

AN EVALUATION

*Enforcement of  
Prevailing Wage Laws*

*Department of Workforce Development  
Department of Transportation*

*00-4*

*April 2000*

**1999-2000 Joint Legislative Audit Committee Members**

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April 19, 2000

Senator Gary R. George and  
Representative Carol Kelso, Co-chairpersons  
Joint Legislative Audit Committee  
State Capitol  
Madison, WI 53702

Dear Senator George and Representative Kelso:

We have completed an evaluation of the enforcement of prevailing wage laws by the departments of Workforce Development (DWD) and Transportation (DOT), as requested by the Joint Legislative Audit Committee. Prevailing wage laws require contractors engaged in public works projects to pay construction workers wages that are at least comparable to those earned for similar private-sector work in the same county.

DWD determines prevailing wage rates in each county for 233 job classifications by conducting an annual survey of construction contractors. The survey process generally provides accurate results but is time-consuming and prevents DWD staff from fulfilling other duties. We provide recommendations for improving the efficiency of the process.

Both DWD and DOT enforce compliance with the law by investigating workers' complaints that they have not been paid appropriate wages. In 1998, DWD completed 116 complaint investigations and collected \$125,811 in back wages owed by contractors. On average, DWD required 304 days to complete an investigation. DOT appears to complete its investigations in considerably less time, and in 1998 collected \$140,700 in back wages owed. DOT also monitors compliance by reviewing contractors' weekly payroll reports independent of formal complaints.

Neither agency typically invokes statutorily available penalty options against contractors that violate prevailing wage statutes, such as monetary damages beyond the back wages owed or debarment from public contracts. We include options for the Legislature to consider if it wishes to increase the enforcement efforts of the agencies.

We appreciate the courtesy and cooperation extended to us by DWD and DOT. Their responses are Appendix II and Appendix III.

Respectfully submitted,

Janice Mueller  
State Auditor

JM/DB/cr



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## SUMMARY

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Prevailing wage statutes require contractors engaged in public works projects to pay construction workers wages that are at least comparable to those earned for similar private-sector work in the same county. Two state agencies enforce prevailing wage rates: the Department of Workforce Development (DWD) enforces them on state and local public works projects, and the Department of Transportation (DOT) enforces them on state highway projects. Nine local governments, primarily in the largest metropolitan areas, have enacted and enforce their own local prevailing wage ordinances.

Prevailing wage laws were enacted in Wisconsin and other states in the 1930s, in response to the Great Depression, as a means of helping to protect workers' wages and discourage public works contractors from importing lower-wage workers from outside the community. While prevailing wage laws have traditionally been strongly supported by labor organizations, they are generally opposed by contractors in the construction trades, especially those that employ non-union workers. Thirty-one states currently have prevailing wage laws. However, as economic times have changed, prevailing wages laws have been overturned in some states: nine states repealed their laws between 1979 and 1987, and enforcement of Oklahoma's law was judicially suspended in 1995.

In Wisconsin, questions have been raised about how effectively the State has enforced existing prevailing wage laws, including whether wage rates are calculated accurately, whether workers' wage-rate complaints are addressed in a timely and effective manner, and whether statutorily established penalties are consistently assessed for wage-rate violations. Others have questioned the extent to which prevailing wages increase the cost of public works projects. As a result, the Joint Legislative Audit Committee directed the Audit Bureau to examine the performance of DWD and DOT in administering the prevailing wage law.

We attempted to determine the increased cost associated with prevailing wage requirements, but we found research available nationally on the subject to be inconclusive. Most researchers agree that prevailing wage requirements increase wage costs on public works projects. However, some believe that when factors such as higher productivity and improved construction quality are taken into account, prevailing wages do not increase overall costs. Others assert that contractual obligations and building codes ensure adequate construction quality and, therefore, prevailing wage laws are unnecessary. In fact, most assertions about the

costs of prevailing wage laws are based on studies with methodological weaknesses that prevent definitive conclusions. Nevertheless, there are costs to determine wage rates and enforce compliance with statutes. In June 1999, 11.68 full-time equivalent state staff, whose annual salaries and fringe benefits totaled approximately \$611,800, administered Wisconsin's program.

DWD, which is responsible for determining wage rates, annually surveys all contractors that worked in the state in the previous year to obtain information about the salary and fringe benefits they paid their construction workers. This information is used to determine wage rates in each county for 233 construction job classifications. Union groups and non-unionized contractors we spoke with believe that DWD's survey yields accurate wage rates. Although the response rate has been only about 20 percent annually since the survey was developed in 1996, DWD officials believe that because many large contractors complete the survey, it is likely the results reflect substantially more than 20 percent of the work completed in the state in the prior year.

DWD staff have indicated that while they are pleased with the results of the survey, they have found the survey process is time-consuming and limits the amount of staff time available to investigate complaints of possible violations or to monitor contractor compliance with Wisconsin statutes. We identified several steps that DWD can take to improve the efficiency of its survey process, including:

- more strongly encouraging contractors to submit their surveys on computer disks, which would decrease the amount of time contractors need to prepare the information and reduce the amount of data entry required by DWD staff;
- continuing its efforts to make the survey available on the Internet and to allow contractors to complete it on-line and submit it electronically, which would also reduce the amount of data entry required;
- training clerical staff to check surveys for accuracy as they are entering survey data, which would allow prevailing wage staff to concentrate on other duties, such as investigating wage-rate complaints; and
- reviewing completed surveys on only a sample basis.

DWD enforces prevailing wage statutes for state and local public works projects by relying on individuals to file complaints. Other than during its complaint investigations, DWD does not monitor compliance through collecting and inspecting payroll reports, which contain



information about the number of hours worked and the hourly wages and fringe benefits for each worker. In contrast, DOT, which enforces prevailing wage statutes on state highway projects, and the cities of Madison and Milwaukee, which are two of the local governments that enforce local prevailing wage requirements, combine complaint investigation with monitoring programs that include the regular review of payroll reports. DOT and local staff indicate their monitoring efforts can identify violations before complaints are filed, thereby saving the time and effort of formal investigations. In addition, DOT and local staff believe the number of complaints they receive is limited because of their monitoring programs.

DWD officials have indicated that agency does not conduct monitoring independent of formal complaint investigations for several reasons. First, they believe that monitoring does not produce results that justify the effort required. Second, DWD's prevailing wage staff spend their time determining wage rates and investigating complaints, which they have identified as higher priorities than compliance monitoring. Third, DWD does not contract for public works projects and, therefore, its staff do not always know when projects are underway.

However, because monitoring is generally considered an important component of any regulatory and enforcement program, DWD may wish to consider whether to establish monitoring activities. If DWD established monitoring activities in the future, we believe it could do so in a manner that requires only limited staff effort. For example, DWD could require only those contractors that have violated prevailing wage laws to submit certified weekly payroll reports. In 1998, which was a typical year according to its staff, DWD determined that 40 contractors had violated statutory prevailing wage requirements.

DWD received 99 wage-rate complaints in 1999. We reviewed the agency's complaint investigation process and found that complaint investigations are often lengthy. For example, the average investigation took 304 days to complete in 1998; however, five took more than two years to complete. In 1998, DWD identified \$125,811 owed to workers, who waited 367 days, on average, to receive their wages after filing complaints.

DOT staff estimate that they receive fewer than 30 complaints per year; however, DOT does not maintain information showing the exact number of complaints filed, the time taken to complete investigations, or the results of those investigations. Based on a review of investigation files at two of DOT's eight district offices, staff took 92 days, on average, to complete each investigation. DOT staff do not keep records indicating the total of back wages and overtime collected on state-funded projects, but they collected \$140,700 in 1998 on federally funded projects. It is difficult to compare DWD's and DOT's enforcement efforts because of the lack of information collected by DOT.

While DWD and DOT recover unpaid wages for workers, the agencies rarely apply other statutory actions against contractors that violate the law, such as recovering damages for workers or debarring repeat violators from public works contracts. Statutes direct DWD to require contractors to pay affected workers liquidated damages, which are monetary payments, of up to 50 percent of the amount of the back wages owed under certain circumstances. Similarly, DWD can collect liquidated damages of 100 percent of the back wages owed for repeat violators on local public works projects. Our review of DWD's investigation files indicates DWD attempted to assess the 50 percent liquidated damages in only 3 of 94 substantiated complaints in 1998, and it did not attempt to assess the 100 percent damages after any of the 94 investigations, all of which involved local projects.

Statutes allow DWD to prevent repeat violators from signing additional contracts for public works projects for up to three years. DWD officials indicate they debar contractors based on the severity and frequency of the violations and the level of cooperation the contractors provide during DWD's investigative process. From January 1994 through November 1999, DWD debarred 15 contractors for an average of 2.2 years each. No contractor has been debarred since October 1997, and the average length of debarment declined from 3.0 years in 1994 to 1.5 years in 1997. DOT has not debarred any contractors since January 1994, but it has forbidden one subcontractor from working in its Wisconsin Rapids district because of noncompliance with prevailing wage requirements.

Although most contractors comply with prevailing wage requirements, some repeatedly violate the statutory wage provisions. If the Legislature wishes to broaden the penalty options available in order to increase their use by DWD and DOT, it could consider:

- requiring contractors to pay workers interest on all back wages and overtime amounts owed;
- clarifying statutory language concerning the assessment of liquidated damages; and
- specifying violation thresholds that would require debarment.

