

**ELEVENTH ANNUAL
NORTHEAST SURETY AND FIDELITY CLAIMS
CONFERENCE**

**A SURVEY OF PREVAILING WAGE LAWS AND THEIR
IMPLICATIONS FOR THE SURETY**

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I. Introduction

A “prevailing wage” law regulates the wages that must be paid on a particular project. In addition, most prevailing wage laws prescribe how these rates are determined and provide sanctions and penalties against those who violate the prevailing wage law by failing to pay the applicable rate. In the United States there are in fact numerous laws which govern wage and hour requirements on public and private construction projects. On the federal level, the Fair Labor Standards Act, 29 U.S.C. §201 et seq.¹, and the Davis-Bacon Act, 40 U.S.C. §276a et seq.², are the most noteworthy. In addition, there are numerous other federal³ and state statutes which pertain to wage and hour requirements on construction projects. Although a full discussion of the details of each of these statutes is beyond the scope of this paper, attorneys and representatives of surety companies should be aware of the fact that these laws are out there and that they pose potential liability for their bond principals as well as potential liability on their payment and/or performance bonds.

This paper will not attempt to provide a comprehensive treatment of the various wage and hour laws applicable to construction projects. Rather, it will focus on the prevailing wage acts applicable to public projects in the form of the federal Davis-Bacon Act and the “Little Davis-Bacon Acts”, i.e. the statutes enacted by the various states which establish prevailing wage standards on projects by the states or their subdivisions. With that limitation in mind, the paper will provide a survey of these various prevailing wage laws as well as a discussion of their application and implications for the surety.

II. Threshold Coverage Issues

Unless a prevailing wage statute explicitly and specifically prescribes otherwise, analysis of the coverage of a prevailing wage claim on a particular bond will generally be analogous to coverage of labor claims in general. Accordingly, the issues of who is a beneficiary with standing to make a claim and what coverage is afforded should be addressed as threshold matters so as to determine whether a particular claim is more properly brought against a payment bond, performance bond or neither. After this determination is made, one can address the coverage issues which are more idiosyncratic to prevailing wage claims.

A. Liability of the Payment Bond Surety

Of course, the primary bond in regard to claims for labor is the payment bond. The payment bond surety is generally liable for labor claims either by express statutory provision,

¹ The Fair Labor Standards Act provides standards for wages and hours of employees working on private projects. Although the employees must be working in “interstate commerce”, that provision has been broadly construed by the courts.

² The Davis-Bacon Act provides wage and hour standards for workers on federal contracts.

³ In addition to the Fair Labor Standards Act and the Davis-Bacon Act, the federal government has enacted various other wage and hour laws such as: the Portal-to-Portal Act of 1947, 29 U.S.C. §251 et seq. (establishing guidelines for what activities must be compensated for by employers); the Walsh-Healey Public Contracts Act, 41 U.S.C. §§35-45 (governing wages and hours of employees engaged in supplying goods to the federal government in contracts exceeding \$10,000), the Copeland Anti-Kickback Act, 18 U.S.C. §874, 40 U.S.C. §276c (governing wages and hours for employees); the Service Control Act of 1965, 41 U.S.C. §§351-8 (governing wages and fringe benefits of employees under certain federal contracts); the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-32 (governing hours and working conditions on public contracts).

such as the Miller Act, 40 U.S.C. §270(a)(2), or the “Little Miller Acts”, by the terms of the bond itself, or both. Concomitantly, the providers of such labor have clear standing to pursue claims against the payment bond by either express statutory provision, by the express terms of the bond itself, or by the well-entrenched case law giving such claimant third-party beneficiary standing to pursue a claim on the payment bond.

The payment bond surety’s liability for labor claims may include liability for wages, union contributions and contributions for other fringe benefits such as employee retirement funds and health and welfare funds. The terms and amounts of these wages and fringe benefit entitlements are set by contract, collective bargaining agreement and applicable prevailing wage laws.

B. Liability of the Performance Bond Surety

More problematic is the liability of the surety on its performance bond. The primary and named beneficiary of a performance bond is the obligee named on the bond.⁴ Obviously, third parties such as laborers and materialmen have an initial obstacle of proving that they have standing to make claim on the bond as third party beneficiaries⁵ or otherwise.

1. Third-Party Beneficiary Liability

The general rule that one can discern from the various decisions is that in those cases where the non-obligee claimant is asserting a third-party beneficiary theory, it generally must be shown that the surety contract was entered into with the intention to benefit such third parties.⁶

The Third Restatement of Suretyship and Guaranty sets out the rule of law in regards to third party beneficiaries and bonds:

“§69. Third Party Beneficiaries of Secondary Obligations

When (i) pursuant to the underlying obligation, a duty of the principal obligor to a third person is created and (ii) the secondary obligor promises the obligee to fulfill the principal obligor’s duty to the third person, the third person is an intended beneficiary of the secondary obligor’s promise unless the agreement creating the secondary obligation expressly disclaims such liability.”⁷

This provision is in accord with the Restatement Of Security §§165-166 (1941), which pertained to construction contracts. The implication of both Restatements, however, is that if a

⁴ Under the Miller Act, the named obligee, i.e. the government, has been held to be the only beneficiary of a Miller Act performance bond. See, *United States ex rel. James E. Simon Co. v. Ardelt-Horn Constr. Co.*, 446 F.2d 820 (8th Cir. 1971), cert. Denied, 404 U.S. 1060 (1972); *United States Fidelity & Guar. Co. v. A&A Machine Shop*, 330 F.Supp. 1403 (S.D. Tex. 1971).

⁵ Edward G. Gallagher, Ed., *The Law of Suretyship*, Ch. 10 (American Bar Association 1993) cites a number of cases wherein laborers and materialmen have utilized the third-party beneficiary theory.

⁶ *Ceco Corp. v. Plaza Point, Inc.*, 573 S.W.2d 92 (Mo.App. W.D. 1978). See also *Terre Du Lac Assn, Inc. v. Terre Du Lac, Inc.*, 737 S.W.2d 206 (Mo.App. E.D. 1987), and *Kansas City N.O. Nelson Co. v. Mid- Western Constr. Co. of Mo., Inc.*, 782 S.W.2d 672 (Mo.App. W.D. 1989)

⁷ Restatement of the Law Third Suretyship and Guaranty (American Law Institute 1995).

surety issues a performance bond on a construction contract that does not contain provisions wherein the contractor promises to pay laborers or materialmen but simply agrees to complete the work free of liens or to furnish labor and materials, the laborers and materialmen do not have any rights against the surety on a third-party beneficiary basis.⁸ Thus, absent a provision in the construction contract requiring the contractor to pay laborers or materialmen, there generally will be no right to make a claim for labor, including for prevailing wages, on the performance bond.

