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Public Works Study

Prepared by the Municipal Research and Services Center
for the Washington State Department of Labor & Industries



PUBLIC WORKS STUDY

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MRSC

OFFICE: 225 Tacoma Ave S., Tacoma, WA 98402

MAILING: 1712 6th Ave, Suite 100, PMB 1330, Tacoma, WA 98405

(206) 625-1300 | (800) 933-6772

www.MRSC.org

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Introduction

Defining a construction project¹ as a “public work” has important implications for both government agencies and the construction industry. Designating a construction project as a “public work” brings significant legal requirements related to how government agencies select and compensate contractors on construction projects. [Senate Bill \(SB\) 5418](#) introduced during the 2023-24 legislative session proposed changes to the state law public work definition that could greatly expand when and how these requirements apply.

Under current state law, only construction projects executed “at the cost of” a public agency (a state government agency or a local government) are considered public works. Current public works statutes require public agencies contracting for real property construction (as well as maintenance and repair) to follow specific procurement and payment requirements. Conversely, the public works statutes currently do not apply to privately contracted and funded construction projects because they are not “at the cost of” a public agency (and are therefore not public works). But this seemingly simple public-private project distinction reveals a legal gray area: what about privately contracted construction projects where the government is not a contracting party and only provides direct or indirect project funding? Should the law also treat those projects as public works executed “at the cost of” a public agency and subject to public works contracting and procurement requirements?

The proposed language in [SB 5418](#) was intended to address this gray area. It explicitly includes private and community-led construction projects that are partially funded (directly or indirectly) by public funds within the public works definition, by identifying them as being executed “at the cost of” the public agency. This change could significantly expand the types of construction projects that are subject to public works requirements.

This report seeks to identify the current landscape of public works statutes and requirements and to explore the various ways that state agencies and local governments directly and indirectly fund privately contracted construction projects, to better understand the overall impact of [SB 5418](#)’s proposed changes. In so doing, this report uses various terms when referring to state and local government agencies, such as: “state agencies,” “municipalities,” “public agencies,” and “state and local governments.” The term “private construction projects” refers to those projects in which the agency is not a contracting party and any agency role is limited to funding contributions.

¹ For purposes of this report, “construction project” refers to real property construction, including contracted real property repair or maintenance work (other than legally defined ordinary maintenance).

Current Public Work Definitions and Proposed Changes

CURRENT DEFINITIONS OF PUBLIC WORK

The term “public work” is currently defined in both the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). The definition in [Chapter 39.04 RCW](#), *Public Works*, is relatively short and governs most public works requirements (including competitive bidding, apprentice utilization, and insurance and bonding requirements). In comparison, the WAC definition in [Chapter 296-127 WAC](#), *Prevailing Wage*, is more specific and detailed². It applies *only* for purposes of determining whether a project will require the payment of prevailing wages. Notably, the [Chapter 296-127 WAC](#) public work definition includes certain projects that are not specifically referenced in the [Chapter 39.04 RCW](#) definition, meaning that certain projects are considered a public work for prevailing wage purposes only. To illustrate, see the following side-by-side comparison of the RCW and WAC public work definitions. Note that the WAC definition below is an abbreviated version adjusted for this format. For the full definition, see [WAC 296-127-010\(7\)](#).

RCW 39.04.010(5) Definition	WAC 296-127-010(7) Definition
<p>“Public work” means:</p> <p>All work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with Chapter 39.12 RCW.</p>	<p>“Public work” shall include:</p> <p>All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state or of any municipality (regardless of funding source or insurance payment).</p> <ul style="list-style-type: none"> • All work (etc.) that constitutes a lien or charge on any property of the state or of a municipality; • All work (etc.) a private party performs because of the government’s agreement to lease or buy at least 50% of the completed result (RCW 39.04.260);* • Facility maintenance (including janitorial maintenance and building service maintenance, but excluding defined “ordinary maintenance”) performed by contract; and* • Nonstandard item manufacturing for a public works project by contract.* <p>The term “public work” shall not include:**</p> <ul style="list-style-type: none"> • Work performed by volunteer workers (consistent with RCW 35.21.278); or • Ordinary maintenance work performed by regular government employees.

* Refers to work that is considered a public work for prevailing wage purposes only and not for applicability of public works procurement, contracting, or apprentice utilization.

** [WAC 296-127-010\(7\)\(b\)\(ii\)\(B\)](#) also provides that the term public work shall “not” include certain work related to housing authorities contracting with property management services to operate a housing project. The WAC provides that project revenues and tenant rent collected by the property management services company from the housing project’s tenants and used to pay operating and maintenance costs are considered private funds. [SB 5418](#) did not propose migrating that language into [Chapter 39.12 RCW](#).

2 [Chapter 39.12 RCW](#), *Prevailing Wages on Public Works*, does not currently include a definition of “public work.” Instead, consistent with the legislative directive in [RCW 39.12.015](#), the State Department of Labor & Industries has crafted a more specific and detailed definition of “public work” for the purposes of prevailing wage applicability in [WAC 296-127-010\(7\)](#). While the statute and rules have developed differences over time, the RCW and WAC work together, along with case law, to define public works for prevailing wage purposes.

SENATE BILL 5418: PROPOSED CHANGES TO DEFINITIONS OF PUBLIC WORK

Introduced during the 2023-24 regular session, [SB 5418](#) proposed two changes to the definitions of public work in [RCW 39.04.010\(5\)](#) and in [WAC 296-127-010\(7\)](#).

First, [SB 5418](#) expanded how payment sources impact a project's status as a public work. As the definitions of public work in [RCW 39.04.010\(5\)](#) and in [WAC 296-127-010\(7\)](#) reflect, an important component of the definitions is that a project be undertaken "at the cost of" the state or a municipality. But the current public work definitions in [RCW 39.04.010\(5\)](#) and [WAC 296-127-010\(7\)](#) do not define this phrase, leaving it open to interpretation. [SB 5418](#) proposed to define what it means to be "at the cost of" in [RCW 39.04.010\(5\)](#) by adding the bolded language:

"Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, **including those supported in whole or in part by the granting or loaning of public dollars or by tax deferral or reimbursement**, or which is by law a lien or charge on any property therein.