During the course of this evaluation, we were unable to obtain accurate, complete data showing the results of DWD's and DOT's enforcement efforts. However, both agencies are implementing new computerized tracking systems, which are expected to provide information about their enforcement efforts. To ensure proper management of their programs,

state program officials should ensure they receive regular reports containing accurate and complete information regarding their enforcement efforts.

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# INTRODUCTION

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## **Prevailing wage laws require wages for public works projects to be comparable to those paid for similar private-sector work.**

Wisconsin statutes require contractors engaged in public works projects to pay construction workers wages that are at least comparable to those earned for similar private-sector work in the same county. These “prevailing wage” requirements apply to workers engaged in all types of publicly funded construction work, including building, remodeling, repairing, painting, and transporting materials and supplies to and from a project site. Two state agencies enforce prevailing wage rates: the Department of Workforce Development (DWD) enforces prevailing wage statutes for state and local public works projects, and the Department of Transportation (DOT) enforces prevailing wage statutes for state highway projects.

All public works projects that meet or exceed cost thresholds are subject to state prevailing wage laws. In 2000, the thresholds are \$34,000 for projects in which one trade accounts for 85 percent or more of the total cost of labor required, and \$168,000 for projects involving multiple trades. If a project is funded by a combination of state and federal funds, both state and federally established prevailing wage rates apply, and a contractor must pay the higher of the two rates.

DWD annually determines prevailing wage rates for each county in Wisconsin. State and local agencies contracting for public works projects must then include the applicable prevailing wage rates in project bidding and contract documents, and the rates must be posted at the project site once construction begins. Statutes allow local governments constructing public works projects to petition DWD for an exemption from applying for wage rate determinations if their policies for determining and enforcing wage rates meet or exceed state standards. Nine local governments currently have exemptions: the cities of Appleton, Fond du Lac, Green Bay, La Crosse, Madison, Milwaukee, and Racine; Milwaukee County; and Milwaukee Public Schools.

The prevailing wage statute was enacted by the Legislature in 1933, but it is patterned after a federal law—the Davis-Bacon Act—that was enacted in the early 1930s in response to the Great Depression and as a way to decrease the possibility that contractors would lower workers’ wages when bidding on public works projects, which are typically required to be awarded to the contractor with the lowest bid. The statute was also intended to protect workers by removing the incentive to bring in non-local laborers willing to accept lower wages and by ensuring that workers in the construction industry, which is characterized by seasonal fluctuations in the availability of work, were able to maintain a reasonable standard of living.

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**Thirty-one states currently have prevailing wage laws.**

Prevailing wage laws have traditionally been strongly supported by labor organizations, but they are generally opposed by contractors in the construction trades, especially those that employ non-union workers. As economic times changed, some states determined the laws were no longer needed and overturned them. Nine states repealed their laws between 1979 and 1987, and enforcement of Oklahoma's law was judicially suspended in 1995. Thirty-one states currently have prevailing wage laws.

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**Concerns have been raised about DWD's and DOT's enforcement of prevailing wage law.**

In Wisconsin, questions have been raised about whether DWD and DOT are effectively administering the prevailing wage law, including whether wage rates are calculated accurately, whether workers' wage-complaint investigations are completed in a timely manner, and whether statutory penalties are consistently assessed for violations. In addition, others have questioned the extent to which prevailing wages increase project construction costs. In response to these concerns, and at the direction of the Joint Legislative Audit Committee, we analyzed:

- the effect of prevailing wages on the cost of public works projects;
- the process DWD uses to determine prevailing wage rates;
- the adequacy of DWD's and DOT's monitoring activities and complaint investigation procedures; and
- the extent to which penalties are imposed on contractors for violating prevailing wage statutes.

In conducting this evaluation, we spoke with officials of DWD and DOT and visited two of DOT's eight district offices, whose staff investigate prevailing wage complaints; examined the case files of all DWD complaint investigations completed in 1998; reviewed DWD's and DOT's policies and procedures; analyzed summary information; and reviewed research reports that examine how prevailing wages affect project costs. In addition, we interviewed officials of the cities of Green Bay, Madison, and Milwaukee, which are among the nine local governments that have exemptions from state prevailing wage requirements; several contractor associations and union groups; five other midwestern states that have prevailing wage laws; and staff of the United States Department of Labor.

## Cost of Prevailing Wage Requirements

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**Researchers disagree about the extent to which prevailing wages affect overall project costs.**

A number of individuals around the nation, including academics, legislative research staff, and staff of private research organizations, have studied the extent to which prevailing wages increase project costs. Most researchers, including both proponents and opponents of prevailing wage laws, agree that the laws result in increased wage costs for public works construction projects. However, there is little agreement concerning the effects of the laws on overall project costs or whether the costs are justified by the benefits associated with prevailing wages.

Some researchers assert that prevailing wage laws actually decrease the overall cost to government when other factors are taken into account. They believe that the laws tend to ensure that a skilled construction labor force is hired, which results in higher productivity, lower worker compensation costs, improved construction quality, and minimal project cost overruns. In addition, they believe that if the laws were repealed, lower wages would reduce income and sales tax collections, which would outweigh any cost savings.

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**Concerns exist about how prevailing wage rates are calculated.**

In contrast, other researchers claim that prevailing wage laws increase overall government costs. They believe that the laws are no longer needed because contractual obligations, workplace safety laws, and building codes keep project costs low by ensuring an able, productive, and safety-conscious workforce. Furthermore, they believe that amounts saved through reduced wages on construction projects could fund additional projects, thereby increasing employment opportunities. Finally, they assert that the laws artificially inflate wages because prevailing wage rates typically reflect union wages. Many smaller, non-unionized contractors do not submit the information state agencies use to determine prevailing wage rates because they believe the information will not be taken into account.

Available research does not provide for definitive conclusions about whether or not prevailing wages increase overall project costs. For example, some studies asked contractors to estimate their wage costs if prevailing wages had been paid. However, researchers acknowledged that the contractors' estimates were speculative and may have been biased to exaggerate the additional cost. Other studies examined the effects of the repeal of prevailing wage laws on project costs in one area and then presumed that similar effects would occur throughout the entire state or nation. Still others theorized that an increase in workplace injuries that was observed for workers in several job classifications after prevailing wage laws were repealed in one state would occur throughout the entire construction industry.

The non-unionized contractors with whom we spoke believe that prevailing wage requirements increase their costs in several ways. For example, they pointed out that if the weather prevents sufficient progress from being made on a project, weekend work may be necessary to remain on schedule, and prevailing wage statutes require contractors to pay overtime of at least 1.5 times each worker's base hourly wage for all weekend work, even if employees do not work during the week. Contractors also stated that complying with prevailing wage requirements increases their administrative costs and raises confidentiality concerns. As a result, officials of one non-unionized contractor association told us that almost half of the association's members choose not to bid on projects subject to prevailing wage statutes.

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**The annual staffing cost to administer prevailing wage statutes is \$611,800.**

Regardless of whether prevailing wages increase project and contractor costs, there are costs to the State to determine the wage rates and enforce statutes. As shown in Table 1, 11.68 full-time equivalent (FTE) state staff administered prevailing wage statutes as of June 1999, including 5.50 FTE staff at DWD and 6.18 FTE staff at DOT. Annual salaries and fringe benefits for the 11.68 positions total approximately \$611,800. General program revenue funds the DWD positions, while a combination of state and federal revenue funds the DOT positions.

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Table 1

**State Prevailing Wage Staff**  
June 1999

	<u>Full-time Equivalent Positions</u>
DWD	5.50
DOT	
Madison	1.40
Waukesha	1.80
Green Bay	0.60
Wisconsin Rapids	0.53
La Crosse	0.20
Eau Claire	0.70
Rhinelander	0.10
Superior	0.35
Central Office	<u>0.50</u>
DOT Subtotal	<u>6.18</u>
Total	11.68



We could not determine the number or the total dollar value of state and local projects subject to state prevailing wage requirements. However, in fiscal year (FY) 1998-99, the Building Commission approved 560 contracts totaling \$328.6 million, and DOT signed 412 contracts totaling \$597.3 million. Local governments reported \$1.1 billion in capital expenditures to the Department of Revenue during calendar year 1998, although an unknown portion of this amount was for equipment purchases.

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## DETERMINING PREVAILING WAGE RATES

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### **DWD determines wage rates for public works projects by annually surveying construction contractors.**

DWD distributes an annual survey that requests detailed information from construction contractors about the hourly wages and fringe benefits they pay their laborers, electricians, truck drivers, furnace installers, and other workers. DWD uses the survey results to determine annual prevailing wage rates for public works projects. Union officials and contractors with whom we spoke indicated they are generally satisfied with the annual survey, and we found that the survey helps ensure that prevailing wage rates reflect actual wages paid. Nevertheless, concerns have been raised about the time it takes DWD to determine the wage rates.

Until 1996, DWD gathered wage and fringe benefits information from local unions, contractors, and employers' associations on a project-by-project basis whenever state agencies or local governments that intended to solicit construction bids requested prevailing wage information. 1995 Wisconsin Act 215, which took effect in April 1996, required DWD to determine the annual wage rates in all counties for all construction job classifications. Act 215 also made a number of technical changes to the way in which prevailing wage rates are determined.