2. Liability Derived From Statutory Requirements

If a performance bond is required by statute and the surety is required by statute to pay for labor or materials supplied to a project but the actual bond issued does not contain such a requirement or limits the liability of the surety to the named obligee, courts will generally construe the bond to conform with the more expansive requirements and provisions of the statute. The result is that the surety will generally be liable on its performance bond for claims by laborers, including prevailing wage claims.⁹

3. Liability Derived From The Bond Or The Underlying Contract

If there is language in the construction contract which provides, or sometimes even if it alludes to, a duty to ensure payment of laborers and materialmen, courts generally hold that, if the bond, when read in connection with the contract, contains a provision obligating the contractor to pay for material, it constitutes a provision for the benefit of laborers and materialmen, upon which they are entitled to maintain an action against the surety on its performance bond.¹⁰ This action could include prevailing wage claims.

C.) Prevailing Wage Statutes

The key threshold determinant of whether a prevailing wage claim is covered is, of course, the applicable prevailing wage law itself. At the end of this paper is a table of

⁸ *Wilbur Waggoner Equip. Rental & Excavating Co. v. Bumiller*, 542 S.W.2d 32 (Mo. App. E.D. 1976); *J. Louis Crum Corp. v. Alfred Lindgren, Inc.*, 564 S.W.2d 544 (Mo. App. W.D. 1978); *Garco Indus. Equip. Co. v. Mallory*, 485 N.E.2d 652 (Ind.App. 1985); *Cretex Cos. v. Construction Leaders, Inc.*, 342 N.W.2d 135 (Minn. 1984); *Brower Co. v. Noise Control of Seattle, Inc.*, 401 P.2d 860 (Wash. 1965).

⁹ See, *Houdailla Indus. V. United Bonding Ins. Co.*, 4553 F.2d 1048 (5th Cir. 1972); *Porter v. Eyer*, 294 P.2d 661 (Ariz. 1956); *State ex rel. W.M. Carol & Co. v. C.L. House Const. Co.*, 656 P.2d 236 (N.M. 1982).

¹⁰ See, e.g., *Ill-Mo Contractors, Inc.*, supra.; *Amelco Window Corp v. Federal Ins. Co.*, 127 N.J. Super. 342, 317 A.2d 398 (N.J. App.Div. 1974); *Neenah Foundry Co. v. Nat'l Surety Corp.*, 47 Ill.App.2d 427, 197 N.E.2d 744 (Ill.App. 1964); *Royal Indem. Co. v. Alexander Indus.*, 211 A.2d 919 (Del. 1965); *Acoustics Inc. v. American Sur. Co.*, 320 P.2d 626 (Nev. 1958); *Bristol Steel & Ironworks v. Plank*, 178 S.E. 58 (Va. 1935); also see, *Anchorage Sand & Gravel Co. v. Alaska Dock & Bridge Builders, Inc.*, 119 F.Supp. 943 (D. Alaska 1954); *Crowely v. United States Fidelity & Guar. Co.*, 69 P. 784 (Wash. 1902) (subcontractor's surety held liable on its performance bond when such bond guaranteed faithful performance of the subcontractor to supply labor and materials); but see, *Pioneer Concrete & Fuel, Inc. v. Apex Constr., Inc.*, 664 P.2d 938 (Mont. 1983) (holding there to be no such liability absent express terms of the bond).

prevailing wage laws¹¹. A review of applicable statutes is the beginning of wisdom in any prevailing wage bond claim.

Prevailing wage laws may explicitly prescribe coverage of prevailing wage laws in a bond. Thus, for example, the prevailing wage laws in states such as Arkansas, Tennessee, Illinois, Maryland, Missouri and Oklahoma, require the posted contract bond to contain language guaranteeing the faithful performance of the prevailing hourly wage clause as provided in the underlying bonded contract. Hawaii, as another example, makes a contractor and its sureties specifically liable for unpaid wages due plus liquidated damages in an equal amount. Maine, on the other hand, specifically exempts a surety from liability for the penalties and attorney's fees provided for in its prevailing wage law, although the surety would be subject to liability for the prevailing wage claim itself. Ohio's prevailing wage law, as a final example, makes provision for a contractor which has failed to pay the prevailing wage to post a special prevailing wage rate bond. Unless this bond is posted, it is precluded from continuing project work.

Short of explicitly making the surety liable for prevailing wage claims, many statutes mandate incorporation of the prevailing wage law as a provision of the contract. The net effect of this is to make a surety liable for its bond principal's failure to ensure payment of prevailing wages. Analysis of whether the surety is liable for such failure on its payment bond, performance bond, both, or neither, follows the analysis of performance and payment bond coverage generally (as discussed above).

III. Prevailing Wage Claims And The Surety

A. Issues

A prevailing wage bond claim may arise in the instance of a laborer's pursuit of a claim when it has not been paid at all. Perhaps more typically in recent years is the underpayment claim. This claim arises after (what presumably was) full payment of wages has been made; however, after investigation or audit by the union or the government, the claim is made that a provider of labor was underpaid. This claim, which often includes claims for unpaid fringe benefits, is not infrequently pursued or pushed by the union or the government on behalf of a number of workers. In recent years, it has also become the subject of class action litigation.

In addition to the primary issues of whether there is prevailing wage liability at all and if so, what are the actual damages (which are typically the difference between what was paid and what the prevailing wage was), there are a number of issues which are unique to the surety. These issues include:

- Whether there is coverage of the claim under the payment or performance (or other) bond at issue;

¹¹ The table should be used as a handy reference tool and starting point only. It is not a substitute for a comprehensive understanding and review of the cited statute or of the prevailing wage laws and other laws, including bond laws, of the jurisdiction at issue.

- Who has liability under prevailing wage law. Is this liability limited to an entity (and its surety) with a direct employer-employee relationship?
- Is the surety liable for the punitive portions of any claim provided for under the applicable prevailing wage statute such as penalties, costs and attorney's fees or is its liability limited to the difference between what was paid and the prevailing wage?
- Is the project even subject to the prevailing wage law?
- What is the applicable limitations period? Is this the same limitation period as exists against the bond principal or is there a separate limitation period applicable to the surety?
- Are special notice or limitations periods contained in the bond enforceable?
- Who has standing to pursue a bond claim? In addition to the worker himself, are there other entities, including a governmental agency, union, or assignee that have standing to pursue the claim?

These are just some of the issues that may be encountered by the surety on a prevailing wage claim. Resolution of these issues is dependent upon: (1) the facts; (2) the applicable prevailing wage statute; (3) the bond; and (4) the principal contract. The table of statutes at the end of this paper and the following cases provide a survey of how some of these issues are addressed in various jurisdictions.

