The Complex Worlds of New York Prevailing Wage

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CURE identifies, shares, and advocates solutions for a rapidly urbanizing world. CURE redefines sustainability as dense, mixed-income, mixed-use, transit-based urban development. From climate change and energy dependence to the socioeconomic and political upheaval they engender, CURE addresses emerging and current global issues through the lens of urbanization.

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Executive Summary

As Americans—but especially New Yorkers—worry about a stalled economy and crumbling infrastructure, it is appropriate to examine the regulatory burdens government imposes upon itself, and thus upon the public. A wide range of environmental, labor, and procurement rules increase the price and slow the delivery of essential government projects and services without providing any discernible increase in their quality. Prevailing wage legislation—which intends to mandate the payment of typical private-sector wages and benefits on contracts for public construction and building services—is such a case.

Proponents argue that New York State’s prevailing wage law should encompass all projects, buildings, and construction sites that have any government participation. Opponents argue that further extension of prevailing wage will prove destructive economically by driving labor costs up to unsustainable levels, reducing the creation of new jobs, discouraging capital investment, and lowering tax revenues. Moreover, with prevailing wage rates generally far higher than local average rates—as much as twice as high, before counting fringe benefits that can add another 70 percent on top—the public dollar buys fewer actual projects delivered under these regulations.

Over the last five years, New York has experienced significant policy debate over extending its prevailing wage regulations from projects clearly defined and understood as public work to government-regulated projects, such as utility infrastructure, and various government-subsidized projects, such as affordable housing and business improvement districts.

This study looks at the questionable validity of New York’s prevailing wage methodology.
Recommendations for New York

- Under Governor Andrew Cuomo’s NY Works capital plan, 45 agencies and authorities will spend some $16 billion annually rebuilding New York’s infrastructure. **Of that, some $6 billion will be spent on labor, much of it at artificially high prevailing wages,** misallocating some $2-3 Billion which could productively be used to employ more workers and rebuild more infrastructure. These billions would be more equitably spent hiring additional workers, which would result in getting more projects moving and far more of New York rebuilt.

- Under state law, a union contract that covers at least 30 percent of the workers in the designated trade and locality becomes the basis for the labor department’s calculation of prevailing wages for public construction. Yet the reality of this 30 percent threshold is open to question. For one thing, **unions now represent only 24 percent of New York State’s work force.** In the New York City metropolitan area, the 30 percent threshold for collective bargaining coverage was last met in 2002—a decade ago. Government officials have not undertaken a serious effort to understand where and for which trades the 30 percent threshold is and is not being met—but it is surely going unmet in many cases.

- **New York is unique in requiring the use of collective bargaining agreements to establish rates, while also imposing a threshold for that use.** Both should be rethought.

- The use of collective bargaining agreements that may overlap or conflict—and that are not available for public inspection—should be reconsidered. **When the 30 percent threshold is not met, an entirely new system—uncontrolled by union agreements—will need to be constructed.** Where the 30 percent threshold is met, collective bargaining agreements should be fully accessible to the public, since they are the basis not only for government spending, but also for the regulatory apparatus binding all participating developers and contractors.

- Where the 30 percent threshold is not being met, New York law calls for rates to be based on “the average wage” for that trade and locality. **The most straightforward, transparent, and efficient approach to accomplish this would be to employ US Bureau of Labor Statistics (BLS) mean wages with a conventional fringe-benefit rate in the range of 25-40 percent.**

- **Because prevailing wage mandates add 25-30 percent to the cost of development, they should not be extended to currently uncovered sectors,** such as affordable housing, which is not public construction and which already faces soaring costs and a shortage of financing, or industrial development agencies (IDAs). Unlike private-sector developers, affordable housing developers cannot simply raise rents to cover increased costs from prevailing wage mandates. Higher rents can make a project ineligible for subsidies from federal and state programs. As the Citizens Housing & Planning Council (CHPC) demonstrated in a 2008 report, raising the costs of affordable housing will simply produce less housing. **IDAs, which use public financing but not public funding, are private entities that do not fall under the law’s jurisdiction.**

- Nor should prevailing wage mandates be extended to utilities, which already charge some of the highest rates in the nation, or business improvement districts, which are largely financed by the private sector.

- Now is also the time to reexamine the impact of prevailing wage on currently covered sectors. As the State of New York strives to rebuild its decaying infrastructure, it finds itself repeatedly stymied by high costs. **Prevailing wage should be reexamined within the context of all the factors impeding capital rebuilding, including regulatory barriers, environmental reviews, financing restrictions, and costs of materials.**
New York and Beyond

- Mean and median wage data collected and published by government labor statistics groups, notably the BLS, reflect local market rates far more accurately than do wage rates issued by government labor wage groups, including the US Department of Labor Wage & Hour Division (WHD) and the NYS Department of Labor Bureau of Public Work. The duplication of effort between different divisions of governmental departments is confusing as well as wasteful. Labor departments should use one reliable set of data to set prevailing wage rates.

- Mean and median wage data collected by state labor departments track closely to the data published by BLS. Either BLS should collect and publish the data, or the states should, following BLS standards and methodologies. The duplication of effort between authorized research groups at different governmental levels is bewildering and inefficient.

- Full national reform of prevailing wage should require use of BLS data to set hourly wages. A conventional fringe-benefit rate in the range of 25-40 percent—following standard practices for health insurance, retirement allowance, vacation, holiday pay, etc.—needs to be developed and implemented. Transition from WHD to BLS would yield significant savings in federal and state agency resources, simplify administration and reporting for agencies and contractors, lower contracting costs for public construction, and vastly improve transparency of prevailing wage policy, rate-setting, and implementation.
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1. Introduction

As Americans—and New Yorkers in particular—worry about a stalled economy and crumbling infrastructure, it is appropriate to examine the regulatory burdens government imposes upon itself, and thus upon the public. A wide range of environmental, labor, and procurement rules increase the price and slow the delivery of essential government projects and services without providing any discernible increase in their quality. Each set of rules has its own heritage, constituency, and cost. Prevailing wage legislation—which intends to mandate the payment of typical private-sector wages and benefits on contracts for public construction and building services—is such a case.

While the first federal prevailing wage laws were passed by Congress shortly after the Civil War, the mother legislation that has influenced laws across the country is the Davis-Bacon Act of 1931. Written and enacted at the beginning of the Great Depression, Davis-Bacon’s intent was to stabilize wage rates in federally financed construction projects, preventing the downward push on labor rates that might otherwise occur. Davis-Bacon requires U.S. and District of Columbia contracts for construction, alteration, or repair of public buildings or public works to state the minimum wages to be paid to various classes of laborers on a project. Approximately 60 “related Acts” have extended prevailing wage requirements to transportation, housing, environmental, and other projects that receive federal grants, loans, loan guarantees, or insurance. Of the 50 states, 32 have their own prevailing wage laws, as do many large cities throughout the country.  

1 Davis-Bacon Act of 1931, 29 U.S.C. 201 et. seq.  
New York State has had a prevailing wage law since 1894, and its constitution has required payment of prevailing wages for public work since 1938.\(^3\) The law currently covers contracts for construction and repair of public works and public buildings and certain building services. As a specially designated jurisdiction with a municipal population exceeding one million, New York City imposes its local prevailing wage on some additional categories, such as utility work requiring a city permit.\(^4\) In addition, since 1894—predating municipal collective bargaining by some 60 years—state law has allowed the comptroller to set wages for the city’s direct employees in certain job titles that are not “graded.” These are mainly laborer and mechanical trades similar to those covered by prevailing wage law for public work contracts, and city comptrollers have traditionally set wages in the same manner both for these trades and for public work contracts. In April 2012, Mayor Bloomberg issued an executive order moving these titles into the same category as other municipal employees—affecting some 10,000—with the intent of grading those titles. Most other counties and cities around the state had already taken steps to move exempted titles back into collective bargaining.\(^5\) Labor unions sued the administration over the executive order, and won a temporary restraining order on May 4, 2012.

Nonetheless, neither state nor city prevailing wage law covers the entire universe of governmentally supported and financed construction projects—and there lies the controversies of the last few years.

