryan. 2016. "The Effect of State Prevailing Wage Laws on African-American Employment in Construction." Unpublished working paper.

Bernstein, David E., and Leonard, Thomas C. 2009. Excluding Unfit Workers: Social Control Versus Social Justice in the Age of Economic Reform, Law and Contemporary Problems, Vol. 72, pp. 177-204.

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

Bilginsoy, Cihan, and Glover, Robert W. 2005. "Registered Apprenticeship Training in the U.S. Construction Industry," *Education + Training*, Vol. 47, No. 4/5, pp. 337-349.

Bilginsoy, Cihan and Philips, Peter. 2000. 'Prevailing Wage Regulations and School Construction Costs: Evidence from British Columbia.' *Journal of Education Finance,* Vol. 24, pp. 415-432.

California Department of Housing and Community Development, California Tax Credit Allocation Committee, California Housing Finance Agency, and California Debt Limit Allocation Committee. 2014. "Affordable Housing Cost Study." Accessed at: www.hcd.ca.gov/housing.../finalaffordablehousingcoststudyreport-with-coverv2.pdf.

Dickson-Queada, Allison, Manzo, Frank, Belman, Dale, and Bruno, Robert. 2-13. "A Weakened State: The Economic and Social Impacts of Repeal of the Prevailing Law in Illinois." Labor Education Program, School of Labor and Employment Relations, University of Illinois at Urbana-Champaign. Accessed at: https://ler.illinois.edu/wp-content/uploads/2015/01/PWL_policy-brief_spreads041.pdf.

Donado, Alejandro. 2015. "Why Do Unionized Workers Have More Nonfatal Occupational Injuries?" *Industrial and Labor Relations Review*, Vol. 68, No. 1, pp. 153-183.

Duncan, Kevin. 2015. "The Effect of Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations on Highway Maintenance Costs." *Industrial and Labor Relations Review*, Vol. 68, No. 1, pp. 212-237.

Duncan, Kevin. 2015a. "Do Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations Affect Aggressive Bidding? Evidence from Highway Procurement Auction," *Journal of Public Procurement*, Vol. 15, Issue 3, pp. 291-316.

Duncan, Kevin, Philips, Peter, and Prus, Mark. 2014. "Prevailing Wage Regulations and School Construction Costs: Cumulative Evidence from British Columbia." *Industrial Relations*, Vol. 53, No. 4, October, pp. 593-616.

Dunn, Sarah, Quigley, John, and Rosenthal, Larry. 2005. "The Effect of Prevailing Wage Regulations on the Cost of Low-Income Housing," *Industrial and Labor Relations Review*, Vol. 59, No. 1, pp. 141-157.

Fraundorf, Martha, Farrell, John P., and Mason, Robert. 1984. "The Effect of the Davis-Bacon Act on Construction Costs in Rural Areas," *The Review of Economics and Statistics,* Vol. 66, No. 1, pp. 142-146.

Gallaway, Lowell, and Vedder, Richard. 1999. Wages, Profits and Minority Businesses, *Society*, Vol. 37, pp. 88-93.

Gardner, Kent and Ruffner, Rochelle. 2008. "Prevailing Wage in New York State: The Impact of Project Costs and Competitiveness," Center for Government Research. Accessed at: http://reports.cgr.org/download-single-report/1532.

Gillen, Marion, Baltz, Daivd, Gassel, Margy, Kirsch, Luz and Vaccaro, Diane. 2002. "Perceived Safety Climate, Job Demands, and Coworker Support among Union and Nonunion Injured Construction Workers." *Journal of Safety Research*, Vol. 33, No. 1, pp. 33-51. Accessed at: http://www.sciencedirect.com/science/article/pii/S0022437502000026.

Glassman, Glassman, Head, Michael, Tuerck, David, and Bachman, Paul. 2008. "The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages," Beacon Hill Institute. Accessed at: http://www.beaconhill.org/BHIStudies/PrevWage08/DavisBaconPrevWage080207Final.pdf.

Janicki, Hubert and McEntarfer, Erika. 2015. "Where did all the construction workers go?" Research Matters, U.S. Census Bureau. Accessed at: http://researchmatters.blogs.census.gov/2015/10/16/where-did-all-the-construction-workers-go/.