In June of each year since 1996, DWD staff have surveyed all construction contractors that worked in the state during the previous year. Contractors are asked to provide the hourly wages and fringe benefits amounts they paid to workers in each public works job classification, as defined by DWD. Contractors specify the county in which each construction project took place, whether the projects were subject to prevailing wage laws, and whether the workers were union members.

As shown in Table 2, staff mailed 15,297 surveys in 1999, of which 3,196 were returned. Since 1997, approximately 20 percent of contractors have returned the surveys. DWD officials believe that because many large contractors complete the survey, it is likely that the results reflect substantially more than 20 percent of all hours worked in the state in the prior year. Appendix I is the 1999 survey form, the results of which will be used to determine wage rates for calendar year 2000.

Table 2

**Prevailing Wage Survey**

	<u>Surveys Mailed</u>	<u>Surveys Returned</u>	<u>Percentage Returned</u>
1996	18,111	1,740	9.6%
1997	17,761	3,845	21.6
1998	16,303	3,240	19.9
1999	15,297	3,196	20.9

**DWD determines wage rates in every county for 233 job classifications.**

DWD determines prevailing wage rates for each job classification in every county based on the wage and fringe benefits data gathered from the survey. The 1999 survey determined wage rates for 233 job classifications. In order to determine a wage rate for a job classification, statutes require that at least 500 hours of wage and fringe benefits information be reported by the survey respondents for a county. If fewer than 500 hours are reported, hours from contiguous counties and then the entire state may be included in order to compile 500 hours of information.

Once 500 hours or more of work have been identified for a job classification, prevailing wage rates are established in one of two ways. If the majority of hours were paid at exactly the same hourly amount because they were part of a collective bargaining agreement, that amount becomes the wage rate. However, if no majority exists, statutes state that the wage rate shall be an average of the wages and benefits of the highest-paid 51 percent of wage hours reported.

In October of each year, DWD allows contractors 30 days to examine the preliminary rates for the upcoming year and make corrections to previously submitted wage and fringe benefits information, or to submit new information if the contractors were not contacted during the initial survey period. Statutes require DWD to determine the final wage rates by January 1 of each year for state and local projects, and by May 1 for state highway projects.

Except for DOT, which uses the state highway rates finalized by DWD in May, and exempt local governments that use either DWD's wage rates or their own rates, if those rates are higher than DWD's, all state agencies and local governments preparing to contract for a public works project subject to prevailing wage requirements are required to request the prevailing wage rate determinations from DWD for all job classifications associated with a project before soliciting bids from contractors. In 1998, DWD staff provided 1,510 wage rate

determinations to state agencies and local governments. Providing the determinations requires little time because staff have already spent a considerable amount of effort during the survey process, and the resulting wage rates developed from the annual survey are stored in computer data bases.

### **Effectiveness of the Wage Rate Survey**

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**Contractors and unions generally believe that DWD's survey is an effective way to determine wage rates.**

Both union groups and non-unionized contractors generally believe DWD's survey is an effective way to determine wage rates. Some believe that because unionized contractors are more likely to complete DWD's survey, the resulting wage rates are a closer reflection of union rates than of wages paid by the industry as a whole. However, even detractors believe DWD's current survey is a significant improvement to the project-by-project determination process used before 1996.

We interviewed officials from five other midwestern states with prevailing wage laws—Illinois, Indiana, Michigan, Minnesota, and Ohio—and from the federal Department of Labor. Of the five midwestern states, only Minnesota uses an annual survey that is similar to DWD's. Illinois plans to begin using an annual survey in 2000, but the other three states rely on collective bargaining agreements or determine rates on a project-by-project basis. Relying exclusively on collective bargaining agreements, however, excludes wages paid by non-unionized contractors, and collecting wage information on a project-by-project basis may require considerable effort.

The federal Department of Labor uses a survey to determine wage rates for federally funded construction projects, but the survey is neither comprehensive nor conducted annually. Instead, federal surveys are conducted in particular areas of the country and only for certain job classifications, based on the number and value of upcoming projects scheduled and how long it has been since the wage rates were last updated. As a result, some federal wage rates are several years old and may not reflect current wages.

### **Improving the Survey Process**

Although the wage rates that result from the annual survey are likely to be accurate, a considerable amount of effort by DWD staff is needed to review returned surveys. The most time-intensive component of the survey process occurs from June through August, when DWD staff review all returned surveys for accuracy by, for example, ensuring that the reported hourly wages are more than the minimum wage rate and that the wage information is coded to the appropriate county. In 1999, four staff reviewed the surveys, and two clerical staff entered survey information into a data base. Although staff do not keep time records,

they estimate they spend approximately 70 percent of their time throughout the year preparing the survey, analyzing the results, and determining the wage rates.

In 1999, 300 contractors, or 9.4 percent of contractors responding to the survey, submitted their survey information on computer disks that were provided by contractor associations and union organizations. Contractors indicated that providing information electronically requires less effort than submitting the information on paper. In addition, when information is submitted on computer disks, data entry work required of DWD clerical staff is reduced.

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**Prevailing wage rates  
could be determined in  
less time.**

DWD officials could implement options that are likely to decrease the amount of time required to complete the survey process without appreciably affecting the accuracy of the wage rates. Therefore, we recommend the Department of Workforce Development:

- more strongly encourage contractors to submit their surveys on computer disks, which would decrease the amount of time contractors need to submit the information and would also reduce the amount of data entry required by DWD staff;
- continue its efforts to make the survey available on the Internet and to allow contractors to complete it on-line and submit it electronically, which would also reduce the amount of data entry required;
- train clerical staff to check surveys for coding accuracy as they are entering survey data, which would allow prevailing wage staff to concentrate on other duties; and
- review completed surveys on only a sample basis, which could be adjusted in size depending on the extent to which errors are identified.

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## ENFORCING PREVAILING WAGE LAWS

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**Concerns have been raised about the amount of time needed to complete complaint investigations.**

DWD enforces prevailing wage statutes for state and local public works contracts by relying on individuals to file complaints alleging contractor noncompliance. In contrast, DOT, which enforces statutes for state highway contracts, investigates wage-rate complaints that are filed and, in addition, attempts to identify and resolve violations before complaints are filed by monitoring contractor compliance. Concerns have been raised about the amount of time it takes to complete complaint investigations. We identified several ways that both agencies could improve their enforcement efforts.

### **Monitoring Activities**

State statutes require contractors to maintain payroll and other records of wages and fringe benefits paid to employees who worked on public works projects. DWD and DOT are allowed, but not required, to inspect these records. In contrast, federal law requires contractors to submit weekly payroll reports for all projects involving federal funds, and either the contractors or their accounting firms must certify that the reports are accurate.

Other than during its complaint investigations, DWD does not collect or inspect contractors' weekly payroll records. DWD officials cite several reasons for not inspecting payroll records independent of formal complaint investigations. First, they believe monitoring does not produce results that justify the effort required. Second, DWD's prevailing wage staff spend their time determining wage rates and investigating complaints, which DWD has identified as higher priorities than compliance monitoring. Third, DWD does not contract for public works projects and, therefore, its staff do not always know when projects are underway.

Contractors must submit weekly certified payroll reports to DOT because approximately three-quarters of state highway projects involve federal funds. DOT staff indicate that inspecting payroll reports is integral to effective enforcement of prevailing wage statutes. DOT's procedural manual, which provides detailed guidelines on how to monitor contractors for compliance, suggests that district staff randomly check payroll reports for each federally funded project. If violations are noted or staff are concerned that the appropriate wages were not paid, all payroll reports from the contractor are typically checked, and staff request additional information from the contractor as well.

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**DOT staff review contractors' weekly payroll reports but do not maintain summary information.**

Staff of the two DOT district offices we visited—Waukesha and Wisconsin Rapids—stated that they attempt to review every submitted payroll report for accuracy. They indicated that after identifying problems in the payroll reports, they contact the contractors and are able to resolve many problems before complaints are filed. DOT does not, however, maintain summary information about the number of payroll reports reviewed, the number of violations identified by those reviews, or the amount of back wages recovered.

The cities of Madison, Milwaukee, and Green Bay also require contractors to submit certified weekly payroll reports for all public works projects. In Madison, one staff member works half-time to examine payroll reports submitted by an estimated 100 contractors each year. If the reports are not submitted, the city withholds project payments owed to the contractor. The reports are checked at the start of projects; if no problems are discovered, subsequent reviews are not as comprehensive. Milwaukee requires contractors to submit certified weekly payroll reports for three-month periods or at the end of projects lasting less than three months. One staff member is assigned to review the submitted reports full-time. In Green Bay, one individual spends less than 20 hours per week examining each payroll report, but project engineers also examine the reports. If contractors do not submit the reports, project payments are withheld.

Concerns have been raised about requiring the submittal of payroll reports. First, some individuals believe that the privacy of public works project employees may potentially be harmed if employees' social security numbers are included on the payroll reports. The report form used by DOT requests contractors to include social security numbers. In contrast, the City of Madison requests only the last four digits of each number, and the City of Milwaukee does not request social security numbers.

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**Non-unionized contractors are concerned about revealing sensitive payroll information.**

Second, officials of an association that represents non-unionized contractors expressed reservations about requiring the submittal of weekly payroll reports on all state and local projects. They indicated that many contractors are concerned about making sensitive wage and payroll information available to the State because other companies, especially those that are unionized, could gain access to the information and use it to offer higher wages to a contractor's most skilled employees.