Its proponents argue that New York State’s prevailing wage law should encompass all projects, buildings, and construction sites that have any government participation.\(^6\) Opponents counter that further extension of prevailing wage will prove destructive economically by driving labor costs up to unsustainable levels, reducing the creation of new jobs, barring new entrants, discouraging capital investment, and lowering tax revenues.\(^7\) Moreover, with prevailing wage rates generally far higher than local average rates—as much as twice as high, before counting fringe benefits that can add another 70 percent on top—the public dollar buys fewer actual projects delivered under these regulations.\(^8\)

Over the last five years, New York State has experienced significant policy debate over extending its prevailing wage regulations from projects clearly defined and understood as public work to government-regulated projects, such as utility infrastructure, various government-subsidized projects, such as affordable housing, and quasi-government entities, such as business improvement districts. As Governor Andrew Cuomo’s $16 billion NY Works capital plan moves forward to rebuild the state’s infrastructure, this debate is likely to intensify. About half of the roughly $6 billion that funds labor costs will go to artificially high prevailing wage rates that are substantially above market.

To compete successfully for prevailing wage work, which is highly and precisely regulated, contractors must be sufficiently large and sophisticated to respond to government requests for proposals and bids. They need to be able to purchase large insurance policies and completion bonds, and to report regularly to the contracting agency their compliance with a range of contractual requirements from Minority/Women-owned Business Enterprise (M/WBE) subcontracting to prevailing wage—in addition to technical submittals. Although general contractors are responsible for the compliance of all their subcontractors, major contractors generally hire subcontractors who specialize in government work, and are staffed to handle the extensive administrative requirements of public bidding and contracting. In addition, most contractors and subcontractors large enough to work regularly on government projects are familiar with the work rules and fine-grained trade classifications that come with employing a fully unionized workforce.

The affordable housing industry, by contrast, is mainly composed of smaller firms lacking experience in prevailing wage contracting—and therefore the administrative infrastructure to comply with its requirements. They tend to hire from the local community, training their largely nonunion employees to perform a variety of tasks that are not defined by specialized trade classifications and detailed work rules.

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3 Chapter 622 amendment to New York’s Eight Hour Law (Chapter 385); New York Constitution Article 1 § 17; New York State Department of Labor, Bureau of Public Work.
4 New York City Administrative Code § 19-142.
5 Francis Barry, interview, April 17, 2012.
7 George C. Leef, Prevailing Wage Laws: Public Interest or Special Interest Legislation, 30 CATO JOURNAL 137 (Winter 2010).
8 See Table 2 below.
2. Prevailing Wage Across the States

At first glance, prevailing wage seems to be a permanent fixture of the American political realm. The majority of states—32 plus the District of Columbia—have prevailing wage laws, while 18 do not. Between 1979 and 1988, an economically problematic period, 9 states repealed their laws. Many scholars and analysts have attempted to determine what difference, if any, prevailing wage laws make to a state’s economy and productivity. No study, however, has been conclusive, in part because prevailing wage operates within an immensely complex and diverse economic universe.

Of the states that repealed their prevailing wage laws in the last few decades—Alabama, Arizona, Colorado, Florida, Idaho, Kansas, Louisiana, New Hampshire, and Utah—seven are right-to-work states. Prevailing wage opponents point out that fast-growing states like North Carolina, Virginia, and Arizona do not have prevailing wage laws.\(^9\)

Yet even this division is multifaceted. Florida, for example, which was the first state to repeal prevailing wage in 1979—over the veto of its governor—nonetheless saw cities and counties then pass their own prevailing wage legislation. The repeal of Alabama’s law in 1980 made the South—from Virginia to Mississippi except for Tennessee—almost solidly non-prevailing wage. In 1984, Arizonans voted, by ballot initiative, to preclude cities and counties from implementing local prevailing wage statutes. The Idaho legislature repealed its prevailing wage requirement in 1985, along with legislation mandating overtime pay for more than eight hours of work. After a series of governor vetoes, the Colorado legislature repealed its prevailing wage mandate in 1985—only to see Pueblo and other towns establish local prevailing wage programs. After a school construction cost scandal, the New Hampshire legislature repealed in 1985, without the signature of Governor John Sununu. In 1987, the first state to have passed a prevailing wage law—Kansas—repealed, followed by Louisiana in 1988.

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In other words, the world of prevailing wage is confusing, diverse and volatile. What is more, nearly every state with prevailing wage legislation experiences contentious debate every legislative session along with proposals for expansion or retraction. Labor unions tend to be the strongest proponents of extending prevailing wage into new territory, while economic development groups are the most active opponents. As Kent Gardner, President and Chief Economist at the Center for Governmental Research, summarizes, “In every legislative session prevailing wage is at the top of the minds of both organized labor and the economic development community—although on opposite sides. The potential gain or loss to each side is large, and thus significant.”

In New York State, the debates over extending prevailing wage have tended to focus on four sectors—affordable housing, industrial development, utilities, and building-service workers.

Prevailing wage’s simple concept—the hourly wage plus benefits paid to the majority of workers within a defined area—can become difficult and murky in its execution. For one thing, government often determines that the “prevailing” rate for a given job is the same as the union rate—even though union wages and benefits are nearly always substantially above market and, indeed, tend to be the highest in any given jurisdiction.

Those who support prevailing wage requirements assert that they are a just means of ensuring fair pay for arduous work, leveraging public investment to sustain rather than undermine local labor markets. Opponents contend that they artificially and rigidly drive up the costs of construction, preventing many crucial projects—including essential infrastructure—from being built. They object to imposing these additional costs on public agencies (and thus taxpayers), who are not party to the privately negotiated contracts between labor unions and employer groups. Despite the commonness of prevailing wage legislation, these arguments remain unresolved.

Prevailing wage and the viability of affordable housing

In most states, including New York, fields like affordable housing (as opposed to public housing) have been exempt, largely because they do not fall under the definition of public works projects. In Vulcan Affordable Housing Corporation v. Hartnett, the New York State Supreme Court ruled that the targeted affordable housing project was not a public work because it involved “no public use of the structure, no public ownership, no public access, and no public enjoyment.” That decision has stood since 1989.

Prevailing wage had not been an issue for New York State’s affordable housing industry until recently, partly because construction unions have directed their efforts to commercial and residential development in Manhattan—sectors that are far more organized and concentrated than the highly decentralized affordable housing industry. For a variety of reasons, including exceptionally high union wages and benefits along with complex and inefficient work rules, New York City’s high-rise construction costs are the most expensive in the country. New York’s affordable housing industry, which has successfully contained costs, would face a jump of 25 percent in total development costs were prevailing wage requirements to be imposed, concluded a 2008 study by the Citizens Housing & Planning Council (CHPC).

To cover the cost increase, government subsidies would have to double (which is unlikely to happen), or production costs would have to be cut by 50 percent.

To demonstrate prevailing wage’s impact on affordability, CHPC used the example of a New York City project with a per-unit cost of $250,000. Amortizing the additional $62,500 per unit that would result from prevailing wage would add about $400 per unit per month—requiring another $400 per month in rent to support the increased debt. For the apartment to be “affordable”—costing no more than 30 percent of gross income—the new rent would require another $16,000 in annual income. A low-income family making $35,000 per year that could have afforded an apartment at $875 per month could not afford the new cost of $1,275 per month. The apartment instead would have to go to a family making at least $51,000 annually. To keep the apartment affordable to a low-income family, city subsidies would need to cover the additional $62,000 construction cost attributable to prevailing wage—more than doubling the public subsidy from the usual $40,000-$60,000.
Imposing prevailing wages on affordable housing, CHPC concluded, would increase the cost of labor substantially, without improving construction quality, while making it even more difficult for small and minority-owned subcontractors to compete with larger, established firms to build affordable housing projects. CHPC’s main conclusion was that imposing prevailing wages on the affordable housing industry would reduce both the supply and the affordability of subsidized housing.

According to a forthcoming study by Hamilton, Rabinowitz & Alschuler Advisors (HR&A), New York State’s affordable housing industry has combined $1.3 billion in public funding with $1.5 billion leveraged in private funding to produce or preserve 18,500 units. Based on CHPC’s findings, that $1.3 billion would need to double to cover prevailing wage.

