



**To:** Chair Smith Warner, Vice Chairs Drazen and Holvey; Members of the House Rules Committee

**From:** Tracy Rutten Rainey, League of Oregon Cities

**Date:** May 5, 2021

**RE:** LOC Opposition to SB 493-A & Request for Amendments

---

Thank you for the opportunity to provide testimony on SB 493-A. The League of Oregon Cities is opposed to the A-Engrossed version of this bill and does have very real concerns and worries about the potential cost impacts that could result from this legislation. ***We are here today to ask for the opportunity to work with other stakeholders, sponsors and members of this committee on changes to the bill*** that we believe will help protect against the potential for a more volatile wage determination system and other unintended consequences, including the potential for cost increases for infrastructure and other critical projects across the state. **We are recommending several important changes/amendments to the bill, and those changes are listed on page three of this testimony.**

***What the bill does:***

- Current law requires the Oregon Bureau of Labor and Industries to use a wage survey to determine the construction wage rates that should be paid in various parts of the state for public works projects.
- Current law also allows BOLI to use other data, including from collective bargaining agreements, if the wage survey data isn't sufficient to determine appropriate regional wage rates.
- SB 493-A eliminates the wage survey in regions where a collective bargaining agreement exists. Under SB 493-A, the new minimum construction wages would be based on the highest wage rate identified in a collective bargaining agreement (CBA). **This means that if more than one CBA exists, the highest wage rate identified would become the new minimum wage for that region.** This departs from a current system that utilizes an averaging mechanism and instead uses only one data point to establish the new wage rate.
- The bill would mean that all public agencies in a region are subject to the highest wage rates identified in a collective bargaining agreement even if the public agencies are not subject to the collective bargaining agreement.
- The bill fails to define what constitutes a bona fide collective bargaining agreement for the purpose of being eligible to be used for this purpose. As a result, a collective bargaining agreement that is reflective of a specialized project, specialized work, limited hours and a limited number of employees, could become the CBA that everyone else in the region must abide by in terms of construction wage rates.

***Why LOC is opposed to SB 493-A:*** The LOC is not opposed to finding a better mechanism for BOLI to determine wage rates and we are not opposed to departing from the current wage survey process. In addition, we are not opposed to the general principle behind prevailing wages for public works projects,

and we are not here today to suggest that prevailing wage requirements do not have merit for public projects.

- **Cost increase concerns for critical infrastructure and other projects:** LOC is concerned that this specific proposed change to the mechanism for determining the appropriate wage rates in a given region by using only the highest wage rate in one collective bargaining agreement, could result in unintended consequences, including the potential for wage spikes and project cost impacts. **We are also extremely concerned over the report from the University of Oregon Labor Education Research Center that indicated that if Oregon were to pass legislation similar to the law passed in Washington in 2018, it would result in \$100 million in additional construction wages annually.** Not surprisingly, \$100 million annually is a number that caught our attention as we would presume that the \$100 million in increased wage rates is coming via increased public project costs, and we would like to better understand how these additional costs could impact infrastructure, our ratepayers and taxpayers, the impacts this will all have on the costs of housing and some of the other type of projects that are subject to prevailing wage requirements. We do presume this represents costs increases for public projects, including critical infrastructure for seismic resilience, protection of public health, community livability and environmental protection. Link to UO LERC report: [FNL Prevailing Wage Report.pdf \(wpmucdn.com\)](https://www.wpmucdn.com/fnl-prevailing-wage-report.pdf)

We do realize that proponents have cited studies that have shown that prevailing wage laws do not increase project costs as the use of skilled, higher wage labor results in efficiencies in the construction of that project. But we are not talking about eliminating use of prevailing wage laws in Oregon – that is not what this bill is about. We are already subject to prevailing wage laws and this bill doesn't seek to change that. What we are talking about in this bill is changing the mechanism for determining the actual wage rates and we see it as a significant departure from the current approach.