Kaboub, Fadhel, and Kelsay, Michael. 2014. "Do Prevailing Wage Laws Increase Total Construction Costs?" *Review of Keynesian Economics*, Vol. 2, No. 2, pp.189-206.

Keller, Edward and Hartman, William. 2001. 'Prevailing Wage Rates: the Effects on School Construction Costs, Levels of Taxation, and State Reimbursements,' *Journal of Education Finance*, Vol. 27, pp. 713-728.

Kelsay, Michael. 2015. "The Adverse Economic Impact From Repeal of the Prevailing Wage Law in West Virginia." Accessed at: http://www.faircontracting.org/wp-content/uploads/2015/01/The-Adverse-Economic-Impact-from-Repeal-of-the-PW-Law-in-WV-Dr.-Michael-Kelsay-Full-Report.pdf.

Kelsay, Michael, Wray, Randall, and Pinkham, Kelly. 2004. "The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri." Accessed at:http://constructionacademy.org/wp-content/uploads/downloads/2012/08/2004-u-of-missouri.pdf.

Keyes, William. 1982. "The Minimum Wage and the Davis-Bacon Act: Employment Effects on Minorities and Youth," *Journal of Labor Research*, Vol. 3, No. 4, pp. 399-407.

Kersey, Paul. 2007. "The Effect of Michigan's Prevailing Wage Law," Mackinac Center for Public Policy, August 27. Accessed at: http://www.michigancapitolconfidential.com/8907.

Manzo, Frank, Lantsberg, Alex, and Duncan, Kevin. 2015. "The Economic, Fiscal, and Social Impacts of State Prevailing Wage Laws: Choosing Between the High Road and the Low Road in the Construction Industry." Accessed at: https://illinoisepi.files.wordpress.com/2017/03/pw-national-impact-study-final2-9-16.pdf.

Miller, Harry, Hill Tara, Mason, Kris, and Gall, John. 2013. "An Analysis of Safety Culture & Safety Training: Comparing the Impact of Union, Non-union, and Right to Work Construction Venues." Online Journal of Workforce Education and Development, Vol. 6, Issue 2, pp. 1-13. Accessed at: http://opensiuc.lib.siu.edu/ojwed/vol6/iss2/5/.

Minnesota Office of the Legislative Auditor. 2007. "Evaluation Report: Prevailing Wages." Accessed at: http://www.auditor.leg.state.mn.us/ped/pedrep/prevailingwages.pdf.

Ohio Legislative Service Commission, "The Effects of the Exemption of School Construction Projects From Ohio's Prevailing Wage Law, S.B. 102 Report, Staff Research Report No. 149, May 20, 2002. Accessed at: http://www.lsc.ohio.gov/research/srr149.pdf.

Paciorek, Andrew. 2015. "Where are the Construction Workers," Fed Notes, Board of Governors of the Federal Reserve System. Accessed at: http://www.federalreserve.gov/econresdata/notes/feds-notes/2015/where-are-the-construction-workers-20150226.html.

Philips, Peter. 2014. "Kentucky's Prevailing Wage Law: An Economic Impact Analysis." Accessed at: http://www.faircontracting.org/wp-content/uploads/2014/02/Kentucky-Report-2014-Philips.pdf.

Philips, Peter, Mangum, Garth, Waitzman, Norm, and Yeagle, Anne. 1995. "Losing Ground: Lessons from the Repeal of Nine "Little Davis-Bacon" Acts." Accessed at: http://www.faircontracting.org/PDFs/prevailing_wages/losingground.pdf.

Prus, Mark. 1999. "Prevailing Wage Laws and School Construction Costs: An Analysis of Public School Construction in Maryland and the Mid Atlantic States." Accessed at: http://eric.ed.gov/?id=ED456630.

Rosaen, Alex. 2013. "The Impact of Michigan's Prevailing Wage Law on Education Construction Expenditures." Prepared by the Anderson Economic Group, LLC, November 13, 2013. Accessed at: http://prevailingwagetruth.com/wp-content/uploads/2013/11/AEG-Report-MI-PW-Law-and-Education-Construction-2.pdf.