A similar set of conclusions was reached by one of the very few econometric studies ever done of the effects of prevailing wage requirements on the cost of low-income housing. In a 2005 analysis of 205 subsidized housing projects across California (including a control group of 30 projects not subject to prevailing wage), economists Sarah Dunn, John Quigley, and Larry Rosenthal concluded that prevailing wage laws raised the costs of low-income residential projects by 19-37 percent. This is a significant finding in itself. More important, the California situation in October 2001—when after heated debate the legislature voted to extend prevailing wage to affordable housing—closely parallels the contemporary debate in New York State. Passed in 1931, the same year as Davis-Bacon itself, the California law has long been regarded as one of the most stringent in the nation, going far beyond federal law to cover demolition work, site and sewer construction, and even janitorial and hauling jobs. In 2001, coverage was extended to all subsidized housing construction using federal, state, or local funding of any kind.

In California, as in current debates in New York State, proponents of prevailing wage argued that a beneficial outcome would be increased productivity on the part of construction workers. Dunn, et. al, concluded that this simply did not happen. Instead, their results indicate that higher wage costs outweighed any unmeasured productivity gain in these housing projects. Nonetheless, the assertion that prevailing wage induces higher productivity has become a standard part of political maneuvering, though no methodologically sound study in New York State has proved this to be the case.

In effect, prevailing wage is an income transfer program, shifting income from taxpayers to workers while increasing the costs of housing, much of which will no longer be available to low-income households.

Industrial Development Agencies

Each year since 2008 the state legislature has considered extending prevailing wage requirements for projects financed by industrial development agencies (IDAs) either through revenue bonds or tax abatements. As public authorities, IDAs are not subject to prevailing wage requirements for the private construction projects they finance through tax-exempt revenue bonds—though they do pay prevailing wage for their own construction.

In an extensive study of wage rates and construction costs undertaken for the New York State Economic Development Council, the Center for Governmental Research (CGR) concluded that construction labor costs

14 The problem of racial discrimination in construction has plagued Davis-Bacon from its earliest days, when at least one motivation behind the federal law was to prevent low-wage black workers from Alabama replacing high-wage white workers on Long Island. Yet no thorough, scholarly study has been produced on this subject. The closest is probably Armand J. Thieblot’s 1999 “Prevailing Wage Laws and Black Employment in the Construction Industry,” which analyzed the 1990 Census of Population, concluding that repeal of prevailing wage laws would most likely lead to higher black employment. This was challenged by Dale Belman, “Prevailing Wage Laws, Unions, and Minority Employment in Construction,” The Economics of Prevailing Wage Laws (2005), whose research found “no relationship between prevailing wage statutes and the racial composition of the construction labor force.”
18 See footnote 16, Dunn, et. al, at 19.
upstate would be 57 percent higher were prevailing wages imposed on IDA private construction, and 154 percent higher downstate, than in comparable metropolitan areas in competitor states. These discrepancies would result in prototype total project costs of 28 percent higher upstate, and 76 percent higher downstate. On average, CGR estimated that mandating prevailing wage would increase the total cost of a typical urban construction project in New York State by 36 percent—broken down to 23 percent upstate and 52 percent downstate. CGR’s overall conclusion was that, “Any project subject to prevailing wage rates might well result in foregone or scaled-back levels of investment.”

CGR’s projections were backed up by the actual experience of IDAs. The Ulster County IDA, for example, had scrapped its self-imposed prevailing wage policy in 2009, noting that it had been unable to close a single deal under prevailing wage. “The added costs would have made the projects noncompetitive,” said Ulster County IDA chairman David O’Halloran.

Utilities and Business Improvement Districts (BIDs)

In 2010 Governor David Paterson vetoed a pair of bills that would have required any utility supplying electric, gas, or steam to pay prevailing wage for contracted building service workers. The vetoed bills would also have covered contracted building service workers at BIDs, which would have affected the more than 60 BIDs operating in New York City as well as others in the rest of the state.

Albany legislators have reintroduced versions of the vetoed bills. Con Edison argues that the legislation would be destructive of the small minority- and women-owned companies with which they now contract. They would not be able to compete at mandated higher wages. Further, the higher wages would change Con Edison’s calculations about efficient hiring, almost surely encouraging it to redeploy its own employees rather than contracting out the work.

Utilities in New York City already pay prevailing wage on municipal projects, defined as any work that requires a city permit. When a utility does work on its own property without having to pull a permit, it is not bound by prevailing wage. Legislation has been proposed every year since 1999, including this year, to expand these requirements to utility work throughout New York State—whenever a street-opening permit is needed from any county or municipality or from the state itself. A wide array of municipalities and business organizations joined forces to oppose the bill.

In 2010, National Grid noted that these two proposed expansions of prevailing wage would add over $30 million a year to its costs, layered on top of more than $160 million that its customers had been forced to pay in increased utility bills arising from other mandates imposed the previous year. Con Edison—including its Orange and Rockland subsidiary—said the expansions would cost $21 million annually. Thus, while these proposed expansions of prevailing wage would not increase burdens on taxpayers, they would increase the costs to ratepayers—still, essentially the public at large.

19 Kent Gardner and Rochelle Ruffer, Prevailing Wage in New York State: The Impact on Project Cost and Competitiveness, Center for Governmental Research (Rochester, New York) (January 2008). CGR compared the impact of prevailing wage requirements in seven jurisdictions in New York State (Albany, Buffalo, Long Island, New York City, Poughkeepsie, Rochester, and Syracuse) with seven jurisdictions around the country (Tampa, Indianapolis, Raleigh, Cleveland, Providence, Scranton, and Austin).
20 Id at 7. CGR concluded that a prevailing wage requirement would cause the cost of a typical small project in New York City to balloon 48 percent from $12.4 million to $18.4 million.
22 Interview with Con Edison officials, March 2, 2012.
Prevailing wage for service workers in buildings and projects that receive government financing or operational support

New York’s labor law has long required payment of prevailing wages by firms holding contracts with an agency or political subdivision of the state for provision of building services, including maintenance or security. New York State’s largest private-sector union and the country’s largest property services union, SEIU 32BJ, which represents building-service workers, has lobbied for years to extend this requirement to office cleaners, janitors, residential building workers, and security officers in buildings that the government subsidizes or where it leases space—as well as to building services contracted by utilities and BIDs. The former chair of the New York City BID Association, which lobbied against the 2010 bill, says that it would have superseded the current system by which BIDs hire social-service linked organizations, such as the Doe Fund or Atlantic Maintenance, to handle sanitation at slightly above minimum wage.

In March 2012, the New York City Council passed a measure to require building owners to pay prevailing wage to service workers in buildings that the city subsidizes or where it leases space. Calling it “terrible legislation,” Mayor Bloomberg said he would exercise his veto, which he did on April 25, saying, “Having a city employee, like the Comptroller, tell the private sector what to pay—rather than letting the market tell businesses what is fair and equitable—will lead to all kinds of market distortions that cost taxpayers money.” City Council Speaker Christine Quinn predicted the council would override, which the council indeed did by a vote of 44 to 4 on May 15.

Private construction with tax abatements

Proposals to extend prevailing wage requirements to employees working on the construction of projects with 421-a tax abatements have been repeatedly proposed, but never enacted into law. Originally enacted in 1971, when New York was seeing very little development, 421-a was intended to spur new construction by using a property’s value before construction to calculate taxes—usually for 10 years, but as long as 25 years in empowerment zones, such as Harlem. Repeatedly modified and restricted geographically over the years, 421-a actually expired in December 2010 amid multiple controversies. One of the most contentious was the push to require the payment of prevailing wage to construction workers building 421-a projects of 80 units or more, even though these are non-public. In June 2011, 421-a was extended, without any prevailing wage requirement, through June 2015.

23 New York State Labor Law, Article 9 § 230.
3. How Prevailing Wage Works: A World of Redundancy and Duplication

Regulations and administrative implementation of prevailing wage vary from jurisdiction to jurisdiction. The U.S. government and most states with their own prevailing wage law rely on surveys—mainly of large employers and labor unions—to set wage rates.

Federal determinations are made by the US Department of Labor’s Wage & Hour Division (WHD), while yet another branch of US DoL, the well-regarded Bureau of Labor Statistics (BLS), separately collects and calculates employment and wage data throughout the nation for all industries, including construction.