- **Increased costs to infrastructure result in increased costs to water rates/sewer rates/system development charges/etc.** It is important to keep in mind that additional infrastructure costs are not directly paid for by local governments; those costs are paid for by our ratepayers and citizens – many of who are already concerned and struggling with affordability issues especially for drinking water and sewer costs. Infrastructure costs continue to increase and our backlog for infrastructure is significant. For many communities, increased infrastructure costs simply mean project don't happen. Our recent water infrastructure survey showed approximately 20 billion in necessary water infrastructure investment for Oregon cities in the coming 20 years. It is already cost prohibitive for many communities to invest in necessary infrastructure improvements. Again, for many communities, especially small and rural communities, cost increases simply mean projects won't happen or the scope of a project will be narrowed. Budgetary constraints are already a reality for our residents and ratepayers, especially those that are low-income or on fixed incomes, and we do worry that any significant cost increases will either mean additional costs for those citizens or will result in projects that simply don't pencil out, resulting in unresolved infrastructure backlogs in many Oregon communities.

I want to make it clear that I don't think that increasing cost for critical infrastructure is the intent of this legislation, but we have real concerns that it could be the result without some revisions to this language.

**LOC recommends the following amendments to SB 493-A:**

1. First and most importantly, we strongly encourage the committee to use an averaging of CBAs within a region for wage rate determination. In order to determine which CBA has the highest wage rate (as is required under SB 493-A), it would appear that BOLI would already need to attempt to identify all CBAs in a region. We believe that using an average of CBAs within a region will help mitigate against potential, sudden wage spikes while still providing the efficiency and consistency that this bill aims to achieve.
2. Second, we are encouraging the committee to consider language that would create a backstop mechanism that would trigger additional review and use of additional data by BOLI if any occupational wage rate increases by more than a certain percentage from one period/year to the next. In some of our internal discussions it has been suggested that a 15% increase in a specific wage rate may be an appropriate threshold to trigger use of additional data in making a final wage rate determination.
3. In addition, we encourage a definition of “bona fide collective bargaining agreement” to ensure that a CBA that reflects specialized work or a limited number of hours or limited number of employees does not become the only CBA that is used to establish the new minimum wage for all work done within that occupational trade.
4. Finally, after a recent conversation, it has come to LOC’s attention that we may have a very real legal concern with this bill that warrants further review and discussion. The concern would be around the implementation and administration of this process for BOLI and how they go about collecting CBAs for the purpose of wage rate determination. If there is a CBA in existence that is not submitted to BOLI and it is later discovered that the CBA that wasn’t submitted had a higher wage rate for a given occupational trade; we are concerned that there may be a potential for a wage claim to be filed down the road. Our legal counsel is continuing to evaluate this, but we also believe that there could be a relatively simple amendment that would provide some legal protection should this concern play out as a future reality. That fix would specify that only CBA’s that are “received by the Bureau of Labor and Industries” are to be used for this wage rate determination.
5. Extending the timeline for the legislations effective/operative date. Current this bill becomes effective the 91<sup>st</sup> day following sine die. The new wage rates would become operative on January 1, 2022. This bill will require rulemaking and getting the process right is critical. We suggest, at a minimum, an operative date of January 1, 2023. There are a lot of questions and unknowns in terms of how this new system will be implemented and administered by BOLI and we believe it is critical to have adequate time to engage in the robust rulemaking process that we anticipate will be necessary should this bill pass.

We are also generally supportive of other concepts that other stakeholders have suggested, specifically from Associated General Contractors. We are asking the committee for the opportunity to find a path forward to consider workable solutions to mitigate some of our concerns. We are fully committed to taking the time required to get this bill right. We believe that we do have enough time remaining this session to do that work and we are hopeful that there is a willingness to find some amendment language this session that addresses the concerns and needs of the various stakeholders.

Thank you again for this opportunity to share our concerns and request for amendments. If you have any questions, please contact me at [trutten@orcities.org](mailto:trutten@orcities.org).