



Office of Missouri State Auditor
Nicole Galloway, CPA

Prevailing Wage Program



Nicole Galloway, CPA
Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of the Department of Labor and Industrial Relations - Prevailing Wage Program

Background	The prevailing wage law requires not less than the prevailing hourly rate of wages to be paid to workers on public works projects. The law applies to all public works projects constructed by or on behalf of the state and local public bodies. The prevailing wage law does not apply to maintenance work consisting of the repair of existing facilities when the size, type, or extent of the existing facilities are not changed or increased. The Department of Labor and Industrial Relations (DOLIR) is responsible for determining the prevailing wage rates and enforcing the prevailing wage law. The DOLIR, Division of Labor Standards (DLS), Wage and Hour Section is responsible for the day-to-day operations of the prevailing wage program.
Complaint Investigations	DLS did not investigate all complaints, did not always perform investigations in accordance with procedures or state law, and did not maintain a database of all complaints received. DLS records indicate 219 complaints were received, 115 complaint investigations were completed, and 68 violations were found during the year ended June 30, 2016.
Compliance with the Prevailing Wage Law	We reviewed 22 public works projects and, although we found no instances of noncompliance with the wage rates paid according to the certified payroll documentation, we found 20 projects had at least one instance of noncompliance with a prevailing wage law requirement by the public body.
Project Notifications	The DLS does not actively identify state agencies and other public bodies who fail to submit project notifications to encourage compliance. As a result, the DLS does not receive project notifications from public bodies on a significant number of public works projects as required by state law. In addition, projects without a project notification appear to be more likely to have noncompliance with other prevailing wage law requirements.
Construction Safety Training	During our review of prevailing wage complaints, which included construction safety training complaints, we noted limitations in the law impair effective enforcement of the construction safety training requirement.

In the areas audited, the overall performance of this entity was **Fair**.*

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

All reports are available on our Web site: auditor.mo.gov

Prevailing Wage Program

Table of Contents

State Auditor's Report	2
------------------------	---

Introduction	
Background	4
Scope and Methodology	7

Management Advisory	
Report - State Auditor's	
Findings	
1. Complaint Investigations.....	8
2. Compliance with the Prevailing Wage Law	11
3. Project Notifications.....	13
4. Construction Safety Training	15

Organization and Statistical	18
Information	



NICOLE GALLOWAY, CPA **Missouri State Auditor**

Honorable Jeremiah W. (Jay) Nixon, Governor
and
Ryan McKenna, Director
Department of Labor and Industrial Relations
and
John E. Lindsey, Director
Division of Labor Standards
Jefferson City, Missouri

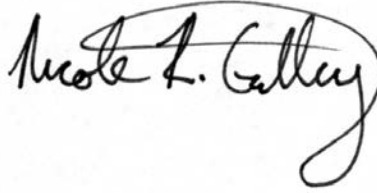
We have audited certain operations of the Department of Labor and Industrial Relations, Division of Labor Standards as it relates to the prevailing wage law, in fulfillment of our duties under Chapter 29, RSMo. The purpose of the audit was to evaluate the prevailing wage program. The objectives of our audit were to:

1. Evaluate internal controls over significant management and financial functions of the prevailing wage program.
2. Evaluate compliance with certain legal provisions related to the prevailing wage program.
3. Evaluate the economy and efficiency of certain management practices and operations of the prevailing wage program.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the division's management and was not subjected to the procedures applied in our audit.

For the areas audited, we identified (1) deficiencies in internal controls, (2) noncompliance with legal provisions, and (3) the need for improvement in certain management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Prevailing Wage Program.

A handwritten signature in black ink that reads "Nicole R. Galloway". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Nicole R. Galloway, CPA
State Auditor

The following auditors participated in the preparation of this report:

Director of Audits:	Robert Showers, CPA, CGAP
Audit Manager:	Dennis Lockwood, CPA
In-Charge Auditor:	Brian Hammann, M.Acct., CPA
Audit Staff:	Shannon Spicer, MBA Mackenzie J. Wooster

Prevailing Wage Program

Introduction

Background

The state established the prevailing wage law in 1957. Under Sections 290.210 through 290.340, RSMo, the Department of Labor and Industrial Relations (DOLIR) is responsible for determining the prevailing wage rates and enforcing the prevailing wage law. The DOLIR, Division of Labor Standards (DLS), Wage and Hour Section is responsible for the day-to-day operations of the prevailing wage program.