Using multiple data sources including the National Compensation Survey, Occupational Employment Statistics Survey, and the Current Population Survey, BLS publishes wage data by occupation for each state and for hundreds of additional geographical divisions, including approximately 80 metropolitan areas and 170 nonmetropolitan areas. BLS funds and provides technical support for states collecting employment statistics, including the Occupational Employment Statistics survey and the Quarterly Census of Employment & Wages performed by the New York State Department of Labor’s Division of Research & Statistics. Governmental research groups such as Research & Statistics and BLS publish extensive notes on methodologies used for collecting, calculating, and validating data. BLS surveys encompass virtually the entire labor force, using sophisticated instruments targeted for different purposes. But BLS does not set the wage rates for any jurisdiction.

Charged with setting rates for Davis-Bacon, WHD has no way to ensure that self-selected participation in its voluntary surveys will yield a representative cross-section of the construction industry—and indeed it does not.
WHD and its state-level analogues do not examine and explain their methodologies in the manner of the BLS or the research arms of state labor departments.

Davis-Bacon does not require US DoL to set rates in this manner. Neither does Davis-Bacon preclude use of BLS data to set rates—although it does list a comprehensive set of fringe benefits expected to be included in prevailing wages. Instead, US DoL’s own agency regulations (Title 29 of the federal code) document the labor secretary’s delegation of responsibility for determining prevailing wage rates to the Deputy Under Secretary of Labor for Employment Standards and then, in turn, to the administrator of WHD.25

Of the 32 states that require prevailing wage on their public construction projects, five—Massachusetts, Michigan, New Jersey, New York, Ohio—explicitly stipulate collective bargaining agreements as the basis for setting rates. Other jurisdictions, including the federal government, consider collective bargaining agreements along with other factors. Yet the administering public agencies do not necessarily have access to the full text of collective bargaining agreements that they use to set rates.

While the states of Massachusetts, Michigan, New Jersey, and Ohio adopt collective bargaining agreements straightforwardly, New York requires that a union contract cover at least 30 percent of the workers in the designated trade and locality in order for the state labor department to use it to set prevailing wages. New York is unique in requiring the use of collective bargaining agreements to establish rates, while also imposing a threshold for that use.

This is of the utmost importance. New York State’s underlying assumption is that the will of the work force should trigger prevailing wage regulation—if 30 percent of workers sign a union contract, that contract’s provisions then become the basis of setting prevailing wage for all affected workers. But what should be the result if—as now seems to be happening—the 30 percent threshold is no longer met? According to New York State Labor Law, Article 8, Section 220, (5)(a), “the average wage paid to such workers, laborers or mechanics in the same trade or occupation in the locality for the twelve-month period preceding the fiscal officer’s annual determination shall be the prevailing rate of wage.” The exact meaning of this approach is very unclear—especially since fiscal officers (the labor commissioner for New York State, or the comptroller for New York City) have relied exclusively—and without challenge—on collective bargaining agreements to set rates since 1983.

Some states, including Connecticut and Texas, save themselves substantial staff time and expense by applying the federal rates to their own projects. The laws of others, including Pennsylvania, permit using a combination of factors to determine wage rates.

Labor departments use completed surveys, collective bargaining agreements, and other resource documents to establish highly detailed work classifications. Davis-Bacon, and most other systems as well, distinguish among four distinct categories: heavy, highway, building, and residential construction. For each of these four types of construction, seemingly uniform trades—carpenters, electricians, laborers, plumbers, etc.—are divided into multiple classifications that contain several levels of apprentices and helpers. Administering a structure this complex absorbs substantial agency resources and, for the private sector, compliance commands substantial contractor resources. The multiplicity of classifications (over 70 in New York, for example) reflects the trade heritage of unionized construction, but do not represent the practices of newer sectors of the industry, populated by smaller, community firms—such as those building affordable housing.

In recent years, contractors and subcontractors have turned increasingly to expert third-party consultants to handle the burdensome bureaucratic work of compliance—assigning classifications to workers and tasks, assembling payroll reports, ensuring adequate record retention. The fees for such consultant services routinely total as much as 5 percent of the project’s hard costs—money that is not only unproductive from the point of view of enhancing the project’s quality but also often not affordable by small contractors and developers.

25 Since the November 2009 elimination of the Employment Standards Administration (ESA), WHD has reported directly to the secretary of labor. The Office of the Assistant Secretary and the Office of Management, Administration and Planning (OMAP) were abolished, with administrative functions in OMAP transferred to WHD and three other programs previously under ESA.
The precise projects that are covered by prevailing wage vary by jurisdiction—and jurisdictions differ in their requirements for the frequency and content of payroll reporting. Prevailing wage rates include both an hourly wage and a fringe-benefit component. Employers must pay the fringe rate by contributing to qualified benefit funds, by direct cash payment to the worker, or by some combination of the two. Most jurisdictions identify wage and fringe separately, but the State of Washington, for example, publishes a single prevailing wage rate that encompasses both.

It is also important to remember that prevailing wage is far from universal—while 32 states have it, 18 do not. Of the 18, half—or 9—have repealed their prevailing wage statutes since 1979.

**Federal government**

Davis-Bacon requires all U.S. and District of Columbia contracts of at least $2,000 for construction, alteration, or repair of public buildings or public works to state the minimum wages to be paid to various classes of laborers and mechanics on the project.

The WHD conducts surveys every three years for each state to determine prevailing rates for wages and fringe benefits on a county-by-county basis. WHD notifies congressional representatives, governmental agencies (federal, state, local), contractor trade associations, and building trade unions at both the local and headquarters levels of upcoming surveys. Survey participation (completion and submission of the *Report of Construction Contractor's Wage Rates*) is encouraged, but not required by law. Because completing the survey requires significant administrative effort, most contractors and subcontractors do not participate. As a result, the data are far from complete, rendering at least some of the findings unreliable. This has long been known—but has simply been incorporated into the administrative culture of prevailing wage.

Davis-Bacon defines prevailing wages to include the basic hourly wage and a fringe rate consisting of the sum of what a contractor pays to third-party funds and the cost “that may be reasonably anticipated” for the contractor to provide for medical care, pension, workers compensation, unemployment benefits, life insurance, disability insurance, vacation and holiday pay, apprenticeship programs, and other benefits. Thus, the survey used by WHD to calculate prevailing wages identifies specific categories of fringe benefits—Health & Welfare, Pension (401K, etc.), Apprentice Training, Vacation & Holiday, Additional Fringe—which it totals to calculate the overall fringe rate, in addition to the hourly wage.

WHD deems the rate “prevailing” if it applies to more than 50 percent of workers in the designated trade classification working on similar projects in the designated locality. In the absence of a majority, WHD uses a weighted average of the wages paid. How WHD determines the absence of a majority is not entirely clear.

In setting rates, WHD may consider additional factors—statements of wages paid on other projects, signed collective bargaining agreements, rate determinations made by states and localities for their own prevailing-wage projects, and wage data from federal agencies for other Davis-Bacon projects—along with survey findings.

Employers on federal prevailing wage jobs must submit weekly payroll information to the contracting agency. Certified statements must include the name, address, and Social Security number of each employee; each employee’s work classifications; hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents; daily and weekly numbers of hours worked; deductions made; actual wages paid; and, if applicable, detailed information regarding fringe benefit programs and apprenticeship or trainee programs.

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27 In project areas where fringe benefits “do not prevail,” however, the Davis-Bacon wage determination consists of only the hourly wage, according to 29 C.F.R. § 5.30(b).
28 29 C.F.R. § 1.2(a)(1).
State of New York: Union Collective Bargaining Agreements Are the Basis of Prevailing Wage—Even though Union Membership Has Fallen Steadily

Article 8, Section 220 of New York State’s Labor Law requires that employers pay prevailing wages on all “public work” projects, regardless of the dollar value of the project. For a project to be public work, a public entity must be a party to a contract involving the employment of laborers, workers, or mechanics, and the project’s primary objective must be to benefit the public. The collective bargaining agreements used to determine the rates paid on these public projects are private contracts between labor unions and employers.

Unlike under Davis-Bacon, mere state government funding or financing does not bring with it a prevailing wage requirement. IDAs, for example, do not impose prevailing wage on the private construction projects they finance through tax-exempt revenue bonds.