B.) The Survey

The following cases provide, within no particular analytical pattern, a survey of the treatment by some courts in various jurisdictions of various issues raised in cases involving prevailing wage claims and the surety.

In *Department of Industrial Relations v. Seaboard Surety Company*, 50 Cal.App. 4th 1501, 58 Cal.Rptr. 532 (Cal.App. 1996), the Court held that the appropriate statute of limitations applicable to an action was the six month period for action on a **payment bond** prescribed by the section of the California Civil Code rather than the 90 day limitation period provided in the section of labor code for action against the contractor for prevailing wages, and thus the action was timely. In that case, even though ordinarily the statute of limitations with respect to obligations of the principal would otherwise bar an action against the surety on its bond, the terms of the bond were deemed to provide otherwise since the bond was given pursuant to the particular statute (which had a six month limitation period for action on the bond) and the bond was deemed to incorporate the statute into the bond. In its decision, the Court noted that "there is no question the payment bond covers the obligation to pay prevailing wages" and further recognized that the California Department of Industrial Relations, Division of Labor Standards Enforcement had standing to pursue the bond claim on behalf of workers whose statutory rights to prevailing wages were allegedly violated.

In *Serraino v. Mar-d, Inc.*, 228 N.J. Super. 482, 550 A. 2d 178 (N.J. Super. Ct. 1988), the Superior Court granted summary judgment in favor of the New Jersey Commissioner of Labor on its action on behalf of subcontractor employees against a subcontractor, general contractor and the general contractor's surety for the subcontractor's violation of the prevailing wage act. The Court held that the general contractor and its surety were liable to the

subcontractor's employees for the subcontractor's violation of New Jersey's prevailing wage act. In so doing, the Court held that the Commissioner had standing to bring such action on behalf of a group of the subcontractor's employees. In its holding, the Court specifically rejected the general contractor's argument that the prevailing wage act imposes liability only upon the entity which had the direct employer-employee relationship with the underpaid worker. Rather, the Court reasoned that the intent of the prevailing wage act was to broaden, not limit, the general contractor's liability for payment of prevailing wages. Furthermore, the Court noted that the contract executed between the owner and the general contractor specifically required the general contractor to pay "all workmen" the prevailing wage rate. The Court went on to hold the general contractor's surety liable under the New Jersey Bond Act.

In *Strong v. C.I.R., Inc.*, 184 Wis. 2d 619, 516 N.W. 2d 719 (Wis. S.Ct. 1994), the Wisconsin Supreme Court held that a prime contractor and its surety were not liable for double damages, costs, and attorney's fees as only the direct employer would be subject to the penal aspects of the Wisconsin Prevailing Wage Law. The Court held that although the prime contractor would be liable under the contract and bond statute, only the direct employer (in that case the subcontractor) would be subject to the penal aspects of the prevailing wage law. The Court also held that an employee could bring an action under the prevailing wage law on his own behalf as well as in a representative capacity for other employees. Thus, the Court justified its holding that "similarly situated" employees who are not initially named in the complaint, but filed a consent before trial, were entitled to recover in the same manner as the named plaintiffs. Although the Court held that the prime contractor and its surety were not liable for the prevailing wage act penalties, the Court noted that it was clear and undisputed that under the prevailing wage law and the contract itself that the prime contractor and its surety were "the guarantors of the payment of the prevailing wage to all workers at the site of the project whether employed by a subcontractor or the prime contractor."

In *The Pipeline Industry Benefit Fund v. Aetna Casualty and Surety Ins. Co.*, 503 P.2d 1286 (Okla. App. 1972), the Court held the surety on a **performance bond** liable for defaulted health and welfare payments which its bond principal had been obliged to pay pursuant to agreements with the Pipeline Industry Benefit Fund. As part of its decision, the Court held that the surety would be liable since it considered the default in payment of health and welfare payments to be part of labor costs within the prevailing wage act.

In *U. S. v. Carter*, 353 U.S. 210, 77 S.Ct. 793 (1957), the United States Supreme Court held that under the Miller Act, a surety under a general contractor's payment bond was liable for delinquent contributions to health and welfare fund which the contractor was required to pay under a collective bargaining agreement along with liquidated damages, attorney's fees, court costs and other related expenses of litigation.

In *Newark Laborers' Pension-Welfare Funds v. Commercial Union Insurance Company of New York*, 126 N.J. Super. 1, 312 A.2d 649 (N.J. Super. 1973), the Appellate Division of the New Jersey Superior Court held that housing projects for which financing was provided by the New Jersey Housing Agency were "public works" within the purview of the New Jersey prevailing wage act and further held that the surety was liable on its bonds for costs and reasonable attorney's fees incurred in endeavoring to recover delinquent contributions.

In *Dean v. Seco Electric Company*, 35 Ohio St. 3d 203, 519 N.E. 2d 837 (Ohio S.Ct. 1988), the Ohio Supreme Court reversed the Ohio Court of Appeals and held that in the absent of an express provision to the contrary, a surety's liability upon a labor and material payment bond is limited to payment for labor and material only and does not extend to liability for statutory penalties, attorney's fees, and costs for violation of the prevailing wage statute. The Court further held that the surety was not liable for the penalty assessed against the principal for the wrongful acts of the principal where there had been no showing that the surety ratified the principal's wrongful acts or that the surety was guilty of actual malice, fraud or oppression.

In *Bernard v. Indemnity Insurance Company of North America*, 162 Cal. App. 2d 479, 329 P.2d 57 (Cal. App. 1958), the Court held that a surety on bonds required by statute to be furnished by a contractor was liable for payments required to be made by the public contractor and to union health and welfare funds under a collective bargaining agreement.

In *State v. Planet Insurance Company*, 321 A.2d 128 (Del. 1974), the Court held that prevailing wage rates for employees of a subcontractor were within the coverage of a bond which the prime contractor was required by statute to supply the state agency; however the surety was not liable under the statute for liquidated damages or attorney's fees.

In *Board v. Eurostyle, Inc.*, 998 S.W.2d 810 (Mo.App. 1999), the Court held that employees of a subcontractor which brought an action against the subcontractor, the general contractor and its surety on a general contractor's performance bond were entitled by the prevailing wage statute to recover double the difference of wages owed and wages paid, together with reasonable attorney's fees, in their action.

