

Appendix A: Sales & Use Tax in Washington State

Sales Tax

Washington State – Road Construction

In accordance with RCWs 82.08 Sales Tax and 82.12 Use Tax, Washington State retail sales and use tax is applied to contractors¹ working on WSDOT projects on state-owned highways in two ways:

1. *Contractor gross receipts.* Sales and use tax is applied to the contractor's total billing, including charges for labor, services, sub-contractor costs, and materials.
2. *Contractor purchased materials consumed during construction.* When WSDOT contractors purchase materials that will be consumed by the contractor during construction (i.e. temporary striping, barricades), the contractor is charged sales tax. Materials installed as part of construction are not subject to sales tax when purchased by the contractor.

Public Road Construction Exemption

RCW 82.04.050(10) creates a Public Road Construction exemption that exempts construction labor and services from sales and use tax when construction occurs on highways owned by cities, counties, special districts or the federal government.² Under the Public Road Construction Exemption, sales and use tax is not paid on the full contract price. It is paid by contractors on all materials and services purchased or used for the work whether they are installed as part of the project or consumed. The Public Road Construction Exemption also reduces the B&O tax rate paid by prime contractors from 0.00484 to 0.00471.

The Washington Department of Revenue 2012 Tax Exemption Study identifies the purpose of the exemption as: 1) taxing contractors who do work for the federal government on the value of the materials they incorporate into the project³; and 2) reducing costs for local jurisdictions. The study's estimated savings to taxpayers from the exemption in the 2013-15 biennium is \$95.5 million in state tax and \$35.0 million in local taxes.⁴

The exhibit below summarizes the differences between sales and use tax on WSDOT owned highways and on highways owned by cities, counties, special districts, and the federal government.

¹ This provision is applicable to all contractors working in the state unless specifically exempted.

² RCW 82.04.050(10) eliminates from the term retail sales to which sales and use tax is applied "the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind."

³ The state cannot directly tax the federal government.

⁴ Department of Revenue, 2012 Tax Exemption Study, p. 193.

Washington State Sales & Use Tax and B&O Tax on Highway Construction Services

| | WSDOT Owned Highways WAC 458-20-179 | City, County, Political Subdivision, Federal Owned Highways WAC 458-20-171 |
|-----------------------------|--|--|
| Retail Sales Tax Use Tax | <ul style="list-style-type: none"> • Applied to full contract price • Materials that become part of the structure being built are treated as re-sales and are not subject to tax • Materials used by the contractor in the course of work (i.e. are not part of the structure) are subject to tax | <ul style="list-style-type: none"> • Not applied to contractor charges • Materials that are used or consumed in the construction are subject to tax |
| B&O Tax | <ul style="list-style-type: none"> • Public road classification on total contract price (would apply to prime and subs) (State rate 0.00484) | <ul style="list-style-type: none"> • Prime contractor – retail classification on gross contract price (State rate 0.00471) • Sub-contractor – wholesale on gross contract price (State rate 0.00484) |

Implementation by WSDOT

Project Management

WSDOT pays sales tax based on the jurisdiction of the project and the ownership of the highway. This can become complicated. “How retail sales tax is handled on the overall project depends on the ownership of the property upon which it rests. Keep in mind that a project may span more than one type of ownership.” (WSDOT Construction Manual 2013, p. 1-82)

WSDOT’s project management, cost estimating and standard specifications for bidders reflect the division in sales tax collection based on whether the work is done on state/private or local/federal land.

- *Work on state and privately owned lands.* Work performed on state or privately owned land falls under Standard Specifications Section 1-07.2(2) and Department of Revenue Rule 170.
 - *Tax on total contract amount.* Retail sales tax is required on the total contract amount.
 - *No tax on materials incorporated into the final work.* Materials incorporated into the final work (such as concrete, signs, aggregates) are an integral part of the completed improvement. These materials are purchased for “resale.” No tax is required when purchasing these materials, therefore, no tax is paid as part of force account payments or as part of pricing change order work.
 - *Tax on consumables.* Supplies consumed (such as concrete forms, fuel or tools, equipment purchased or rented) during the performance of the contract are “consumables,” a part of the overall cost of doing business. The contractor is required to pay retail sales tax at the point of purchase/rental for these items. These costs are bid as a part of the associated bid items. When calculating or estimating the cost of force account or change order work, sales tax should be included in the individual invoices for “consumable” items. “It’s a fine line; for example, permanent striping is considered “resale” (tax exempt), temporary striping is a “consumable” (taxed). The fact that taxes are shown or not shown on invoices is not a reliable indication of what the contractor is obligated to pay. Note that, in some cases, it is possible and necessary to pay a tax on a tax.” (WSDOT Construction Manual 2013, p. 1-83).

- *Work on city, county, special district and federally owned land.* Work performed on city, county, special district or federally owned lands falls under Standard Specifications Section 1-07.2(1) and Department of Revenue rule 171.
 - *Tax on total contract amount.* Retail sales tax is not required on the total contract amount.
 - *Tax on materials and consumables.* The Contractor is required to pay retail sales tax on all purchases regardless of use (“consumable” or not). This expense is included in the individual contract items as a part of the bid amount. When calculating or estimating the cost of force account or change order work, sales tax should be included on all invoices.

Standard Specification for Bidders

Standard specification 1-07.2 deals with state taxes. This specification was updated in 2011.

- *Work on state and privately owned lands.* The Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. The Contractor shall not include the retail sales tax in the unit bid item prices except for bid prices for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount. (Specification 1-07.2(2))
- *Work on city, county, special district and federally owned land.* The contractor is to include the Washington State Retail Sales Taxes in the various unit bid item prices, or other contract amounts, including those that the Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in doing the work. (Specification 1-07.2(1))

Other States – Tax on State Highway Construction Service

States with sales and use taxes⁵ vary in how these taxes are applied to state highway construction labor services; gross receipts; and materials incorporated in the project or consumed during construction. Some states have special taxes that are applied to state highway construction and one state, West Virginia returns sales and use taxes collected on state highway projects to the state highway fund.

States with Statewide Sales and Use Taxes

Forty-four (44) states in addition to Washington impose a statewide sales tax. Five (5) states do not impose a statewide sales and use tax.

Sales and Use Tax on Contractor Gross Receipts or Labor and Services

Forty-one (41) states either exempt all contractors from paying sales and use tax on their gross receipts or on their labor and services (36 states) or exempt public works projects from paying the taxes (5 states).

Sales and Use Tax on Contractor Materials

- *No tax on materials.* Six (6) states do not impose sales or use tax on materials consumed or incorporated into the construction of public works, including construction by the state transportation department.
- *Tax on all materials.* Twenty-two (22) states impose sales and use tax on all contractor purchased materials, supplies, and equipment at the point of purchase by the contractor.

⁵ Some states have an excise tax which has the same cost affect as sales and use tax.