The Bureau of Public Work in the New York State Department of Labor (NYS DoL) sets the rates for state projects and for localities throughout the state except for New York City, whose comptroller sets the rates on projects contracted by city agencies and the Metropolitan Transportation Authority’s New York City Transit subsidiary for public work within the five boroughs. NYS DoL sets the rates for state projects in the five boroughs and for MTA projects outside the city. Rates set by the City Comptroller and rates set by NYS DoL for New York City are generally the same.

The state labor law provides for a “public work advisory board” that New York’s labor commissioner may call into session to assist in determining the labor required (trades, classifications) to complete a particular project. The law identifies board members as two representatives of employers in the construction industry, two representatives of “employees therein,” and two representatives of the public. New York’s Public Work Advisory Board does not provide guidance on establishing rates, a responsibility that lies within the sole jurisdiction of the governor’s appointed commissioner of labor (or, for the five boroughs of New York City, the independently elected comptroller). According to the NYS DoL web site, the advisory board last met in March 2009.

For New York State, prevailing wages for covered trades are set according to “collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed.” The assumption that the local union wage is prevailing is reinforced by the definition of “locality” as the geographical area “described and defined for a trade or occupation in the current collective bargaining agreements.” This is often a county, but may also be a collection of counties or segments of counties. Most union locals in New York City cover the five boroughs, but some cover fewer than five, and others may range into counties outside the city—such as Nassau or Westchester.

New York’s 30 percent threshold is unique in prevailing wage law. The U.S. Labor Department defines “prevailing” as covering a majority of workers in a given trade and locality—which is in line with the plain English meaning of the word. Other states follow the federal lead, even if they do not explicitly define “majority” as more than 50 percent. All jurisdictions are vague in explaining how they determine that a particular wage is earned by a majority of workers. Ascertaining 30 percent coverage of any specific contract seems even more difficult to accomplish, especially for areas lying within geographical boundaries claimed by more than one union representing a given trade. A 1986 decision, however, by the New York State Supreme Court assigns the burden of proof to the challenger to an assumption that the 30 percent threshold is met for a particular trade in a particular locality.

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29 New York State Labor Law, Article 8 § 220, (3-b) and (3-d).
30 New York State Labor Law, Article 8 § 220, (5)(d).
31 In private correspondence, the Office of the City Comptroller confirms that “at the present time virtually all of the wage rates and benefits in our LL220 schedule are for the entire City of New York,” April 20, 2012.
32 Liquid Asphalt Distributors Assoc. v. Lillian Roberts, Commissioner of Labor of the State of New York. “In conjunction with abolishing respondent’s duty to survey, the 1983 amendments place the burden on employers who contest prevailing wage rates to show that, in fact.
Since then, DoL’s Director for the Bureau of Public Work has not handled a single challenge, and the longstanding practice of both NYS DoL and the New York City Comptroller is to assume as given that the 30 percent legal threshold has been met. This allows them to set rates—both hourly wages and fringe benefits—according to the applicable collective bargaining agreements. If the threshold were not met, the “average wage” paid for the same trade in the locality would determine the prevailing rate, which would often be significantly lower than the rate now set—in some cases, as much as 50 percent lower.33

Despite the lack of challenges, the data show that construction unions represent considerably less than 30 percent of the construction workforce throughout the state, as well as in most—and probably all—of the state’s various localities, including New York City. The Union Membership and Coverage Database, which provides private and public sector labor union membership, coverage, and density estimates using BLS methods, calculates that 23.7 percent of construction workers employed statewide in 2011 were union members, with 25.9 percent covered by a collective bargaining agreement.34 For the New York-Newark-Bridgeport metropolitan statistical area (MSA), union membership was 21.4 percent and coverage was 23.6 percent.

Since its inception in 1983, the database has tracked steady declines in all of these numbers. Unions represented nearly half of New York State construction workers in 1983. By 2003, union membership had fallen to 29.6 percent, and collective bargaining agreements covered a marginal 30.4 percent of construction workers. Beginning in 2004, the statewide membership and coverage percentages persistently stayed below 30 percent. The numbers for the New York-Newark-Bridgeport metropolitan statistical area have been below 30 percent since the database started tracking that MSA in 2005. The numbers for its predecessor MSA, New York-Northern NJ-Long Island, were below 30 percent in 2003 and 2004. In the New York City metropolitan area, the 30 percent threshold for collective bargaining coverage was last met in 2002—a decade ago. The difficulty in breaking down union membership by locality as defined by New York State Labor Law—that is, by the geographical coverage of each collective bargaining agreement—combined with the onus of proof laying with the challenger, may explain the lack of challenges to rates set by NYS DoL and City Comptroller.

With this decline in union membership, the union wage no longer represents—and perhaps never did represent—actual wages in New York’s localities, as demonstrated by the mean and median wages published by BLS and by NYS DoL Research & Statistics.

Fringe rates (known as “supplements” in New York State law) must encompass all non-cash compensation, “including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay, life insurance, and apprenticeship training,” that prevail in the locality.35 Both NYS DoL and the City Comptroller interpret the law’s instruction to determine the amount of each supplement “in the same manner and at the same times as the prevailing wage is determined” as requiring them to adopt benefit structures from the collective bargaining agreements.36

Both NYS DoL and the City Comptroller have access to the collective bargaining agreements they use to set prevailing wage rates. Both offices also confirm that they do “not include in our calculation items in the CBAs such as political action funds and union industry advancement funds that do not directly benefit workers.”37

(cont.)
Collective bargaining agreements often include adjustments to fringe rates for overtime worked or other factors, adding complexity to the determination and calculation of the rates. In addition, fringe rates in collective bargaining agreements generally include payments to cover union dues, the salaries and benefits for union officials, and public and political advocacy through industry advancement and market recovery funds—increasing the fringe to a far higher level than required to pay for the usual benefits of health care, pension, and vacation. Fringe rates for prevailing wage in the city and state of New York—as well as many other jurisdictions—can reach 70 percent or more of hourly wage rates. (See Table 2 for New York examples.) And while New York’s administering agencies claim to subtract the additional payments for public advocacy, the lack of transparency makes it impossible for outsiders to determine this with certainty—for the collective bargaining agreements unions provide to them for rate-setting, being contracts between private parties, are not generally available for public inspection.38

Employers on New York State prevailing wage jobs are required to submit payroll information to the contracting agency at least every 30 days. At a minimum, certified statements must include for each employee: name, address, last four digits of the Social Security number, work classifications and the daily and weekly hours worked in each of them, and hourly rates paid and supplements paid or provided.

State of New Jersey

New Jersey's Prevailing Wage Act applies to public works contracts awarded by the state, any political subdivision of the state (including public authorities), and regional school boards. For projects contracted by a municipality, the requirement is triggered at a total project dollar value of $14,187; for all other entities, the threshold is $2,000. “Public work” is defined as “construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body.”39 Prevailing wage requirements apply also to the work of laborers, craftsmen, and apprentices for construction, reconstruction, demolition, alteration, or repair work done on any property or premises—whether or not the work is paid from public funds—for substantial leases for public bodies.

In addition, contractors and subcontractors performing work on private-sector construction projects receiving financial assistance in the form of loans, loan guarantees, expenditures, investments, tax exemptions, or incentives from New Jersey authorities—NJ Economic Development Authority, NJ Redevelopment Authority (NJRA), NJ Housing and Mortgage Finance Agency (NJHMFA), Urban Enterprise Zone Authority (NJ Commerce, Economic Growth, and Tourism Commission), Casino Reinvestment Development Authority, NJ Educational Facilities Authority, NJ Health Care Facilities Financing Authority, county improvement authorities—must pay prevailing wage.

The Prevailing Wage Act empowers the Commissioner of Labor and Workforce Development (LWD) to issue rules and regulations to compute wage rates. The prevailing wage is defined as the wage paid in accordance with collective bargaining agreements covering “a majority of workers” of the designated trade in the designated locality.40 According to LWD’s Director of Wage & Hour Compliance, the agency surveys the industry to ascertain which collective bargaining agreement prevails in each area—that is, which covers the most workers. (Unlike federal regulations, New Jersey law does not explicitly equate “majority” with “more than 50 percent.”) Thus, according to the NJ LWD web site, wage rates are “based on the collective bargaining agreements established for a particular craft or trade in the locality” of the project in question. LWD solicits and receives full collective bargaining agreements from the union locals that are party to them. Wage determination in New Jersey does not involve employers at all. LWD collects all information and documentation from the affected union locals.