Roistacher, Elizabeth, Perine, Jerilyn, and Schultz, Harold. 2008. "Prevailing Wisdom: The Potential Impact of Prevailing Wages on Affordable Housing," Citizens Housing & Planning Council, New York. Accessed at: http://chpcny.org/wp-content/uploads/2011/02/Prevailing-Wisdom-web-version1.pdf.

Shane, J.S., Molenaar, K.R., Anderson, S., and Schexnayder, C. 2009. "Construction Project Cost Escalation Factors," *Journal of Management in Engineering*, Vol. 25, No. 4, pp. 221-229.

Thieblot, Armand. 2003. "Race and Prevailing Wage Laws in the Construction Industry: Reply to Azari-Rad and Philips," *Journal of Labor Research*, vol. 24, pp. 169-177.

Thieblot, Armand. 1999. "Prevailing Wage Laws and Black Employment in the Construction Industry," Journal of Labor Research, Vol. 20, No. 1, pp. 155-159.

Thieblot, Armand. 1996. "A New Evaluation of Impacts of Prevailing Wage Law Repeal." *Journal of Labor Research*, Vol. 17, No. 2, pp. 297-322.

Thieblot, Armand. 1995. "State Prevailing Wage Laws: An Assessment at the Start of 1995," Rosslyn, Va.: State Relations Department, Associated Builders and Contractors.

Thieblot, Armand. 1975. "The Davis-Bacon Act." Industrial Research Unit, Report No. 10, Wharton School, University of Pennsylvania, Philadelphia.

United States Department of Labor (n.d.). Davis-Bacon and Related Acts. Accessed at: https://www.dol.gov/whd/govcontracts/dbra.htm.

United States Department of Labor (2015). Introduction to Labor Standards Statutes Coverage. In *Prevailing Wage Resource Book*. Accessed at: https://www.dol.gov/whd/recovery/pwrb/Tab3.pdf.

Vedder, Richard. 1999. "Michigan's Prevailing Wage Law and Its Effects on Government Spending and Construction Employment," A Mackinac Center Report, September. Accessed at: https://www.mackinac.org/archives/1999/s1999-07.pdf.

Vedder, Richard and Gallaway, Lowell. 1999. "Wages, Profits, and Minority Businesses," *Social Science and Public Policy*. Vol. 7, No. 1, pp. 88-93.

Vermont Legislative Joint Fiscal Office, 2014. "Fiscal Note: H.878 – An Act Relating to Prevailing Wages." Accessed at: http://www.leg.state.vt.us/jfo/fiscal_notes/2014_H_878_Fiscal_Note.pdf.

Vincent, Jeffery and Monkkonen, Paavo. 2010. "The Impact of State Regulations on the Cost of Public School Construction," *Journal of Education Finance*, Vol. 35, No. 4, pp. 313-330.

Vitaliano, Donald. 2002. "An Econometric Assessment of the Economic Efficiency of State Departments of Transportation," *International Journal of Transportation Economics*, Vol. 29, No. 2, pp. 167-180.

Weil, David. 1991a. "Building safety: The role of construction unions in the enforcement of OSHA." *Journal of Labor Research*, Vol. 13, Issue 1, pp. 121-132.

Weil, David. 1991b. "Enforcing OSHA: The Role of Labor Unions." *Industrial Relations*, Vol. 3, No.1, winter, 1991, pp. 20-36.

Weinberg, Edgar. 1969. "Reducing Skill Shortages in Construction." *Monthly Labor Review*, Vol. 92, No, 2, pp. 3-9.

Wial, Howard. 1999. "Do Lower Prevailing Wages Reduce Public Construction Costs," Keystone Research Center. Accessed at: http://keystoneresearch.org/sites/default/files/krc_prevailwage_costs.pdf.

Zullo, Rolland. 2011. "Right-to-Work Laws and Fatalities in Construction." Ann Arbor, MI: Institute for Research on Labor, Employment, and the Economy, University of Michigan. Accessed at: http://irlee.umich.edu/?page=publications.