Nevertheless, requiring contractors to submit weekly certified payroll reports for state and locally funded projects could improve enforcement efforts in two ways. First, it could increase compliance with statutory requirements, because contractors would know that regulatory staff would possess and could review all such reports. As a result, it could become necessary for state staff to investigate fewer complaints.



Second, if a construction worker did file a complaint, staff would have much of the basic information needed for an investigation at hand, which could reduce the amount of time needed to complete the investigation.

If only those contractors that have violated prevailing wage statutes in three prior years were required to submit payroll reports, the amount of effort required of state staff and contractors would be limited. DWD determined that 40 contractors had violated statutes in 1998, which, according to staff, was a typical year. Therefore, over a three-year period, it would be necessary for DWD staff to monitor approximately 120 contractors, although the number would be less if some contractors were repeat violators. As noted, one City of Madison staff member works half-time to examine reports submitted by an estimated 100 contractors each year.

It appears that contractors could submit weekly payroll reports without significant additional effort. The information required to complete the reports—the hourly wages and fringe benefits paid to each employee, as well as the number of hours worked by each employee on each project—is already developed by contractors, many of whom are required to provide it to DOT every week for federally funded projects, as well as to the cities of Madison, Milwaukee, and Green Bay. In addition, contractors already compile much of this information for other reasons, such as for payroll, income tax, and unemployment compensation purposes.

To minimize the time and expense required for contractors, especially those with smaller operations, it may be preferable for contractors to submit weekly payroll information for all weeks of a project at the project's end. Therefore, *we recommend the Department of Workforce Development and the Department of Transportation collect and review certified weekly payroll reports for all contractors that have violated prevailing wage statutes in three prior years.*

Interviewing employees during the construction of public works projects is another way of determining whether contractors are complying with statutory requirements. Interviews consist of asking workers the hourly wage they are being paid, the number of hours they work, and the type of work they perform. By maintaining an occasional presence at project sites and distributing information to workers about their right to receive prevailing wages and how to file complaints, it is likely that state staff can increase contractors' compliance.

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**DOT staff interview  
public works project  
employees to help ensure  
compliance.**

DWD does not interview public works construction employees other than during its complaint investigations because, as noted, its regulatory staff are located in Madison and do not always know when public works projects are underway. In contrast, DOT district staff, as well as the

on-site engineers responsible for state highway projects, interview contractors' employees as time permits. DOT's procedural manual suggests that staff concentrate their interviewing efforts on:

- contractors with past compliance problems;
- contractors new to the district or whose employees have not been interviewed previously; and
- projects with potential problems because of the amount of work or type of activity involved.

If the interviews indicate potential violations, DOT staff may review previously submitted payroll reports or request additional information from the contractor. DOT staff believe these monitoring activities allow them to identify and resolve violations before workers file formal complaints. However, DOT does not maintain detailed records indicating how often it conducts wage interviews or the results of the interviews, such as the number of violations identified and the amount of back wages collected.

Staff of the cities of Madison and Milwaukee also conduct wage interviews. In Madison, one staff member spends approximately 15 hours per week interviewing employees on the city's projects that are subject to prevailing wage laws. Engineers responsible for Milwaukee's projects are expected to conduct wage interviews at least once during each project. However, Milwaukee staff indicated that engineers may not always conduct interviews if their time is spent completing higher-priority project tasks.

### **Investigating Complaints**

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**A wage-rate complaint must be filed within two years after an alleged violation occurred.**

Workers who believe they were not paid the appropriate prevailing wage rate on state or local public works projects may file complaints with DWD within two years of the date the violation allegedly occurred; if the work occurred on a highway project involving state or federal funds, workers must file their complaints with DOT. In addition, other workers, unions, or contractors may file third-party complaints on behalf of an affected worker. We found that DWD staff took 304 days, on average, to complete complaint investigations in 1998. However, because complete information indicating the time it took DOT to complete complaint investigations does not exist, it is difficult to compare the two agencies' enforcement efforts.

## **DWD Complaint Investigations**

Individuals alleging wage-rate violations file their complaints with DWD using a standard form. Upon receipt, a complaint is assigned to a staff member for investigation. DWD received 97 wage-rate complaints in 1997, 97 in 1998, and 99 in 1999, according to summary data provided by the agency.

DWD's goal is to complete investigations within 120 days, according to a December 1998 brochure provided to contractors; however, agency officials stated that their goal is to complete investigations within 240 days. DWD staff typically notify the contractor of the allegation and the complainant's name shortly after receiving the complaint. The contractor is told to review its time and payroll records for the complainant for the time period during which the violations allegedly occurred and to respond to DWD within 15 days, providing:

- a check made out to the complainant in the amount of the back wages requested by the complainant;
- a check made out to the complainant for a different amount, if the contractor's review of records indicates the complainant is owed a different amount; or
- a detailed explanation, including documentation, of why no back wages are owed to the complainant.

If a contractor disputes the complaint or submits information that is insufficient for DWD to determine the amount, if any, that is owed to the complainant, the investigator requests additional information, such as fringe benefits information and time cards. If a contractor promptly provides all relevant information, the investigator is often able to determine relatively quickly whether a violation occurred. However, if the contractor does not provide complete information in a timely manner, it may be necessary for DWD to make multiple additional requests. Based on a review of all information submitted, the investigator determines the amount of back wages and overtime amounts, if any, that are owed to the complainant.

Contractors report that the complexity of prevailing wage requirements sometimes makes compliance difficult. Some non-unionized contractors stated that the job classification system used by DWD to determine wage rates reflects a labor structure used by unionized contractors. As a result, a non-unionized contractor may inadvertently classify workers inaccurately and, as a result, pay them incorrect wages.

Enforcing prevailing wage statutes can be challenging for investigators, who must obtain evidence that a contractor did not pay the required wage rate or overtime amount on a project that may have been completed many months earlier. Examining the contractor's payroll and other records may indicate violations occurred, but in many instances additional evidence is needed to substantiate a complaint. Regulatory staff often need the complainant or the complainant's co-workers to provide information about the exact types of work performed, which indicates the wage rate the contractor should have paid. Completing these tasks sometimes takes a considerable amount of time.

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**DWD completed  
116 complaint  
investigations in 1998.**

In 1998, DWD completed 116 complaint investigations involving 58 contractors. Workers filed 68, or 58.6 percent, of the complaints on their own behalf, and unions filed 38 complaints, or 32.8 percent of the total. The remaining complaints were filed by workers on behalf of fellow employees and by contractors alleging that their competitors did not comply with statutory requirements.

As shown in Table 3, DWD substantiated 94, or 81.0 percent, of the 116 complaint investigations it completed in 1998. In 4 of the 94 investigations, DWD found that although violations had occurred, the contractor had actually overpaid the complainants at other points in time and, therefore, did not owe any additional funds. Complaints were not substantiated in 18 instances, and 4 complaints were withdrawn before DWD staff could determine whether or not a violation had occurred.

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Table 3

**Results of DWD Complaint Investigations Completed in 1998**

	<u>Number</u>	<u>Percentage</u>
Complaint Substantiated		
Payment Assessed	90	77.6%
No Payment Assessed	<u>4</u>	<u>3.4</u>
Subtotal	94	81.0
Complaint Unsubstantiated	18	15.6
Complaint Withdrawn	<u>4</u>	<u>3.4</u>
Total	116	100.0%

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**In 1998, DWD completed 23.3 percent of its investigations within 120 days.**

As shown in Table 4, 23.3 percent of complaint investigations concluded in 1998 were completed within 120 days, and 55.2 percent were completed within 240 days. However, 28.4 percent took more than one year to complete, including five that took more than two years to complete. Overall, the average investigation in 1998 took 304 days to complete.

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Table 4

**Completion Time for DWD's 1998 Complaint Investigations**

<u>Number of Days to Complete Investigation</u>	<u>Number of Cases</u>	<u>Cumulative Percentage</u>
0 - 30	1	0.9%
31 - 60	3	3.4
61 - 90	17	18.1
91 - 120	6	23.3
121 - 180	9	31.0
181 - 240	28	55.2
241 - 360	19	71.6
361 - 730	28	95.7
More than 730	<u>5</u>	100.0
Total	116	

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After DWD staff complete an investigation, contractors are allowed to appeal the decision to the director of the agency's Bureau of Labor Standards. In an informal hearing, the director determines whether or not the results of the staff investigation should be modified by, for example, lowering the amount of back wages owed. The director may also approve a payment plan that allows the contractor to pay the back wages over a period of time, such as one year. If contractors are dissatisfied with the director's decision, they may appeal to a circuit court.

None of the investigations completed in 1998 were appealed in court. However, contractors appealed 17 cases to the director of the Bureau of Labor Standards. On average, it took 219 days to resolve the appeals. As of November 1999, DWD had completed the investigations, resolved

the appeals, and obtained all back wages and overtime owed for 100 of the 116 investigations completed in 1998. It took DWD an average of 367 days each to close these cases.