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38 Collective bargaining agreements of the prevailing wage unions “are available for inspection by appointment” in the city comptroller’s offices. Preamble to the Labor Law § 220 Prevailing Wage Schedule.
40 New Jersey State Acts, 34:11-56.26(9)
Employers on New Jersey prevailing wage jobs are required to submit payroll information to the contracting agency within ten days of payment of wages. Certified statements must include the name, address, and work classification of each employee; hourly rate of pay; actual daily, overtime and weekly hours worked; gross pay; itemized deductions; net pay; any fringe benefits paid to approved plans, funds or programs on behalf of the employee; and fringe benefits paid in cash.

State of Connecticut

Connecticut’s Prevailing Wage Law (Connecticut General Statutes Section 31-53) applies to contracts by the state or its agents, or by any political subdivision of the state for construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project. For new construction, the requirement is triggered at a total project dollar value of $400,000; for rehabilitation work, the threshold is $100,000. The existence of government funding does not bring with it a prevailing wage requirement.

Since a 1977 legislative change, the Commissioner of Labor may determine prevailing wage rates through a series of local hearings or simply adopt the rates set by the US Secretary of Labor under Davis-Bacon.\footnote{Previously, the commission had to use local hearings to set rates. According to Connecticut DoL’s Director of Wage & Workplace Standards, this practice “took a lot of [DoL] staff resources” and also “depressed the rates.”} In practice, Connecticut uses the federal rates. Connecticut DoL’s Director of Wage & Workplace Standards notes that following Davis-Bacon “typically comes out to union rates.”

Like the US DoL, Connecticut requires certified payroll information to be submitted weekly to the contracting agency. At a minimum, certified statements must include for each employee: name and address, occupation(s), hours worked, and rates paid.

Commonwealth of Pennsylvania

Pennsylvania’s Prevailing Wage Act applies to any public body entering a contract for construction, reconstruction, demolition, alteration or repair work (other than maintenance work) of public work, involving employment of laborers, mechanics, skilled and semi-skilled laborers and apprentices, when the estimated cost of the total project is at least $25,000.

The governor of Pennsylvania appoints six members of a seven-member board to advise the Secretary of Labor & Industry on the prevailing-wage law:

- representative of an association of general contractors engaged full-time in the building construction industry
- representative of an association of the heavy and highway construction industry
- member of an historically established union representing labor in the building construction industry
- member of an historically established union representing labor in the heavy and highway construction industry
- member of an association representing a political subdivision
- someone, not engaged in or employed by the building industry or by a public body, to represent the general public

The seventh member “shall be learned in the law and employed by the secretary.” Among its other duties, the board is available to consult with the secretary on determining the “prevailing minimum wage rate in the locality in which public work is to be performed for each craft or classification of all workmen needed to perform public work contracts.”

Pennsylvania’s Secretary of Labor & Industry may “ascertain and consider the wage rates and employee benefits established by collective bargaining agreements” in setting prevailing wage rates. The secretary may also consider other factors, including information from federal agencies, workforce availability, and “statements signed...
and certified by contractors and subcontractors and union representatives showing wage rates paid on projects, within the locality. In practice, Pennsylvania uses collective bargaining agreements to set the rates.

Like the US DoL, Pennsylvania requires certified payroll information to be submitted weekly to the contracting agency. At a minimum, certified statements must include for each employee: name, craft or classification, number of hours worked per day, actual hourly rate of wage paid, deductions, and employee benefits.

State of Maryland

Maryland’s Prevailing Wage Law (State Finance and Procurement Article, Annotated Code of Maryland—Sections 17-201 through 17-226) applies to any contract by a public body for public work, employing laborers or mechanics, with a value of at least $500,000 and with the state providing at least 50 percent of the funds for the construction. “Public body” includes the state, a unit of the state government or instrumentality of the state, or any political subdivision, agency, person, or entity with respect to the construction of any public work for which 50 percent or more of the money used for construction is state money. “Public work” specifically does not include work performed by a public service company under order of the Public Service Commission.

The Department of Labor, Licensing & Regulation’s Division of Labor & Industry has a six-member Advisory Council on Prevailing Wage Rates, appointed by the governor with the advice and consent of the state senate:

- two individuals from management in the building and construction industry
- two individuals from labor in the building and construction industry
- two individuals from the general public

Maryland regulations require its labor commissioner to “conduct ongoing surveys to obtain and compile wage rate information” and to “encourage contractors, contractors’ associations, labor organizations, public officials, and other interested parties to submit voluntarily” data on wage rates paid on various types of construction in localities throughout the state. Under the rate-setting regulations, the commissioner must consider payrolls and certified statements setting forth wage rates paid on other projects, signed collective bargaining agreements, and rates previously determined by federal and local officials pursuant to prevailing wage legislation.

Maryland relies exclusively on a voluntary survey, conducted between September 1 and October 31 each year, to set rates effective December 1. The survey reflects very high rates of participation, largely from “repeat customers,” according to the Prevailing Wage Unit’s administrator. The unit’s staff of four sends the survey to contractors from past prevailing wage projects, to unions, and to the merit-shop trade associations. Both unions and merit shop groups solicit their contractors to participate.

Despite its name, the Advisory Council on Prevailing Wage Rates has little to do with setting the rates. The council meets annually in April to accept a report from Labor & Industry on the previous year’s survey and to discuss any pending legislation affecting prevailing wage.

Employers on Maryland prevailing wage jobs are required to use US DoL Payroll Form WH-347 to submit payroll information to the contracting agency within fourteen days of the end of each payroll period.

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42 Regulations for Pennsylvania Prevailing Wage Act § 9.105.
43 In 2011, MD L&I sent out 6,000 forms by US mail and 4,000 electronically and received 7,866 submissions back. In 2010, the agency collected 9,188 completed surveys.
# Table 1

Nearly Every Aspect of Prevailing Wage Varies by Jurisdiction

<table>
<thead>
<tr>
<th>United States</th>
<th>New York</th>
<th>New Jersey</th>
<th>Connecticut</th>
<th>Pennsylvania</th>
<th>Maryland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevailing wage applies to</td>
<td>Construction, alteration, or repair of public buildings or public works involving various classes of laborers and mechanics. Also applies to transportation, housing, environmental, and other projects that receive federal grants, loans, loan guarantees, or insurance.</td>
<td>Public work with a public entity as party to a contract involving employment of laborers, workers or mechanics. To be “public work,” a project’s primary objective must be to benefit the public. Funding is not a factor. As public authorities, Industrial Development Authorities are subject to prevailing-wage requirements for their own construction, but not for private construction projects they finance through tax-exempt revenue bonds. Also applies to contractors and subcontractors performing work on private-sector construction projects receiving loans, loan guarantees, expenditures, investments, tax exemptions, or other incentives from New Jersey authorities.</td>
<td>Construction, reconstruction, demolition, alteration or repair work, or maintenance work, done under contract by laborers, craftsmen and apprentices and paid for in whole or in part with public funds, except work performed under a rehabilitation program. Also to similar work on property substantially leased for public bodies, whatever the source of contract funding.</td>
<td>Construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public work project by the state or its agents, or by any political subdivision of the state.</td>
<td>Contracts for public work, employing laborers or mechanics, when state funds are used to provide 50% or more of the funds for the construction. Does not apply to work whose construction is performed by a public service company under order of the Public Service Commission.</td>
</tr>
</tbody>
</table>
Table 1 (cont.)

<table>
<thead>
<tr>
<th>United States</th>
<th>New York</th>
<th>New Jersey</th>
<th>Connecticut</th>
<th>Pennsylvania</th>
<th>Maryland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis for determining rates</td>
<td>Triennial surveys by state, using the <em>Report of Construction Contractor’s Wage Rates</em>, with outreach to congressional representatives, governmental agencies (federal, state, local), contractor trade associations, and building trade unions.</td>
<td>Collective bargaining agreements between <em>bona fide</em> labor organizations and employers of the private sector, provided that those employers employ at least 30% of workers in the same trade or occupation in the locality where the work is being performed.</td>
<td>Collective bargaining agreements established for a particular craft or trade in the locality in which the public work is performed.</td>
<td>Either by a series of local hearings or by adopting the US DoL rate determinations.</td>
<td>Consideration of multiple factors, including wage rates and employee benefits established by collective bargaining agreements, information from federal agencies, workforce availability, and certified statements of previous wages paid on public projects in the locality.</td>
</tr>
</tbody>
</table>

Rates for wages and fringe benefits are determined by county.
# Table 1 (cont.)