VENDOR NAME	VENDOR LOCATION
ACETO CONSTRUCTION INC	ALFRED ME 04002
ACME WATERPROOFING CO., INC.	QUINCY MA 02169
ALTEC INDUSTRIES INC	BIRMINGHAM AL 35242
AMERICAN BILLING LLC	SOUTH PORTLAND ME 04106
ARCADIS U.S. INC.	HIGHLANDS RANCH CO 80129
ARTHUR C DUDLEY CONTRACTOR	STANDISH ME 04084
AUTOTRONICS	MADAWASKA ME 04756
BAYSIDE I LLC	PORTLAND ME 04101
BAYSIDE III LLC	PORTLAND ME 04101
BEAUREGARD EQUIPMENT INC	SCARBOROUGH ME 04074
BENCHMARK INC	WESTBROOK ME 04092
BUTTERFIELD HEAVY EQUIPMENT RE	CASCO ME 04015
C.N. WOOD NORTH, INC.	WESTBROOK ME 04092
CALE AMERICA, INC.	CLEARWATER FL 33760
CAMPBELL ELECTRIC	PORTLAND ME 04104
CAROUSEL INDUSTRIES OF NO. AME	EXETER RI 02822
CASCO BAY FORD	YARMOUTH ME 04096
CATHERINE MORRILL DAY NURSERY	PORTLAND ME 04101
CINCINNATI TIME RECORDER	PORTLAND ME 04101
COASTAL ENTERPRISES INC	BRUNSWICK ME 04011
COASTAL ROAD REPAIR	WINDHAM ME 04062
COLEMAN INC., R E	PORTLAND ME 04103
CPRC MANAGEMENT LLC	SCARBOROUGH ME 04074
CREATIVE OFFICE PAVILION	PORTLAND ME 04101
D & C CONSTRUCTION CO., INC.	WATERBORO ME 04087
DENNIS K BURKE INC	CHELSEA MA 02150
DIESEL DIRECT, INC.	STOUGHTON MA 02072
DIRECT ENERGY BUSINESS MARKETI	HOUSTON TX 77046
DOTEN'S CONSTRUCTION, INC.	FREEPORT ME 04032
ECO MAINE	PORTLAND ME 04102
FLOW ASSESSMENT SERVICES, LLC	AUBURN NH 03032
FREIGHTLINER OF MAINE INC	WESTBROOK ME 04092
GLIDDEN EXCAVATING & PAVING	GORHAM ME 04038
GLOBAL MONTELLO GROUP CORP	WALTHAM MA 02454
GORHAM SAND & GRAVEL INC	BUXTON ME 04093
GORRILL-PALMER CONSULTING	SOUTH PORTLAND ME 04106
GREAT FALLS BUILDERS, INC.	GORHAM ME 04038
GREATER PORTLAND COUNCIL OF	970 BAXTER BLVD. 2ND FL
GRIFFON SECURITY TECHNOLOGIES	KENNEBUNK ME 04043
GROVER INC, A H	CUMBERLAND ME 04021
HARDYPOND CONSTRUCTION INC	PORTLAND ME 04103
HASCALL AND HALL, INC	PORTLAND ME 04104
HI-LITE AIRFIELD SERVICES LLC	ADAMS CENTER NY 13606
HI-WAY SAFETY SYSTEMS INC	ROCKLAND MA 02370
HOWARD P. FAIRFIELD INC	SCARBOROUGH ME 04074
INLAND TECHNOLOGIES INTERNTNL	P.O. BOX 253