This revision would remove speculation about whether private construction projects partly or wholly paid for with public loans, grants, or tax incentives are at government cost for public works purposes. With this change, those projects would be considered public works projects.

Second, [SB 5418](#) proposed to incorporate the current public works definition in [WAC 296-127-010\(7\)](#)³ into [Chapter 39.12 RCW](#), and to change that definition to include the same language proposed for [RCW 39.04.010\(5\)](#): "[...] including those supported in whole or in part by the granting or loaning of public dollars or by tax deferral or reimbursement." Similar to the above, with this change, private construction projects partly or wholly paid for with public loans, grants, or tax incentives would be subject to prevailing wage requirements.

The Senate Committee on State Government & Elections held a public hearing on the proposed bill and received testimony from numerous government representatives as well as members of the construction and trade union industries. The testimony was mixed - some witnesses praised [SB 5418](#) for providing clarity around the use of public funds in private construction projects, while others expressed concerns about how the proposed bill's revisions could impact both the cost and the progress of those construction projects. In response to stakeholder concerns, the originators of the bill asked the sponsor and committee chair to not move the bill out of the committee and, instead, support this study.

In the wake of the hearing, the Washington State Legislature directed the Department of Labor & Industries (L&I) to contract with the [Municipal Research and Services Center](#) (MRSC) for this study evaluating how public works requirements (including prevailing wage and apprentice utilization) apply to privately contracted construction projects partly or wholly funded by state or local government funds, granted or loaned public money, or tax incentives.

While certain aspects of this report focus on how [SB 5418](#) may affect prevailing wage and apprentice requirements, the report also addresses [SB 5418](#)'s potential impact on the applicability of all public works requirements consistent with L&I's proviso directing this study, which provides:

[S]tate appropriation for fiscal year 2025 is provided solely for the department to contract with the municipal research and services center to conduct a public works study. The study shall evaluate the application of public works requirements, including prevailing wage and apprentice utilization, on publicly funded construction, including those supported in part or in whole with state funds, the granting or loaning of public dollars, and tax

3 Note that the public work definition proposed to be incorporated into [Chapter 39.12 RCW](#) did not migrate the language in [WAC 296-127-010\(7\)\(b\)\(ii\)\(B\)](#) related to housing authorities contracting with property management services to operate a housing project.

deferrals or reimbursements. The department may use up to five percent of these funds for administration. A report to the relevant committees of the legislature shall be submitted by June 30, 2025.

See [Engrossed Substitute Senate Bill 5950](#), Section 220, Subsection 48, Regular Session.

Accordingly, this report reviews all of the requirements a public agency must follow when undertaking a public works project, two of which are the payment of prevailing wages and apprentice utilization.

Study Approach

MRSC undertook this study from October 2024 through June 2025, using the following methods:

- **Scoping study.** MRSC met with L&I to kick off the project and to scope the study to focus on evaluating how public works requirements (including prevailing wage and apprentice utilization) apply to privately contracted construction projects partly or wholly funded by state or local government funds, granted or loaned public money, or tax incentives. MRSC and L&I continued to meet during the project to review research, the report's outline, preliminary drafts, and final drafts. (**Note:** The scope of this study does not include reviewing impacts of federal funding on public works projects undertaken by a state or local governments. [Appendix B](#), however, does review in brief how federal funding impacts the applicability of state prevailing wage and state apprenticeship utilization on public works projects undertaken by a state or local government.)
- **Stakeholder interviews.** Interviews were conducted early in the study timeline to gain understanding about the types of grants, loans, tax incentives, and other funding that state and local governments offer for private construction projects. A variety of stakeholders (including labor representatives from the building and construction trades, state agencies, and local government entities) were interviewed to ensure neutrality and the consideration of a broad range of perspectives. While some interviewees supported [SB 5418's](#) proposed changes, others were uncertain or expressed concerns over them.

Issues raised in interviews by those who supported passage of the bill included the following:

- When public agencies partially fund projects, it can often be unclear whether public works requirements (including prevailing wage and apprentice utilization) apply to those projects.
- The intention behind the bill was to clarify the definition of public works project. This clarification would eliminate the uncertainties about what laws apply.
- Projects funded by any type (and amount) of federal, state, or local funding (including tax incentives, loans, and grants) should be considered public works “at the cost of” the state or municipality.
- Labor standards have been directly added into certain statutes. During the interviews with representatives from the building and construction trades, it was expressed that one of the goals of [SB 5418](#) is to eliminate the need to lobby for labor standards in specific statutes because [SB 5418](#) would subject all projects receiving public funding to public works requirements.
- The labor standards added to individual statutes generally apply to the construction phase only, and not to labor needed for post-construction operations and maintenance.
- Many affordable housing projects don't currently require the payment of prevailing wage or the utilization of apprentices, which seems contrary to the purpose of providing affordable housing (e.g., when laborers working on affordable housing projects aren't paid prevailing wages, they may not be able to afford to live in the building they build).

Issues raised by those who had concerns about the bill included:

- The expanded public works definition in [SB 5418](#) could add costs to construction - the requirements to pay prevailing wage and utilize apprentices add costs to projects.
- Questions were raised about whether a project should be subject to all public work requirements if only a small portion of it is funded with public dollars and it is otherwise privately financed.

- For nonprofits in particular, the paperwork required for prevailing wage can pose a barrier to hiring contractors for smaller projects that require prevailing wages (especially when there is a lot of competition for skilled labor and available contractors are scarce).
- **Research into the various funding options for construction projects.** Through its research, MRSC identified and summarized state and local government programs that provide grants, loans, tax incentives, and other funding for private construction projects.
- **State guidance review.** MRSC collected, reviewed, and summarized guidance adopted by various state departments related to grants, loans, tax incentives, and other funding provided by state and local government for private construction projects.
- **Review of Washington State statutes and case law, and opinions of the Washington State Attorney General's Office.** MRSC reviewed and summarized Washington State statutes adopting the various programs where state and local governments offered grants, loans, tax incentives, and other funding for private construction projects. MRSC also reviewed and summarized case law and opinions from the Washington State Attorney General's Office that addressed whether specific types of state and local government funding for private construction projects are subject to public works requirements, including prevailing wage.
- **MRSC inquiry review.** MRSC reviewed select inquiries it has received from local governments asking about how public works requirements apply to various private construction projects funded with government money, and MRSC's corresponding responses.