The prevailing wage law applies to all public works projects constructed by or on behalf of state and local public bodies. These projects include fixed works constructed for public use and funded entirely or in part by public funds. Public works projects also include work accomplished directly by any public utility company performed under the order of the Public Service Commission or other public authority. The prevailing wage law does not apply to maintenance work consisting of the repair of existing facilities when the size, type, or extent of the existing facilities are not changed or increased. The law requires not less than the prevailing hourly rate of wages to be paid to workers on public works projects.

The DLS develops annual wage orders to determine the prevailing wage rates based on prior year wage information voluntarily provided by contractors, public bodies, labor organizations, and other entities through the DLS's Contractor's Wage Survey system. Survey participants report the number of hours, wage rates, and benefit rates actually paid on projects for each occupational classification, county and project type on forms developed by the DLS. The survey forms may be submitted in paper or electronic format. Based on survey responses, the prevailing wage rates are determined for each county, occupational title and by project type. There are two project types, building construction or heavy construction. Building construction projects must be for commercial structures, which include a sheltered enclosure for the purposes of housing persons, machinery, equipment or supplies, while heavy construction projects include highways, streets, bridges, tunnels, antennae towers, channels, levees, pipelines, and sewers. The method to determine the prevailing wage rates is set forth under Sections 290.260 and 290.262, RSMo. For annual wage order number 23, effective May 2016, the DLS determined 7,273 prevailing wage rates applicable to 55 occupational titles, all counties, and building and heavy construction projects.



Prevailing Wage Program Introduction

Prevailing wage law requirements for public bodies¹ include the following:

- Request a determination of the annual wage order from the division and incorporate a complete copy of the most current annual wage order in all bid specifications (Sections 290.250 and 290.325, RSMo).
- Include language in the contract that the contractor must pay at least the prevailing wage and the penalty for noncompliance (Section 290.250.1, RSMo).
- Notify the division of the public works project by submitting a form containing information about the scope of the work to be done, the various types of workers who will be needed on the project, and the date work will commence on the project (Section 290.262.12, RSMo).²
- Notify the division of any prevailing wage violations (8 CSR 30-3.010 (7)). The public body should withhold and retain from payments to the contractor all amounts owed as a result of any violation (Section 290.250.1, RSMo).
- Require a completed affidavit of compliance from all contractors and subcontractors before making final payment (Section 290.290.2, RSMo).
- Examine payroll records as often as may be necessary to ensure compliance with the law. In addition, the public body must review payroll records after the project has been substantially completed but prior to acceptance of the affidavit of compliance (8 CSR 30-3.010 (7)).

Contractors are required to:

- Pay employees not less than the prevailing wage rates (Section 290.230.1, RSMo).
- Post the prevailing wage information in a prominent and easily accessible location at the project site (Section 290.265, RSMo).

¹ University of Missouri System officials assert the prevailing wage law is not applicable to system institutions based upon Attorney General's opinions and case law. However; the university system voluntarily requires payment of prevailing wage rates on all university projects.

² The DOLIR has granted the Missouri Department of Transportation a regulatory exemption from this requirement.



Prevailing Wage Program Introduction

- Submit certified payroll records to the public body, which detail all employees' occupational classification, hours worked, and rate of pay (8 CSR 30-3.010 (6)).
- Submit an affidavit of compliance form to the public body at project completion (Section 290.290.2, RSMo).

