

Portland Clean Energy Fund Committee

MEMO: Prevailing Wage Context and Recommendation for PCEF Committee

To: Portland Clean Energy Fund Committee
From: PCEF Staff
Subject: Prevailing Wage Context and Recommendation for PCEF Committee
Date: May 21, 2020

The following memo provides context on prevailing wages, their relevance to the Portland Clean Energy Community Benefits Fund (PCEF) under current Oregon laws, and a recommendation to the PCEF Committee. The recommendation is an approach to wage standards that sends a clear signal to the market and community of the Committee’s desire to see prevailing wages on PCEF projects while creating flexibility to learn, adapt, and improve the program to ensure it is working well for women, people of color, and the chronically underemployed in the workforce and as owners of businesses contracting with PCEF.

Family wage standard required under PCEF code¹:

Creating jobs that provide living wages is a priority of PCEF. By law, payments for work funded by PCEF must be at least 180 percent of the state minimum wage. As of July 1st, 2020, 180 percent of the relevant state minimum wage will be \$23.85/hour.

Prevailing wage rate law in the context of PCEF:

Oregon’s prevailing wage rate (PWR) law is administered by the Bureau of Labor and Industries (BOLI). The PWR was designed to ensure that construction contractors compete on their ability to perform work competently and efficiently while maintaining community-established compensation standards².

The prevailing wage rate includes the base hourly wage rate paid as well as the hourly fringe or benefits rate. It is the combination of these two amounts that must be paid to a worker on a PWR project.

The Oregon Bureau of Labor and Industry determines and updates the non-residential prevailing wage rate annually. Residential construction projects subject to the PWR law must use residential rates established by the federal government.

Prevailing wage law applies to the application of public dollars to public works projects. Generally, privately-owned construction projects with greater than \$750,000 of total public funds (i.e.,

How is the PWR determined:

BOLI conducts an annual survey of non-residential construction trades in Oregon. By law, contractors are required to respond to the survey.

BOLI uses the information in the survey to determine the PWR for non-residential construction trades.

Typically, if the same wage is paid to a majority of workers in a construction trade for a local area (i.e., often based on a collective bargaining or union agreement), then this is the PWR. If the same wage is not paid to a majority of workers in a construction trade for a local area, then the PWR is the average of wages paid.

¹ Portland City Code 7.07.060 C. 3. requires that wage standards for projects funded by PCEF shall be no less than those contained in ORS 470.560(2)(g).

² For additional information on Oregon’s PWR laws, go to: https://www.oregon.gov/boli/WHD/PWR/Pages/W_PWR_Pwrbk.aspx

inclusive of PCEF and other public funds) will be subject to PWR as they are likely to fall under the definition of a public works project as defined by [Oregon Statute \(ORS 279C.800\(6\)\(a\) and OAR 839-025-0004\(20\)\(a\)](#).

Below are a few project examples, and whether they are likely subject PWR law. PWR law is complicated and it will be important that PCEF and grantees connect with BOLI to get formal wage determinations. This is not a substitute for that determination but is intended to help the Committee understand where PWR law currently applies and where it does not.

- Projects that would likely be subject to PWR:
 - Project is a retrofit of a single commercial building with \$600,000 in PCEF funds and \$200,000 in funds from the State of Oregon. Because the total public funds invested in this single project exceeds \$750,000, the project likely meets the definition of a public works project and is subject to PWR.
 - Project is an installation of a green roof on a public school facility with \$125,000 of PCEF funds. Because project is being carried on by a public agency at a public facility and not a private entity, the project is likely subject to PWR.
 - Solar energy installations on public property, regardless of project cost or use of public funds are considered public works projects and subject to PWR.
- Projects that would likely not be subject to PWR:
 - More than \$750,000 in public funding is received by an organization to weatherize many individual single-family homes. Each home weatherization is considered a separate project receiving less than \$750,000 individually and therefore the project is likely not subject to PWR.
 - Construction projects on a privately-owned residential buildings that predominantly provide affordable housing are exempt from PWR even if there are greater than \$750,000 of total public funds invested³.

Considerations for increasing PWR applicability beyond current state requirements:

A central goal and tenet of PCEF is to “develop a diverse and well-trained workforce and contractor pool in the field of clean energy” ([PCC 7.07.020 A](#)). A core value of the PCEF Committee is to build wealth in communities that suffer historic and current discrimination, particularly Black, Indigenous, and people of color communities. Succeeding at this goal and value will require long-term collaboration across our local governments, labor partners, communities, and businesses by promoting shared learning and action, bridging historical community-labor-policy divides, and producing sustainable outcomes to build social and economic capital within historically disadvantaged communities and groups. As part of this effort, PCEF staff have been listening to stakeholders regarding how best to advance our goals and values in ways that are both legally defensible and workable on the ground.

Prevailing wage was discussed in breakout groups during our April 28th workforce and contractor equity design session. These discussions had well over 40 people in attendance representing small and large nonprofit organizations, labor, and construction business diversity groups. Staff additionally sent a survey on May 4th to participants of our workforce and contractor equity discussions to solicit feedback

³ “Affordable housing” means the occupants’ incomes are no greater than 60 percent of the area median income, or no greater than 80 percent if the occupants are owners. “Predominately” for affordable housing means at least 60 percent of the project is designated for affordable housing. “Residential” means no more than four stories in height. ORS 279C.810(2)(d); OAR 839-025-0100(1)(e).

on prevailing wages. Below are a summary of thoughts, reflections, concerns, and uncertainties relayed in both the discussions and survey responses:

- Feedback in support, with questions, or suggesting an alternative to get closer to PWR in PCEF:
 - There were numerous participants across groups (i.e., nonprofit, labor) that were supportive of requiring prevailing wages rather than just 180% above minimum wage.
 - There were also numerous participants/survey respondents across groups (i.e., nonprofit, labor, business diversity) that were supportive of prioritizing/scoring for prevailing wage, but not necessarily requiring it.
 - Many participants and respondents had questions seeking clarity around how PWR would be applied. These included:
 - Questions around whether affordable housing projects would fall under the PWR requirement as they are currently exempt from PWR laws.
 - Whether BOLI would determine a residential rate to be used for residential projects.
 - Whether the required rate would include wages and fringe.
 - One respondent expressed being ok not using PWR, but felt it was necessary to require fringes/benefits. Separate from the PWR discussion, other participants felt fringe/benefits should be required as well.
 - As noted below, there were concerns raised about administrative burden; though some participants believe that may be addressed if adequate training and implementation resources are provided.

- Feedback with concerns about increased use of PWR:
 - The bulk of feedback with reservation about a PWR requirement on PCEF revolved around a concern that the requirement would diminish the ability of smaller contractors to engage and grow with the program, and concern that such a requirement would only allow larger firms with administrative capacity to engage in PCEF. This concern extended to limiting the growth of diverse contractors, who are often smaller, in the space. Specifically:
 - Complying with PWR requires the use of certified payroll. Therefore, contractors must have internal administrative capacity to administer certified payroll. Contractors already participating on public projects will have this capacity, but others may not.
 - In addition to administrative concerns, residential contractors were concerned about managing workforce morale/staffing across their projects if most of their projects are market-based with substantially lower wages, while only a subset of their projects are PCEF projects at PWR.
 - A couple respondents had concerns about placing too many requirements in the “pilot” year before understanding the likely projects and suggested that a decision on PWR be made after understanding the market.
 - Several participants/respondents expressed questions around the potential tradeoff associated with other environmental/social goals.
 - Requiring prevailing wage may make it harder to attract other funds. E.g. an affordable housing funder that does not prioritize wages may perceive prevailing wage requirements as taking away from other goals of the project.

Implementation/policy considerations:

Application of current PWR law, as noted earlier, is complicated. The following are worth nothing as we think about implementation:

- The residential PWR is determined by the federal government through its Davis-Bacon Act wage determinations. A notable difference from BOLI's determination of non-residential rates is that there is no legal requirement that all residential contractors respond to their wage survey. As a result, there are concerns regarding accuracy of the federal residential rates.
- There are currently 2 FTE within the State Employment Department that manage the annual PWR surveys for non-residential projects. Should there be an interest in BOLI surveying and publishing a residential PWR that may be more accurate, PCEF staff will need to work with BOLI to determine implementation feasibility including resourcing of a specially commissioned wage survey.
- Should there be interest in requiring PWR across PCEF projects not currently subject to Oregon PWR, an approach to compliance and enforcement of PWR beyond BOLI's existing areas of coverage will need to be determined, particularly given caps on PCEF administrative costs.

Staff Recommendation:

The use of prevailing wages on PCEF projects is a key opportunity to build wealth in communities and groups historically excluded from the clean energy workforce. Prevailing wages are also a key means to ensuring that labor is not exploited. At the same time, there remain many unknowns around the demographics of those currently making prevailing wage, the demographics of contractors with the capacity to administer a PWR project, and the path to diversifying both of these groups.

As we move forward in this question, as with many other questions in PCEF, it is important we acknowledge what we know about the path, what we know about the future we desire, and what we can do to bend the path to that future. By requiring PWR, are we handicapping or locking out smaller, diverse contractors from participating and growing in PCEF? By not requiring PWR, are we reinforcing a race to the bottom on the backs of workers?

In our recommendations, we attempt to lay out an approach that acknowledges the necessary learning ahead, sends clear market signals for both increasing wages and the applicability of PWR, and responds to uncertainties today.

Staff recommends that the Committee include the following in their Workforce and Contractor Equity Agreements and Plan:

1. Reduction and modification of the threshold for which PWR is applicable. Make PWR applicable to PCEF projects on a single geographic site that have a construction budget exceeding \$500,000 (inclusive of all sources of funding, public and private) in a specific geographic site, excluding privately owned, predominantly affordable residential housing construction⁴;
2. Prioritize PWR through scoring for all other construction projects not subject to PCEF's PWR threshold;

⁴ This would align with existing exemptions under PWR law. "Affordable housing" means the occupants' incomes are no greater than 60 percent of the area median income, or no greater than 80 percent if the occupants are owners. "Predominately" for affordable housing means at least 60 percent of the project is designated for affordable housing. "Residential" means no more than four stories in height. ORS 279C.810(2)(d); OAR 839-025-0100(1)(e).

3. Ensure that applicants are aware of the resources being provided to support successful implementation of wage requirements (e.g., ability to include administrative costs in grant request, free access to reporting platform and training on how to use platform, ability to include required wages in the grant request); and
4. Establish a High Road Committee to participate in collaborative data analysis to determine long-term goals on wages, workforce diversity, and contractor diversity as well as program and policy responses to support those goals. In this analysis, assess the relationships between wages, workforce diversity, and contractor diversity at least every 2 years (to begin once projects are underway and data is being collected), exploring the impact and potential for further reducing the threshold of applicability for PWR on PCEF projects in alignment with PCEF goals on wealth creation, and workforce and contractor diversity.

It is critical that we test our nascent understanding of how prevailing wages create economic opportunities for a diverse workforce and contracting pool. We hope to lay a foundation that provides the flexibility to learn and establish meaningful goals as we proceed.