In *Department of Industrial Relations, Division of Labor Standards Enforcement v. Fidelity Roof Company*, 60 Cal. App. 4th 411, 70 Cal. Rptr. 2d 465 (Cal. App. 1997), the California Court of Appeals held that the D.L.S.E.'s complaint against the contractor which was not filed with the ninety days of the school district's acceptance of the project was barred by the statute of limitations even though no notice of completion was ever recorded and the D.L.S.E.'s claim against the surety was timely. The Court further held that the D.L.S.E. was a proper claimant against the payment bond even though it never received an assignment from the agreed workers to recover the unpaid prevailing wages.

IV. Conclusion

In sum, sureties need be aware of prevailing wage laws and their possible liability under these laws. This liability may cover not only their bond principal's laborers' claims but also the claims of its subcontractors' laborers. Moreover, this liability may include not only the amount of unpaid wages but also may include penalties, interest, costs and attorney's fees. Sureties need to be aware, however, that defenses to coverage do certainly exist and may emanate from the applicable prevailing wage laws (statutes and/or case law), in their own bonds, and in the underlying contract.

TABLE OF PREVAILING WAGE LAWS¹²

DAVIS-BACON ACT	40 U.S.C.A. § 276a et seq.
Determination of Prevailing Wage	Secretary of Labor
Sanctions	Government may, by written notice, terminate the contractor's right to proceed with the contract Contractors who disregard their obligations to pay prevailing wage rates will not be awarded contracts for three years
Right of Action/Enforcement	Comptroller General of the United States is authorized to distribute a list giving the names of firms found to have disregarded their obligation to pay prevailing wage rates Laborers shall have the right of action and/ or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials
Special Provision Applicable to Sureties and Their Bonds	Government may terminate contractors right to proceed with the work to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs incurred
Incorporated as a Provision of the Contract	Yes
ALABAMA	N/A
ALASKA	Alaska Stat. § 36.05.010 et seq.
Determination of Prevailing Wage Rate	Department of Labor and Workplace Development determines. The rate used for contracts is that issued by the Department at least 10 days in advance of the final date for the submission of bids for the contract.

¹² For the purposes of this table, the fact that there is no private right of action listed for a given statute or that there is no special provision pertaining to bonds for a given statute simply means that there was no explicit treatment of such in the statute itself. This does not mean that the law of the jurisdiction might not otherwise deal with these issues. In fact, this is the case in a number of instances.

Sanctions	Wages not paid to employees are deducted from the amount any public body pays on the contract Violator may be fined as much as \$500 and/or be imprisoned for up to 90 days
Right of Action/Enforcement	The Department of Labor and Workforce Development may when necessary conduct investigations and hold hearings concerning wages; compel the attendance of witnesses and the production of books, papers, and documents
Special Provision Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
ARIZONA	Ariz. Rev. Stat. §34-321 prohibits prevailing wage contracts. This provision prohibits prevailing wage provisions in any regulation, ordinance or any other manner which requires public works contracts to contain a provision requiring the payment of prevailing wages.
ARKANSAS	Ark. Stat. Ann §22-9-301 et seq.
Determination of Prevailing Wage Rate	Department of Labor, "Dept." determines annually on or about July 1
Sanctions	Violators ineligible for public works contracts for 2 yrs. from date of final determination; may complete existing projects Dept. compiles quarterly list of ineligible parties; list mailed to any public body on request Duty of public body to hold party ineligible If sanctions violated while ineligible, contractor's state license may be suspended
Right of Action/Enforcement	Administrative action by Dept. of Labor; penalty may be recovered in court Withholding of payments by contracting officer Termination of contractor for failure to

	pay
Special Provision Applicable to Sureties and Their Bonds	Public body requires in contractor's bonds that contractor include provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by the contract.
Incorporated as a Provision of the Contract?	Yes
CALIFORNIA	Cal. Public Contract Code § 1771 et seq.
Determination of Prevailing Wage Rate	Director of Dept. of Industrial Relations, "Director"
Sanctions	Contractor forfeits \$25/day for each worker paid below the prevailing wage rate Contractor pays worker difference b/t prevailing wage rate and amount actually paid
Right of Action/Enforcement	Worker may maintain action in any court of competent jurisdiction w/in 90 days of filing of valid notice of completion in the office of the county recorder or w/in 90 days of acceptance of public work, whichever occurs last.
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
COLORADO	N/A
CONNECTICUT	CONN. GEN. STAT. ANN. § 31-53 et seq.
Determination of Prevailing Wage Rate	Labor Commissioner
Sanctions	Fine of not less than \$2500 but not more than \$5000 for each offense Disqualified from bidding on contracts with the state until full restitution of back wages owed and for an additional six months thereafter For subsequent violations the contractor shall be disqualified for not less than an additional two years

Right of Action/Enforcement	Labor Commissioner may make complaint to the proper prosecuting authorities for violations
Special Provisions Applicable to Sureties and Their Bonds	The state may, by written notice, terminate contractor's right to proceed with the work or such part of the work as to which there has been failure to pay required wages, and the contractor and his sureties shall be liable for any excess costs incurred by the state
Incorporated as a Provision of the Contract?	Yes
DELEWARE	Del. Code Ann. tit. 29 § 6960 et seq.
Determination of Prevailing Wage Rate	Department of Labor (Division of Industrial Affairs) determines annually
Sanctions	Termination of contract with employer liable for all damages resulting therefrom Subject to civil penalty of \$1,000-\$5,000 for each knowing failure to pay the prevailing wage
Right of Action/Enforcement	Contractors who fail to comply with notice of violation may have their rights to proceed with the work under the contract terminated and will be responsible for all the damages resulting therefrom Civil action in any court of competent jurisdiction for treble the difference between the amount paid and the prevailing wage Reasonable attorney's fees and costs Must be brought within 2 years of the accruing of the cause of action
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
DIST. OF COLUMBIA	*See Davis-Bacon Act