Under Section 292.675, RSMo, effective August 2009, contractors engaged in public works construction are required to provide a 10-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees or a similar program approved by the DLS. Public bodies are required to include the construction safety training requirements in all public works contracts. All construction employees who have not previously completed training are required to complete training within 60 days of beginning work on a project. Employees are allowed 20 days to provide documentation of safety training completion before being subject to removal from the project. The DOLIR is charged with investigating claims of violations of the construction safety training requirements. The DLS Wage and Hour Unit conducts those investigations.

The DLS has the authority to administer oaths and subpoena witnesses to testify and produce any materials relevant to investigations. The DLS may assess a penalty of \$100 per day per worker for each instance a worker is not paid the prevailing wage. The penalty is due within 45 days of notice of penalty unless the employer pays the back wages or seeks arbitration within the 45 days. For violations of the construction safety training requirements, the DLS may assess a penalty of \$2,500 plus \$100 per day per worker for each worker without the required safety training after the 60-day and 20-day grace periods have elapsed. Any penalties imposed are to be paid to the public body awarding the contract.

In addition to investigations, the DLS uses communication and educational efforts with contractors, labor unions, public bodies, and other interested parties about the prevailing wage and construction safety training laws to assist in achieving voluntary compliance with the law.

According to the United States Department of Labor, Missouri is one of 30 states with a prevailing wage law. Missouri is one of 8 states³ with a law requiring construction safety training for workers on public works projects.

During the year ended June 30, 2016, the DLS reported completion of 115 prevailing wage complaint investigations resulting in 68 violations (59 percent) involving 465 workers. The investigations resulted in contractors

³ Other states include Connecticut, Massachusetts, Nevada, New Hampshire, New York, Rhode Island, and West Virginia.



Prevailing Wage Program Introduction

being assessed approximately \$533,000 in restitution for underpaid wages. Workers received \$387,000 of this amount while the remaining \$146,000 was not paid within 45 days. The unpaid restitution resulted from four investigations. The DLS assessed the applicable contractors penalties totaling \$74,900. The DLS did not receive payment for the penalties and sent all 4 cases to the Attorney General's Office for prosecution.

In addition to prevailing wage duties, the DLS Wage and Hour unit also administers and investigates violations of the child labor and minimum wage laws. During the year ended June 30, 2016, the DLS reported completing 22 child labor and 441 minimum wage investigations. The DLS also reported unit supervisors and investigators made 559 educational and advisory visits with public bodies during the year.

Scope and Methodology

To gain an understanding of the prevailing wage program, we held discussions with DLS personnel and reviewed written policies and procedures. In addition, to gain an understanding of legal provisions that are significant within the context of the audit objectives, we reviewed relevant statutes, regulations, and Attorney General's opinions.

To evaluate whether prevailing wage rates are being determined in accordance with statutory requirements, we haphazardly selected and tested the prevailing wage rate determinations for 60 occupational titles in counties throughout the state for the 2016 annual wage orders. To evaluate DLS procedures for investigating claims of violation, we obtained and reviewed reports on 10 complaint investigations completed during the year ended December 31, 2015. We also reviewed reports of complaint activity for the period of January 1, 2015, to June 30, 2016. To determine whether public bodies are notifying the DLS of public works projects, we obtained information from various state agencies to identify public works projects and compared the project information to project notification data obtained from the DLS. We researched various requirements and practices of prevailing wage programs in other states. In addition, we reviewed various financial data, performance statistics, and other pertinent documents as necessary.

To determine if public bodies and contractors were in compliance with prevailing wage laws, we reviewed documentation for 22 public works projects. We selected projects for review where bidding occurred after January 1, 2015, and either the project was completed or substantially completed as of June 30, 2016.

Prevailing Wage Program Management Advisory Report State Auditor's Findings

1. Complaint Investigations

Division of Labor Standards (DLS) complaint investigation procedures need improvement. The DLS did not investigate all complaints, did not always perform investigations in accordance with established procedures or state law, and did not maintain a complete database of all complaints received. DLS records indicate the division received 219 complaints, completed 115 complaint investigations, and identified 68 violations during the year ended June 30, 2016.