INTERMEDIX	6451 N. FEDERAL HIGHWAY,
ISS FACILITY SERVICES	DENVER CO 80211
J PRATT CONSTRUCTION, INC.	HEBRON ME 04238
JIMINOS PLUMBING AND HEATING I	PORTLAND ME 04103
JOHN B DISANTO & SONS INC	PORTLAND ME 04104
JORDAN EQUIPMENT CO. INC	W. FALMOUTH ME 04105
KLEINFELDER INC	AUGUSTA ME 04330
LABRECQUE CONSTRUCTION INC.	PORTLAND ME 04103
MAINE BEHAVIORAL HEALTHCARE	SO PORTLAND ME 04106
MAINE BOILER INC	PORTLAND ME 04101
MAINE MUNICIPAL ASSOCIATION	AUGUSTA ME 043309486
MAINE MUNICIPAL BOND BANK	AUGUSTA ME 04338
MAINE PAPER & JANITORIAL PRODU	BANGOR ME 04401
MANSFIELD OIL COMPANY	DALLAS TX 753733706
MARDIGAN, STEPHEN E.	PORTLAND ME 04103
MARITIME CONSTRUCTION & ENG.	CAPE NEDDICK ME 03902
MECHANICAL SERVICES INC	PORTLAND ME 041035292
MEDLINE INDUSTRIES INC	DALLAS TX 753121080
MILESTONE RECOVERY	PORTLAND ME 04101
MINUTEMAN SECURITY TECHNOLOGIE	PORTLAND ME 04103
MORTON SALT	CHICAGO IL 60606
MOTOROLA SOLUTIONS INC	NEWBURY MA 01951
NACHURS ALPINE SOLUTIONS LLC	DETROIT MI 482781191
NAPA DISTRIBUTION CENTER	PORTLAND ME 04101
NEXTERA ENERGY SERVICES OF MAI	DALLAS TX 752660100
NORTHCENTER FOODSERVICE INC	AUGUSTA ME 043382628
NORTRAX, INC	WESTBROOK ME 04092
O'CONNOR MOTOR COMPANY	PORTLAND ME 04103
OTIS ELEVATOR CO	WESTBROOK ME 04092
PATRIOT MECHANICAL LLC	GORHAM ME 04038
PEOPLEFIRST REHABILITATION	ATLANTA GA 303847365
PEOPLEREADY, INC	PORTLAND ME 04101
PORT CITY MECHANICAL, INC	PORTLAND ME 04103
PORTLAND WATER DISTRICT INC	LEWISTON ME 042436800
PREBLE STREET	PORTLAND ME 04101
PRECISION INDUSTRIAL MAINTENAN	SCHENECTADY NY 12308
PROCK MARINE COMPANY	ROCKLAND ME 04841
RANSOM CONSULTING, INC.	PORTLAND ME 04101
REHABCARE	ST LOUIS MO 631504469
RINCK ADVERTISING INC	LEWISTON ME 04240
SACO ROOFING	SACO ME 04072
SARGENT CORPORATION	STILLWATER ME 04489
SEABREEZE PROPERTY SERVICES	PORTLAND ME 04103
SEBAGO TECHNICS INC	SOUTH PORTLAND ME 04106
SHAW BROTHERS CONSTRUCTION	GORHAM ME 04038
SPRAGUE OPERATING RESOURCES LL	PORTSMOUTH NH 03801
STANDARD WATERPROOFING, INC.	WATERVILLE ME 04901

STANTEC CONSULTING SERVICES IN	SCARBOROUGH ME 04074
STATE OF MAINE-DOT	AUGUSTA ME
STREETSCAN INC.	BURLINGTON MA 01803
STRUCTURAL PRESERVATION SYSTEM	CHESHIRE CT 06410
SUNGUARD PUBLIC SECTOR	LAKE MARY FL 32746
SUPERION LLC	LAKE MARY FL 32746
SYSCO NORTHERN NEW ENGLAND, IN	PORTLAND ME 041124657
T BUCK CONSTRUCTION INC	TURNER ME 04282
TED BERRY CO INC	LIVERMORE ME 04253
THE OPPORTUNITY ALLIANCE	SOUTH PORTLAND ME 04106
TITO MASONRY & CONSTRUCTION, L	PORTLAND ME 04103
TYLER TECHNOLOGIES INC	FALMOUTH ME 04105
U S FOODSERVICE, INC.	PEABODY MA 01960
U. S. SECURITY ASSOCIATES INC	ATLANTA GA 31193
UNITIL	BOSTON MA 022981077
VANDERLANDE INDUSTRIES, INC	MARIETTA GA 30062
WINTON SCOTT ARCHITECTS PA	PORTLAND ME 04101
WOLF TECHNOLOGY GROUP, LLC	WINDHAM ME 04062
WOOD ENVIRONMENT & INFRASTRUCT	ALPHARETTA GA 30009
WOODARD & CURRAN INC	PORTLAND ME 04102
WOODS EXCAVATING LLC	WESTBROOK ME 040981282
WRIGHT-PIERCE	TOPSHAM ME 03101
ZONES INC.	SEATTLE WA 981241740

MEMORANDUM

TO: Finance Committee

FROM: Danielle West-Chuhta and Michael Goldman,
Corporation Counsel's Office

DATE: November 20, 2018

RE: Responsible Contracting Ordinance & ERISA

Our understanding is that the Finance Committee is considering a "Responsible Contracting Ordinance" that, among other things, would require contractors performing work on certain public construction and maintenance contracts to participate in a job training or apprenticeship program. That requirement, in principle, is contained in a so-called "model ordinance" that we understand has been circulated to the Committee and is included, in various iterations, in similar ordinances that have been adopted around the country.