<table>
<thead>
<tr>
<th></th>
<th>United States</th>
<th>New York</th>
<th>New Jersey</th>
<th>Connecticut</th>
<th>Pennsylvania</th>
<th>Maryland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project value minimum threshold</td>
<td>$2,000 contract</td>
<td>None</td>
<td>$14,187 for municipalities</td>
<td>$400,000 for new construction</td>
<td>$25,000</td>
<td>$500,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$2,000 for all other public entities, including municipal utility authorities and boards of education</td>
<td>$100,000 for rehabilitation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certified payroll information to be submitted to contracting agency by employer for each employee</td>
<td>Submission weekly</td>
<td>Submission every 30 days</td>
<td>Submission weekly</td>
<td>Submission weekly</td>
<td>Submission weekly</td>
<td>Submission every 14 days</td>
</tr>
<tr>
<td></td>
<td>US DoL Payroll Form WH-347</td>
<td>New York Weekly Payroll Form, optional for contractor’s use, meets all legal requirements</td>
<td>New Jersey Payroll Certification for Public Works Projects</td>
<td>Connecticut Payroll Certification for Public Works Projects</td>
<td>Name, craft or classification, number of hours worked per day and the actual hourly rate of wage paid, including employee benefits and deductions. Form available here.</td>
<td>US DoL Payroll Form WH-347</td>
</tr>
</tbody>
</table>
4. Wage Comparison by New York State Locality for Sample Construction Trades

As is the practice in most states, NYS DoL prevailing wage rates generally track fairly closely with federal Davis-Bacon rates for each locality. Whether state or federal, prevailing wages are usually higher—and sometimes far higher—than the average local wage.\[^{44}\] In all New York State localities charted below, federal and state prevailing hourly wages are consistently higher than their counterpart mean wages, collected and calculated by U.S. Department of Labor’s BLS, as of May 2010.

Just as the state prevailing wages mirror WHD rates, the annualized mean and median wages calculated by NYS DoL’s Division of Research & Statistics track fairly closely to the hourly wages published by BLS. BLS mean wages for construction trades by and large reflect wages current in the larger world of construction, including affordable housing and other mostly nonunionized subsectors of the industry.\[^{45}\] Moreover, BLS uses broader trade classifications (for example, “construction laborer” rather than six or more types of construction laborer). More efficient for contractors as well as more understandable to the public, this approach is also closer to the practice in affordable housing and other construction subsectors involving generally smaller projects.

Moreover, the charts do not tell the entire story. Prevailing wages include a fringe-benefit component, but mean and median wage data published by BLS do not.\[^{46}\] Table 2 shows the BLS mean wage, Davis-Bacon, and New York State prevailing wage (hourly rate, fringe rate, and total) for nine key localities in New York State: Albany, Buffalo, Long Island, New York City, Poughkeepsie, Rochester, Syracuse, and Southwest New York and Capital/Northern New York non-metro areas.\[^{47}\]

\[^{44}\] Exceptions to this general rule include, for example, Shreveport LA and Longview TX, where prevailing wage rates are lower than the local average wages for certain construction trades.

\[^{45}\] As do BLS median wages, which are generally slightly lower, but very similar to BLS mean wages. Some studies use the BLS median data. Others, such as this one, in attempting to identify local averages, use BLS mean data.

\[^{46}\] Davis-Bacon prevailing wage data are taken from WageDeterminationsOnLine.gov, used by federal contracting officers for official contract actions. July 2011 New York wage determination data are taken from wage schedules published by NYS DoL and the NYC Comptroller. NYS DoL updates the county-by-county schedules as of July 1 each year. For New York City, the comptroller also updates rate schedules as of July 1.

\[^{47}\] The New York City chart compares mean hourly wage with Davis-Bacon prevailing wage and New York City prevailing wage, set by the
Table 2

Throughout New York State, Davis-Bacon prevailing wages and local prevailing wages are consistently higher than BLS mean hourly wages—even before fringe benefits are considered.

<table>
<thead>
<tr>
<th>Locality</th>
<th>Trade</th>
<th>BLS mean wage</th>
<th>Davis-Bacon</th>
<th>NYS PW</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Albany County</td>
<td>Albany County</td>
</tr>
<tr>
<td>Albany</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Electrician</td>
<td>$24.26</td>
<td>W: $32.50 F: $3%+18.07 T: $51.55 06/01/2011</td>
<td>W: $32.50 F: $3%+18.07 T: $51.55</td>
</tr>
<tr>
<td></td>
<td>unskilled</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buffalo</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plumber</td>
<td>$24.59</td>
<td>W: $30.88 F: $18.66 T: $49.54 05/01/2011</td>
<td>W: $30.88 F: $18.76 T: $49.64</td>
</tr>
<tr>
<td></td>
<td>unskilled</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(cont.) Comptroller of the City of New York.
Table 2 (cont.)

<table>
<thead>
<tr>
<th>Locality</th>
<th>Trade</th>
<th>BLS mean wage</th>
<th>Davis-Bacon</th>
<th>NYS PW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Island</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Electrician</td>
<td>$31.34</td>
<td>W: $34.76, F: 16%+$10.54, T: $50.86, 04/30/2011</td>
<td>W: $38.45, F: 12%+$15.20, T: $58.26</td>
</tr>
<tr>
<td>New York City</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plumber</td>
<td>$29.57</td>
<td>W: $51.11, F: $22.53, T: $73.64, 07/01/2011</td>
<td>W: $51.11, F: $36.84, T: $87.95</td>
</tr>
<tr>
<td></td>
<td>Electrician</td>
<td>$36.78</td>
<td>W: $49.00, F: $38.97, T: $87.97, 05/12/2010</td>
<td>W: $49.00, F: $40.16, T: $89.16</td>
</tr>
<tr>
<td></td>
<td>Carpenter - building</td>
<td>$28.54</td>
<td>W: $43.02, F: $35.96, T: $78.98, 07/01/2008</td>
<td>W: $46.15, F: $38.50, T: $84.65</td>
</tr>
</tbody>
</table>
Table 2 (cont.)

<table>
<thead>
<tr>
<th>Locality</th>
<th>Trade</th>
<th>BLS mean wage</th>
<th>Davis-Bacon</th>
<th>NYS PW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poughkeepsie</td>
<td>Plumber</td>
<td>$27.02</td>
<td>W: $43.12</td>
<td>W: $43.12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>F: $26.09</td>
<td>F: $23.46/hr paid +</td>
</tr>
<tr>
<td></td>
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<td>Locality</td>
<td>Trade</td>
<td>BLS mean wage</td>
<td>Davis-Bacon</td>
<td>NYS PW</td>
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<td>W: $31.75</td>
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### Table 2 (cont.)