1.1 Complaints not investigated

During the period of July 2015 through October 2015, the DLS did not investigate 24 complaints received. The DLS issued letters to the complainants indicating the decision to close the investigation was due to staff reductions as a result of budget cuts.

Budget reductions reduced the number of full-time equivalent investigators from 6.9 for fiscal years 2012 through 2015 to 4.1 for fiscal year 2016.⁴ However, department officials could not explain how they determined which complaints not to investigate. In addition, it is likely one of the 24 complaints not investigated was at risk for underpaid wages. The DLS received 2 complaints of prevailing wage violations on the same subcontractor. The complaints occurred on separate projects overseen by the same public body. While one complaint was not investigated, the other was investigated and resulted in the subcontractor owing restitution of approximately \$44,000 to 42 workers for underpaid wages. Workers performing carpentry work had been misclassified and paid as laborers.

Section 290.250.2, RSMo, requires the division to investigate any claim of violation of prevailing wage law. In addition, DLS data on complaint investigation results over the last 5 fiscal years indicates an average of 54 percent of complaint investigations identify a violation of the prevailing wage law with most violations identifying underpayment of wages. With such a high violation rate, it is imperative the DLS complete all required complaint investigations to help ensure potential violators of the prevailing wage law are held accountable.

1.2 Investigation procedures

The DLS investigators did not always follow investigation guidelines or issue written notices of violation for failure to comply with prevailing wage law. We reviewed 10 of the 217 investigations closed during the year ended December 31, 2015, and noted the following:

- The DLS closed a complaint investigation without pursuing further action against a contractor who refused to cooperate with the investigation. The investigation report indicates that after responding to

⁴ For fiscal year 2017, the General Assembly authorized increasing the number of full-time equivalent employees for the Wage and Hour unit and increased the personal services appropriation by 46 percent. DLS officials indicated they planned to hire 3 investigators.



Prevailing Wage Program Management Advisory Report - State Auditor's Findings

initial investigation requests the contractor then refused to respond to multiple requests from the investigator to discuss the complaint. After a failed attempt to serve the contractor with a subpoena at an old address, the investigator performed no follow up action and closed the case. The investigator obtained that address from the Secretary of State's business registration website but failed to notice an amended business registration filing with a new company registered agent at a newer address had been filed. Due to failure to properly serve the subpoena, the investigation could not be completed and the contractor could not be referred to the Attorney General's Office for enforcement of the subpoena.

- The DLS did not issue a written notice of violation to a public body for failure to comply with prevailing wage law on an investigation that determined the public body did not bid the project as a prevailing wage project. The investigation report stated the public body was found to be in violation of Section 290.250.1, RSMo; however, the DLS did not send a written notice of violation to the public body as required under Section 290.335, RSMo.
- Investigators did not always review for public body compliance or educate public bodies about prevailing wage law as required by the investigation guidelines. For 4 complaint investigations in which the public body failed to submit the required project notification, we did not observe documentation the investigator attempted to educate the public body on the prevailing wage law as required by the prevailing wage investigation guidelines.

Section 290.240, RSMo, requires the division to inquire diligently as to any violation of the prevailing wage law. Taking no action against a contractor who refused to respond to investigator inquiries does not appear to meet that standard. In addition, Section 290.335, RSMo, requires a written notice of the precise violation be provided to the public body, contractor, or subcontractor if a determination of noncompliance with prevailing wage law has been made. Investigation guidelines established by the DLS also require the investigator to review for public body compliance and educate the public body when noncompliance is identified.

1.3 Complaint records

The DLS did not maintain a complete database of all complaints received or include information on the public body in the database. During the year ended June 30, 2016, DLS personnel only entered 112 of the 219 complaints received into the complaint database. They indicated complaints are initially reviewed and only complaints considered valid are assigned to an investigator and entered into the database. Any complaints not assigned and logged are maintained in manual files for 5 years before being discarded. In addition, DLS officials indicated they do not review the complaint database



Prevailing Wage Program
Management Advisory Report - State Auditor's Findings

for contractors with prior violations to identify complaints with increased risk for violation.