Current Public Works Requirements

Washington State law currently imposes numerous public works requirements on agencies and contractors, regulating (A) how agencies select and retain contractors, and (B) how workers on public works projects are paid.

Note: This report focuses on Washington State law and not federal law. The report does discuss federal funding that flows through state programs and how public works requirements apply to those projects receiving federal funding. As well, [Appendix B](#) does address, in brief, how federal funding impacts applicability of state prevailing wage and state apprentice requirements on public works projects undertaken by state and local governments. Detailed guidance on compliance with federal awards can be found in the [Essentials of Managing Federal Awards: A Compliance Handbook](#) (2024) published by the State Auditor’s Office Center for Government Innovation.

A. Requirements that agencies must follow when selecting and retaining contractors:



- **Plans, specifications, and an estimated cost:** Before advertising, agencies must prepare plans, a detailed description of work, and an engineer’s cost estimate. See [RCW 39.04.020](#), [RCW 39.04.050](#).
- **Project awarded to lowest responsible bidder who submits a responsive bid:** State and local agencies must award a public works project to the lowest responsible bidder. The terms “award” and “responsible bidder” are defined in [RCW 39.04.010](#). [RCW 39.04.350](#) provides specific bidder responsibility criteria.
- **Other public works competitive procurement requirements** (such as advertising, sealed bids, a public bid opening, and bid guarantees): Apply to state agencies and local governments pursuant to agency-specific statutes or locally adopted policies.

B. Requirements that contractors must follow when performing public works project work and paying project workers:



- **Performance and payment bonds** ([RCW 39.08.010](#)): Contractors must provide a surety bond to ensure their faithful contract performance and payment of all project laborers, subcontractors and taxes. For contracts of \$150,000 or less, the public agency, at the option of the contractor, can choose to withhold 10% of the contract price instead of providing a bond. For small works roster contracts⁴ under \$5,000, performance and payment bonds can be waived at the agency's discretion. See [RCW 39.04.152\(5\)](#).
- **Retainage** ([RCW 60.28.011](#)): Public agencies must withhold 5% "retainage" from a contractor's earned payment to ensure that the contractor will pay any taxes or claims due on a public works project. This requirement does not apply to contracts partly or wholly paid for with federal transportation funds. For small works roster contracts, retainage can be waived or reduced at the awarding agency's discretion. See [RCW 39.04.152\(5\)](#).
- **Payment of prevailing wages** ([RCW 39.12.020](#); [RCW 39.12.040](#)) Contractors must pay prevailing wages⁵ to all public works project laborers and workers covered by the wage classifications set by L&I. [WAC 296-127-025](#) requires that public works laborers receive the higher prevailing wage rate (state or federal) on projects subject to both [Chapter 39.12 RCW](#) and the Federal Davis-Bacon and related acts (unless federal law specifically preempts RCW 39.12). Before paying the contractor, agencies must require the contractor to submit an approved statement of their intent to pay the required wages.
- **Apprentice utilization** ([RCW 39.04.320](#)): Utilization of apprentices⁶ depends on the cost of the project and the type of public entity. For most municipalities⁷, apprentices must work at least 15% of the total labor hours on public works projects costing \$2,000,000 or more (that cost threshold reduces to \$1,500,000 on July 1, 2026, and to \$1,000,000 on July 1, 2028). Apprentice utilization for public school districts, four-year institutions of higher education, and state agencies⁸ (except the Washington State Department of Transportation (WSDOT)), is required for projects over \$1,000,000. WSDOT must utilize apprentices for projects over \$2,000,000.

⁴ As explained on the following page, use of the small works roster is a contractor procurement option available to certain public agencies for contracts with an estimated cost up to \$350,000.

⁵ "Prevailing wage" is the hourly wage, usual benefits, and overtime paid in the largest city in each county to the majority of workers, laborers and mechanics performing the same work. The rate is established separately for each county.

⁶ "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program. See [RCW 39.04.310\(1\)](#).

⁷ [RCW 39.04.320\(4\)\(a\)](#) and [RCW 39.04.010\(4\)](#) exempt public housing authorities and drainage, diking and irrigation districts from the requirement to utilize apprentices on public works projects.

⁸ [RCW 39.04.320\(4\)\(a\)](#) exempts state agencies headed by a separately elected official from the requirement to utilize apprentices on public works projects.

APPLICABILITY OF REQUIREMENTS TO PRIVATE PROJECTS DEPENDS ON NUMEROUS FACTORS

The above requirements serve several key purposes in public works projects, including ensuring fair competition and pricing, verifying that an awarding agency's selected contractor is properly licensed and compliant with state tax, employment and other business regulations, and promoting public values like livable wages and construction industry training opportunities. However, as they are currently understood and applied, most of these requirements do not clearly apply to privately contracted construction projects funded, partly or wholly, with public dollars. Instead, whether public work requirements apply to private construction projects can depend on a number of factors, including whether:

- The private party is obligated to repay the grant or loan provided by the public agency;
- The construction takes place on public property;
- The public funding is wholly dedicated to the construction;
- The public agency designs, directs, or otherwise exercises control over the construction process;
- The public agency fronts the money for construction;
- The public agency bears any construction risk, such as cost overruns; and/or
- The public agency ends up with a legal property interest in the constructed facility.

APPLICABILITY OF REQUIREMENTS ON PUBLIC PROJECTS DEPENDS ON PROJECT COST

The applicability of certain public works requirements (for example, a public agency's required contractor procurement process) can also depend on estimated project cost⁹. Required public agency procurement processes are divided into three basic levels that escalate in formality and strictness as a construction project's estimated cost meets or exceeds certain legal thresholds:¹⁰

- **Minimal Competition:** This process can be used for projects estimated to cost less than \$150,000; also have the option to use small works roster.
- **Small Public Works Roster Competitive Process:** This process can be used by authorized public agencies for projects estimated to cost up to \$350,000.
- **Formal Competitive Bidding:** This process is required for projects estimated to cost more than \$350,000.

[MRSC's Contracting and Competitive Bidding webpage](#) provides additional details on these three procurement processes.