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**DWD staff sometimes took no action for months during investigations.**

DWD staff indicated that complaint investigations are often lengthy because contractors do not provide payroll records and other requested information promptly. However, during our review of complaint investigations, we noted instances in which DWD staff appeared to take no action for many months for reasons other than difficulty in receiving the necessary information. Delays harm both complainants, who may be owed back wages, and contracting firms, which often want investigations to be completed as soon as possible. For example:

- In February 1999, DWD concluded that a contractor owed 16 workers \$10,122, due within 15 days of the contractor's receipt of the payment notification from DWD. The contractor did not pay, but DWD took no action until June 1999. At that time, the contractor claimed to have called and written previously requesting an appeal, but to have received no response from DWD. An appeals hearing was held in July 1999. At that time, the contractor agreed to pay the full amount owed.
- In December 1998, a contractor requested an informal appeals hearing, based on DWD's determination that the contractor owed \$36,802 in back wages. DWD did not respond to this request until July 1999. A hearing was held in mid-August 1999, and the contractor agreed to pay the full amount, with interest, over a three-year period. However, DWD officials did not complete the paperwork necessary to set up the payment plan that allowed the contractor to begin making payments until mid-November.

Other governmental agencies that enforce prevailing wage laws take less time than DWD to investigate complaints. Staff of the City of Milwaukee, which received only six complaints from January through August 1999, stated that their investigations typically require about three to four weeks to complete, and almost all contractors promptly pay the back wages they owe. Staff of the City of Madison stated that they receive only a few complaints each year, and their investigations typically require four to six weeks to complete. They also noted that contractors have never disputed their determinations of back wages owed.

Staff in several other midwestern states provided us with estimates of the amount of time required to close their complaint files. Illinois staff received 1,288 complaints in FY 1997-98, and they estimate that they closed the majority of cases within 60 days. Michigan staff received 131 complaints from January through August 1999, and they closed 63 percent of them within 90 days.

### **DOT Complaint Investigations**

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**DOT tries to complete complaint investigations within 90 days.**

DOT's complaint investigation policies and procedures were last updated in October 1998. These policies and procedures instruct staff in the agency's eight districts to contact complainants within five working days of receiving a complaint and to request additional, supporting information from them if necessary. If a complaint appears warranted, a staff member asks the contractor to respond to the complaint within ten working days. If a contractor does not respond, DOT staff send a second letter, which requests a response within ten working days and warns that project payments will be withheld if the contractor continues to ignore the information requests. If a response is still not received, DOT staff send a third letter stating that project funds are being withheld until the matter is resolved. The entire complaint investigation is intended to take not more than 90 days.

In conducting their investigations, DOT staff rely on information similar to that used by DWD staff. For example, DOT staff may request and review a contractor's payroll and time card records and may interview other workers to determine the exact nature of the work completed. In addition, DOT staff rely on the weekly certified payroll reports they have already collected for all federally funded projects. Because DOT directly contracts for all state highway projects, its own engineers or hired private consultants maintain a presence at project sites, and DOT prevailing wage staff are able to contact those individuals to quickly obtain the information necessary for investigating complaints.

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**DOT receives approximately 20 to 30 complaints per year, but the exact number is unknown.**

DOT staff estimate they receive 20 to 30 complaints each year, although they do not maintain complete, detailed records indicating the exact number of complaints received, how much time was required to investigate them, or the results of their investigations. Nevertheless, they believe their monitoring activities allow them to resolve many instances of noncompliance with prevailing wage requirements before workers file formal wage complaints. Our review of complaint files at DOT's Waukesha and Wisconsin Rapids district offices found some files contained incomplete documentation, which prevented us from determining the exact period of time required to complete the investigations. However, based on a small number of files with more

complete information, DOT staff completed their investigations in 92 days, on average, which is considerably less time than DWD staff required. We found:

- four complaint investigations completed by DOT's Waukesha district office in 1998 took an average of 117 days each to complete; and
- three complaint investigations completed by DOT's Wisconsin Rapids district office in 1995 and 1996 took an average of 58 days each. DOT staff stated they have not received a formal complaint since then.

### **Complainant Confidentiality**

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**Only complainants on federally funded highway projects are provided confidentiality.**

State statutes provide no assurances of confidentiality for complainants on state and locally funded projects. When beginning investigations, DWD staff inform contractors of the names of the workers who filed complaints. In contrast, if a highway project involves federal funding, as approximately three-quarters of all DOT projects do, DOT staff follow federal laws that require them to provide complainants with confidentiality as protection against retaliation. DOT staff, therefore, request payroll and other relevant information for a number of workers in addition to the complainant, making it difficult for the contractor to ascertain which employee filed a complaint. If a highway project does not involve federal funding, DOT staff do not volunteer the names of complainants, but they do provide this information if requested by contractors. DOT staff believe that providing confidentiality makes workers more likely to be confident that they can file complaints without retaliation.

Staff of the City of Milwaukee indicate they attempt to keep complainants' identities confidential, although they will reveal the names if requested to by contractors. Two other midwestern states provide confidentiality to complainants. Indiana does so on a regular basis, and Illinois allows complainants to request confidentiality. The other three midwestern states we contacted do not provide confidentiality, nor does the City of Madison.

Union representatives believe that some workers hesitate to file complaints out of fear of retaliation. We found evidence that individuals have tried to file anonymous complaints with DWD, which does not initiate investigations unless individuals provide their names. If the Legislature wishes to provide workers with greater assurance that they will not be retaliated against for filing wage-rate complaints, it could



provide confidentiality to individuals who file complaints on their own behalf by amending ss. 103.49, 103.50, and 66.293, Wis. Stats., which address prevailing wage requirements for state, state highway, and local projects.

### **Unsubstantiated Complaints**

If state staff conduct a complaint investigation but are unable to prove that a contractor violated statutes, the complaint is unsubstantiated. Statutory changes that became effective in April 1996 require DWD to charge complainants for unsubstantiated complaints. Individuals filing complaints on their own behalf are to be charged the actual cost of investigation. For third-party complaints, the charge is to be the actual cost of investigation or \$250, whichever is greater. Statutes contain no provisions that would allow DOT to charge for unsubstantiated complaints.

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**DWD does not recoup costs for all unsubstantiated complaints.**

We reviewed wage-rate complaints resolved in 1998, most of which likely involved work completed after April 1996 because, as noted, complaints may be filed up to two years after the alleged violations occurred. DWD recouped investigation costs for 2 of the 18 unsubstantiated complaints for which investigations were completed in 1998. One worker who filed a complaint on his own behalf was charged \$100, and a union organization that filed a third-party complaint was charged \$250. Of the remaining 15 cases, it appears that at least 6 involved work that occurred after April 1996. However, the files contained no documentation to explain why investigative costs were not recouped. DWD staff indicated they do not always charge for unsubstantiated complaints because they believe statutes provide them with the discretion not to assess the charges.

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## BACK WAGES AND PENALTIES

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If DWD or DOT determines that a contracting firm has not paid its employees prevailing wages or overtime as required by statutes, the agency attempts to collect the amounts owed and, in some instances, assess penalties. Penalty options include liquidated damages, which are monetary payments that are provided to affected employees, and debarment, which prohibits contractors from contracting for additional public works projects for up to three years. Concerns have been raised that failure to assess statutory penalties limits contractors' incentive to comply with prevailing wage requirements and reduces the amounts awarded to employees. We found that DWD and DOT often have not fully used the available penalty options, even when contractors repeatedly violate statutes.

### Back Wages Collected

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**In 1998, DWD identified \$125,811 in back wages and overtime owed.**

DWD and DOT collect back wages owed by contractors and provide the amounts to the affected workers. As a result of complaint investigations completed in 1998, DWD collected \$125,811 in back wages owed by contractors. DOT staff do not maintain exact records for all projects, but in 1998 they collected \$140,700 in back wages on federally funded projects. It is not possible to make meaningful comparisons between the amounts collected by DWD and DOT because neither agency tracks the proportion of project costs collected as back wages.

As shown in Table 5, DWD had collected \$85,445, or 67.9 percent of the \$125,811 it identified in 1998 as being owed by contractors, as of November 1998. Contractors had agreed to pay an additional \$40,366, although DWD had not yet received those funds. DWD allows contractors that demonstrate an inability to make a single payment for the full amount of back wages owed to pay in installments instead, typically with interest.

Table 5

**Back Wages Collected by DWD,  
as Identified by 1998 Complaint Investigations**  
As of November 1999

	<u>Amount</u>
Back Wages Collected	\$ 85,445
Payment Due	<u>40,366</u>
Total	\$125,811

**DOT collected \$140,700  
in back wages on  
federally funded projects  
in 1998.**

As shown in Table 6, DOT staff collected \$140,700 in 1998 and \$170,100 from January through August 1999 on federally funded projects, which make up approximately three-quarters of all projects. However, DOT does not maintain comprehensive information about the amount of back wages collected on state-funded projects. For both years, 46.7 percent of the back wages collected were identified as a result of payroll report reviews and employe interviews.

Table 6

**Back Wages Collected by DOT on Federally Funded Projects**

<u>Method of Identification</u>	<u>1998</u>	<u>1999*</u>
Complaint Investigations	\$ 86,000	\$ 79,700
Payroll Report Reviews and Employe Interviews	<u>54,700</u>	<u>90,400</u>
Total	\$140,700	\$170,100

\* Through August

City of Milwaukee staff collected \$51,316 in back wages in 1997, and \$16,755 from January 1998 through April 1999. City of Madison staff did not actively enforce local prevailing wage ordinances until April 1998. As shown in Table 7, they collected \$82,744 from April 1998 through June 1999. Of this amount, 50.8 percent was collected as a result of payroll reviews and employe interviews.