Complete records of complaints received are necessary to monitor them and ensure all complaints have been adequately investigated and resolved. In addition, complete complaint records would allow better oversight of complaint investigations and help identify complaints with higher risk for violation.

Recommendations

The DLS:

- 1.1 Investigate all complaints as required by state law.
- 1.2 Ensure investigation guidelines are followed on all complaint investigations and issue notices of violation to public bodies, as required by state law.
- 1.3 Maintain a database of all complaints received. In addition, the DLS should review the complaint database to identify complaints with increased risk for violation in order to prioritize investigations.

Auditee's Response

- 1.1 *All prevailing wage complaints are being assigned to a specialist to be investigated.*

All minimum wage complaints are reviewed to verify DLS authority to investigate. Those that are not assigned, for various reasons, are being reviewed by the Wage & Hour Supervisor and the Program Manager before being denied investigation. All child labor complaints are assigned and investigated.

- 1.2 *We have reviewed and updated the investigative guidelines to streamline our process and ensure each step is completed in a timely manner. Specifically, providing the Project Notification (PW-2) form with each public body request for a wage determination, verifying receipt of and/or requesting from the public bodies the PW-2 forms for any projects that have a complaint filed on them, and tracking the public body notice of violation letters and creating guidelines for the subpoena process.*

- 1.3 *On July 1, 2016, the beginning of the new fiscal year, the DLS implemented a process of entering each complaint as it is received into an Excel spreadsheet for tracking purposes. The spreadsheet is updated when the complaint is assigned to a specialist for investigation or denied with the reason of denial. A search of the database is done for each complaint received for previous complaints, violations or investigations.*



2. Compliance with the Prevailing Wage Law

Public bodies frequently do not comply with the prevailing wage law on public works projects. The DLS provides information to public bodies and contractors regarding the prevailing wage law, but additional outreach and training is needed to improve compliance.

We reviewed 22 public works projects and, although we found no instances of noncompliance with the wage rates paid according to the certified payroll documentation, we found 20 projects had at least one instance of noncompliance with a prevailing wage law requirement by the public body. We reviewed projects from 6 school districts, 6 cities, 1 county, 2 water districts, and 3 state agencies, including the Department of Conservation (1 project), the Missouri Department of Transportation (MoDOT) (3 projects), and the Office of Administration (OA), Division of Facilities Management, Design and Construction (FMDC) (3 projects).

The table below summarizes the rate of noncompliance with the prevailing wage law and regulation identified on the 22 projects reviewed:

Description of Noncompliance	Noncompliance Percentage
The public body did not send a project notification to the DLS	74
The public body's contract did not include a statement about the \$100 penalty	59
The public body issued the final payment before obtaining the affidavit of compliance	40
The public body did not document any review of payroll records	30
The bid document did not include the correct wage order	5
The public body's contract did not include any language about prevailing wage	5

Public bodies did not submit project notifications to the division for 14 of the 19 applicable projects. The OA FMDC did not submit project notifications on 2 of the 3 projects reviewed. We previously reported the OA FMDC did not submit project notifications to the division for approximately 3 years in our Report No. 2016-065, issued in August 2016. See MAR finding number 3 for additional discussion on project notifications.

For 13 of the 22 projects reviewed, the project contract did not contain a statement requiring the contractor to pay a \$100 penalty for each worker paid less than the prevailing wage rate for any work done under the contract as required by state law. For 5 projects, officials indicated they used the MoDOT standard contract for federally funded projects, which does not specifically mention the penalty. In addition, the OA FMDC did not include language in its contracts about the \$100 penalty.

Public bodies made final payments on projects before they received all affidavits of compliance on 4 of the 10 completed projects in violation of state law. One project did not have any affidavits of compliance when final



Prevailing Wage Program
Management Advisory Report - State Auditor's Findings

payment occurred. For 3 of 10 completed projects, the public body did not have any documentation of review of contractor payroll records before making the final payment as required by state regulation.