- *Tax on materials consumed in a project, no tax on materials incorporated into the project.* Eleven (11) states tax materials impose sales and use tax when a contractor purchases materials to be consumed in a project, but not when the contractor purchases materials incorporated into the project.
- *Building & machinery exemption.* One state, Pennsylvania, exempts building and machinery equipment but otherwise taxes on all materials

Other taxes

- Alabama – Alabama has a statewide sales tax, but does not charge tax on contractor gross receipts. The state has a 5 percent tax on gross receipts derived from the performance of contracts to construct, reconstruct, or build any state contracted work public highway, road, bridge or
- Delaware has no statewide sales tax, but does have a .006537 tax on contractor gross receipts over \$100,000 per month.
- Mississippi has a statewide sales tax, but does not charge tax on contractor gross receipts. Instead the state has a 3.5 percent contractor’s tax on non-residential contracts over \$10,000. The tax is not applicable to sub-contractors.
- Montana, which also has no statewide sales tax, imposes a 1% license fee on gross receipts of publically funded projects.⁶

Other States with Sales or Similar Tax on Road Construction Services

| State | State Rate | Note |
|---|---------------------------|--|
| Arizona Transaction Privilege Tax | 5.6% | <ul style="list-style-type: none"> • Prime contractor only • Tax base - 65% of the gross proceeds • Does not apply to the sale of materials to a taxable prime contractor or a subcontractor if the materials are incorporated into a construction project. The retail or rental tax does apply to construction machinery and equipment sold or leased to the contractor for use on a construction job. |
| Delaware Contractor Tax | 6.24% | <ul style="list-style-type: none"> • Tax on contractor gross receipts over \$50,000 per month and a 6% bond fee for non-resident contractors |
| Hawaii | 4.0% | <ul style="list-style-type: none"> • Deduction available for qualifying subcontracted work • Applies to architects, landscape architect and engineers |
| Kansas | 5.3% Materials only | <ul style="list-style-type: none"> • Labor services to construct, reconstruct, restore, replace, or repair a bridge or highway in Kansas are exempt from sales tax. |
| Mississippi Contractor’s Tax | 3.5% | <ul style="list-style-type: none"> • Prime Contractor: Subject to the 3.5% contractor's tax in lieu of the sales tax if they are done in the performance of a non-residential contract exceeding \$10,000. No tax on sub-contractors. |
| Montana | 1.0% | <ul style="list-style-type: none"> • License fee on publically funded projects |
| New Mexico | 5.0% | <ul style="list-style-type: none"> • Non-taxable transaction certificate – exempt materials, sub-contractors, equipment leases – pay on leases |

⁶ Montana Public Contractor’s 1% Gross Receipts Tax Brochure

Sales and Use Tax Cost

Sales Tax Rates

Washington State statewide sales and use tax rate is 6.5 percent. The State has authorized additional local and special district sales and use taxes, which can bring the tax rate up to 9.5 percent if all local option taxes are adopted.

Sales Tax Deferrals

The cost to WSDOT on completed projects does not include the cost of deferred sales tax. Sales and use tax totaling \$197.6 million has been deferred until projects are complete and toll revenue can be used to pay the tax.

- *SR 520*. RCW 47.01.412 defers state and local sales and use taxes on the SR 520 improvements until the fifth year after the date certified by the Department of Revenue as the date on which the project is operationally complete. The project is operationally complete under this RCW when the replacement bridge is constructed and opened to traffic. Interest is not charged on the deferred sales and use taxes. Total estimated deferred state and local sales and use taxes are \$140 million.
- *Tacoma Narrows Bridge SR 16*. RCW 47.46.060, as amended in 2012, defers state and local sales and use taxes on the Tacoma Narrows Bridge SR 16 corridor improvements until the 11th year of the project being operational. (Prior to the amendment, state and local sales and use tax were to be repaid on the 5th year of operation.) The deferred tax, which totals \$57.6 million, is to be repaid over 10 years. No interest is charged

Policy Considerations

Policy issues related to modifying the sales and use tax on state owned highway construction services include:

Impact on State General Fund

Sales and use tax is deposited in the state General Fund. Any reduction in sales and use tax that benefits WSDOT construction costs would correspondingly reduce the State's General Fund revenues.

Policy issues have also been raised as to whether it is appropriate for the state to spend motor vehicle funds, which are restricted by Article 18 of the state constitution to highway purposes, on sales and use taxes that benefit the state's General Fund.

Impact on Local Governments

A change in sales and use tax on construction services on state owned highways would also reduce local government revenues.

The Streamlined Sales and Use Tax Agreement (SSUTA), a multi-state agreement, governs the application of sales and use tax in the state. SSUTA Section 302 states that "the tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law." This means that the state does not have the option to exempt construction services from only state sales and use tax and maintain the local option.

Potential Impact on Ability to Tax Federal Construction Contracts

Under the Supremacy Clause of the United States Constitution, the state cannot directly tax the federal government. On construction projects, the state only imposes sales and use tax on the materials the federal contractors incorporate into such projects.

The United States Supreme Court, in a 5-4 decision, upheld Washington's taxation of federal contractors in *Washington v. United States*, 460 U.S. 536 (1983). The important question, according to the Supreme Court, is whether the tax is discriminatory with regard to the economic burdens that result. "The important consideration is not whether the State differentiates in determining what entity shall bear the legal incidence of the tax, but whether the tax is discriminatory with regard to the economic burdens that result. The State does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them. Here, Washington has not singled out contractors who work for the United States for discriminatory treatment. It has merely accommodated for the fact that it may not impose a tax directly on the United States as the project owner."

The Department of Revenue has expressed concern that creating new exemptions and deferrals for construction projects present "a significant legal risk that the federal government or federal contractors will seek to re-litigate *Washington v. United States*. Sales/use tax exemptions pose the greatest legal risk because they plainly treat the beneficiaries of the exemption more favorably than federal contractors are treated. Sales/use tax deferrals also pose a significant legal risk."⁷

The Department of Revenue has identified the potential impact at \$89 million per fiscal year if the state were unable to impose sales and use tax on federal contractors.

Sales and Use Tax Application Alternatives

Three alternatives have been identified.

- *Exempt WSDOT construction contracts from sales and use tax.* Under this alternative the legislature would exempt construction services on state-owned highways from sales and use tax on materials, labor, and services. The effect would be to eliminate state and local sales and use taxes on all construction projects on state-owned highways.
- *Extend Public Road Construction Exemption to state owned roads.* The legislature could amend RCW 82.04.050(10) to include state-owned highways.
- *Direct sales and use tax collected on WSDOT construction contracts to transportation.* The legislature could direct sales and use tax on WSDOT construction contracts to the Motor Vehicle or Multi-Modal Account.

WACs

- **Public Road Construction Exemption WAC 458-20-171.** Building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation facility or parking facility, bridge, tunnel, or trestle which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic. *It does not include persons who construct streets, roads, etc. owned by the state of Washington.* (italics in WAC)

⁷ Department of Revenue, Federal Contractor Concern, August 2013 p.1-2.

- B&O tax – Contractors working under the public road construction exemption are taxable under the public road construction classification upon their total contract price.
- Retail sales tax – Contractors working under the public road construction exemption – “retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts. The retail sales tax does not apply upon any portion of the charge made by such contractors.
- Use tax – Contractors working under the public road construction exemption – “use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid.”
- **WSDOT – Constructing and repairing of new or existing buildings or other structures upon real property – WAC 458-20-170.** “The term “constructing, repairing, decorating or improving of new or existing buildings or other structures”, in addition to its ordinary meaning, includes...the construction of streets, roads, highways, etc. owned by the state of Washington.”
 - B&O tax – Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price. When no gross contract price is stated in any contract or agreement between the builder and the property owner, then the measure of business and occupation tax is the total amount of construction costs, including any charges for licenses, fees, permits, etc. required for construction and paid by the builder.
 - Retail sales tax – Prime contractors are required to collect from consumers the retail sales tax measured by the full contract price. Where no gross contract price is stated, the measure of sales tax is the total amount of construction costs including any charges for licenses, fees, permits, etc. required for construction and paid by the builders. Sales to prime contractors and subcontractors of materials such as concrete, tie rods, lumber, finish hardware etc. which become part of the structure being built or improved are sales for resale and are not subject to the retail sales tax. The retail sales tax applies upon sales and rentals to prime contractors and subcontractors of tools, machinery and equipment etc....which are primarily for use by the contractor rather than for resale as a component part of the finished structure.
 - Use tax. The use tax applies generally to the use by prime contractors and subcontractors of tools, machinery, equipment and consumable supplies acquired by them primarily for their own use and upon which the retail sales tax has not been paid.