FLORIDA	N/A
GEORGIA	N/A
HAWAII	HAW. REV. STAT. ANN. § 104-1 et seq.
Determination of Prevailing Wage Rate	Director of Labor and Industrial Relations
Sanctions	<p>Governmental contracting agency may, by written notice, terminate the contractor's right to proceed with the work</p> <p>The department shall assess a penalty equal to 10% of the amount of back wages found due or \$25 per offense, whichever is greater</p> <p>Where a second violation occurs within two years of the first, the department shall order the firm in violation to pay a penalty equal to the amount of back wages found due or \$100 for each offense, whichever is greater</p> <p>Where a third violation has been committed within two years of the second violation, the department shall assess a penalty equal to two times the amount of back wages due or \$200 for each offense, whichever is greater; and to be suspended from doing any new work on any public work contract for three years</p>
Right of Action/Enforcement	<p>Governmental contracting agency may withhold from the contractor so much of the accrued payments as the agency may consider necessary to pay laborers the difference between the wages required and the wages received</p> <p>Action to recover unpaid wages may be maintained in any court of competent jurisdiction</p>
Special Provisions Applicable to Sureties and Their Bonds	The contractor and contractor's sureties shall be liable to the laborers in the amount of the unpaid wages due, and in an

	additional equal amount as liquidated damages
Incorporated as a Provision of the Contract?	Yes
IDAHO	N/A
ILLINOIS	820 ILCS 130/2 et seq.
Determination of Prevailing Wage Rate	Public Body or Department of Labor, "Dept." determines each year in June
Sanctions	Contractor liable to Dept. for 20% of underpayment Contractor liable to the worker for punitive damages of 2% of amount paid to State for each month following the date of payment during which such underpayments remain unpaid
Right of Action/Enforcement	Atty. General may sue for injunctive relief against awarding of contract or continuation of work on contract for which prevailing wage prerequisites have not been met Contract is void Any worker employed by contractor or subcontractor shall have right of action for difference b/t prevailing wage rate and amount actually paid with costs and attorney's fees Dept. may take assignment of wage claim in trust for worker and bring action to collect claim including costs
Special Provisions Applicable to Sureties and Their Bonds	Required in contractor's bonds that the contractor include provision that will guarantee the faithful performance of the prevailing wage clause as provided by contract.
Incorporated as a Provision of the Contract?	Yes
INDIANA	IND. CODE ANN. § 5-16-7-1 et seq.
Determination of Prevailing Wage Rate	Awarding governmental agency sets up a committee of five persons

Sanctions	Violation by contractor is a class B misdemeanor For violations subsequent to first violation the contractor shall forfeit the contract on which the offense occurred and may not receive any further payment on the contract
Right of Action/Enforcement	State shall require any contractor performing public work to file a schedule of the wages to be paid
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
IOWA	N/A
KANSAS	N/A
KENTUCKY	KY. REV. STAT. ANN. § 337.520 et seq.
Determination of Prevailing Wage Rate	Commissioner may rely on Davis-Bacon rate set by the Department of Labor for a particular locality, or may look to rates paid on previous public works or reasonably comparable private projects constructed in the locality
Right of Action/Enforcement	Commissioner shall file for an injunction preventing a public body from awarding a contract
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
LOUISIANA	N/A
MAINE	Me. Rev. Stat. Ann. Ch. 15 § 1301 et seq.

Determination of Prevailing Wage Rate	Director of Bureau of Labor determines second or third week of September each year
Sanctions	Willful violators subject to fine of not less than \$250/employee/day of violation
Right of Action/Enforcement	Any worker paid unfairly may recover from contractor or subcontractor the difference between amount paid and fair minimum rate of wages, and in addition, a penalty equal in amount to such difference, and reasonable attorney's fees; provided that the surety for such contractor or subcontractor shall not be liable for such penalty or attorney's fees
Special Provisions Applicable to Sureties and Their Bonds	Employee may recover prevailing wage under bond but not statutory penalty or attorney's fees
Incorporated as a Provision of the Contract?	Yes
MARYLAND	Md. State Fin. & Proc. Code Ann. § 17-201 et seq.
Determination of Prevailing Wage Rate	Commissioner of Labor and Industry determines one time per year
Sanctions	Contractor liable to public body for liquidated damages of \$20/employee/day paid less than prevailing wage rate Contractor shall make restitution to the injured employee Commissioner files with Secretary of State list of contractors and subcontractors who are persistent and willful violators; those listed are prohibited from public works contracts for 2 yrs. from date list filed
Right of Action/Enforcement	Commissioner investigates and holds hearing Public body, when making payments to contractor, withholds any amount that the contractor owes to its employees or the public body as a result of the

	<p>violation in an amount sufficient to pay each employee of the full amount of wages due under this subtitle and satisfy a liability of a contractor for liquidated damages as provided</p> <p>If subcontractor responsible for violation, the contractor may withhold from payment to the subcontractor an amount equal to the amount withheld from the contractor by the public body.</p> <p>If payment has already been made to the subcontractor, contractor may sue to recover that amount.</p>
Special Provisions Applicable to Sureties and Their Bonds	<p>Public body shall require that the public work contract include a clause for payment: to a worker of at least the prevailing wage rate; and to an apprentice, of at least the rate that the Council sets for an apprentice</p> <p>Public body shall require bonds on public work contracts to guarantee the faithful performance of the prevailing wage rate clause of the public work contract</p>
Incorporated as a Provision of the Contract?	Yes
MASSACHUSETTS	Mass. Gen. Laws Ann. Ch. 149, § 26 et seq.
Determination of Prevailing Wage Rate	Commissioner determines from time to time as deemed advisable
Sanctions	<p>Violators punished by a fine of \$500-\$2,000 for first offense; second offense \$1,000-\$5,000 or imprisonment or both</p> <p>Violators prohibited from public works contracts for 6 months from the date of conviction; second offense is 3 year penalty</p>
Right of Action/Enforcement	<p>Commissioner enforces</p> <p>After investigation, the attorney general may, upon written notice to the contractor or subcontractor and the sureties of the contractor or subcontractor, and after a hearing thereon, order work halted on the part</p>

	<p>of the contract on which such wage violations occurred, until the defaulting contractor or subcontractor has filed with the attorney general's office a bond in the amount of such penal sum as the attorney general shall determine, conditioned upon payment of said rates of wages</p> <p>Superior court jurisdiction to enjoin or invalidate any contract award made in violation of this section</p> <p>Civil action by employee, including class action, may be filed for damages, including treble damages, costs and attorney's fees</p>
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
MICHIGAN	MI ST. Ch. 408.551 et seq.
Determination of Prevailing Wage Rate	Commissioner of state Department of Labor
Sanctions	<p>Contracting agent, by written notice to contractor and its sureties, may terminate contractor's right to proceed with that part of the contract for which less than the prevailing wages have been or will be paid, and may complete contract by separate agreement with another contractor or otherwise, and original contractor and his sureties shall be liable to contracting agent for any excess costs occasioned thereby.</p> <p>Violators of act guilty of misdemeanor</p>
Right of Action/Enforcement	
Special Provisions Applicable to Sureties and Their Bonds	Sureties liable for excess costs occasioned after termination of contractor for failure to comply with Act.
Incorporated as a Provision of the Contract?	Yes

MINNESOTA	Minn. Stat. §177.41 et seq.
Determination of Prevailing Wage Rate	Commissioner of Labor and Industry determines
Sanctions	Violator subject to fine of up to \$300 and/or 90 days imprisonment for each offense Each day of violation is considered a separate offense
Right of Action/Enforcement	Dept. may demand and the contractor and subcontractor shall furnish to the Dept. copies of all payrolls
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
MISSISSIPPI	N/A
MISSOURI	Mo. Ann. Stat. § 290.210 et seq.
Determination of Prevailing Wage Rate	Department of Labor and Industrial Relations, "Dept." determines on or before July 1
Sanctions	Contractor forfeits to political subdivision (county etc.) \$10/worker/day the worker is paid less than prevailing wage After investigation, Dept. files w/ Sec.of State list of contractors and subcontractors prosecuted and convicted of prevailing wage violations; those listed will be prohibited from contracting w/public body for construction of public works for 1 yr. from date of first conviction and 3 yrs. from date of each subsequent conviction Filing notice of conviction w/Sec. of State is notice to all public bodies
Right of Action/Enforcement	Any worker paid less than the prevailing wage has right of action for double whatever difference b/t prevailing wage and amount actually paid including attorney's fees.

