

## Minnesota Board of Water and Soil Resources (BWSR) FAQs

These FAQs do not have the force and effect of law, and are intended for informational purposes only, and should not be construed as legal advice. The Minnesota Department of Labor and Industry (DLI) enforces prevailing-wage laws on a case-by-case basis. More prevailing-wage information as well as contact information is available at [dli.mn.gov/prevailing-wage](https://dli.mn.gov/prevailing-wage).

### What constitutes a project in relation to program funds administered by BWSR?

Work funded or financed through program funds flowing through BWSR may constitute a project as defined by the Minnesota Prevailing Wage Act, Minnesota Statutes § 177.42, subd. 2. The term “project” is not confined to the construction of buildings, highways and buildings but can also include work on land performed for public use or a public benefit. If the work performed consists solely of maintenance of existing land, it may not be covered. Generally, in the context of formula funds, identifying whether the work constitutes a project will involve examining the grant or funding agreement between the project owner and the entity awarding the grant.

In the context of a competitive grant, all the work covered by the grant application and work plan is considered when determining if the work meets the definition of project. The project owner may not divide the work for which state money is provided for different or separate “projects” for purposes of determining whether prevailing wage requirements apply to the work, even if the work is geographically disparate.

A single project may also involve multiple grants or awards of financial assistance. For example, if funds are designated for the restoration of a single body of water but may be granted to multiple project owners for that single purpose the project may be all work funded by those grants.

Indicators that a contract may meet the definition of project may include, but are not limited to:

- earthmoving or the rearrangement of terrain;
- the work involves alteration or change in the character, nature or use of land;
- repurposing of the land;
- the permanence of the work performed;
- whether the work results in land of a different nature than prior to the work, including repairing or restoring land to a purpose it is no longer fit for or returning the land to its previous, but not current, state; or
- the work is not routine in nature.

Working with BWSR, DLI has reviewed common scopes of work funded through BWSR-administered funds. The following types of BWSR-funded work would generally meet the definition of project:

- conservation cover involving transition from row crops to permanent vegetative cover;

- grade stabilization structures;
- streambank and shoreline protection; and
- water and sediment control basins work.

Work may constitute maintenance, which is not covered by the Act, if it leaves the land in its current state after the work is completed. The following activities may commonly constitute maintenance if work does not result in alteration or change in the character, nature, or use of the land and is not performed in connection with covered work:

- vegetation plantings;
- landscaping;
- pruning;
- seeding/vegetation establishment;
- application of herbicide;
- harvest, rolling, crimping, and/or tilling;
- application of fertilizers and/or amendments;
- mowing/harvest;
- prescribed burning; and
- removal of invasive species.

A [Project Assessment Form](#) can be submitted to DLI if there is uncertainty about whether specific works meets the definition of a project and is subject to prevailing wage requirements. This form should be submitted prior to the solicitation of bids or execution of a grant contract where appropriate. For funds administered by BWSR, the Project Assessment Form should be submitted by BWSR to ensure that DLI has, or can promptly obtain, all information necessary.

## What dollar thresholds determine if prevailing-wage requirements apply?

If work otherwise constitutes a project, prevailing wage will apply if the estimated cost of completing the projects equals or exceeds \$2,500 if one trade is involved or \$25,000 if more than one trade is involved. The dollar amount is determined by looking at the cost of completing the work, not the dollar amount of the grant or financial assistance provided or bids received.

## How do I determine the appropriate labor code for workers?

The labor codes for purposes of prevailing wage can be found in Minnesota Rules Parts 5200.1101 and 5200.1102. DLI has guidance available on its [website](#) regarding appropriate labor codes for common tasks related to conservation and restoration work.

DLI's Prevailing Wage Unit is available to provide assistance with additional questions related to labor codes. Additional questions may be submitted using a [Classification and Code Clarification Form](#). This form should be submitted by the contracting authority to [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us). DLI encourages grant recipients and contractors to submit this form as soon as questions about assigning job classifications and codes arise.

## **What language must be included in contracts involving program funds administered by BWSR?**

Contracts providing grants or other state funding should alert grantees that work that meets the definition of a project and relevant dollar thresholds are subject to prevailing wage requirements and that all laborers and mechanics performing work on the project must be paid the applicable prevailing wage rate in accordance with Minn. Stat. §§ 177.41-177.44. If state funding is provided through multiple levels of grants or contracts, for example if a local soil and water district receives program funds which it then grants, this information should be provided at each level of contract or funding award.

Contracts between project owners (i.e., generally the entities performing the work or contracting to have the work performed) and contractors subject to prevailing wage requirements must specifically state prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay, include the applicable wage determination for the project, and include the following language:

- Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

The contract must also provide for required prevailing-wage reporting.

## **What are the reporting requirements on projects subject to prevailing wage.**

The project owner must demand, and any contractor on the project must furnish, compliance documents no more than 14 days after the end of each pay period. Contractors and project owners must retain these records for a minimum of three years after final payments are made. Required reporting forms and detailed instructions are available on DLI's [website](#). There may be requirements related to administration of grants and state funds that DLI does not enforce.

## **What wage rates should be used?**

For MPWA covered restoration, conservation, and similar types of projects, highway and heavy wage rates have historically been applied. This is consistent with application of the federal heavy category, which is considered a catch-all category, to federally funded projects of this nature that are subject to the Davis-Bacon Act. These wage rates are set by region. Wage determinations containing these wage rates are available [online](#).

Are any workers not covered by prevailing wage requirements?

Some workers are not subject to Minnesota prevailing wage requirements, specifically the following:

- the Conservation Corps Minnesota is exempt from state prevailing requirements; and

- employees of the state and political subdivisions are not covered by prevailing wage requirements.

Additionally, a person registered as an apprentice in a bona fide apprenticeship program registered with the U.S. Department of Labor or a state apprenticeship agency is not subject to prevailing-wage requirements. The rates of pay for such workers are established by the program to which the apprentice is subject.

These workers may still be subject to federal prevailing wage requirements, if applicable. Questions concerning federal prevailing-wage requirements should be directed to the U.S. Department of Labor.

## **Where can I find more information?**

General prevailing-wage information is available at [dli.mn.gov/prevailing-wage](https://dli.mn.gov/prevailing-wage).

Information related to prevailing wage and state grant programs is available at our [State grant programs page](#).

DLI can be contacted with questions at [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us) or 651-284-5091.