⁹ Public agency employees can also perform work on public works project up to a limited amount. For example, cities may have public works performed by city employees equal to a dollar value not exceeding 10% of the public works construction budget for the budget period. [RCW 35.22.620\(2\)](#).

¹⁰ A project's estimated cost is its total cost or value—projects cannot be split into discrete “phases” for public works valuation purposes.

APPLICABILITY OF PREVAILING WAGE REQUIREMENTS DEPENDS ON TWO-PART TEST

The requirement to pay prevailing wages to protect workers differs from the other public works requirements because it applies to projects defined as public works regardless of their cost. L&I has a two-part test for prevailing wage applicability on its [Public Works Projects: Awarding Agencies webpage](#):

- **Question 1:** Is the project funded by any public dollars (direct or indirect¹¹) for any portion of the project? Or is it a turn-key project (i.e., private construction resulting from government agency agreements to rent, lease or purchase)? If yes to either, then proceed to Question 2.
- **Question 2:** Does the project include any construction, reconstruction, maintenance or repair? If yes to both Question 1 and Question 2, prevailing wages are required.

One current challenge in applying Question 1 is that the term “indirect” is not defined in [Chapter 296-127 WAC](#). While case law and L&I determination letters provide some insight into what is considered “indirect” for prevailing wage purposes¹², questions still remain. [SB 5418](#) sought to address this uncertainty by eliminating any distinction between direct and indirect funding and identifying *all types of public funding at any amount* to be “at the cost” of a public agency for public works purposes. If prevailing wages apply to a project, [Chapter 39.12 RCW](#) requires numerous procedural steps be followed, including:

- Project contracts must include prevailing wage language.
- The project contractor must submit a “statement of intent to pay prevailing wage” form for L&I approval prior to payment.
- The project contractor must, at least monthly, place certified payrolls in the prevailing wage intent and affidavit account.
- Contractor invoices must state that prevailing wages have been paid.
- The contractor and all subcontractors must file “affidavit of wages paid” forms before the notice of completion is filed and retainage released.

OVERSIGHT AND ENFORCEMENT OF PUBLIC WORKS REQUIREMENTS

Ensuring compliance with public works requirements currently falls to L&I and the State Auditor’s Office (SAO). L&I ensures that contractors pay prevailing wages and utilize apprentices. The SAO (through its general auditing function) has the authority to review state and local government compliance with procurement requirements including advertising, sealed bids, public bid opening, bid guarantees, awarding the project to the lowest responsible bidder, and the posting of performance and payment bonds.

If the language in [SB 5418](#) became law, presumably L&I and the SAO would also track the above compliance measures in the privately contracted construction projects that would then be subject to public works requirements.

¹¹ [Chapter 296-127 WAC](#), Prevailing Wage, does not define what is meant by “indirect” public funding. As explored further in this report’s section on [Sources of Government Funding for Private Projects](#), L&I has previously concluded in some cases that tax incentives, bonds, and non-forgivable loans were not funded “at the cost of” the state or municipality. L&I has not concluded whether those sources are considered “indirect” funding sources.

¹² Relevant case law and L&I determination letters are detailed in this report’s section on [How Current Public Works Requirements Apply to Private Projects Funded by Public Funds, and the Impacts of SB 5418](#) and [Appendix B](#).

Sources of Government Funding for Private Projects

This section of the report identifies the various funding incentives state and local governments provide for private construction projects, including tax incentives, loans, and grants. (In some cases, government agencies fund loans and grants with bonds.) The next report section ([How Current Public Works Requirements Apply to Private Projects Funded by Public Funds, and the Impacts of SB 5418](#)) explores how public works requirements currently apply to private construction projects funded by these various funding incentives, and the impact of [SB 5418](#) on that applicability.

State agencies and local governments offer private developers various funding incentives to encourage property development for public purposes. The public purposes and associated public benefits may include the provision of affordable housing, economic revitalization, public health facilities, the delivery of recreation and community services, the remediation or reduction of pollution or other community harms, energy efficiency, or the conservation of public resources.

Funding recipients can include private property owners and developers, non-profit organizations, community groups, and public housing authorities. Often, government money used to build a privately-owned development project is “stacked” with other funding (the money provided by the state or local government is only one portion of the project’s overall funding, which can include private funding).

While not comprehensive, [Appendix A](#) shows in greater detail the various funding types and sources MRSC identified during this project.

TAX INCENTIVES

The state and local governments encourage private development that furthers public purposes and provides associated public benefits through a variety of tax incentives, such as tax deferrals, reductions, exemptions, and reimbursements. At the state level, tax incentives are implemented through specific state departments, such as the Department of Commerce or the Department of Revenue. The Department of Revenue (DOR) has a comprehensive list of tax incentive programs on its [Tax Incentives Program webpage](#). These tax incentives include deferrals, reduced rates, and exemptions and credits for state business and occupation (B&O) tax, sales/use tax, and property/leasehold tax.

While not all of DOR’s listed tax incentives are construction-related, some are, including:

- **Affordable Housing on Underdeveloped Land** ([Ch. 82.92 RCW](#)): A sales and use tax deferral (and eventual waiver if conditions are met) for owners that build affordable housing on underdeveloped land (defined as surface parking lots).¹³
- **Clean Energy**: A sales and use tax deferral and reduction for certain clean technology manufacturing. Deferral amounts depend on L&I certifying that a project meets legislatively defined goals. Tax refunds require developers to comply with labor standards, as explored more in this report’s section on [How Current Public Works Requirements Apply to Private Projects Funded by Public Funds, and the Impacts of SB 5418](#). See DOR’s Special Notice on [Sales and use tax deferral program for clean energy investment projects](#) (2022).

¹³ The City of Spokane is the first city in Washington State to adopt a code enabling use of this tax deferral, calling it the [Parking 2 People Incentive](#).