Special Provision Applicable to Sureties and Their Bonds	Required in contractor's bonds that contractor guarantee the faithful performance of prevailing hourly wage clause as provided by the contract
Incorporated as a Provision of the Contract?	Yes
MONTANA	Mont. Code Ann. § 18-2-401 et seq.
Determination of Prevailing Wage Rate	Commissioner of Labor, "Commissioner"
Sanctions	<p>Contractor forfeits to Dept. of Labor and Industry 20% of delinquent wages, fringe benefits, attorney's fees, audit fees, and court costs</p> <p>Contractor forfeits to employee amount of wages owed and \$25/day for each day underpaid</p> <p>Public body retains \$1,000 of contract price as liquidated damages for violations</p> <p>If Commissioner determines gross negligence by the contractor, he may retain up to \$10,000</p> <p>In the case of a willful violation, the contractor is ineligible to receive any public works contracts for 3 yrs. after final judgment</p>
Right of Action/Enforcement	<p>Individual worker may sue to recover wages due under Title 39, ch 3, part 2</p> <p>If insufficient funds under terms of contract to cover penalties, Commissioner may maintain action in district court to recover all penalties due w/in 90 days of the filing of the notice of completion of the project and its acceptance by the contracting agency</p>
Special Provisions Applicable to Sureties and Their Bonds	All public works contracts under this part must be approved in writing by the legal adviser of the contracting county, municipal corporation, school district, assessment district, or special improvement district body or officer prior to execution by the contracting public officer or officers

	At least \$1,000 of the contract price must be withheld at all times until the termination of the public works contract
Incorporated as a Provision of the Contract?	Yes
NEBRASKA	N/A
NEVADA	Nev. Rev. Stat. Ann. § 338.020 et seq.
Determination of Prevailing Wage Rate	Labor Commissioner, “Commissioner” determines annually
Sanctions	Contractor forfeits \$10-\$25/day that worker paid less than prevailing wage and for each day that violation is not reported to Commissioner and public body Commissioner assesses any violator the difference between the prevailing wage and the amount actually paid including costs of investigation and prosecution
Right of Action/Enforcement	
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
NEW HAMPSHIRE	N/A
NEW JERSEY	N.J. Stat. Ann. § 34:11-56.26 et seq.
Determination of Prevailing Wage Rate	Commissioner of Labor, “Commissioner” or his duly authorized representatives determines every 2 years unless superseded within that period by a later determination
Sanctions	If any worker files protest in writing w/in 3 months from date of incident, the Commissioner may direct the fiscal officer of the public body to deduct from the payment to the contractor

	<p>sums owed to the worker which will be paid directly to worker</p> <p>Any worker may file protest in writing with Commissioner within 2 years from date of incident; willful violators of this Act will be guilty of a disorderly persons offense, fined \$100-\$1,000 or imprisoned 10-90 days or both; each week worker paid less than prevailing wage is separate offense</p> <p>Commissioner may collect administrative penalties up to \$250 for first violation and up to \$500 for each subsequent; violator may request hearing within 15 days of receipt of notice of violation; list of violators compiled; no public works contracts may be awarded them for 3 yrs. from listing</p>
Right of Action/Enforcement	<p>Public body shall have access to contractors wage records at all reasonable hours</p> <p>The Commissioner shall have the authority to investigate and ascertain the wages of workmen employed on any public work in the state</p> <p>Commissioner may compile and distribute to public bodies a list of all contractors who have failed to pay prevailing wages</p>
Special Provisions Applicable to Sureties and Their Bonds	<p>Public body may terminate contract due to prevailing wage violations and the contractor and his sureties shall be liable to the public body for any excess costs occasioned thereby</p>
Incorporated as a Provision of the Contract?	Yes
NEW MEXICO	N.M. Stat. Ann. § 13-4-11 et seq.
Determination of Prevailing Wage Rate	Director of Labor and Industry, "Dir." and Industrial Division of the Labor Dept. determine with a continuing program
Sanctions	Contractor liable to employee for liquidated damages of \$10/day for

	<p>willful violation</p> <p>Contracting agency may pay affected workers from any accrued payments withheld under the terms of the contract</p> <p>Dir. compiles list of violators; those listed are banned from public works contracts for 3 yrs.</p>
Right of Action/Enforcement	<p>Termination of contractor's right to proceed with the work on which there has been a willful violation</p> <p>Contracting agency may prosecute the work to completion by contract or otherwise</p>
Special Provisions Applicable to Sureties and Their Bonds	Contractor and his sureties shall be liable to the state for any excess costs occasioned thereby
Incorporated as a Provision of the Contract?	Yes
NEW YORK	N.Y. State Fin. Law § 220 et seq.
Determination of Prevailing Wage Rate	Fiscal officer (Commissioner of Labor, Comptroller) determines no later than 30 days prior to July 1
Sanctions	<p>Corporation who willfully violates guilty of misdemeanor and fined \$500 or imprisoned for no more than 30 days for first offense</p> <p>Second offense, \$1,000 fine, forfeiture of the contract, and no money paid for work done on contract</p>
Right of Action/Enforcement	<p>Comptroller or financial officer may deduct from the whole amount of any payment the sum admitted by any contractor or subcontractor to be due on account of labor performed on such public improvement before making payment of the amount certified for payment in any estimate or voucher and may withhold the amount so deducted for the benefit of the workers whose wages are unpaid or not provided</p> <p>Fiscal officer orders hearing</p>