Table 7

**Back Wages Collected by the City of Madison**

<u>Method of Identification</u>	<u>April–December 1998</u>	<u>January–June 1999</u>	<u>Total</u>
Payroll Review and Employee Interviews	\$24,556	\$17,517	\$42,073
Complaint Investigations	3,432	34,467	37,899
Other	<u>0</u>	<u>2,772</u>	<u>2,772</u>
Total	\$27,988	\$54,756	\$82,744

**Penalties Assessed**

**DWD and DOT seldom invoke penalties for violating prevailing wage statutes.**

Statutes provide a variety of penalties, in addition to payment of wages due, for the enforcement of prevailing wage statutes. Penalties include: 1) 50 percent liquidated damages for second violations on state and local projects, excluding state highway projects; 2) 100 percent liquidated damages for all wage rate violations on local public works projects; and 3) debarment from additional public works contracts for three years. However, DWD and DOT seldom invoke these penalties.

**Liquidated Damages**

Statutes provide DWD with the authority to assess two types of liquidated damages for nonpayment of prevailing wages and overtime, and in both cases the amounts assessed are provided to affected workers. Under s. 109.11(1)(b), Wis. Stats., DWD may require a contractor that has violated statutes to audit its payroll records to identify any similar violations committed against other workers. If a contractor is later found by DWD to have committed a similar violation after being instructed to audit its records, DWD is required to direct the contractor to pay the affected employees liquidated damages of up to 50 percent of the amount of back wages owed.

DWD’s complaint files typically did not contain sufficient information for us to determine whether or not liquidated damages could have been assessed for each substantiated complaint. However, the files indicated that DWD attempted to assess 50 percent liquidated damages in only 3 of 94 complaints substantiated in 1998. In one instance, DWD assessed a \$2,100 penalty, or 50 percent of the wages owed. In the other two instances, DWD’s files indicated neither the penalty amounts nor whether they were ultimately assessed.

DWD can also assess another type of liquidated damages. Under s. 66.293(11)(a), Wis. Stats., contractors that do not pay prevailing wage rates or overtime on local projects are liable not only for the unpaid amounts, but also for an equal amount of liquidated damages. However, DWD did not assess the 100 percent damages on any of the contractors that committed the 94 substantiated complaints involving local projects in 1998. If DWD had assessed the 100 percent damages, it would have recovered an additional \$125,811.

DWD officials provided two reasons for not assessing the 100 percent damages. First, officials believe that because statutes indicate an action to recover the back wages owed and liquidated damages may be pursued only in court, DWD does not have the authority to assess or collect the damages. However, DWD does attempt to recover the back wages. Second, officials stated that when assessing monetary penalties, they rely on the statutory provisions that allow them to assess up to 50 percent damages for second violations, which were enacted at a later date and, therefore, take precedence over the statutory provisions establishing 100 percent damages.

Both reasons can be questioned. Although s. 66.293(11)(a), Wis. Stats., states that an action to recover unpaid wages and damages may be pursued in court, which indicates an optional route for pursuing the claim, it also states that the contractor is liable for both the back wages owed and the damages. Consequently, it could be argued that because DWD collects the wages owed under this section of the statutes, it could also collect the damages specified under the section. Similarly, while DWD officials correctly point out that statutory provisions relating to the 50 percent damages for second violations were established at a later date than the provisions relating to the 100 percent damages, the two penalty provisions pertain to different types of violations, and statutes do not indicate that the 50 percent damage provisions supplant the 100 percent damage provisions.

In contrast to DWD, DOT is not authorized by statutes to assess liquidated damages, but it may refer instances of overtime violations on federally funded projects costing more than \$100,000 to the federal Department of Labor, which can assess contractors \$10 per day in damages for each employe who works in excess of 40 hours per week without receiving overtime pay. DOT has not referred any cases to the Department of Labor in the past several years. Instead, DOT relies on state enforcement options.

Two other midwestern states we contacted collect liquidated damages in addition to wages and overtime owed. For each month unpaid wages or overtime are owed, Illinois assesses contractors 20 percent of the amount owed as liquidated damages, which are used by that state to enforce prevailing wage laws, and an additional 2 percent of the amount owed, which is provided to the affected workers. In FY 1997-98, Illinois

collected \$445,200 in liquidated damages for violations of prevailing wage statutes. Ohio can assess contractors a monetary penalty equal to 75 percent of the back wages and overtime owed, and these funds are used to help that state pay for enforcement costs. Since 1997, Ohio has collected \$8,781 in this manner.

### **Debarment**

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**Contractors can be barred from public works projects for up to three years for violating statutes.**

Statutes require DWD to provide state agencies and local governments with a list of all contractors that have not paid prevailing wages or the required overtime amounts at any time within the preceding three years. As required by statutes, contractors appearing on this list are debarred, which prevents them from signing contracts for additional public works projects for up to three years unless otherwise recommended by DWD. Contractors may, however, complete work associated with existing contracts. Statutes provide DWD with the discretion not to debar contractors that commit minor violations in good faith. Administrative code provides DOT with the authority to debar contractors for up to three years for violating provisions in highway construction contracts that require contractors to comply with prevailing wage requirements.

DWD maintains a list of those contractors it has debarred. Each time a new contractor is debarred, DWD sends the updated list to approximately 90 state and local agencies, and it provides the list whenever an agency requests a wage rate determination for a project. DWD's administrative code states that contractors are debarred based on several factors, including:

- the severity of their violations;
- the frequency of prior violations committed; and
- the level of cooperation provided during DWD's investigation of the violations.

DWD notifies contractors of impending debarment decisions and allows them 20 days to contest the decisions in writing or to request an informal hearing with the director of its Bureau of Labor Standards. Staff take the response into account when making a final debarment decision. If an informal hearing is requested, the contractor is allowed to bring additional evidence explaining why it believes debarment should not occur. If DWD imposes debarment, the contractor may appeal the decision to a circuit court.

As shown in Table 8, DWD's list shows that it debarred 15 contractors from 1994 through 1999. DWD has not debarred a contractor since October 1997, and none of the 15 contractors were still debarred as of March 2000. The average length of DWD's debarments declined from 3.0 years in 1994 to 1.5 years in 1996 and 1997. DOT has not debarred any contractors since 1994.

Table 8

**Debarment of Contractors**

	DWD		DOT
	Number of Debarments	Average Years of Debarment	Number of Debarments
1994	4	3.0	0
1995	4	2.6	0
1996	3	1.5	0
1997	4	1.5	0
1998	0	—	0
1999	<u>0</u>	—	<u>0</u>
Overall	15	2.2	0

**Some contractors have repeatedly violated statutes but have not been debarred.**

The decline in the number of contractors debarred and the length of debarments may reflect increased compliance with statutes, or it may be an indication that DWD and DOT are not making full use of their ability to debar contractors. Some of the 58 contractors for which DWD completed complaint investigations in 1998 repeatedly violated prevailing wage statutes in the prior five years but were not debarred. For example, DWD did not debar four different contractors although it had substantiated:

- one complaint in 1993, four complaints in 1994, and two complaints in 1997 against one of these contractors;
- two complaints in 1995, one complaint in 1997, and six complaints in 1998 against another contractor;



- seven complaints in 1996 and one complaint in 1998 against a third contractor; and
- four complaints in 1995 and seven complaints in 1998 against a fourth contractor.

While 27 of the 40 contractors against which DWD had substantiated complaints in 1998 violated statutes two or fewer times from 1993 through 1998, a small number committed more numerous violations within a single year. DWD substantiated 15 complaints against one contractor in 1996, 12 complaints against a second contractor in 1998, and 9 complaints against a third contractor in 1998. None of these contractors was debarred.

DWD staff indicated that they seldom use the debarment option because it is a lengthy process involving administrative hearings and procedures for appeals and requiring a significant amount of staff resources. According to staff, this has resulted in debarment being reserved for only the most extreme cases of noncompliance with prevailing wage statutes.

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**Some contractors are debarred for six months or less.**

When DWD has debarred contractors, the length of the debarment has sometimes been considerably shorter than the three years allowed by statutes. From 1994 through 1997, DWD debarred three contractors for less than one year. One contractor was debarred for slightly more than five months, and two were debarred for six months. As noted, debarred contractors are allowed to continue working on public works projects for which they have already contracted. Therefore, debarring contractors for short periods of time may have little punitive effect, especially if the contractors are able to secure sufficient work to operate during the debarment period.

Because of the absence of useful complaint investigation files, we could not determine which DOT contractors, if any, had repeat violations in recent years. However, DOT officials agreed with their DWD counterparts in stating that debarment is a lengthy, difficult process involving much staff time and effort that can be used more effectively for preventing prevailing wage violations. In addition, DOT officials explain that it is possible for a contractor to render debarment ineffective by liquidating the company and then re-incorporating under a new name and under the control of another individual.

Provisions within its contracts give DOT the authority to approve all subcontractors working on state highway projects. DOT officials note that they have, on occasion, used this authority to disapprove subcontractors based on noncompliance with prevailing wage requirements. In October 1996, DOT disapproved one subcontractor

from working in its Wisconsin Rapids district for an indefinite period of time. As of November 1999, the subcontractor was still disapproved. DOT has not disapproved any other subcontractor since January 1994.

