



Lessard – Sams Outdoor Heritage Council

Centennial Office Building, First Floor
658 Cedar St
St. Paul, MN 55155

Commissioner Nicole Blissenbach
Minnesota Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

July 30, 2024

Dear Commissioner Blissenbach:

I write to you on behalf of the Lessard-Sams Outdoor Heritage Council (LSOHC) regarding the application of prevailing wage on projects that are financed by the constitutionally dedicated Outdoor Heritage Fund (OHF) we oversee. These same concerns may apply to projects financed by the Clean Water Fund (created by the 2008 Clean Water, Land and Legacy constitutional amendment) and the Environment and Natural Resources Trust Fund.

The LSOHC provides recommendations to the legislature on how to most appropriately utilize public Outdoor Heritage funds in line with the State's constitution and provides oversight on OHF appropriation spending as guided by state law and the constitution. All people working in Minnesota should be paid the appropriate wage for the activities performed in the course of their duties, and we should all strive to ensure the rates that apply to work funded through dedicated funds are reflective of this value. With that thought in mind, we are respectfully requesting a process by which to establish appropriate rates for restoration-based work.

It has come to our attention that the statute change made during the 2024 legislative session, Minnesota Law 2024, Chapter 110, Article 2, Section 6, governing the application of prevailing wage under the Department of Labor and Industry's (DLI) jurisdiction has a direct unintended detrimental impact on projects supported by the funds we oversee as they relate to restoration and improvement of land available to the public or funded in whole or part by state funds (underlined words represent the new statute language):

Sec. 6. Minnesota Statutes 2023 Supplement, section 177.42, subdivision 2, is amended to read:

Subd. 2. **Project.** "Project" means demolition, erection, construction, alteration, improvement, restoration, remodeling, or repairing of a public building, structure, facility, land, or other public work, which includes any work suitable for and intended for use by the public, or for the public benefit, financed in whole or part by state funds. Project also includes demolition, erection, construction, alteration, improvement, restoration, remodeling, or repairing of a building, structure, facility, land, or public work when the acquisition of property, predesign, design, or demolition is financed in whole or part by state funds.

According to DLI's website, Prevailing Wage is meant to set the "minimum hourly wage employers must pay certain workers who work on **construction** projects where state dollars are used to fund **construction** (*emphasis added*)."¹ This amendment, while apparently intended to clarify the statute, now effectively incorporates more publicly funded projects which may not have a construction element. Stated differently, state funded, non-construction, projects will now be subject to prevailing wage. We request that DLI prioritize a process to bring prevailing wage regulations affecting conservation activities, such as vegetation management, in line with the state law and to resolve inconsistencies between the new statutory language and current regulations and practice. More specifically, what is needed are applicable prevailing wage rates that reflect the nature of conservation-related work activities.

We understand that certain grantees of OHF funding, having engaged in conservation-related vegetation management work activities using these funding awards, have been directed by DLI staff to use the current highway and heavy construction "general laborer" rates for their conservation projects funded with public funding. Under Minn. Rules 5200.1101, Subpart 1A, this labor code is for "work performing tasks involving physical labor at building, highway, and heavy construction projects, tunnel and shaft excavations, and demolition sites including the following tasks or other tasks not listed which are not considered skilled craft work." This has been a poor fit for the type of work and a poor fit for actual market rates for conservation activities.

First, the definition of Highway and heavy construction does not reflect conservation work. Specifically, Minn. Rules 5200.1010 defines Highway and heavy construction as:

...all **construction** projects which are similar in nature to those projects based upon bids as provided under Minnesota Statutes, section 161.32 for the construction or maintenance of highways or other public works and includes **roads, highways, streets, airport runways, bridges, power plants, dams, and utilities** (*emphasis added*).

Minnesota Statutes section 161.32 is specific to Contracting for Work on Minnesota Trunk Highways. Most conservation projects do not match this description. As such, utilizing Highway and Heavy Construction wage determinations for all conservation projects is not appropriate. A new labor category specific to conservation activities is required to more accurately reflect the prevailing wage of this sector.

Second, the amounts being paid in labor by placing vegetation restoration projects into the General Labor category under Minn. Rules 5200.1101, Sub. 1A, is not reflective of the actual Prevailing Wage. To illustrate this point, the general laborer basic rate for Cook County, MN is \$40.26/hour;² in contrast the prevailing wage rate in this same county for "forest and conservation workers under federal H2B visa rates is \$17.72/hour.³ This latter rate is much more in-line with market rates for conservation work and would likely be supported by a wage rate survey conducted by DLI specific to conservation work. However, without having the correct labor category, DLI may have a difficult time establishing labor surveys which reflect the current labor market.

Alignment with the federal rates would help to provide consistency in the conservation restoration and enhancement market as well as ensure a smooth working relationship with federal partners. Many of our Grantees partner with federal agencies to complete conservation projects. Those projects are often

¹ <https://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>

² https://workplace.doli.state.mn.us/prevwage/highway_data.php?region=01

³ <https://www.flcdatacenter.com/>

partially funded with federal dollars, which would be subject to the Davis-Bacon Act or Service Contract Act. Project funding problems could arise if Minnesota's Prevailing Wage laws and regulations conflict with the federal wage rates.

Currently, some OHF grant recipients are experiencing challenges in their use of OHF grant funds resulting from:

- Conflicting prevailing wage determinations and guidance by DLI to grantees.
- Inconsistency in the application of prevailing wages.
- Lack of wage rates reflective of conservation activities.
- Uncertainty in submission of grant proposals and estimates for conservation work.

It is important to note the urgency in resolving the uncertainty around this issue. Contracts issued by our grant partners that span the implementation date of this new requirement face such uncertainty that these contracts may need to be canceled and with it, a stoppage of restoration work until it is sorted out and new contracts negotiated. Some grant partners are so uncertain of what they need to do (in large part due to inadequate DLI guidance) that they are virtually paralyzed from continuing restoration activities and fear missing an entire winter work window resulting in unspent grant funds and potentially expiration and return of unspent grant funds

Do not overlook the fact that construction wages far exceed current competitive wages for restoration work and as a result, far less work would likely be accomplished which will then affect the outcomes promised when the grants were issued. This will result in the citizens of the state not receiving the value expected for funds committed to critical habitat restoration work.

These considerations make it even more critical for DLI to prioritize a process for clear guidance and prevailing wage classifications that are reflective of the land and restoration activities we steward.

We request your timely response on this pressing issue and stand ready to partner with DLI to help ensure a process can incorporate relevant information needed to set appropriate rates.

Thank you for your consideration,

David Hartwell, Chair Lessard-Sams Outdoor Heritage Council

cc: Governor Tim Walz
Senator Fong Hawj – Chair, Senate Environment, Climate, and Legacy Committee
Representative Leon Lillie – Chair, House Legacy Finance Committee
Senator Jennifer McEwen – Chair, Senate Labor Committee
Sarah Strommen, Commissioner, DNR
John Jaschke, Executive Director, BWSR