As the Committee is considering that particular proposal, it should be aware that ordinances which require participation in apprenticeship programs have been the subject of several legal challenges. The most common basis for challenge has been an allegation that mandatory apprenticeship provisions are pre-empted by the federal Employee Retirement Income Security Act (ERISA).

The courts that have considered those challenges have been split on whether ordinances mandating apprenticeship programs are preempted and therefore invalid. *See e.g. Merit Constr. Alliance v. City of Quincy*, 759 F.3d 122 (1st Cir. 2014); *and Associated Builders & Constrs., Inc. v. New Castle Cnty*., 144 F.supp.3d 633 (Dist. Del. 2015).

The issue, in sum, and as articulated by the First Circuit in *Quincy* is this:

> By its terms, ERISA "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). The Supreme Court has distilled the statute's "relate to" language into two independently sufficient alternatives: "a connection with or reference to" an ERISA plan will result in preemption.

> [T]he Ordinance categorically requires all contractors on Quincy public works projects to operate a Massachusetts-approved apprentice training program. . . . Incorporating the state's standards imposes a raft of stringent conditions on would-be bidders including, among others, documenting of the program's terms and conditions. . . , the location of the program's apprentice activities . . . , training and instruction. . . , wage rates. . . , recordkeeping. . . , instructor qualifications. . . , apprentice enrollment. . . , reporting. . . , and termination. . . .
>
> With such a compendium of stipulations in place, we have no difficulty concluding that the Ordinance goes far beyond simply influencing ERISA apprentice training programs. It mandates an employee benefit structure and specifies how that structure must be administered. This is simply too intrusive to withstand ERISA preemption.

Id. The Court summarized its conclusions as follows:

> ERISA specifically includes apprentice training programs in its definition of employee welfare benefit plans. A state-law mandate regarding the structure or administration of such plans falls within the ambit of ERISA's preemption provision. The Ordinance comprises such a mandate because it dictates the establishment of an employee benefit structure and sets the standards governing that structure. Even though a non-ERISA option might be available for compliance with the Ordinance, the availability of such an option does not save the Ordinance: its mandate still has the effect of destroying the benefit of uniform administration that is among ERISA's principal goals.

So, under First Circuit precedent (which is the federal circuit that includes Maine), a local ordinance mandating participation in an apprenticeship program is vulnerable not just to challenge but to being invalidated.

Notwithstanding the *Quincy* case, there are alternative arguments not addressed in that case that could serve as the basis for a defense of such an ordinance – arguments that have been successful in other jurisdictions. For example, the "market participation" theory essentially distinguishes between a state or municipality acting as a "purchaser" and expressing purchasing preferences that advance a proprietary, rather than a regulatory, preference. Some courts have upheld apprenticeship requirements contained in procurement ordinances on that basis. *Associated Builders & Constrs., Inc. v. New Castle Cnty*., 144 F.supp.3d 633 (Dist. Del. 2015). Again, it is not clear how the First Circuit would come out on that question as it does not yet appear to have considered the "market participation" theory in connection with a mandatory apprenticeship requirement.

In summary, the mandatory apprenticeship language contained in the "model ordinance" and included in the draft being considered by the Committee has been the basis for a number of legal challenges around the country. The outcomes of those challenges have been varied but it is important to note that the prevailing case in the First Circuit invalidated similar language. There are differences in the language being proposed here (there is a choice between state and federally approved programs, for example, which might diminish the extent to which the federal program is preempted) and there are certainly arguments available in support of the ordinance that do not appear to have yet been addressed in Maine. Nevertheless, the Committee should certainly be aware of the risk of litigation and possible invalidation of that provision as it moves forward with this proposal.