### **Other Penalties**

Statutes provide additional penalty options, including withholding project payment from contractors, obtaining payment from a contractor's surety bonds, and referring cases to the judicial system for criminal prosecution. In addition, DWD can fine individuals up to \$100 per day for ignoring any lawful order from DWD or violating any statutory prevailing wage provision for which no other penalty is specified. Although staff of both DWD and DOT stated that warning contractors about these penalty options is useful for encouraging compliance with prevailing wage requirements, the agencies provided only limited evidence that they have invoked these options in recent years.

Statutes require final project payments to be withheld until a contractor submits an affidavit certifying that all work performed is in accordance with prevailing wage statutes. If a state agency or local government authorizes final project payment before the affidavit is filed—or if DWD determines that a wage violation occurred and requests the agency to withhold final payment, but the agency fails to do so—the agency is liable for all unpaid back wages owed, up to the final payment amount. In addition, DOT includes provisions in its contracts that allow it to withhold payments during projects until contractors comply with prevailing wage requirements.

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**State staff believe withholding project payments can increase contractor compliance.**

Both DWD and DOT staff believe that withholding project payments is an effective way of motivating contractors to correct prevailing wage violations. DWD staff state that they withheld payments on a number of occasions in recent years. Although we found evidence that DOT withholds project payments, sometimes in amounts exceeding \$100,000, DOT staff were unable to provide detailed information indicating how often this has occurred in recent years.

Statutes also authorize DOT and DWD to secure payment of prevailing wages owed from contractors' surety bonds, which contractors purchase as insurance for any work they are unable to finance and which are required for all state public works contracts. Although DOT and DWD staff believe that informing contractors of their agencies' authority to secure payment from the bonds often encourages compliance, they indicate that neither agency has actually obtained payment from the bonds in recent years.

Finally, statutes allow DOT and DWD to submit cases of prevailing wage violations to the judicial system, where criminal penalties may be assessed. DOT has not made such referrals in recent years because most violations do not involve wage amounts that are large enough to warrant court proceedings, and district attorneys are often too busy with other matters. However, in 1997, DWD referred one case to the Department of Justice. That case was settled before trial when the contractor agreed to pay, over a ten-year period, \$90,000 in back wages owed to 11 workers. In November 1999, DWD referred a second case to the Department of Justice because a contractor refused to pay \$2,559 owed to four workers. In addition, in January 1999, the Brown County district attorney initiated criminal proceedings against a Green Bay contractor after a union organization provided information indicating that prevailing wage violations may have occurred. At the time, DWD was involved in five ongoing complaint investigations involving the contractor.

### **New Penalty Options**

Most contractors that complete public works projects either comply with prevailing wage statutes or commit only a few minor violations over a period of years. However, as noted, some contractors repeatedly violate statutes, and DWD and DOT staff believe that some violations occur intentionally. Without the application of penalties, contractors found in violation of statutes are required to pay only the back wages they owe, which reduces the effectiveness of the penalties and does not provide some contractors with an incentive to obey the law. If the Legislature wishes to broaden the penalty options available in order to increase their use by DWD and DOT, there are several alternatives it could consider.

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**The Legislature could require interest payments from contractors for back wages owed.**

First, as noted, workers filing complaints with DWD wait, on average, approximately one year from the time of filing until they receive the back wages and overtime amounts that are owed. In other areas, such as income tax payments, it is common to include an interest charge from the original due date as an inducement to encourage prompt payment. One alternative the Legislature could consider to encourage voluntary compliance with prevailing wage statutes would be requiring that contractors pay interest to workers who are owed back wages and overtime. Interest charges could be calculated from the date the amounts were owed until the date they are paid.

A second alternative the Legislature could consider would be clarifying statutory language concerning the circumstances under which DWD is required to assess the two types of liquidated damages. Additionally, the Legislature could consider standardizing the assessment of liquidated damages for all types of violations. The amount of these damages could

be set at 100 percent of owed back wages and overtime amounts, which is the current amount applicable to violations on local public works projects. Alternatively, if assessment of damages would be at the agencies' discretion, a lower rate could be established to encourage greater use by DWD and DOT.

As noted, because both DWD and DOT have used their discretionary authority, a small number of contractors that have violated prevailing wage statutes on numerous occasions in recent years have not been debarred. A third option the Legislature could consider would be to require DWD and DOT to debar contractors that repeatedly violate prevailing wage statutes.

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Officials of both DWD and DOT are working to improve their enforcement of prevailing wage statutes. For example, both agencies are implementing new computerized tracking systems that are expected to provide them with enforcement information. However, DWD's written complaint investigation procedures, which should provide staff with guidance and officials with a means of measuring staff performance, are not current. In addition, DWD officials transferred two of seven staff positions out of the prevailing wage section in recent years, making it difficult for the remaining staff to complete necessary tasks.

### **Accurate Program Information**

We were often unable to obtain accurate and comprehensive information about their enforcement of prevailing wage statutes from DWD and DOT. For example, summary complaint investigation data that DWD provided were sometimes not consistent with information in the agency's complaint investigation files. DWD's summary data show that in 1998, staff required 219 days, on average, to complete complaint investigations, rather than the 304 days indicated in the files. In addition, the summary data show that staff completed a different number of complaint investigations in almost every month of the year compared to the number indicated in DWD's complaint files.

DWD officials were unable to provide reasons for these discrepancies. Staff may have entered the data into the tracking system inaccurately, or we may have been provided with incorrect summary information as a result of DWD staff's lack of familiarity with the new tracking system. Regardless of the reason, DWD officials should provide staff with training and instruction in using the tracking system properly so that the system provides accurate information.

DOT was unable to provide aggregated information about its monitoring efforts, complaint investigations, or assessment of penalties. DOT recently implemented a new project tracking system that will be operational during the 2000 construction season. Although the system is intended primarily as a tool for project engineers and others to track the status of highway construction projects, officials expect it will also include detailed information related to prevailing wage issues, such as the contractors involved with each project, whether contractors submitted complete payroll information, the number and type of

monitoring activities conducted by DOT staff, the names of workers who filed wage-rate complaints, whether project funds were withheld from contractors, and the amount of back wages recovered.

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**State program officials should ensure the collection of accurate information about their enforcement efforts.**

The new computer tracking systems being implemented by DWD and DOT have the potential to provide information essential for effective management of the agencies' prevailing wage programs. However, officials must ensure that they receive regular reports containing accurate and complete program information regarding:

- the number and type of monitoring activities conducted, as well as the results of those activities;
- the number of new complaint investigations undertaken and the number of investigations completed, including the results of those investigations and the amount of time it took to complete them;
- the amount of back wages collected; and
- the type and amount of penalties assessed on contractors that committed prevailing wage violations.

With this information, officials will be able to determine whether staff are meeting agency guidelines, such as those intended to ensure timely complaint investigations, or whether additional efforts are needed to improve performance.

### **Written Complaint Investigation Procedures**

DWD's written complaint investigation policies and procedures are 18 years old, and staff no longer refer to them because they are outdated and they refer to statutory provisions that have since been modified or deleted. Consequently, staff currently rely on an informal set of procedures, developed using their collective experience, to guide their investigations.

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**Updating DWD's complaint investigation procedures could improve enforcement.**

Although our review of all investigations completed during 1998 indicated that staff generally follow consistent practices, written procedures would help improve program operations. For example:

- newly hired staff would have a resource other than the institutional knowledge of existing staff, who may not always be as experienced as they currently are, to consult while investigating complaints; and

- officials could better assess staff performance if they could compare it to written procedures containing performance expectations, such as time goals for the completion of complaint investigations, and they could more easily identify areas in which greater efforts are needed to improve enforcement of prevailing wage laws.

### Staffing Levels

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**DWD officials recently reduced prevailing wage staffing levels.**

Seven positions have been authorized for DWD's prevailing wage section, and the last increase in staffing occurred when a position was added to the section in the 1991-1993 biennial budget. In January 1998 and May 1999, DWD officials reassigned two staff from the prevailing wage section to the section that enforces minimum wage laws. Agency officials gave several reasons for the two transfers, including that workload had increased in the minimum wage section but had declined in the prevailing wage rate section. They indicated that the average caseload of complaint investigations for prevailing wage staff had declined from 55.2 in 1995 to 15.5 in April 1999. In contrast, the average number of investigations assigned to minimum wage section staff increased from 75.6 to 119.5 over the same period. DWD officials stated that the transfers of the two staff members are only temporary, until the long-term needs of the two sections are decided.

While the prevailing wage section's caseload has declined in recent years, DWD staff cite staffing constraints as a reason for not conducting monitoring activities or reviewing weekly payrolls. In addition, staffing limits are given as an explanation for the time taken to complete investigations, which was 304 days in 1998. Finally, DWD staff have indicated that action has not been taken to debar any contractors for the past several years because of the considerable amount of staff time required and because of turnover in the staff positions authorized to make debarment decisions.

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**Improving DWD's efficiency could lead to more effective statutory enforcement.**

Improved operating efficiency may allow the prevailing wage section to determine wage rates and enforce statutes in less time and with fewer staff than it has had in recent years. As noted, we believe DWD officials could take a number of measures to reduce the amount of time required to determine annual wage rates without appreciably affecting accuracy. In addition, DWD staff could review certified payroll reports from contractors that repeatedly violate statutes in a three-year period. Identifying violations through such monitoring could lead to fewer complaints being filed with DWD, which would save staff time.