Appendix B: Sales & Use Tax in Other States

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | | States Sales Tax on Materials | | |
|------------|--|---------------------------------|--|----------------|---|--|--|----------------|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Alabama | Exempt | | 5% of gross receipts derived from performance of contracts to construct, reconstruct or build any public highway, road, bridge or street subject to monthly discount of up to \$400.00 | 5% | Applies to state contracts only – not to cities or counties unless the state is also a contractor Proceeds of tax – pensions (15%) and mental health (85%) | Yes | Interview with State Department of Transportation | |
| Alaska | No statewide sales tax | | | | | No state sales tax | | |
| Arizona | Not exempt | Not exempt | | 6.5% | Prime contractor only Tax base - 65% of the gross proceeds | No - if incorporated, Yes - if consumed | Not if the materials are incorporated in the project nor for construction machinery & equipment sold or leased to the contractor for use on a construction job | 6.5% |
| Arkansas | Exempt | | | | | Yes | Contractors are deemed to be consumers of all tangible personal property or taxable services purchased by them in the performance of a contract and the sales of all such property to contractors are taxable sales. | 6.5% |
| California | Exempt | | | | | Yes | Construction contractors are generally consumers of materials furnished and retailers of fixtures and pay sales & use tax. Services are not taxable (except jobsite fabrication of fixtures). | 7.5% |
| Colorado | Exempt | | | | | No - if incorporated Yes - if consumed | Exemption for highways and other public works | 2.9% |

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | States Sales Tax on Materials | | | |
|---|---|--|--|---|---|---|--|--------------------------------|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Connecticut | Taxable only if rendered in conjunction with existing commercial, industrial or income producing property; exempt if new construction or residential property | Exempt Public Right-of-Way is exempt - property such as a state or municipal street or road and adjacent area. | | | | No - if incorporated Yes - if consumed | When a construction contract is with an exempt entity, the contractor may purchase materials and supplies incorporated or placed in the project exempt from tax. | 6.35% (no local rates allowed) |
| Delaware | No state sales tax | | Tax on contractor gross receipts over \$100,000 per month & a 6% bond fee for non-resident contractors | 0.006537 | Excludes gross receipts paid to sub-contractors | No state sales tax | | |
| Florida *state relies on sales tax for 50% or more of its state tax revenues | Exempt | | | | | Yes | Public works agencies use owner-direct purchase program and not pay sales tax | 6% |
| Georgia | Exempt | | | | | Yes | All materials | 4% |
| Hawaii | Not exempt (excise tax) | Not exempt | | 4.712% - Oahu 4.166% - other Islands | Deduction available for qualifying subcontracted work | Yes | Wholesale rate | 0.5% |

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | | States Sales Tax on Materials | | |
|----------|--|--|--------------------------|----------------|-------|---|---|----------------|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Idaho | Exempt | | | | | Yes | Contractor is the consumer of the goods used. Must pay sales tax on all his Purchases – even if working on exempt customer project | |
| Illinois | Exempt | | | | | Yes | | 6.25% |
| Indiana | Exempt | | | | | Yes – if consumed No – if incorporated No - if public safety equipment on public work | Purchase of public safety equipment required by contract to be used in the construction and repair of public roads, bridges, highways, and other public infrastructure for a governmental entity is exempt from sales and use tax. | 7% |
| Iowa | Exempt | | | | | No – if incorporated Yes – if consumed | Special Exemption Certificates Designated exempt entities awarding construction contracts may issue special exemption certificates to contractors and subcontractors, allowing them to purchase, or withdraw from inventory, building materials for the contract free from sales tax – includes Dept. of Transportation | 6% |
| Kansas | Not exempt | Exempt Labor services to construct, reconstruct, restore, replace, or repair a bridge or highway | | | | Yes | Project exemptions are not authorized for Dept. of Transportation | 6.15% |

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | | States Sales Tax on Materials | | |
|---------------|--|---------------------------------|--------------------------|----------------|-------|---|--|----------------|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Kentucky | Exempt | | | | | Yes | On all materials | 6% |
| Louisiana | Exempt | | | | | No | Exemption certificate for materials purchased for public works | |
| Maine | Exempt | | | | | No – if incorporated Yes – if consumed | Materials that are incorporated into state projects are exempt. Materials used in the project are taxable | 5% |
| Maryland | Exempt | | | | | Yes | Materials incorporated into government owned real property are taxable when purchased. | 6% |
| Massachusetts | Exempt | | | | | No | Exemption certificate for sales of materials for public works projects | |
| Michigan | Exempt | | | | | Yes | A contractor is required to pay sales or use tax on all items used to provide Service, including equipment, supplies, and materials. Revenue Administrative Bulletins (RAB) 1993-5 and 1999-2. | 6.25% |
| Minnesota | Exempt | | | | | Yes | Contractors or subcontractors must pay sales or use tax on the cost of all materials, supplies and equipment to complete the construction contract. State agencies are not exempt from sales tax | 6.875% |
| Mississippi | Exempt | | | | | No – if incorporated Yes – if consumed | No sales or use tax on purchases on component materials and services. Rentals and purchases of non-component materials and supplies to be used in the performance of construction work are subject to the regular retail rate of sales or use tax | 7% |

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | | States Sales Tax on Materials | | |
|----------------|--|--|---|----------------|-------|---|--|----------------|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Missouri | Exempt | | | | | No | Exemption Certificate for materials incorporated or consumed in construction | |
| Montana | No statewide sales tax | | License fee on publically funded projects | 1% | | No statewide sales tax | | |
| Nebraska | Not exempt | Exempt: Any government entity is exempt from paying sales tax | | | | No – if incorporated Yes – if consumed | Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax | 5.5% |
| Nevada | Exempt | | | | | Yes | If a government contractor purchases building materials for use on a public works project, the government contractor must pay Sales/Use Tax on those materials | 6.85% |
| New Jersey | Not Exempt | Exempt: Labor is exempt as long as an exempt capital improvement | | | | No | Exemption for state agencies – exemption certificate | |
| New Mexico | Not exempt | Not exempt | | 5.125% | | No | Non-taxable transaction certificate – exempt materials, sub-contractors, equipment leases – pay on leases | |
| New York | Exempt | | | | | No | Government purchase order serves for an exemption | |
| North Carolina | Exempt | | | | | No | | |
| North Dakota | Exempt | | | | | Yes | Contractor regarded as end user Includes contracts with State agencies | 5% |

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | | States Sales Tax on Materials | | |
|--|--|---------------------------------|--------------------------|----------------|---|--|---|----------------|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Ohio | Exempt | | | | | No – if incorporated Yes – if consumed Building & machinery exemption Yes | Agencies of the state not subject to tax for materials incorporated in real property | 5.75% |
| Oklahoma | Exempt | | | | | Yes | Exemptions do not include state agencies | 4.5% |
| Oregon | No state sales tax | | | | | No state sales tax | | |
| Pennsylvania | Exempt | | | | | No | Exemption for exempt organizations – including state agencies | 6% |
| Rhode Island | Exempt | | | | | No – if incorporated Yes – if consumed | Exemption for exempt organizations – including state agencies for materials and supplies essential to construction of a project and that are to be utilized in the construction thereof | 7% |
| South Carolina | Exempt | | | | | Yes | Purchases for state government agencies not exempt Tax on all construction materials | 6% |
| South Dakota *state relies on sales tax for 50% or more of its state tax revenues | Not exempt | Not exempt | | 2% | Contractors for state agencies must pay Gross receipts tax applied to materials with sales tax | Yes | Prime contractor and sub-contractor due on materials furnished | 4% |
| Tennessee *state relies on sales tax for 50% or more of its state tax revenues | Exempt | | | | If services performed on real property | Yes | | 7% |