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<th>Davis-Bacon</th>
<th>NYS PW</th>
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<td></td>
</tr>
</tbody>
</table>
Graph 1

In Albany County, mandated hourly wages for electricians are nearly a third more than the average hourly electrician wage in the Albany-Schenectady-Troy area.
Graph 2

In Erie County, mandated hourly wages for carpenters are 43 percent higher than the average hourly carpenter wage in the Buffalo-Niagara Falls area. The Davis-Bacon wage for laborers is 22 percent higher than the average hourly laborer in the area—and the state wage is even higher than the federal wage.
In Suffolk County, New York prevailing wages outstrip the federal rates, except for plumbers, for whom the Davis-Bacon wage is nearly 64 percent higher than the average hourly plumber wage for Long Island.
New York City and federal prevailing wages track closely, but far outpace the average hourly wages for all trades sampled—with a 73 percent premium for plumbers and a 30 percent premium for laborers over average wages in the New York-White Plains-Wayne area.\textsuperscript{48}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{Wage_Comparison_New_York_City_Area.png}
\caption{Wage Comparison for New York City Area}
\end{figure}

\textsuperscript{48} BLS also makes available National Compensation Survey wage data for the New York-Newark-Bridgeport metropolitan area. In that collection, the hourly wage for an electrician is $33.51, for a carpenter, $26.88, and for a construction laborer, $29.71. Plumber data is not included in the list of construction occupations.
New York State prevailing wages for carpenters and laborers in Dutchess County are notably higher than the Davis-Bacon rates. And where they matching federal rates, they bring a 59 percent premium for plumbers and a 38 percent premium for electricians over average hourly wages in the Poughkeepsie-Newburgh-Middletown area.
State and federal prevailing wage rates are identical for the sampled trades in Monroe County—and 45 percent above average laborer wages, 41 percent above average carpenter wages, and 26 percent above average plumber wages in Rochester.
Graph 7

State and federal prevailing wage rates are identical for the sampled trades in Onondaga County—and 41 percent above average carpenter wages, 28 percent above average plumber wages, and 27 percent above average laborer wages in Syracuse.
State and federal prevailing wage rates are identical for the sampled trades in Steuben County—and 51 percent above average plumber wages and 44 percent above average electrician wages in the Southwest New York nonmetropolitan area.
New York State and federal prevailing wages for Hamilton County track closely, but far outpace the average hourly wages for all trades sampled. The New York State premium for plumbers in the Capital/Northern New York nonmetropolitan area is 49 percent, and the Davis-Bacon premium is 60 percent.
5. In the Prevailing Wage World of Extreme Redundancy, BLS's Superior Transparency and Multiple Research Instruments Offer the Best Model

The most striking aspect of prevailing wage administration is its extreme redundancy. With tremendous resources at its disposal, the US DoL’s Wage & Hour Division uses targeted surveys to determine wages and benefits all over the country. With far fewer resources, states and localities then determine their own rates—which in New York, but also elsewhere, turn out to be very similar to the DoL’s. Meanwhile, BLS, another branch of US DoL, collects wage data with a separate set of survey instruments—and the research offices of state labor departments often duplicate this work.

BLS’s superior transparency and use of multiple instruments would seem to make its wage data more reliable than the prevailing wage rates derived by WHD and its counterparts on the state level—or even state-based labor statistics groups. Because BLS does not currently collect information on benefits, a transition to a BLS-based prevailing wage would require the development of a standard fringe calculation. In the meantime, the lack of a standard fringe hinders serious comparative analysis among jurisdictions.

This extensive overlapping bureaucracy also imposes a significant administrative burden on contractors and subcontractors required to comply with prevailing wage. The details vary from jurisdiction to jurisdiction, but prevailing wage laws always require contractors to collect, record, report, and retain specific payroll data for a workforce that may include permanent as well as transient employees. The regulations also make prime contractors answerable for their subcontractors. The contractor must certify the completeness and accuracy, not only of its
own payroll information, but also the information of all subcontractors on a job. This is difficult and expensive even for large construction companies with well-staffed administrative offices, but is nearly impossible for firms whose smaller workforces and revenues cannot support the overhead needed for the extensive data collection and reporting required by prevailing wage.
6. Recommendations

Recommendations for New York

- Under Governor Andrew Cuomo’s NY Works capital plan, 45 agencies and authorities will spend some $16 billion annually rebuilding New York’s infrastructure. Of that, some $6 billion will be spent on labor, much of it at artificially high prevailing wages. These billions would be more equitably spent hiring additional workers, which would result in getting more projects moving and far more of New York rebuilt.

- Under state law, a union contract that covers at least 30 percent of the workers in the designated trade and locality becomes the basis for the labor department’s calculation of prevailing wages for public construction. Yet the reality of this 30 percent threshold is open to question. For one thing, unions now represent only 24 percent of New York State’s work force. Government officials have not undertaken a serious effort to understand where and for which trades the 30 percent threshold is and is not being met—but it is surely going unmet in many cases.

- New York is unique in requiring the use of collective bargaining agreements to establish rates, while also imposing a threshold for that use. Both should be rethought.

- The use of collective bargaining agreements that may overlap or conflict—and that are not available for public inspection—should be reconsidered. When the 30 percent threshold is not met, an entirely new system—uncontrolled by union agreements—will need to be constructed. Where the 30 percent threshold is met, collective bargaining agreements should be fully accessible to the public, since they are the basis not only for government spending, but also for the regulatory apparatus binding all participating developers and contractors.
• Where the 30 percent threshold is not being met, New York law calls for rates to be based on “the average wage” for that trade and locality. The most straightforward, transparent, and efficient approach to accomplish this would be to use BLS mean wages with a conventional fringe-benefit rate in the range of 25-40 percent.

• Because they add 25-30 percent to the cost of development, prevailing wage mandates should not be extended to currently uncovered sectors, such as affordable housing, which is not public construction and which already faces soaring costs and a shortage of financing, or IDAs. Unlike private-sector developers, affordable housing developers cannot simply raise rents to cover increased costs from prevailing wage mandates. Higher rents can make a project ineligible for subsidies from federal and state programs. As the Citizens Housing & Planning Council demonstrated in a 2008 report, raising the costs of affordable housing will simply produce less housing. IDAs, which use public financing but not public funding, are private entities that do not fall under the law’s jurisdiction.

• Nor should prevailing wage mandates be extended to utilities, which already charge some of the highest rates in the nation, or business improvement districts, which are largely financed by the private sector.

• Now is also the time to reexamine the impact of prevailing wage on currently covered sectors. As the State of New York strives to rebuild its decaying infrastructure, it finds itself repeatedly stymied by high costs. Prevailing wage should be reexamined within the context of all the factors impeding capital rebuilding, including regulatory barriers, environmental reviews, financing restrictions, and costs of materials.

New York and Beyond

• Mean and median wage data collected and published by government labor statistics groups, notably the BLS, reflect local market rates far more accurately than do wage rates issued by government labor wage groups, including the U.S. Department of Labor Wage & Hour Division and the NYS Department of Labor Bureau of Public Work. The duplication of effort between different divisions of governmental departments is confusing as well as wasteful. Labor departments should use one reliable set of data to set prevailing wage rates.

• Mean and median wage data collected by state labor departments track closely to the data published by BLS. Either BLS should collect and publish the data, or the states should, following BLS standards and methodologies. The duplication of effort between authorized research groups at different governmental levels is bewildering and inefficient.

• Full national reform of prevailing wage should require use of BLS data to set hourly wages. A conventional fringe-benefit rate in the range of 25-40 percent—following standard practices for health insurance, retirement allowance, vacation, holiday pay, etc.—needs to be developed and implemented. Transition from WHD to BLS would yield significant savings in federal and state agency resources, simplify administration and reporting for agencies and contractors, lower contracting costs for public construction, and vastly improve transparency of prevailing wage policy, rate-setting, and implementation.
Conclusion

Most officially set prevailing wage rates are significantly higher than the wages that truly prevail in a locality. This has serious consequences for everyone—employers, employees, government officials, developers, contractors, subcontractors, and, of course, taxpayers. The combination of an ongoing, persistent decline in union membership and the partnering of wage determination to collective bargaining agreements is a major cause of the discrepancy.

The decline of unionization is especially important in the construction industry—the main target of prevailing wage. The data show that unions represent far less than 30 percent of the construction workforce throughout the state, including New York City.

Now is the time to reexamine the entire universe of prevailing wage.
Julia Vitullo-Martin is a Visiting Senior Fellow of the Center for Urban Real Estate. She concurrently serves as a Senior Fellow at the Regional Plan Association, and was previously a Senior Fellow and Director of the Center for Rethinking Development at the Manhattan Institute, Senior Fellow and Director of the Citizens Jury Project at the Vera Institute of Justice, Senior Editorial Advisor for the Commonwealth Fund, Managing Editor for the Mayor’s Commission on New York City in the Year 2000, Assistant Commissioner for Planning and Development with the NYC Department of Parks and Recreation, and Executive Director of the Citizens Housing and Planning Council. She has taught at the New School University, Hunter College, and in the Department of Politics and Education at Columbia University. She has taught and written numerous reports for foundations and for the city, state, and federal governments. Vitullo-Martin holds a Ph.D. in political science from the University of Chicago.

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