One of the 22 projects was bid using an outdated wage order instead of the wage order applicable at the time of bid, as required by state law. The more current wage order had a higher prevailing wage benefit rate for the employee we reviewed. After we brought this concern to their attention, DLS personnel conducted an investigation and determined employees on the project were paid at least the correct prevailing wage rate including benefits. One of the 22 projects did not include prevailing wage language in the contract as required by state law.

The public bodies bid all 22 projects as prevailing wage projects and, based on a test of certified payroll documentation, employees were paid at least the prevailing wage rate.

Construction safety training program

In addition, we reviewed contracts for the 22 projects tested to determine whether they contained language as required by state law about construction safety training. Two contracts (9 percent) did not contain language stating the contractor and any subcontractor shall require all on-site employees to complete the 10-hour construction safety training program. Also, six contracts (27 percent) did not contain language requiring the contractor to pay a penalty to the contracting public body for employees that did not meet the safety training requirement.

Additional outreach can improve compliance

The DLS has information about the prevailing wage law available on its website including a Missouri public works project public body checklist to assist public bodies in being compliant with prevailing wage laws. However, 15 of 22 projects reviewed (68 percent) did not use the DLS checklist or a similar checklist to help ensure compliance. We noted instances of public body noncompliance on all 15 of these projects. The public bodies that had used such a checklist as part of their review process had fewer instances of noncompliance. This suggests that use of the DLS prevailing wage checklist by public bodies helps ensure compliance with state law.

The DLS provides information on the prevailing wage law through investigators in the field providing training to businesses and public bodies, occasional training sessions at conferences, and answering questions about the prevailing wage law. However, based on the noncompliance identified in our review of public works projects, additional outreach training is needed. Additional proactive enforcement procedures, including an increased emphasis on the DLS prevailing wage checklist, will help ensure compliance with state prevailing wage laws.



Prevailing Wage Program
Management Advisory Report - State Auditor's Findings

Recommendation

The DLS improve outreach and training efforts to public bodies to improve compliance with the prevailing wage law.

Auditee's Response

The DLS will provide a Public Works Public Body Check-Off List in all future Annual Wage Order determinations provided that outlines step-by-step the processes necessary for compliance of the requirements of the Missouri Prevailing Wage Law. The check-off list includes the steps for before, during and before final payment is made, including suggested language for penalties for noncompliance. The Prevailing Wage Law, Prevailing Wage Rates for Public Works Projects, 8 CRS 30-3.010; Request for Wage Determination (PW-3) form, Project Notification (PW-2) form, Check-Off List (PW-5), Certified Payroll Record and instructions (LS-57) form, and the Contractor's Report of Construction Wage Rates (LS-04) form are being discussed and distributed at public body and contractor presentations.

The DLS will send a mass email to all public bodies with a friendly reminder of their responsibility of compliance with the Prevailing Wage Law as public entities including the forms listed above, the DLS website, telephone number, and email address.

3. Project Notifications

The DLS does not actively identify state agencies and other public bodies that fail to submit project notifications. As a result, the DLS does not receive project notifications from public bodies on a significant number of public works projects as required by state law. In addition, for projects the DLS did not receive a project notification for, non compliance with other prevailing wage law requirements was more likely to occur. The DLS received approximately 2,200 project notification submissions from 231 public bodies during the year ended June 30, 2016.

Section 290.262.12, RSMo, requires public bodies before work begins on public works projects to notify the DLS of the scope of the work to be done, the various types of workers who will be needed on the project, and the date work will commence on the project. The DLS has developed a project notification form. Besides the project details, the form also requests the public body provide contact information for the public body, contractor, and all subcontractors on the project.

State agency notifications

We obtained information from multiple state agencies about public works projects overseen by the agency itself or administered by local governments with funds provided by the agency. We requested information on projects bid between January 1, 2015, and June 30, 2016 and compared that information to DLS's project notification database. We were able to match projects on the agency lists to project names in the notification data for some lists. For other lists, we could only compare the number of projects on the lists to the number of projects in the notification data because project names were not consistent between the lists and the notification data.