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | | States Sales Tax on Materials | | |
|---|--|---------------------------------|--------------------------|----------------|--|---|---|--|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Texas *state relies on sales tax for 50% or more of its state tax revenues | Not exempt | Exempt | | | State government is exempt from sales tax on contractors | No – if incorporated Yes – if consumed | State exemption – no tax if material entirely consumed in the project | 6.25% |
| Utah | Exempt | | | | | Yes | Sales of construction materials to state agencies exempt if the agency pays the seller directly & the items are converted to real property by employees of the agency | 4.7% |
| Vermont | Exempt | | | | | Consumed on project – no Tools etc. not consumed on a project yes Yes | Applies to public works – exemption certificate | 6% |
| Virginia | Exempt | | | | | Yes | No exemption for public work | 5.0% N. Virginia & Hampton Roads 4.3% elsewhere |
| West Virginia | Exempt | | | | If work results in a capital improvement | Yes | The contractor is subject to tax on all purchases of goods and services used in the performance of a capital improvement contract. | 6% Returned to the State Road Fund |

| State | Tax on Contractor on Labor &/or Gross Receipts | | | | | States Sales Tax on Materials | | |
|-----------|--|---------------------------------|--------------------------|----------------|---------------------------------|-------------------------------|--|----------------|
| | Exempt from Sales or Excise Tax | Exempt Public Road Construction | Other Similar Tax or Fee | State tax rate | Notes | Taxable | Notes | State tax rate |
| Wisconsin | Exempt | | | | Real property construction only | Yes | No exemption for government agencies | 5% |
| Wyoming | Exempt | | | | | Yes | Purchases of materials, supplies, etc. by the contractor for real property improvement are taxable to the contractor No exemption for government entities | 4% |

Appendix C: Sample Letter & Survey



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360-902-5335

March 2012

Dear Survey Participant:

The Department of Labor & Industries (L&I) is conducting this survey to gather wage and hour information for work performed by Ready Mix Truck Drivers, so that we may calculate the prevailing wage that will be required to be paid to workers on public works projects governed by chapter 39.12 RCW, Prevailing Wages on Public Works.

Prevailing wage is the hourly wage, benefits and overtime paid in the largest city in each county to the majority of workers in each trade. The law (RCW 39.12) requires L&I to establish a prevailing wage rate for each trade employed in public work. On the reverse side of this letter is the section of the prevailing wage rule [WAC 296-127-019(6)] that describes how we calculate the wage rate based on the data we receive on survey forms.

Your participation in this survey is extremely important, even if you don't perform public work. This survey reflects the local area wage conditions for work performed from **January 1, 2010 through December 31, 2011**. The more complete and accurate the survey responses are that L&I receives, the more accurately the results will reflect the actual wages paid to Ready Mix Truck Drivers throughout the state. All identifying company information will be kept confidential.

Enclosed you will find:

- Instructions (beginning on the other side of this letter)
- Survey form
- "Description of Work" for Ready Mix Truck Drivers (on the back of the survey form)
- A postage-paid return envelope

We must receive your completed survey form **no later than June 30, 2012**, in order to include your wage and hour information in our calculations. You may return the survey form to us by mail, electronically as an email attachment, or by fax. Please see the instructions for further details.

Thank you very much for taking the time to complete this survey. If you have any questions, please contact Nathan Peppin in the Prevailing Wage Program at (360) 902-5304, or by e-mail to Peppn235@Lni.wa.gov.

Sincerely,

A handwritten signature in blue ink that reads 'L. Ann Selover'.

L. Ann Selover
Industrial Statistician

03/30/2012

How L&I Sets Prevailing Wage Rates Based on Survey Results

WAC 296-127-019(6)

(6) Valid data reported on wage surveys shall be calculated, as follows:

(a) If the majority of hours reported for a trade or occupation in the largest city in a county is paid at the same wage rate, then that rate shall be established as the prevailing wage rate.

(b) If the same wage rate is not reported to have been paid for the majority of hours reported in the largest city in a county for a trade or occupation, then the average wage rate shall be established as the prevailing wage rate, based on a weighted average of the hours, wages, and benefits reported in the largest city.

(c) If a statistically significant number of hours fails to be reported for the largest city in a county, then the average wage rate for the county is established as the prevailing wage, based on a weighted average.

(d) If there fails to be reported for an entire county, sufficient hours to validate the survey data, that county's hours shall be combined with those reported for other counties that are adjacent, until the established hours threshold for validation has been met.*

*Please note in 2003 the use of data from adjacent counties to set prevailing wage rates was prohibited. See RCW 39.12.026.

Wage and Hour Survey Instructions

Please read these general instructions before completing the survey.

EXCEPTIONS:

Please check the appropriate box on the survey form, complete the top portion, sign, and return the form if you:

- Did not employ any workers in this trade.
- Employ public employees, as a state or other public agency, who perform the work described for this trade.

If you choose to not participate in this survey, please tell us why, fill out the top portion, sign, and return the form to L&I.

- **Report all hours worked, for both public and private projects, from January 1, 2010 through December 31, 2011.** Remember as you complete the survey form that it is based on data for a two-year period. It is not uncommon for different employees to make different wages or the same employee to make different wages at various times during the survey period (for example, due to raises in their pay, decreases in their pay, differences based on the specific type or capacity of the vehicle driven, or private versus public works rates). For purposes of reporting wage and hour information for this survey each rate must be reported separately based on the location (inside or outside the largest city in the county). If you need additional assistance for determining how to list various wage rates please contact L&I at (360) 902-4626 or email us at PW1@Lni.wa.gov.

Example – Rate Changes – Public and Private Work

Employee A Private Work - Survey Time Period: January 1 - December 31, 2010

Earns a total package (wage + usual benefits) of \$35 per hour
(\$30/hr wages, \$3/hr medical/dental benefits, \$1/hr pension benefits, \$1/hr apprenticeship)
Private work included in this survey at \$35/hr: 25 hours work performed inside the largest city

Employee A Private Work - Survey Time Period January 1 - December 31, 2011

Earns a total package (wage + usual benefits) of \$37 per hour
(\$30/hr wages, \$4/hr medical/dental benefits, \$2/hr pension benefits, \$1/apprenticeship)
Private work included in this survey at \$37/hr: 20 hours worked inside the largest city and 10 hours worked outside the largest city

Employee A Public Work – For the two-year survey period, January 1, 2010 – December 31, 2011

Earns a total package (wage + usual benefits) of \$39 per hour
(\$32/hr wages, \$4/hr medical/dental benefits, \$2/hr pension benefits, \$1/apprenticeship)
Public work included in this survey at \$39/hr: 100 hours worked inside the largest city

Each of these rates must be reported separately on the survey form. At a minimum you will have three rows documenting the wage and usual benefit breakdown for \$35, \$37 and \$39. If the hours at a specific rate (for example, \$37) included work inside AND outside of the largest city or in various largest cities/counties additional rows would be required for each.

See the table below for how to report these various rates.

Note: Not all columns that are on the survey form are used for this example, and an extra “total” column that is not on the survey form is added here to help with the illustration.

| Hours Worked Inside the Largest City | Hours Worked Outside the Largest City | Hourly Base Wage Rate | Hourly Rate* of Employer Contributions for Insurance (medical, dental, life, etc.) | Hourly Rate* of Employer Contributions to Pension or Retirement Plans | Hourly Contribution* Made to Apprenticeship Programs | Total Wage and Fringe Package [This column is not on the survey form.] |
|--------------------------------------|---------------------------------------|-----------------------|--|---|--|---|
| 25 | | \$30.00 | \$3.00 | \$1.00 | \$1.00 | \$35.00 |
| 20 | | \$30.00 | \$4.00 | \$2.00 | \$1.00 | \$37.00 |
| | 10 | \$30.00 | \$4.00 | \$2.00 | \$1.00 | \$37.00 |
| 100 | | \$32.00 | \$4.00 | \$2.00 | \$1.00 | \$39.00 |

- **Include hours for journey-level workers only.** Do not report hours of work, wages, or benefits paid to trainees, helpers, supervisors, or owner/operators.
 - “Owner/operators” includes (1) sole owners and their spouses, (2) any partner who owns 30% or more interest in the partnership, and (3) a president, vice-president or treasurer of a corporation who owns at least 30% of the corporation.
 - See [WAC 296-127-015](#) regarding “supervisors.”

WAC 296-127-015 Applicability of prevailing wages for supervisors. Determinations as to whether individuals are workers, laborers, or mechanics are based on the scope of work actually performed by the individuals, rather than the title of their occupations.