- **Computer Data Centers (Rural and Nonrural):** An exemption from sales and use tax imposed on purchases of equipment, infrastructure and related labor and services for computer data centers measuring 100,000 square feet or larger. Tax refunds require developers to comply with labor standards, as explored more in this report's section on [How Current Public Works Requirements Apply to Private Projects Funded by Public Funds, and the Impacts of SB 5418](#). See DOR's Special Notices on [Sales and use tax exemption for rural data centers expanded](#) (2022) and for [nonrural data centers](#) (2022).
- **Entertainment Arenas (RCW 82.29A.130):** A leasehold excise tax exemption for entertainment arenas that: a) seat more than 4,000; b) are located on city-owned land in a city with a population exceeding 100,000; and c) are built solely with private funds.
- **Multi-Family Housing on Underutilized Commercial Property:** A sales and use tax deferral (and eventual waiver if conditions are met) for owners of buildings on underutilized commercial land. This incentive defers taxes for project purchases that convert such buildings to multi-family units if at least 10% of the converted units will be affordable to low-income households. See DOR's Special Notice on [Tax deferral for multifamily housing](#) (2024).
- **Solar Canopies:** A sales and use tax deferral for the construction of solar canopies on large-scale commercial parking lots at qualifying commercial centers. The deferral of taxes depends on the project's compliance with specific labor standards, as explored more in this report's section on [How Current Public Works Requirements Apply to Private Projects Funded by Public Funds, and the Impacts of SB 5418](#). See DOR's Special Notice on [Solar canopy retail sales and use tax deferral](#) (2022).
- **Warehouse Incentive Programs:** An exemption and remittance of the state's portion of retail sales tax paid for the construction or expansion of certain warehouses, distribution centers and grain elevators and distribution centers. See DOR's information on [Tax Incentives: Warehouse remittance](#) (2022).

Cities, towns and counties can also enable tax incentive programs. Some local governments adopt state programs that provide a state and local property tax exemption. Examples include:

- **Multi-Family Housing Property Tax Exemption Program:** Cities and some towns and counties can adopt programs providing developers with state and local property tax exemptions to stimulate affordable and multi-family housing construction. The Department of Commerce audits these programs. See the [Department of Commerce's Multi-Family Housing Property Tax Exemption Program](#). For a local example, see the [City of Yakima's Municipal Code Chapter 11.63, Downtown Redevelopment Tax Incentive Program](#).
- **Targeted Urban Area Tax Exemption Program:** Cities that plan under the Growth Management Act may designate a portion of their industrial and manufacturing land as eligible to receive a property tax exemption for the value of newly constructed industrial/manufacturing facilities within the designated area. See [Chapter 84.25 RCW](#). For a local example, see the [City of Richland's Targeted Urban Area \(TUA\) Tax Exemption Program Overview](#).

Local governments can also offer their own programs to waive or defer their locally imposed taxes. See [RCW 35.102.040\(3\)](#). Examples include:

- **Downtown Revitalization:** The City of Bellingham offers a B&O tax credit to incentivize development in designated urban areas. See [Bellingham's Municipal Code Section 6.04.105](#).
- **New or Revitalized Construction:** The City of Auburn offers a construction sales tax refund program to incentivize projects in certain zones of the city that provides a refund of 20% up to \$100,000 of the city's sales tax. See [Auburn's Municipal Code Section 3.60.036](#).

LOANS AND GRANTS

Both the state and local governments offer a variety of loans and grants for non-agency projects that provide public benefits ranging from affordable housing to neighborhood improvements, environmental work, and community art installation. Loan and grant recipients agree to deliver public benefits in return for the funding, and in some cases the benefits are provided over time. While the terms “loan” and “grant” are often used alongside each other and seemingly interchangeably in the statutes, they have distinct meanings. A [loan](#) is a temporary lending of money meant to be repaid (often with interest). On the other hand, a [grant](#) is a permanent money transfer subject to certain conditions with no expectation of repayment unless the recipient violates the grant conditions. The distinction between loans and grants is potentially important because projects funded with loans that must be repaid are arguably not “at the cost of” the state.

Some examples of loans and grants provided by public agencies for private construction include:

- Affordable housing grants and loans, where recipients use the funds to construct housing for households below specified income thresholds. Required housing affordability is then enforced through rent restrictions in restrictive covenants or deeds of trust against the property.
- Grants or loans to construct a public health, childcare or other community facility, where recipients may agree to provide certain public services for a specified term, with the agreement again enforced through a restrictive covenant or deed of trust.
- Grants or loans for community art installations, environmental work or neighborhood improvements, where the public benefit may be delivered with the completed project (avoiding the need for a restrictive covenant or deed of trust like in the above examples).

Affordable Housing

Affordable housing loan or grant money provided by the state or local governments is often “passed-through” from the federal government. The largest source of such pass-through federal funding in the affordable housing space is the U.S. Department of Housing and Urban Development (HUD).

One example of HUD funding for local affordable housing is the [Community Development Block Grants](#) (CDBG) program. This program awards federal funds to states, metropolitan cities, and urban counties to facilitate improvements to public facilities, the provision of public services, and other activities that enable developing viable urban communities with decent housing and a suitable living environment. Federal law establishes a formula used to calculate these funding awards and specifies how jurisdictions may use awarded funds once received. Many community-based activities can be funded with grants from the CDBG program, but these grants generally cannot be used to pay for government buildings or expenses, political activities, equipment purchases or income payments. Many Washington local governments receive and use CDBG funds in their community development efforts. For example, the [City of Tacoma uses CDBG funds for its Home Rehabilitation Loan Program](#), which provides low-interest home repair loans for low-to-moderate households. Small rural cities and counties cannot receive CDBG funds directly from HUD but can apply for grants through the State Department of Commerce. See [Department of Commerce’s webpage on Community Development Block Grants](#) (CDBG).

Another example is the [HOME Rental Development program](#) which is a housing block grant program used to preserve and create affordable housing for very low-income households.

The state also offers various loan and grant programs for affordable housing construction. For example, the Washington State [Housing Trust Fund](#) provides amortized and deferred loans and recoverable grants to local governments and nonprofit organizations to build very low-income housing units. All available state grant programs for affordable housing are listed on the Office of the State Treasurer's [Washington Fund Directory: Housing, Infrastructure & Economic Development](#).

Cities and counties also administer loan and grant programs to encourage the development of affordable housing, including:

- Loans or grants to nonprofit organizations or public housing authorities to develop affordable and supportive housing. According to the [Department of Commerce's report, Encouraging Investments in Affordable and Supportive Housing – Update on Implementation](#) (2019), "Jurisdictions may finance loans or grants to nonprofit organizations or public housing authorities and may pledge the tax proceeds for repayment of bonds under debt limitations imposed by the state constitution or statute." See also [RCW 82.14.540\(11\)](#).
- The Workforce Housing Grant/Loan Program, which provides a grant/loan for the development of workforce housing. For example, the City of Leavenworth's grant/loan program provides a loan or grant to finance qualifying workforce housing. See [Leavenworth's Municipal Code Chapter 3.43](#).