Prevailing Wage Program Management Advisory Report - State Auditor's Findings

Based upon our work we determined that of the 696 projects on the agency lists, the DLS had not received a project notification form on 391 projects (56 percent), as follows:

- For projects funded by the Department of Economic Development and administered by public bodies, 59 of 81 projects (73 percent) did not have a project notification submitted.
- The OA, FMDC did not submit project notifications for 84 of 137 projects (61 percent).
- For projects funded by the Department of Natural Resources and administered by public bodies, 104 of 180 projects (58 percent) did not have a project notification submitted.
- For MoDOT funded projects, administered by local public agencies, project notifications were not submitted for 143 of 276 projects (52 percent).
- The Department of Conservation did not submit a project notification for 1 of 22 projects (5 percent).

The MoDOT is exempt from the project notification requirement under state regulation, however MoDOT had submitted project notifications for 136 of 504 projects overseen by the agency. DLS officials indicated they met with MoDOT officials in July 2016 and reached an agreement that MoDOT would begin submitting project notifications for all MoDOT administered projects.

School district notifications

The DLS does not actively monitor school districts who report capital outlay expenditures to ensure they are completing project notification forms. We obtained public school capital outlay building expenditures for the year ended June 30, 2015, from the school year 2014-2015 Annual Secretary of the Board Report (ASBR) submitted to the Department of Elementary and Secondary Education. The DLS received project notification forms from 48 schools during the year ended June 30, 2015. However, we identified 86 schools with capital outlay expenditures of more than \$1 million, and 107 schools with capital outlay expenditures between \$100,000 and \$1 million, that did not submit any project notification forms for the year ended June 30, 2015. While the ASBR does not contain information about specific public works projects, it is likely many schools are not submitting project notification forms on these projects.

Projects with notification forms have a reduced rate of noncompliance

Our review of public works projects indicated projects without a project notification form submitted to DLS had a 20 percent noncompliance rate with other prevailing wage law requirements (See MAR finding number 2



Prevailing Wage Program
Management Advisory Report - State Auditor's Findings

for information on the specific requirements we reviewed). In contrast, projects with a project notification submitted to the DLS had a 7 percent noncompliance rate with other prevailing wage law requirements. While we reviewed a limited sample of public works projects, our review indicates public bodies that fail to submit project notifications to the DLS have a higher noncompliance rate with other prevailing wage law requirements and would be good candidates to receive outreach training about the prevailing wage law.

DLS officials indicated they have not actively monitored noncompliance with notification requirements partially because they currently do not have adequate staff to perform any routine project testing on projects for which they receive project notifications. However, a more complete project notification database would help the DLS increase compliance with prevailing wage law by performing additional outreach to public bodies. Increased outreach would particularly benefit public bodies who are less familiar with prevailing wage requirements such as school districts, municipalities, water and sewer districts, and fire and ambulance districts.

Recommendation

The DLS actively identify state agencies and public bodies who are not submitting project notifications and are more likely to have public works projects, and utilize the notification database to improve outreach efforts.

Auditee's Response

The DLS made an agreement with MoDOT in July 2016 for Project Notification (PW-2) forms to be submitted. The DLS has since received PW-2 forms from MoDOT and have entered them into the database. The DLS has also implemented a practice of contacting all public bodies that have a complaint filed on one of their projects when a PW-2 has not been submitted.

4. Construction Safety Training

Current state law requiring construction safety training for workers on public works projects needs to be strengthened. During our review of prevailing wage complaints, which included construction safety training complaints, we noted limitations in the law impair effective enforcement of the construction safety training requirement.

Under Section 292.675, RSMo, any contractor or subcontractor completing construction of public works for any public body is required to provide an approved 10-hour construction safety training program to all on-site employees unless the employee has previously completed a construction safety training program.

The contractor is required to ensure project employees who have not previously received the training, are provided safety training within 60 days of starting work on a project. If an employee is observed by the DOLIR on a job site without the proper training certificate, the employee has 20 days to



Prevailing Wage Program Management Advisory Report - State Auditor's Findings

provide it. If the employee fails to provide a training certificate and both the 60 day and 20 day timeframes have elapsed, the DLS can assess a fine against the employer of \$2,500, plus \$100 for each employee on the project without a training certificate.