(1) Where additional supervisory duties are required of workers, laborers, or mechanics by statute or regulation, the industrial statistician shall establish a rate of pay for a work classification to be called “journey level in charge.” These rates shall be published in the semiannual prevailing wage publication.

(2) Supervisors (e.g., foremen, general foremen, superintendents, etc.,) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:

(a) For each hour spent in the performance of manual or physical labor if it is for more than twenty percent but less than fifty percent of their hours worked on a public works project during any given week.

(b) For all hours worked in any given week if they perform manual or physical labor for fifty percent or more of their hours worked on a public works project during such week.

(3) If supervisors subject to the journey level prevailing wage rate are paid a salary, the compensation (salary divided by number of hours worked) must be equal to or greater than the prevailing wage rate for the type of work performed.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, §296-127-015, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-015, filed 10/31/88.]

- **You may report hours for apprentices separately.** Report hours worked by apprentices only if they are enrolled in an apprenticeship program which has been registered and approved by the Washington State Apprenticeship and Training Council (WSATC), and you are a WSATC registered training agent. If you report hours for apprentices, write the word “Apprentice” in Column A.
- **State all wages in hourly terms.** Do not list annual or monthly salaries or piece-rate earnings. All wages and benefits must be reported as hourly rates. If you paid workers on a salary, or other non-hourly basis, you will need to mathematically determine the hourly rate based on actual payments made for the hours worked.
- **Report wage and hour information by county. Separate the hours worked Outside the Largest City from the hours worked Inside the Largest City for each county where the work was performed.** The counties and largest cities are listed in a table on the back of the survey form. The law requires L&I to calculate a separate prevailing wage for each county in the state.
- You may complete the survey form by filling out the information on the enclosed paper form or by downloading and completing the fillable form from our web site at [www. Prevailing Wage.Lni.wa.gov](http://www.Prevaling Wage.Lni.wa.gov).
- **Sign the form. Whether you complete the survey by filling in the paper form or by filling in and printing out the downloaded form, be sure to sign the survey form before returning it to us.** If it is not signed, we cannot include it in the survey results.
- **We must receive your completed survey no later than June 30, 2012, to include your information in our calculations. You have several choices for returning it:**
 - You may return it by mail using the postage-paid return envelope we enclosed with the survey form.
 - You may fax it to us at 360-902-5300. If you fax your survey to us, please be sure all the information is entered in a clearly legible format. If we cannot read your form, we cannot process it.
 - You may e-mail a completed form to us. To do this, sign the form, produce an image of it (scan the document) and send the electronic image of the completed, signed survey as an email attachment to Nathan Peppin at Pepn235@Lni.wa.gov.
- **Be sure to keep a copy of the completed survey form for your records.**
- **If you have questions or need assistance with how to complete and send the form to us, please call (360) 902-4626 or email us at PW1@Lni.wa.gov.**
- **The trade that L&I is surveying throughout this period is Ready Mix Truck Drivers.**

Instructions for Filling Out Columns A–I on the Survey Form

**The survey period is a two-year period, from
January 1, 2010 through December 31, 2011.**

- A. Trade:** Use “Ready Mix Truck Driver” based on the “Work Description” on the back of the survey form to identify whether your employees worked in this trade during the survey period. **If you are reporting hours worked by apprentices,** list apprentices separately in another row and write “Apprentice” for the name of the trade. Do not report hours for apprentices unless they are enrolled in an apprenticeship program registered and approved by the Washington State Apprenticeship and Training Council (WSATC), and you are a WSATC registered training agent. If some of your workers are “trainees” but don’t qualify as “apprentices” do not include their hours and their wage rates.
- B. County where the work was performed:** Report and name the county where the work was performed. If you report work performed in more than one county, list each county separately.
- C. Hours worked inside the county’s largest city:** Separate the hours worked Outside the Largest City from the hours worked Inside the Largest City for each county where the work was performed. Report in column “C” the total number of hours worked by all workers at each individual hourly rate within the largest city. This information is needed because L&I is required to calculate the rate of hourly wages, benefits and overtime paid to the majority of workers in the same trade working in the largest city of each county.
- D. Hours worked outside the county’s largest city:** Separate the hours worked Outside the Largest City from the hours worked Inside the Largest City for each county where the work was performed. Report in column “D” the total number of hours worked by all workers at each individual hourly rate outside the largest city within each county where the work was performed.
- E. Hourly base wage rate:** Report in column “E” the hourly wage rate paid to the worker(s). If workers were paid different rates, list those rates separately by county and/or the largest city. Do not include benefits in this entry. Do not include overtime or premium pay in this entry. If some hours were worked at a premium rate (overtime or double time) report those hours at their base wage rate, not the premium wage rate.
- F. Hourly rate paid for insurance (medical, dental, life, etc.):** The insurance rate includes medical, dental, vision, life insurance, etc. Report in column “F” the insurance rate in per-hour terms. If you do not know the hourly rate, determine it by dividing the total insurance benefits paid **for the two-year survey period** by the hours worked by that



employee for the two-year survey period. See the Usual (fringe) Benefits example below. Do not include insurance benefits that the worker pays through payroll deductions, or any other benefits or fees that are required to be paid by employers, such as workers' compensation premiums, unemployment insurance or any other federally or state-mandated payroll deductions.

- G. Hourly rate contribution to pension or retirement plans:** Report in column "G" pension or retirement plan employer contributions in per-hour terms. If you do not know the hourly rate, determine it by taking the total dollar amount paid by the employer into a bona fide pension fund or retirement account **for the two-year survey period**, and dividing that amount by the total hours worked by that employee during the two-year survey period. See the Usual (fringe) Benefits example below. Do not include any pension or retirement benefits or contributions that are employee paid through payroll deductions, or that are required to be paid by employers, such as social security.
- H. Hourly rate paid for vacation and/or holiday:** Report in column "H" vacation or holiday benefits paid or accrued per hours worked during the **two-year survey period**. If you do not know this hourly rate, determine it by taking the total dollar amount paid by the employer to the employee (or accrued if not paid) for vacation time during the two-year survey period, and dividing that amount by the number of hours worked by that employee during the two-year survey period. See the Usual (fringe) Benefits example below.
- I. Hourly rate paid to apprenticeship programs:** Report in column "I" the hourly contribution amounts paid to apprenticeship programs certified by the Washington State Apprenticeship and Training Council for the trade being surveyed. This should be a pre-established hourly contribution rate that is paid by the employer in addition to worker wages and benefits. This does not include funds that an employee pays. If you do not know the hourly rate, determine it by dividing the total payments made **for the two-year survey period** by the number of hours worked by that employee during the two-year survey period. See the Usual (fringe) Benefits example below.

Example - Usual (fringe) Benefits Calculation
Two-Year Survey Period – January 1, 2010 through December 31, 2011

An employee worked a total of 3,500 hours **for the two-year survey period** (both private and public jobs) and received 4 weeks (160 hours) of vacation from January 1, 2010, to December 31, 2011. The employer paid the worker \$20.00 per hour for vacation time off. In that case, the hourly amount the employer put into the employee's vacation fund for the survey period is:

- 160 (hours vacation time) x \$20.00 paid per hour = \$3,200
- Divide this amount (\$3,200) by 3,500 (actual hours worked during the survey period)
 - $\$3,200 / 3,500 \text{ hours} = \0.91 per hour

The hourly rate paid for vacation in this example is \$0.91 per hour.
This amount would be recorded in column "H" of the survey form.

Work Description

Ready Mix Truck Drivers

For the purpose of the Washington state public works law, chapter 39.12 RCW, ready mix truck drivers drive transit mixer type trucks used for the transportation of wet concrete products and related supplies to, from, and on construction projects.

The work includes all types of construction projects that are covered under chapter 39.12 RCW and WAC 296-127-018.

The work includes the use of any transit mixer type truck designed to deliver wet concrete including, but not limited to: roller or barrel trucks, semi-mixer trucks, and roll-off mixer bodies.