Broadband

Federal and state funding is available for the development of broadband infrastructure, including:

- The [Washington State Broadband Office](#) within the State Department of Commerce administers and awards National Telecommunications Information Administration (NTIA) funds for use in developing eligible broadband infrastructure projects. Funds are awarded to local governments, nonprofits, and private companies through State Department of Commerce contracts.
- The [Public Works Board](#) has a broadband service expansion grant and loan program (established under [RCW 43.155.160](#)) which provides loans and grants from the Statewide Broadband Account to expand broadband infrastructure.
- The [Community Economic Revitalization Board](#) administers low-interest loans and grants to finance the cost of building broadband infrastructure in rural communities.

Miscellaneous

Local governments also grant and loan money to private owners or developers for a variety of other public benefit purposes, including:

- **Sewer Services Loan Programs:** Local sewer customers can use loans from these programs to purchase and install materials and equipment related to sewer discharge and treatment. Recipient customers must fully repay the loans, which bear interest and are secured by an interest in the property. See, for example, [City of Longview's Sewer Services Loan Program \(Municipal Code Ch. 3.61\)](#).
- **Arts and Cultural Programs:** Local governments offer grants to artists for the creation and installation of artwork on public property. See, for example, [City of Vancouver's Public Art Plan](#) (2020).
- **Community Improvement Programs:** Localities provide grants to enhance communities, parks and neighborhoods, such as the [Port of Seattle's South King County Community Impact Fund Environmental Improvements Program](#), the [City of Ellensburg's Park Partnership Program](#) (2024), and [Pierce County's Watersheds Small Grant Program](#).

BONDS

Bonds are another funding option for construction projects. State or municipal bonds may fund loans and grants for public purposes, upon compliance with several requirements. Bond financing serves a particularly key role in the affordable housing arena by funding grants or loans to affordable housing developers.

One example is the [Washington State Housing Finance Commission's Bond/Tax Credit Program](#), which enables certain federal tax credits for projects financed through tax exempt bonds (which can result in some affordable housing projects being funded with a combination of bond funds and tax credits, in addition to other grants and loans).

Under [RCW 82.14.530\(5\)](#), counties may issue bonds to finance the provision or construction of affordable housing (or other related facilities or services). Counties can repay these bonds with up to 50% of the revenue they receive from the housing and related services sales tax authorized in that RCW section.

Another bond example is commonly referred to as “63-20 bonds,” where a nonprofit issues bonds on behalf of a state or local government to construct a public facility that will revert to the state or local government when the bonds mature. These bonds are outlined in more detail below.

IMPACT FEE CREDITS

[Impact fees](#) are one-time charges that local governments assess against new development projects to help pay for certain public facilities needed to serve the newly developed area's resulting growth. An impact fee “credit” must be provided to a development's owner if the development includes the construction of facilities identified in the jurisdiction's capital facilities plan and is required as a condition to development. In impact fee “credit” situations, the local government must forego collection of the fees ([RCW 82.02.060\(5\)](#)). See, for example, [Clark County's Code Section 40.630.060](#), *Impact Fee Credits*.

JOINT DEVELOPMENT PROJECTS/AGREEMENTS

Government agencies sometimes enter into agreements with private developers where the developer builds a project with private funds and then leases part or all of it to the government (often with an option for the government to purchase the completed structure after a certain lease period). In other circumstances, the government “ground leases” its land to a private developer who uses private funds to build a facility on the land; once the ground lease expires, the land reverts to the government. Local governments may also enter into an agreement with a nonprofit that finances and develops a project. U.S. Treasury Revenue Procedure 82-26 (known as “63-20 bonds”) is an example of this arrangement. This procedure allows nonprofits to pay private developers for facility construction by issuing tax-exempt bonds “on behalf of” the state or local government. The nonprofit repays the bonds with net revenues of the constructed facility (which can include lease payments if the government leases the facility). Once the bonds are repaid, federal tax law requires the nonprofit to transfer unencumbered title to the financed facility to the state or local government.

PARTIAL WAIVER OF RENT

Public agencies sometimes offer their tenants partial rent relief in exchange for the tenant's improvements to the leased property. For example, a city owns commercial property and leases it to a business tenant. The business desires to make its own improvements to the building at its own cost, in exchange for a reduction in rent payments to the city, which the city grants.

How Current Public Works Requirements Apply to Private Projects Funded by Public Funds, and the Impacts of SB 5418

This section identifies how public works contracting requirements currently apply to projects that state agencies or local governments partly or wholly *pay for* (either directly or indirectly), but don't actually *contract for*. It also identifies how the proposed changes in [SB 5418](#) could impact those projects.

[SB 5418](#) proposed an expansion of the public works defining phrase “at the cost of the state or any municipality” to specifically include projects paid for with government loans, grants, or tax incentives. This change is significant because it:

- Changes traditional notions of what it means for a project to be at the “cost” of the state or a local government, and how that phrase is currently applied in practice; and
- Raises questions about the extent to which public works requirements will apply to projects funded in these ways, and who will be responsible to oversee compliance with the requirements on such projects.

While numerous Washington State cases, AGO opinions, and L&I determination letters address the applicability of prevailing wages to private construction projects that receive public funding, very little formal guidance addresses the applicability of other public works requirements (e.g, competitive bidding and apprentice utilization) to these projects. While one could extrapolate the prevailing wage guidance analysis to the remainder of the public works requirements, the conclusions in applicable court cases and AGOs¹⁴ clearly focus on interpreting the public work definition as it applies to [Chapter 39.12 RCW, Prevailing Wage](#), and not to [Chapter 39.04 RCW, Public Works](#). Therefore, how public funding impacts the applicability of all public works requirements on private construction projects is not entirely clear. Reviewing the limited guidance, it appears that the applicability of these requirements depends on a number of factors, including whether the public agency designs, directs, or is otherwise involved in the construction process, whether the project occurs on public property, and whether the public agency ultimately owns the improvements (factors previously outlined in more detail in more detail in the section [Applicability of Requirements to Private Projects Depends on Numerous Factors](#) of this report).