Nevertheless, even if DWD improved its efficiency, existing regulatory staff may be insufficient to determine annual wage rates and enforce statutes effectively and efficiently. Therefore, DWD officials may eventually need to return the two staff members who were transferred to other duties back to the prevailing wage section.

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TEAR HERE →

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# ANNUAL PREVAILING WAGE RATE SURVEY

Page \_\_\_\_ of \_\_\_\_

Return Survey Forms to Labor Standards Bureau, P.O. Box 7887, Madison, WI 53707-7887

Control # \_\_\_\_\_ Form # \_\_\_\_\_

Employer Name and Address: \_\_\_\_\_  
 Make any Change  
 To Your Name or  
 Address

**REMEMBER !! ONLY report work performed from June 1, 1998 thru May 31, 1999. DO NOT report ANY information regarding apprentices, subjourneypersons, subforemen, foremen, general foremen, or superintendents. Keep a copy of the completed report for your records.**

The completion of this form is required by ss. 66.293, 103.49 and 103.50, Stats. See s. 103.005(12)(a) for penalty information. Completed forms MUST be received or postmarked no later than July 31, 1999. READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS FORM. Type or print using BLACK INK ONLY. If more space is needed, use the back of this form, or make copies of the front of this form.

A. Name or Description of Project	B. Pro- ject Type	C. Public Project		D. Location of Project (Include city, village or township)	E. County Code	F. County Name	G. Class Code	H. Leave Blank	I. Employee Classification	J. Hourly Basic Rate	K. Hourly Fringe Benefits	L. Union		M. Total Hours Worked
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FOR DELETION ONLY

THE BACK OF THIS FORM MUST BE SIGNED AND DATED

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I understand that the personally identifiable information that I provide may be used for secondary purposes, pursuant to Wisconsin's Privacy Law, s. 15.04(1)(m), Stats., and that the willful falsification of information may result in my criminal or civil prosecution pursuant to s. 943.392, Stats.

Print Name		Print Title	
Signature			
Date Signed		Telephone ( )	

**BE SURE TO  
KEEP A COPY OF THE  
COMPLETED REPORT FOR  
YOUR RECORDS**

Tommy G. Thompson  
Governor

Linda Stewart, Ph.D.  
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

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April 10, 2000

Janice Mueller  
State Auditor  
22 E. Mifflin St. Suite 500  
Madison WI 53703

Dear Ms. Mueller:

Thank you for the work the Legislative Audit Bureau put forth in conducting its audit of the department's prevailing wage program. Your audit report offers many valuable recommendations for improving the department's program that we plan to implement as soon as possible. The following are my comments on your various recommendations:

**More strongly encourage contractors to submit their survey data on computer disks**

The department agrees that survey data received on computer disks saves data entry time by DWD staff. For this reason the department has strongly encouraged contractors to supply survey information on computer disks. In the four years the new survey process has been in place, the department estimates that they have experienced over a three hundred percent increase in the number of surveys filed on computer disks, going from a low of 70 disks in the first year to over 300 disks in the fourth year of the survey. Most of the surveys filed on computer disk have come from union affiliated contractors or contractors associated with American Builders and Contractors (ABC). ABC, and many of the unions have developed computer disk programs for the use of their members. The department plans to develop its own computer disk program to enable contractors other than those who have affiliated with the ABC, or who are union affiliated contractors, to use computer disks to file their survey information. The department anticipates that the program could be ready for use in the 2000-2001 survey period.

**Continue efforts to make surveys and survey information available on the Internet and allow contractors to file survey information via the Internet**

The department expects to have surveys and survey information available on the Internet for the commencement of this year's survey on June 1, 2000. The department currently is studying ways to allow contractors to file survey information via the Internet.

The two main problems the department sees with allowing contractors to file survey data via the internet, relate to our concern for the security of the data entered by contractors, as well as the concern about the cost and complexity of designing and maintaining a computer system with enough sophistication to handle the amount of data that might be submitted at any one point in time.

It is possible that the sheer volume of data submitted by more than one large contractor at the same time as another large contractor could crash the system.

### **Train clerical staff to check surveys for accuracy as they are entering survey data**

The department agrees with the recommendation to free investigators to focus on enforcement efforts by utilizing clerical employees to check surveys for accuracy. The department currently hires two limited term employees (LTE's) each summer to enter survey data on the computer. Unfortunately, due to the amount of time it takes to enter survey data on the computer, these workers do not have time to also review the data for accuracy. The division is considering the possibility of hiring additional LTE's to perform the accuracy checks. The ability of the Equal Rights Division to implement this suggestion this survey year is dependent upon their budget. They have already indicated that they believe it will be possible to implement this recommendation this year and are proceeding with their budget planning on that basis.

### **Review completed surveys on only a sample basis**

The department currently relies upon contractors to accurately submit survey information to the department but they believe it is necessary to check 100% of the data submitted to ensure its accuracy. Even with this thorough review, the department finds errors in the completed survey that must be corrected, often after the fact. These corrections affect work on projects that have already been bid and must be re-bid. The department believes that the integrity of our survey process demands that we make every effort to ensure the accuracy of our data. It is simply not cost effective to have to make numerous recalculations of wage rates that could have been avoided by a more careful review of the submitted data before the rates are set. The department will not be implementing this suggestion. However, we will review this decision again in the future, after we have been able to work out any additional bugs in our survey system.

### **Recommend the Legislature consider broadening and clarifying penalty options available to DWD and DOT to deal with violations**

The department supports the recommendation to clarify the legislative intent of penalty provisions in Chapter 109 and Section 66.293(11)(a) of Wisconsin Statutes.

The department also supports the concept of charging violators interest on unpaid wages provided a simple means can be developed for assessing interest charges.

We agree with the concept that debarments of contractors/individuals should be based upon the level of violations committed. I have concerns, however, about adopting rigid thresholds within the statutes for levels of violations. A simple classification error by a contractor employing hundreds of workers in many different classifications, on many different jobs, could involve thousands of dollars of unpaid wages. Mistakes can happen, and most violations are not intentional, but rather occur because of the complexity of the rate structures and the number of classifications of trades.

However, if the department finds that a contractor has been involved in an intentional attempt to underpay wages, the department wants to retain the flexibility to assess penalties that are meaningful. Clarifying the legislative intent on the issue of penalties, while retaining flexibility on enforcement, will give the department the authority it needs to enforce the laws fairly.

#### **Adopt a program of routine monitoring of contractor's compliance**

The department agrees it would be helpful to routinely monitor contractor payrolls for work performed on prevailing wage projects. The department will be adopting the Legislative Audit Bureau's recommendation that we monitor those contractors who have been found to have violated the prevailing wage laws within three previous years. We will be requesting those contractors with violations within the last three years; to submit certified weekly payroll reports to the department on all work performed on prevailing wage projects in this state. We are seeking additional budget authorization to hire the program support and equal rights officers necessary to implement this change on a permanent basis. Until such time as that authorization is realized, we will be utilizing Limited Term Employees (LTE's) to assist us in this effort. In addition we will be establishing a program of random site inspections, once we have received the staff referred to above.

The department shares the concern expressed in the audit report that DWD needs to improve the efficiency of its complaint investigations. We believe the implementation of the suggestions made in the audit report will go a long way toward accomplishing that goal. The department believes the comparison with DOT complaint investigations fails to emphasize the differences in responsibility between the two departments. DWD utilizes 70% of its 5.5 full time positions to set prevailing wage rates while DOT can devote 100% of its 6.18 full time positions to investigating prevailing wage complaints. DOT annually receives only 20 to 30 written complaints per year while DWD received 116 complaints in 1998.

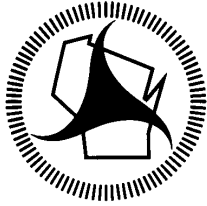
Ms. Mueller  
Page Four

Once again, let me take this opportunity to thank the audit team for the excellent job they have done on this audit of the prevailing wage enforcement program in this department. We appreciate the excellent suggestions that have been made, and look forward to their full implementation.

Sincerely,

Linda Stewart, Ph.D.  
Secretary

## APPENDIX III



# Wisconsin Department of Transportation

[www.dot.state.wi.us](http://www.dot.state.wi.us)

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

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April 18, 2000

Janice Mueller, State Auditor  
Legislative Audit Bureau  
State of Wisconsin  
22 E. Mifflin Street, 5th floor  
Madison, WI 53703

Dear Ms. Mueller:

Thank you for the opportunity to provide written comments on the evaluation of the enforcement prevailing wage laws. We appreciate the time your staff spent reviewing our enforcement processes and agree with the following recommendation:

### **Legislative Audit Bureau Recommendation**

WisDOT shall collect and review certified payroll reports for all contractors that have violated prevailing wage statutes in the past three years.

### **WisDOT Response**

WisDOT will pursue reviewing of payrolls of repeat violators of prevailing wage laws either by requiring payrolls on all state funded projects or by requiring payrolls only from those contractors on state funded projects who have violated wage laws in the past three years.

We believe the monitoring efforts WisDOT staff undertake with respect to enforcing prevailing wage laws identify many violations before complaints are filed, and also limit the number of complaints we receive, thereby saving the time and effort of formal investigations.

Sincerely,

Terry Mulcahy, P.E.  
Deputy Secretary