	<p>Violators will be ordered to pay wages due, including interest at a rate not less than 6% per year and not more than the rate in effect at the time by the superintendent of banks</p> <p>Order may direct payment of a further civil penalty of no more than 25% of the total amount due</p>
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
NORTH CAROLINA	N/A
NORTH DAKOTA	N/A
OHIO	Ohio Rev. Code Ann. § 4115.03 et seq.
Determination of Prevailing Wage Rate	Department of Industrial Relations, "Dept." determines on the first day of January every even-numbered year
Sanctions	Contractor pays penalty of 75% of the difference between the fixed rate of wages and amount paid to employee to Director of Dept.
Right of Action/Enforcement	<p>Director investigates violations</p> <p>Violators listed and prohibited from public works contracts for 1 yr. for first offense; 5 yrs. for second offense w/in 5 yrs. of first</p> <p>Employee may recover difference between the fixed wage and the amount paid to him plus 25% of the difference</p>
Special Provisions Applicable to Sureties and Their Bonds	Where investigation by the Dept. reveals that a contractor or subcontractor has failed to pay the prevailing rate of wages, the contracting public authority or the Dir. may, upon written notice to the contractor or subcontractor and the sureties of the contractor or subcontractor, and after a hearing, order work halted on the part of

	the contract for which less than the prevailing rate of wages had been paid, until the defaulting contractor has filed with the department a bond in an amount of such penal sum as the Dept. shall set, conditioned upon payment of the prevailing rate of wages.
Incorporated as a Provision of the Contract?	Yes
OKLAHOMA	Okla. Stat. Ann. Ch. 40 § 195 et seq.
Determination of Prevailing Wage Rate	Commissioner of Labor determines when notified by public body that rate needed for new public works contract
Sanctions	<p>Violator must pay difference between actual wages paid and wages entitled to be paid plus interest accrued at an annual rate of 20%</p> <p>Contractor must pay \$100/day for each day of violation</p> <p>Commissioner may recover 10% of deficiencies unless contractor comes into compliance within 10 days of notice</p> <p>Violators ineligible for public works contracts for 2 yrs.</p>
Right of Action/Enforcement	
Special Provisions Applicable to Sureties and Their Bonds	Public body shall require in contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract
Incorporated as a Provision of the Contract?	Yes
OREGON	Or. Rev. Stat. § 279.348 et seq.
Determination of Prevailing Wage Rate	Commissioner of Bureau of Labor and Industry determines at least once per year, may be amended at any time
Sanctions	Intentional violators banned from public works contracts for 3 yrs.
Right of Action/Enforcement	Contractor liable to workers in the

	<p>amount of unpaid wages along with an additional penalty in the amount of the unpaid wages as liquidated damages Commissioner may enforce provisions by civil action on assigned wage claim or administrative proceeding on assigned wage claim</p>
<p>Special Provisions Applicable to Sureties and Their Bonds</p>	<p>The contractor or contractor’s surety and every subcontractor or subcontractor’s surety shall file certified statements with the public contracting agency in writing certifying the hourly rate of wage paid each worker and further certifying that no worker has been paid less than the prevailing wage rate specified in the contract</p> <p>Contractor may deposit bonds or securities with the public contracting agency or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the public contracting agency. In such event the public agency shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor, interest on such bonds or securities shall accrue to the contractor.</p> <p>Contractor may deposit a surety bond for all or any portion of the amount of fund retained, or to be retained, by the public contracting agency in a form acceptable to the public contracting agency. Such bond or any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retainage. The public contracting agency shall reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the contractor. Whenever a public contracting agency accepts a surety</p>

	bond from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor or supplier from which the contractor has retainage. The contractor shall then reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier.
Incorporated as a Provision of the Contract?	Yes
PENNSYLVANIA	Pa. Stat. Ann. tit. 43 § 165-1 et seq.
Determination of Prevailing Wage Rate	Department of Labor and Industry determines
Sanctions	Any person or firm who intentionally violates the prevailing wage shall be barred from contracts with public bodies for 3 years Violator is liable to the state for liquidated damages
Right of Action/Enforcement	Secretary investigates and provides hearing Violators liable to Commonwealth of Pennsylvania for liquidated damages, in addition to damages for any other breach of the contract Any worker has right of action for the difference between the wage paid and the prevailing wage rate
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
RHODE ISLAND	R.I. Gen. Laws § 37-13-7 et seq.
Determination of Prevailing Wage Rate	Director of Labor, "Dir."
Sanctions	Violators guilty of misdemeanor and fined \$50-\$100/day of noncompliance or imprisoned for 10-90 days or both Violators will be ordered to pay wages due plus interest at a rate of 12% per annum, attorney's fees, and costs

	<p>Civil penalty of 3 times the amount due</p> <p>Violators ineligible for public works contracts for 18-36 months; any bids awarded on which work has not begun are revoked</p> <p>Second violation within 18 months, violators ineligible for 60 months</p>
Right of Action/Enforcement	<p>Dir. orders hearing</p> <p>If violation, awarding party may terminate right to proceed with the work and shall prosecute the work to completion by contract or otherwise</p>
Special Provisions Applicable to Sureties and Their Bonds	<p>Contractor required to file with proper authority good and sufficient bond with surety furnished by any surety company authorized to do business in the state, conditioned upon the faithful performance of the contract and upon the payment for labor performed and material furnished in connection therewith, a bond to contain the terms and conditions set forth in chapter 12 of this title.</p> <p>Contractor and sureties liable to the awarding party for any excess costs occasioned by the prosecution of the work to completion</p> <p>Dir. notifies bonding company of suspected violators for investigation</p>
Incorporated as a Provision of the Contract?	Yes
SOUTH CAROLINA	N/A
SOUTH DAKOTA	N/A
TENNESSEE	Tenn. Code Ann. § 12-4-404 et seq.
Determination of Prevailing Wage Rate	Commission of five members: Commissioner of Labor and Workforce development, state architect, commissioner of transportation, and 2 members

	appointed by the governor
Sanctions	
Right of Action/Enforcement	Commission or any employee may maintain an action against contractor for the breach of any condition of any performance bond given under the provisions of this part, and, in case of breach of any provision of such bond, the particular state agency which awarded the contract may advertise the work and relate the contract in the same manner as the original letting.
Special Provisions Applicable to Sureties and Their Bonds	Bond of the contractor or subcontractor shall contain provision obligating contractor or subcontractor to a faithful performance of each requirement imposed under this part
Incorporated as a Provision of the Contract?	Yes
TEXAS	Texas Code Ann. § 2258.001 et seq.
Determination of Prevailing Wage Rate	Public body in the locality in which public work is to be performed
Sanctions	Contractor or subcontractor in violation of statute shall pay a fine equal to \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated A fine not to exceed \$500 Confinement in jail for a term not to exceed six months
Right of Action/Enforcement	On receipt of information a public body shall make an initial determination as to whether good cause exists to believe a violation occurred A public body shall notify in writing the contractor or subcontractor and any affected worker of its initial determination A public body shall retain any amount due under the contract pending a final determination of the violation