As mentioned above, detailed in this section of the report are the different types of direct and indirect government funding provided to private construction projects, and how current public works laws apply to them. This section also identifies the potential impact of [SB 5418](#) to these private construction projects.

TAX INCENTIVES

The provision of a tax incentive (for example, a refund or deferral of sales and use taxes that would otherwise be due) reduces or defers the developer's obligation to pay state or local taxes. Current public works statutes do not specify whether projects become public works when the government gives the developer a tax incentive for the project. Generally, a construction project is not considered a public work simply because it receives a tax incentive. However, some statutes condition tax incentives on the developer's compliance with specified labor

¹⁴ L&I's guidance and oversight only applies to the applicability of prevailing wage and to apprentice utilization requirements, and not to the other public works requirements.

standards, such as prevailing wage and apprentice utilization.¹⁵ As well, certain fact sets could potentially result in a determination from L&I that a project funded by tax incentives requires prevailing wages.

Often tax incentive statutes condition the receipt of a tax refund or deferral upon compliance with union- and public agency- negotiated terms and conditions in project labor agreements (PLA) or community workforce agreements (CWA). Sometimes local governments also adopt these PLA or CWA requirements into their ordinances or policies. See, for example, [City of Seattle's Municipal Code Chapter 20.37](#).

[RCW 82.89.070](#) (a tax incentive statute for clean energy investment projects) is a good example of a sales and use tax refund that depends on a project following specified public works requirements. See also [Chapter 296-140 WAC](#). This statute provides tax refunds that escalate (50%, 75%, or 100%) as projects meet increasing labor standards. The [Department of Revenue's Special Notice: Sales and use tax deferral program for clean energy investment projects](#) (2022) details these state sales and use tax refunds as follows:

- **50% tax refund** for projects that include procurement and contracts with women, minority, or veteran owned businesses, and with entities that have a history of complying with federal and state wage and hour laws, apprentice utilization, and preferred entry workers living in the project construction area.
- **75% tax refund** for projects that meet all of the above and pay prevailing wages.
- **100% tax refund** for projects that have a project labor agreement or community workforce agreement incorporating labor standards.¹⁶

Computer data storage centers and solar canopies are examples of other construction projects that are eligible for tax incentives when they incorporate public works requirements. To receive a tax deferral for building a data storage center, the developer must enter into a community workforce agreement or project labor agreement, pay prevailing wages and utilize apprentices. See [RCW 82.08.988](#). Tax deferrals for solar canopies are similar to those provided for clean energy investment projects, with potential tax deferrals that escalate in tandem with escalating public works requirement compliance. See [RCW 82.90.060](#).

L&I oversees and enforces compliance with state prevailing wage laws. L&I's position in many cases has been that unless a specific statute requires payment of prevailing wages, they are not required in private construction projects where a public agency's only role is giving a tax incentive to the developer. L&I has issued no formal guidance to this effect, but it has expressed this position over the years in response to certain fact sets. Notably, MRSC is not aware of any formal legal authority applying public works requirements to privately built projects funded with government tax incentives.

If adopted, [SB 5418](#) would turn all projects funded with tax incentives into public works that require payment of prevailing wages, apprentice utilization (depending on the cost of project), and the other requirements detailed in the section [Applicability of Requirements to Private Projects Depends on Numerous Factors](#) of this report.

¹⁵ Note that apprentice utilization requirements do not apply to housing authorities that receive a tax incentive (or any other funding incentive) for a project. See [RCW 39.04.320\(4\)\(a\)](#).

¹⁶ In this context, a "project labor agreement" (PLA) means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in [29 U.S.C. Sec. 158\(f\)](#). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project. See [WAC 296-140-001\(1\)\(h\)](#).

LOANS AND GRANTS

Construction executed “at the cost of” the state or of any municipality will trigger public work requirements under the current statutory definition of a public work. General public works statutes do not specifically indicate whether state or local government loans or grants to private construction projects turn the projects into public works “at the cost of” the granting or lending entity. But L&I has issued formal and informal determinations that provide some insight in the context of prevailing wages, as follows:

- If public agency grant funds are used to pay construction costs for a private project, prevailing wages are required. See the [January 28, 2010 L&I determination letter](#) (concluding that in the case of a grant awarded “for construction activities,” the relevant factor in determining whether prevailing wage applies is the source of the money, not the status of the organization).
- While no formal determinations have been issued on the topic, L&I has opined in response to specific fact sets that private construction projects funded by non-forgivable public agency loans (those that must be repaid) are not subject to prevailing wage requirements. Presumably, L&I treats private construction projects funded by forgivable public agency loans (those that do not require repayment) as subject to prevailing wage requirements.

L&I’s determinations focus on prevailing wage and do not address other public works requirements, such as competitive bidding and other procurement requirements. It is not clear whether private projects funded with government grants and loans are subject to all public works requirements - this may not be black and white and will likely depend on a number of factors, such as those identified in the section [Applicability of Requirements to Private Projects Depends on Numerous Factors](#) of this report.

But while unclear under current law, the change proposed by [SB 5418](#) would clearly subject private construction projects funded through any state and local government grant or loan (forgivable or not) to *all* public works requirements (not just prevailing wage). This could create some complications, including:

- Doing so may contravene some existing state laws. For example, [RCW 35.21.278](#) allows local governments to provide private organizations with grants to improve parks, school playgrounds, and other similar public spaces without complying with competitive bidding laws. Annual funding for these types of projects is capped at \$75,000 or \$2 per resident, whichever is greater. See [RCW 35.21.278](#).¹⁷
- Potential conflicts between federal and state public works requirements. Federal grant terms often incorporate federal public works-related requirements (such as requiring use of the federal apprenticeship system). State laws currently cover federal-state law conflicts in prevailing wages (see [WAC 296-127-025](#)), but other state laws may need modification to address legal conflicts over other public works requirements.
- To reiterate, [SB 5418](#) could classify all private projects funded with government loans (repaid or not) to be “at the cost of the state or any municipality.” This is the case even though the borrower of a government loan typically is responsible for repaying the loan and therefore the project is considered at the borrower’s cost and not at the government’s cost.