Enforcement limited

Current enforcement methods of this requirement are limited. Under Section 292.675.5, RSMo, the DOLIR shall investigate any claim of violation of safety training requirements. However, very few complaints are received. This is likely due to a lack of incentive by both the employee and employer to file a complaint. In the event a complaint is filed, the DLS typically is unable to enforce any penalty because the job has been completed and any untrained workers can no longer be observed on the job site, as required by state law.

During the year ended June 30, 2016, the DLS received 24 safety training complaints. Of those complaints, 19 could not be investigated because the project was complete and there were no employees on-site who could be checked for documentation of training completion. For the 5 projects with active employees at the time of the DLS complaint investigation, division personnel identified no violations of the safety training requirement.

DLS officials indicated they began actively enforcing the safety training requirement in 2011 and issued many violations because contractors did not have documentation in their records all employees on the certified payrolls had completed the required safety training programs. However, since state law does not require contractors to maintain or provide documentation of the completion of safety training for all employees on certified payrolls, the DLS changed to the current procedure of requiring a complaint before investigating.

Seven other states have construction safety training requirements. Three of the 7 states require proof of training completion to be included with the first certified payrolls submitted to the public body allowing the public body to ensure all employees have completed the safety training at the beginning of the project. A requirement that contractors must maintain and submit documentation that all on-site employees have completed or are currently obtaining the construction safety training would provide some assurance the contractor and all on-site employees have complied with the construction safety training requirements before working on the job. In addition, requiring documentation that training requirements have been met would allow for easier enforcement by the DLS. In addition, public bodies should be given authority to determine if violations have occurred and to report any violations to the DLS.

Recommendation

The DOLIR work with the General Assembly to revise state law to require contractors on public works projects to maintain and submit documentation



Prevailing Wage Program
Management Advisory Report - State Auditor's Findings

that all on-site employees are in compliance with construction safety training requirements. In addition, public bodies should be empowered to determine if contractors are not complying with the safety training requirements and to report any violations to the DLS.

Auditee's Response

The DLS has included the safety training requirements in their guidelines to ensure that specialists explain the safety training requirements to all contractors and public bodies through education/presentations and to encourage public bodies to include language in both the solicitation and advertisement for bid and the bid specifications.

The DLS will continue to educate contractors and public bodies of the requirements of the Prevailing Wage Law Construction Safety Training highlighting the positives of compliance.

- 1) Fewer deaths*
- 2) Fewer accidents*
- 3) Lower Worker's Compensation premiums*

In addition, we will add a column on the LS-57 Certified Payroll form to include a check box for OSHA 10 Training.

Prevailing Wage Program

Organization and Statistical Information

The Division of Labor Standards (DLS), is a division of the Department of Labor and Industrial Relations. The DLS is an administrative division created by the Labor and Industrial Relations Commission to satisfy the requirements of section 8, paragraph 5, of the Omnibus State Reorganization Act of 1974. This act created an inspection section which is now named the Division of Labor Standards.

The DLS is organized into three sections: Wage and Hour, On-Site Safety and Health, and Mine and Cave Safety. The Wage and Hour Section is responsible for determining the prevailing wage rate and enforcing the prevailing wage law and construction safety training law. In addition, the Wage and Hour Section administers and enforces Missouri's child labor, and minimum wage laws and provides information to the public on Missouri's labor laws.

The Wage and Hour Section receives separate appropriations for the prevailing wage, child labor, and minimum wage programs. For the year ended June 30, 2016, the prevailing wage program's appropriation authority was \$192,470 and expenditures were \$182,172. For the year ended June 30, 2015, the prevailing wage program's appropriation authority was \$312,978 and expenditures were \$265,985.

John E. Lindsey was appointed the Division Director effective August 7, 2013. The Wage and Hour Section employed 9 full-time employees, including 4 investigators, as of June 30, 2016.