Ready mix truck drivers deliver wet concrete to forms, trenches, pumps, pumpers, pumper trucks, conveyors, curb machines, buckets, wheel barrows, buggies, screeds, and slip-form machines, etc.

| Washington Counties and Largest Cities | | | | | |
|--|----------------|--------------|---------------|-------------|---------------|
| County | Largest City | County | Largest City | County | Largest City |
| Adams | Othello | Grays Harbor | Aberdeen | Pierce | Tacoma |
| Asotin | Clarkston | Island | Oak Harbor | San Juan | Friday Harbor |
| Benton | Kennewick | Jefferson | Port Townsend | Skagit | Mount Vernon |
| Chelan | Wenatchee | King | Seattle | Skamania | Stevenson |
| Clallam | Port Angeles | Kitsap | Bremerton | Snohomish | Everett |
| Clark | Vancouver | Kittitas | Ellensburg | Spokane | Spokane |
| Columbia | Dayton | Klickitat | Goldendale | Stevens | Colville |
| Cowlitz | Longview | Lewis | Centralia | Thurston | Olympia |
| Douglas | East Wenatchee | Lincoln | Davenport | Wahkiakum | Cathlamet |
| Ferry | Republic | Mason | Shelton | Walla Walla | Walla Walla |
| Franklin | Pasco | Okanogan | Omak | Whatcom | Bellingham |
| Garfield | Pomeroy | Pacific | Raymond | Whitman | Pullman |
| Grant | Moses Lake | Pend Oreille | Newport | Yakima | Yakima |

3/30/2012

Appendix D: Prevailing Wage Studies

What follows is a summary of 10 studies related to the costs of prevailing wage. It is worth noting that no study appeared to be unbiased in its method. We reviewed five studies that found prevailing wage to be a benefit in terms of productivity that either balanced out additional cost or did not produce higher costs. These studies generally found 0% increase in project costs due to prevailing wage laws combined with general economic benefits.

The other five studies concluded that prevailing wage increased costs. These studies typically compared prevailing wages to market rates, as if both state and federal prevailing wage laws would be repealed. Program cost increases in these studies ranged from 6% to 15%.

| Study | Pro/Con | Key Findings |
|---|---------|---|
| The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri | Pro | Total economic impact of repeal would be between \$324.1 and \$488.2 million annually in lost income and tax collections Claims of savings of 15-30% total cost savings are not possible. |
| An Analysis of Davis-Bacon Prevailing Wage Requirements: Evidence from Highway Resurfacing Projects | Pro | Compared federal projects with prevailing wage with state projects without and found no statistical cost differences that could be attributed to prevailing wage. Productivity increases with higher wages balance out costs. |
| The Benefits of State Prevailing Wage Laws | Pro | Repeal of prevailing wage laws lead to less training, younger and less experienced workforce, higher injury rates and lower wages. Unemployment rate is biggest driver of costs. Prevailing wage does not lead to cost increases due to higher productivity. |
| Kentucky's Prevailing Wage Law: Its History, Purpose and Effect | Pro | Claims that 4 schools could be built for price of 3 are not possible because labor is only 30% of total cost. Found costs stabilized after prevailing wage re-applied in 1996 Unemployment and weather are cost drivers, not prevailing wage |
| The Economic Development Benefits of Prevailing Wage | Pro | Higher productivity, better technology, and other employer savings offset higher wages. Prevailing wage raises health and pension coverage, worker skills, wages and opportunities for less-educated workers and minimizes race to the bottom. Research shows skilled workers 20% more productive. |
| An Economic Examination of West Virginia's Prevailing Wage Law | Con | Biggest problem with prevailing wage laws is there is no standard method of collection to determine wages. Statistical surveys by US DOL and others should be used. Data from WORKFORCE West Virginia over a three-year cycle showed difference between true market wage and prevailing wage to be 49-74% Prevailing wages compress wages across occupations and do most harm to least-skilled and least-paying positions. Unemployment in 2007 was 4.6%. Without prevailing wage, would have been 4.4% Should have exemptions for small contractors and schools. Could save 30% or more. |

| Study | Pro/Con | Key Findings |
|--|---------|---|
| Prevailing Wage Laws: Public Interest or Special Interest Legislation | Con | <p>Prevailing wage laws raise costs, interfere with efficient labor mobilization, impose additional admin and compliance costs.</p> <p>2007 Kersey study showed prevailing wages 39% higher in construction.</p> <p>2000 CBO study found estimated savings of Davis-Bacon repeal to be \$10.5 billion between 2000 and 2010</p> <p>California study found 9-37% increase in construction costs when law amended to apply prevailing wage to subsidized housing construction.</p> |
| Prevailing Wage Laws in New York State: The Impact on Project Cost and Competitiveness | Con | <p>Used hypothetical project prototype to compare costs. Found prevailing wage increases costs by 28-76% assuming same productivity levels vs. comparison communities across the country compared to costs that are 4-16% higher than others with market wages.</p> |
| The Effects of the Exemption of School Construction Projects from Ohio's Prevailing Wage Law | Con | <p>Analysis by Ohio Legislative Service Commission that showed overall savings on school construction projects to be 10.7% after exemption created in law.</p> <p>No statistical difference in quality of construction according to surveys.</p> |
| Prevailing Wage Laws: Greed Disguised as Public Policy | Con | <p>Prevailing wage laws make union wage rates the "prevailing" rate even though only 14.5% of construction workers are unionized.</p> <p>Oregon study showed prevailing wages 25% higher than market.</p> <p>Davis-Bacon wages are not accurate.</p> <p>Estimates that only 30% of costs of construction are labor are not accurate across project types. For repairs/renovations, can be 60-70%.</p> <p>Government estimates that Davis-Bacon only increases costs by 3.7% are not accurate.</p> |

Appendix E: Labor & Industries Responses to Advisory Panel Questions on Prevailing Wage



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

Government Affairs and Policy Division • Office PO Box 44001 • Olympia, Washington 98504-4001

November 25, 2013

Kathy Scanlan
Scanlan Consulting

Kathy –

Thank you for clarifying the questions asked by members of the Joint Transportation Committee during their meeting on October 29. The questions we were asked to respond to were:

- How many changes to prevailing wage rules have been made in the past few years that would affect transportation projects?
- Please identify the numbers of surveys we send, how many go to business interests and how many go to labor interests, the numbers of each that respond, and the percent of hours or wages that are included in these responses.
- Please provide a description of how a person would respond to our survey and a copy of that survey.

To help illustrate the prevailing wage survey process, attached are the survey form and instructions from a recent survey of Ready Mix Truck Drivers.

How many changes to prevailing wage rules have been made in the past few years that would affect transportation projects?

Below is a list of prevailing wage rule-making activities over the past two decades, beginning in 1993. Prior to the beginning of each rule-making effort (the filing of the CR-101), the department sought and received substantial stakeholder input and shared that input with various groups including and especially the Prevailing Wage Advisory Committee which is composed of business, labor and public agency stakeholders. In some cases, stakeholder discussions took place over many years.

Of the nine rule changes during that period of time, five amended scope of work definitions for specific work activities. As provided for in the law, any interested party had the opportunity to challenge these determinations, which include:

- September 2009 – Amendment of the scope of work definition for Electronic Technician.
- November 2008 – Adoption of the scope of work definitions for Construction Site Surveyor, Diver and Diver Tender, and Industrial Power Vacuum Cleaner scope of work definitions.

- December 2006 – Adoption of scope of work descriptions for Stage Rigging Mechanics, Street Sweepers and Tinting and Coating Installers.
- August 2004 - Amendment of an existing rule to clarify the scope of work description for Outside Telephone Line Construction.
- July 2000 – Adoption of scope of work definitions for approximately sixty trades and occupations.