City of Portland, Maine
Finance Committee Meeting
February 11, 2019
Public Hearing on Proposed Changes to Responsible Contracting
Comments received via email on Monday, February 11th

Brendan O'Connell <boconnell@portlandmaine.gov>

Fwd: Responsible Contracting

Brendan T O'Connell <boconnell@portlandmaine.gov> Mon, Feb 11, 2019 at 4:39 PM
To: Brendan O'Connell <boconnell@portlandmaine.gov>

---------- Forwarded message ----------
From: **Rob Bergeron** <Rob@hascallhall.com>
Date: Monday, February 11, 2019
Subject: Responsible Contracting
To: "nmm@portlandmaine.gov" <nmm@portlandmaine.gov>, "bsr@portlandmaine.gov" <bsr@portlandmaine.gov>, "sthibodeau@portlandmaine.gov" <sthibodeau@portlandmaine.gov>, "bbatson@portlandmaine.gov" <bbatson@portlandmaine.gov>, "jcosta@portlandmaine.gov" <jcosta@portlandmaine.gov>, "pali@portlandmaine.gov" <pali@portlandmaine.gov>, "kcook@portlandmaine.gov" <kcook@portlandmaine.gov>

Dear, Counselors

My name is Rob Bergeron and I own a contracting company here in Portland, Hascall & Hall, we have been here since 1948 . I am very concerned about the agenda that is listed on the website for tonight's meeting;

- Payment of prevailing wages, No problem here as long as everyone has to play on the same field.
- Requiring contractors to participate in a Registered apprentice program, this is a very big problem as the only group that does this are Union contractors. If this passes you have accentually eliminated all contractors that reside in the city (and Pay Taxes) from working in the city. The type of work we have done for the city for my 27 years , the only competition that is Union are out of state contractors. This is not fair.
- Additional opportunities to treat their workers well, what does this mean??

All in all , I believe this is very bad for the city and will not only increase the cost for projects being done in the city , but will also eliminate the Portland tax paying contractors from doing the work, not to mention there are very few other types of contractors i.e. road work that could meet the second requirement.

I also believe this would very much narrow the selection of contractors from the entire state of Maine. I ask you to reconsider passing such an amendment or at the very least modify this so as not to exclude the non-union contractors here in the City of Portland

That you for taking the time to read this email.

Respectfully, Rob Bergeron

Hascall & Hall

--
Nick Mavodones
City Council At-Large
389 Congress Street
Portland ME 04101
(207) 874-8685
nmm@portlandmaine.gov

Sent from Gmail Mobile

Portland Maine Yes. Google's good here.

Brendan O'Connell <boconnell@portlandmaine.gov>

Responsible Contracting

Quincy Hentzel <qhentzel@portlandregion.com> Mon, Feb 11, 2019 at 3:20 PM
To: "nmm@portlandmaine.gov" <nmm@portlandmaine.gov>, "jcosta@portlandmaine.gov" <jcosta@portlandmaine.gov>, "estrimling@portlandmaine.gov" <estrimling@portlandmaine.gov>
Cc: "boconnell@portlandmaine.gov" <boconnell@portlandmaine.gov>

Good afternoon Finance Committee Members – I know that this evening you will be deliberating and voting on an amendment relating to responsible contracting. The Chamber has and continues to have concerns around this proposed change. We are in favor of finding solutions to problems, but it has been unclear as to whether a problem unique to Portland exists that might be solved by this amendment. We are concerned about the fiscal impact of this proposal to public works projects in the city and also the fiscal impact related to compliance costs and increased staffing needs. The resulting strain on an increase in costs to the city would be an increase in taxes on taxpayers – something that everyone should be extremely sensitive to. Its unclear whether what is gained will outweigh any increased cost to Portland residents, especially with no data proving an issue exists that needs to be addressed.

I wanted to ensure our comments were taken into consideration this evening and I thank you all for your thoughtful consideration of this issue.

Best regards,

Quincy

PORTLAND Regional Chamber of Commerce
A Partnership of Community Chambers

Quincy H. Hentzel

Chief Executive Officer

Portland Regional Chamber of Commerce

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