Special Provisions Applicable to Sureties and Their Bonds	If the amounts retained by the public body are not sufficient for the public body to pay the worker the full amount owed, the worker has a right of action against the contractor, subcontractor and the surety to recover the amount owed, reasonable attorney's fees, and court costs.
Incorporated as a Provision of the Contract?	Yes
UTAH	UT ST §34-30-14 provides that, except as required by federal or state law, state or any political subdivision may not require payment of prevailing wages
VERMONT	VT. ST. T. 29 §161
Determination of Prevailing Wage Rate	Department of Employment and Training established and publishes prevailing wage periodically in its occupational employment and wage survey.
Sanctions	
Right of Action/Enforcement	
Special Provisions Applicable to Sureties and Their Bonds	
Incorporated as a Provision of the Contract?	Yes
VIRGINIA	N/A
WASHINGTON	Wash. Rev. Code Ann. § 39.12.010 et seq.
Determination of Prevailing Wage Rate	Industrial statistician of the Department of Labor and Industries
Sanctions	<p>A fine of \$500 for each false filing or failure to file</p> <p>Contractor shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full</p> <p>If a contractor or subcontractor is found to be in violation for a second time within a five year period, the contractor or subcontractor shall not be</p>

	<p>allowed to bid on any public works contract for one year from the date of notice of noncompliance</p> <p>A fine of not less than \$1,000 or an amount equal to 20% of the total prevailing wage violation found on the contract, whichever is greater</p> <p>Contractor or subcontractor shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full</p> <p>If the contractor or subcontractor is in violation for a second time within a five-year period they shall not be allowed to bid on any public works contract for 2 years</p>
Right of Action/Enforcement	<p>Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance</p> <p>A judicial appeal from the director's determination may be taken, with the prevailing party entitled to recover reasonable costs and attorney's fees</p>
Special Provisions Applicable to Sureties and Their Bonds	<p>To the extent that a contractor or subcontractor has not paid the prevailing rate of wage, the director shall proceed against the bond in accordance with the applicable statute to recover such amount</p> <p>Unpaid work has lien against bonds and retainage</p> <p>Surety bond requirement under RCW 18.27.040</p>
Incorporated as a Provision of the Contract?	Yes
WEST VIRGINIA	W. VA. Code § 21-5A-3 et seq.
Determination of Prevailing Wage Rate	Commissioner of Labor or member of department determines on January 1 of each year
Sanctions	Any contractor or subcontractor who

	<p>willfully and knowingly violates article shall be fined not less than \$50 nor more than \$250</p> <p>Any employee who is paid less than the posted prevailing wage, may recover the difference between the prevailing wage and actual wage paid, and in addition thereto, a penalty equal in amount to such difference, and reasonable attorney's fees</p>
Right of Action/Enforcement	<p>Any person who may be affected may object in writing within fifteen days after the certified copies of the determination have been filed with the secretary of state and department of labor</p> <p>The department of labor shall set a date for a hearing within ten days of the receipt of the objection and within ten days of the conclusion of the hearing make a final determination</p> <p>Any person affected by the final determination may appeal to the board within ten days from the filing</p> <p>Any party to the proceeding before the board may within thirty days after receipt of the notice of its decision, appeal to the circuit court of the county where the construction is to be performed</p>
Special Provisions Applicable to Sureties and Their Bonds	<p>The contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and his subcontractors to pay a rate or rates of wages which shall not be less than the fair minimum rate of wages as provided by this article</p>
Incorporated as a Provision of the Contract?	Yes
WISCONSIN	Wis. Stat. Ann. § 103.49 et seq.
Determination of Prevailing Wage Rate	Department of Labor determines by January 1 of each year
Sanctions	Any contractor or subcontractor who

	<p>violates this section may be fined not more than \$200 or imprisoned for not more than six months or both</p> <p>Each day that nay such violation continues shall be considered separate offense</p> <p>The Labor Department shall distribute a list to all state agencies of persons found to have failed to pay the prevailing wage rate, state agencies may not award any contract to such person unless 3 years have elapsed from the date the department issued its findings</p>
Right of Action/Enforcement	<p>Upon completion of a project and before receiving final payment for work on the project, each contractor shall file with the state agency authorizing the work an affidavit stating that the contractor has complied fully with the requirements of this section</p> <p>The Labor Department may inspect the contractor's or subcontractor's payroll and other records and information relating to wages paid</p>
Special Provisions Applicable to Sureties and Their Bonds	The prevailing wage rate of labor shall be physically incorporated into and made part of the contract or subcontract
Incorporated as a Provision of the Contract?	Yes
WYOMING	Wyo. Stat. Ann. § 27-4-401 et seq.
Determination of Prevailing Wage Rate	Public body awarding contract
Sanctions	Violators shall be punished by a fine not to exceed \$500, or by imprisonment not exceeding six months, or by both when convicted by a court of competent jurisdiction
Right of Action/Enforcement	<p>Upon complaint of violation, the commissioner of labor and statistics shall investigate and institute actions for penalties</p> <p>The commissioner shall be allowed to</p>

	inspect all wage rate records of contractors and subcontractors at all reasonable hours
Special Provisions Applicable to Sureties and Their Bonds	The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing wage rate shall be paid to all workmen performing under the contract
Incorporated as a Provision of the Contract?	Yes

JOHN W. ROURKE
Biographical Sketch

John W. Rourke is a shareholder in the St. Louis law firm of Reinert & Duree, P.C.. His practice emphasizes fidelity and surety bond claims and litigation, construction litigation, and commercial law. He is a graduate of the University of Virginia and the University of Missouri School of Law.

Mr. Rourke is licensed to practice law in Missouri, Illinois, and a number of federal courts. He is a member of the American Bar Association, the Missouri Bar, the Illinois State Bar Association, the Chicago Bar Association, and the Bar Association of Metropolitan St. Louis. He has been a contributor to or co-author of a number of papers and publications pertaining to fidelity law, surety law and construction law. Most recently, he co-authored Managing Construction Claims and Litigation for the Missouri Paralegal and Advanced Construction Law in Missouri; Mechanics' Lien Laws and Strategies in Missouri; The Law of Suretyship: Missouri Law and Practice Pertaining to Construction Bonds and Other Surety Bonds.

Peter Westhoff and Jocelyn Brennan
Biographical Sketches

Peter Westhoff and Jocelyn Brennan are law clerks at the St. Louis, Missouri law firm of Reinert & Rourke, P.C..