Other rule changes during this period included:

- December 1993 – Rulemaking to ‘modernize’ Chapter 296-127 WAC in a number of areas. The amount of the fees for processing of Intent and Affidavit forms was changed. Terms such as “contract” and “ordinary maintenance” were defined. Application of prevailing wage to “turnkey” projects was clarified due to a change in RCW 39.04.260.
- May 2004 – Amendment of an existing rule, necessitated by a change in law, to clarify which prevailing wage rates apply to purchase orders that are issued under job order contracts.
- August 2008 – Amendment of an existing rule to change the fees required for the processing of “Intent” and “Affidavit” forms. This was necessitated by a change in law.
- December 2008 – Amendment of the “Material Supplier” rule, initially adopted in 1992 covering deliveries of concrete, crushed rock and similar materials. The amendment clarified the conditions under which prevailing wages are required for delivery of those materials and was necessary due to guidance provided by the Court in *Silverstreak*.

Please identify the numbers of surveys we send, how many go to business interests and how many go to labor interests, the numbers of each that respond, and the percent of hours or wages that are included in these responses.

As you know, the department surveys by “groups” of trades. As indicated in our correspondence of September 27, each group includes several trades. Below is information for groups 2 through 5, indicating the total number of surveys mailed to the group and to each trade within the group, the number returned and the response rate. Unfortunately, the department is not able to break out the number of surveys returned from business or labor interests. Nor is information related to the percent of hours or wages reported from those interests recorded in a method to allow data to be attributed to either.

The group 5 survey, which included Carpenters, Electricians, Insulation Applicators, Millwrights, Lathers, Drywall Applicators, Construction Site Surveyors, Cabinet Makers (In Shop) and Pile Drivers, was published on August 2, 2010, except for survey results for construction site surveyors, which was published on October 15, 2012. During the initial Group 5 survey mailing, more than 27,300 surveys were mailed (not including six surveys mailed to Prevailing Wage Advisory Committee members). Of those, more than 27,300, or 99 percent, were mailed to businesses and 18, or less than 1 percent were mailed to union organizations. Though the data is not available for the other survey groups, this distribution of survey recipients is likely indicative of all groups, as union interests often represent a statewide organization and therefore make up a small number of the surveys mailed.

It should also be understood that a response may not include hours or wages. You'll note on the attached form that respondents who did not employ workers in the trades being surveyed, or who employ public employees, are asked simply to check the appropriate box on the survey, provide identifying company information and sign. In addition, those wishing not to participate in the survey may also indicate that and return it. Such responses are included in the number of surveys returned, below, though wage and hour information is not provided.

Finally, if a survey was returned as "undeliverable" it is considered in the total mailed, but not included in the number returned, below. Other common reasons for a survey not being returned may include: simply declining to participate, businesses ceasing operation, businesses reporting under incorrect Insurance Services risk classifications and businesses not performing the specific work being surveyed.

Group 5 Survey – 2009

Group 5 survey was published on August 2, 2010, except for survey results for construction site surveyors, which was published on October 15, 2012 and became effective November 14, 2010. For this group, more than 27,300¹ surveys were mailed to nine different trades. The survey period covered January 1, 2008 through December 31, 2008.

| <u>Trade/Occupation</u> | <u>Mailed</u> | <u>Returned</u> | <u>Response Rate (%)</u> |
|----------------------------|---------------|-----------------|--------------------------|
| Inside Wireman Electrician | 2337 | 500 | 21 |
| Carpenter | 20779 | 4178 | 20 |
| Drywall Applicator | 1308 | 253 | 19 |
| Insulation Applicator | 723 | 183 | 25 |
| Lather | 299 | 84 | 28 |
| Millwright | 549 | 176 | 32 |
| Pile Driver | 95 | 60 | 63 |
| Construction Site Surveyor | 487 | 168 | 34 |
| Cabinet Makers | 769 | 212 | 28 |

Group 4 Survey – 2008

Group 4 survey was also published also on February 1, 2010. For this survey, just over 31,000 surveys were mailed to eight different trades. The survey period covered January 1, 2007 through December 31, 2007.

| <u>Trade/Occupation</u> | <u>Mailed</u> | <u>Returned</u> | <u>Response Rate (%)</u> |
|---------------------------|---------------|------------------------------|--------------------------|
| Laborer | 20664 | 4048 | 20 |
| Carpenter Tender | | Included in "Laborers" above | |
| Clean-up Laborer | | Included in "Laborers" above | |
| Flagger | 5021 | 1580 | 31 |
| Utilities Laborer | 2261 | 675 | 30 |
| Fence Erector and Laborer | 1352 | 364 | 27 |
| Hod Carrier | 1319 | 292 | 22 |
| Asbestos Abatement | 428 | 162 | 38 |

¹ This number differs from the "nearly 30,400" figure given in September. The difference is based on a subsequent re-surveying of one of the Group 5 trades due to an error identified in the original survey mailing list for that trade.

Group 3 Survey - 2007²

Group 3 survey was also published on February 1, 2010. Just over 28,500 surveys were mailed to ten different trades. The survey period covered July 1, 2006 through June 30, 2007.

| <u>Trade/Occupation</u> | <u>Mailed</u> | <u>Returned</u> | <u>Response Rate (%)</u> |
|-------------------------|---------------|-----------------|--------------------------|
| Boilermaker | 136 | 40 | 29 |
| Asbestos Worker | 1014 | 242 | 24 |
| Heating Equip. Mechanic | 959 | 176 | 18 |
| Metal Fabricator | 3728 | 1345 | 36 |
| Painter | 6253 | 1036 | 17 |
| Plumber/Pipefitter | 3139 | 773 | 25 |
| Refrigeration Mechanic | 1426 | 645 | 45 |
| Roofer | 5275 | 1307 | 25 |
| Sheet Metal Worker | 6132 | 1357 | 22 |
| Sprinkler Fitter | 462 | 143 | 31 |

Group 2 Survey – 2007

Group 2 survey was published on February 1, 2010. Just over 18,300 surveys were mailed to thirteen different trades. The survey period covered January 1, 2006 through December 31, 2006.

| <u>Trade/Occupation</u> | <u>Mailed</u> | <u>Returned</u> | <u>Response Rate (%)</u> |
|---------------------------|---------------------|-----------------|--------------------------|
| Brick Mason | 1088 | 179 | 16 |
| Carpet Layer | 2075 | 362 | 17 |
| Drywall Taper | 1089 | 196 | 18 |
| Electrical Fixture Worker | 2134 | 281 | 13 |
| Electrician – Inside | 2205 (see footnote) | | |
| Glazier | 878 | 213 | 24 |
| Iron Worker | 1840 | 544 | 30 |
| Marble Setter | 699 | 141 | 20 |
| Stone Mason | 1088 | 150 | 14 |
| Terrazzo Worker | 836 | 302 | 36 |
| Tile Setter | 2081 | 336 | 16 |
| Mason Finisher | 2080 | 328 | 16 |
| Traffic Control Striper | 210 | 60 | 29 |

² The total of surveys mailed for these Groups 2 and 3 does not match those given in September. The difference is based on a re-surveying of Electricians, which had originally been included in Group 2 and was re-surveyed with Group 5. The reason for the re-surveying related to confusion stemming from the Electrician survey form and instructions.

Please provide a description of how a person would respond to our survey and a copy of that survey.

The survey form and instructions are attached for your information. This survey process is manual, using paper forms. The survey forms are mailed to all interested parties, who are asked to report what hours were worked, and what wages and benefits were paid, both inside and outside of the largest city of each county. They are then asked to mail completed paper forms to the department. Respondents can photocopy the survey form, if more room for data is needed. Respondents can also attach a printout of a spreadsheet as long as the printout is in the format shown on the survey form and includes all the data requested. The department does not currently provide a web-based method for contractors to submit the data electronically.

Please let me know if you have questions. I can be reached at (360) 902-6805 or tammy.fellin@lni.wa.gov.

Sincerely,

Tammy Fellin

Tammy Fellin
Legislative Director

Attachments

Appendix F: Prevailing Wage in Other States

States with State Prevailing Wage Laws

| State | Threshold Amount (Transportation Projects) | Federal Funded Project Prevailing Wage Requirements | State Basis for Determining Rates | Separate Highway Rate (categories excluding residential) |
|--------------|---|--|--|---|
| Alaska | \$25,000 | Federal rate | N/A | Single rate |
| California | \$25,000 construction ¹ \$15,000 alteration, demolition, repair or maintenance work | Higher rate | CBA Modal rate (Majority paid at a single rate or if no majority paid a single rate, then use the rate being paid to the greatest number of workers) May also consider federal rate US DOL rate (option by statute to survey) | Commercial Building Heavy Highway Dredging |
| Connecticut | \$400,000 new construction \$100,00 remodeling | Uses federal rate to determine state rate | US DOL rate (option by statute to survey) | US DOL rate |
| Delaware | \$100,000 new construction \$15,000 alteration, repair, renovation, rehabilitation, demolition, reconstruction | Higher rate | Annual survey and shall encourage the voluntary submission of wage data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. Employers in SIC codes identified by unemployment compensation records If majority paid at the same rate, that rate is prevailing wage, otherwise mean rate US DOL rate | Building Heavy Highway |
| Hawaii | \$2,000 | Higher rate | US DOL rate | Single rate |
| Illinois | None | Federal rate | Survey – try to do annually | Building Highway Floating Oil & Chip Rivers |
| Kentucky | \$250,000 | Uses federal rate to determine state rate | US DOL rate (can also conduct hearings) | US DOL rate |

¹ Threshold is \$1,000 unless an awarding body elects to initiate and enforce a labor compliance program that has been approved by the Director of the Department of Industrial Relations. Caltrans has done this and their projects have the threshold noted in the table.

| State | Threshold Amount (Transportation Projects) | Federal Funded Project Prevailing Wage Requirements | State Basis for Determining Rates | Separate Highway Rate (categories excluding residential) |
|---------------|--|--|--|--|
| Maine | \$50,000 | Federal – if more than 20% federal funding. Can use both rates on the same project (i.e. a bridge project had a federal component and a state sub-project – used different prevailing wage rates) | Annual survey of contractors (can impose fine of \$50 if not filed) – median wage Can consider CBA | Highway & Earthwork Heavy & Bridge |
| Maryland | \$500,000 | x | Annual surveys – contractors, contractor’s associations, labor organizations, public officials & other interest parties to submit data voluntarily | Building Highway |
| Massachusetts | None | Higher rate | CBA – but not less than amount paid municipal employees in the locality & not less than private | Single rate for construction |
| Michigan | None | Federal rate | CBA | Parking lot, road, highway, bridge & airport construction General |
| Minnesota | \$25,000 – more than one trade involved \$2,500 – single trade involved | Higher rate | Survey – of construction projects in the preceding 12 months with a total cost of \$25,000 or more | Highway/heavy Commercial |
| Missouri | None | Higher rate | Annual survey – of commercial contractors | Building Heavy |
| Montana | \$25,000 | Federal rate | New law 2013 – for highway and heavy rates (HB0464 Laws of 2013) a) conduct a survey of construction contractors registered for heavy construction services or highway construction services, electrical and plumbing contractors who perform commercial work or b) Adopt federal rates or c) A combination | Building Heavy Highway Non-construction |
| Nebraska | None | N/A | No state rate | N/A |
| Nevada | \$100,000 | Higher rate | Annual survey of contractors who do work in a county | Single rate |
| New Jersey | \$2,000 - construction \$50,000 – aggregate cost for maintenance & repair | Higher rate | CBA – for a particular craft or trade in the locality | Single rate |

| State | Threshold Amount (Transportation Projects) | Federal Funded Project Prevailing Wage Requirements | State Basis for Determining Rates | Separate Highway Rate (categories excluding residential) |
|--------------|--|---|---|--|
| New Mexico | \$60,000 | Higher rate | CBA Others with workers not subject to CBA can submit additional data Can consider survey data | Street, highway, utility, light engineering General building Heavy |
| New York | None | Federal rate | CBA – with private sector employers provided those employers employ at least 30% of workers in the same trade or occupation in the locality CBA | Building Heavy & highway |
| Ohio | For work related to bridge and road construction \$78,258 – new construction \$23,447 – remodeling Thresholds adjusted with inflation | Higher rate | CBA | Single rate |
| Oregon | \$50,000 | Federal rate | Most rates reflect CBAs (Oregon Prevailing Wage Booklet July 2013) Annual construction industry wage survey of occupations and crafts performing commercial building and heavy and highway construction in 14 geographic regions of the state May consider CBA, federal rates, other independent wage surveys Oregon goal – move closer to federal rates Many occupations use CBA rates | Single rate |
| Pennsylvania | \$25,000 | Uses federal rate to determine state rate | CBA May also consider information from federal agencies, workforce availability & certified statements of previous wages paid on public projects in the locality, survey if insufficient information | Heavy & highway laborers Heavy & highway operators Building operators Truck drivers & painters – heavy, highway, & building |
| Rhode Island | \$1,000 | Higher rate | US DOL rate | US DOL rate |
| Tennessee | \$50,000 (on highway construction projects only) | Higher rate | Annual survey of highway contractors | Building Highway |
| Texas | None | Uses federal rate to determine state rate | US DOL rate (option by statute to survey) | US DOL rate |

| State | Threshold Amount (Transportation Projects) | Federal Funded Project Prevailing Wage Requirements | State Basis for Determining Rates | Separate Highway Rate (categories excluding residential) |
|---------------|--|---|---|--|
| Vermont | \$100,000 | Higher rate | Annual Based on Occupational and Wage Survey – based on wage earners covered by unemployment insurance | Single rate |
| Washington | None | Higher rate | Survey – every 3 years – average wage in largest city in the county CBA – receive copies – used in semi-annual update | Single rate |
| West Virginia | None | Higher rate | Annual by locality CBA – may obtain & consider | Building & construction Heavy & highway |
| Wisconsin | None | Federal rate | Annual survey of employers <ul style="list-style-type: none"> • Wage paid to majority of workers by area • If no wage is a majority – then average of the highest 51% of workers Future contractual increases – CBA where the CBA rates equals the prevailing wage | Airport pavement & state highway Building & heavy |
| Wyoming | \$25,000 | Federal rate | Annual survey For Heavy and Highway Construction rates shall be sent to employers and employee organizations engaged in construction, reconstruction, improvement, enlargement, alteration or repair of major heavy and/or highway projects <ol style="list-style-type: none"> 1) Average – 50% or more have same salary 2) Significant minority – two with 30% or more with same salary – weighted average of those two 3) Weighted average – where not two with 30% with same salary – weighted average of all 4) Moving average – CBA inflation adjustments | Building & construction Heavy & highway |

States without Prevailing Wage Laws that Apply to State Funded Transportation Projects

| State | Repealed or Invalidated by Court Decision |
|--|--|
| States Without Prevailing Wage Laws | |
| Alabama | Repealed - 1980 |
| Arizona | Invalidated - 1980 & repealed - 1984 |
| Colorado | Repealed - 1985 |
| Florida | Repealed - 1979 |
| Georgia | |
| Idaho | Repealed - 1985 |
| Iowa | |
| Kansas | Repealed - 1987 |
| Louisiana | Repealed - 1988 |
| Mississippi | |
| New Hampshire | Repealed - 1985 |
| North Carolina | |
| North Dakota | |
| Oklahoma | Invalidated - 1995 |
| South Carolina | |
| South Dakota | |
| Utah | Repealed - 1981 |
| Virginia | |
| States with Prevailing Wage Laws – Exempt State Transportation Projects | |
| Arkansas | Exempts highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department |
| Indiana | The Common Construction Wage Act does not apply to contracts let (awarded) by the Indiana Dept. of Transportation for the construction of highways, streets, and bridges. (IC 5-16-7-1(g)) |

Appendix G: Environmental Review & Permitting Streamlining Efforts

RESULTS

WHAT

WHEN