¹⁷ This statute also exempts from competitive bidding laws contracts entered into between school districts (and similar institutions) and community service organizations (and similar institutions) for the building of tiny houses for low-income housing, so long as the students participating in building the houses meet certain criteria.

BONDS¹⁸

State or local governments may issue bonds to fund grants or loans for public purposes. Consistent with the discussion under the “Loans and Grants” heading above, a bond-financed *grant* awarded to pay construction costs may be considered to be “at the cost of” the state or local government for prevailing wage purposes in the same way that a government cash grant or forgivable loan would be. And, a non-forgivable bond-financed loan could be considered a project that is “at the cost of” the loan recipient (and not the state or local government). Again, it is not entirely clear under current law whether all public works requirements would apply to private projects funded with bond-financed grants (whether they are or not may depend on a variety of factors, such as those discussed in the section [Applicability of Requirements to Private Projects Depends on Numerous Factors](#) of this report).

If the private party issues bonds or otherwise finances the project itself, the project is not “at the cost of” the state or local government. Even if a state agency or local government contracts to lease or purchase the completed facility, the project should not be considered at government cost as long as the private party is responsible to pay for construction costs and cost overruns (e.g., the private party bears the construction risk).¹⁹ The Washington Court of Appeals addressed this in [Alexandria Real Estate Equities, Inc. v. Univ. of Wash.](#) (2023), which held that a building project was not at the University of Washington’s cost even though the University committed to leasing a portion of the building upon its substantial completion.

Similarly, the Attorney General’s Office has also opined that “projects constructed pursuant to properly structured and authorized financing contracts under 63-20 financings do not constitute ‘public works’ because the developer procures the financing and bears the financial and completion risk.” See [AGO 2008, No. 10](#).

IMPACT FEE CREDITS

Public works statutes do not currently specify whether private projects become public works when the government gives an impact fee credit to the developer in exchange for their construction of facilities identified in the jurisdiction’s capital facilities plan. Depending on interpretation, the proposed changes in [SB 5418](#) could turn these projects into public works.

JOINT DEVELOPMENT PROJECTS/AGREEMENTS

Current legal authority provides that certain joint development projects are subject to prevailing wages but not necessarily to other public works requirements. For example:

- A private nonprofit’s construction of a building on city land was a public work subject to prevailing wages when the construction was partially paid for with public funds and ownership of the building reverted to the city after completion. See [Supporters of the Center, Inc. v. Moore](#) (2003).
- Private party construction on public land where the government committed to leasing a portion of the constructed building was not “at the cost of” a public agency and was not a public work subject to competitive bidding since the private developer wholly paid for the construction. This was true even though ownership of the completed building would also eventually revert to the government. See [Alexandria Real Estate Equities, Inc. v. Univ. of Wash](#) (2023).

¹⁸ Bonds in this context refers to financial bonds used to pay for a project. It does not refer to other types of public works bonds (such as bid bonds and performance bonds).

¹⁹ If the lease or purchase contract is for at least 50% of the project, prevailing wage requirements apply under [RCW 39.04.260](#).

- [RCW 39.04.260](#) provides that construction of a facility by a private party through a contract where the government will rent, lease, or purchase at least 50% of the completed facility is subject to prevailing wage. A [2006 L&I determination letter](#) confirmed this, concluding that turn-key projects²⁰ built on private land with private funds are subject to prevailing wages when the sale or lease meets this 50% threshold.
- *City of Spokane v. Dept of L&I* (2000) held that annual maintenance on a city-owned facility is subject to prevailing wage when the city pays a private party to perform the work.

The above scenarios reflect that otherwise private projects can become public works *for prevailing wage purposes* merely by receiving government funding. Less clear is whether such projects also become subject to *all other public works requirements* (such as competitive procurement requirements), with the [Alexandria Real Estate Equities](#) decision (noted above) in fact suggesting that the other requirements wouldn't apply solely on account of government funding. By explicitly expanding the public works definition to potentially include private projects "supported in part or in whole by" government funding, [SB 5418](#) could render such projects subject to all public works requirements.

PARTIAL WAIVER OF RENT

The public works statutes do not currently specify whether construction projects on public property undertaken by a private tenant and for which that tenant receives a partial waiver of rent are considered public works. Depending on interpretation, the proposed changes in [SB 5418](#) could turn these projects into public works.

20 "Turn-key" projects are those where the developer completes and delivers a fully functional project ready for immediate use.

Conclusion

This report details the various funding methods public agencies use to support private development and addresses how those private projects currently fit within the overall public works framework. If the changes proposed by [SB 5418](#) became law, most private construction projects that are partly or wholly funded with public money would undoubtedly be subject to public works requirements (including prevailing wage and apprentice utilization). However, outstanding practical questions would remain about how to manage these new projects as public works.

Current public works law envisions a state agency or local government as a “project owner” responsible to ensure compliance with procurement and contracting requirements, payment of prevailing wages, and the utilization of apprentices. [SB 5418](#) would expand this notion by applying public works requirements to private projects with only limited, indirect, or in some cases even remote government involvement.

In the course of the study, the following legal and practical questions emerged about [SB 5418](#)’s potential impact on public works, including:

- If a private construction project receives only partial state or local government funding, would public works requirements apply only to the government funded part of the project, or to the whole project?
- If only the government funded portion of such a project is a public work, how would public works requirements be enforced only on those discrete portions of the project?
- Would there be a minimum level of government funding required for a private construction project to be considered a public work?
- Would the state agency or local government that is partially funding the private construction project be considered the “project owner” ultimately responsible for ensuring compliance with public works requirements?
- If the government is not the project owner, what competitive processes would be available to and required of the private contractor? (**Note:** The small works roster process is only available to public agencies, not private entities.)
- If the government is not the project owner, given that the framework of the public works statutes is designed around public agencies, would it make sense to separate public agency and private contractor requirements? In other words, keep separate the contracting and procurement requirements that are applicable to public agencies from the requirements applied to non-public entities receiving public funds for private construction projects.
- If government agencies would not be responsible for public works compliance merely by contributing funding to an otherwise private project, who *would* be responsible to track, report, and verify compliance with public works requirements? For instance, currently only the SAO has authority to audit public agency compliance with procurement requirements, and L&I currently only audits prevailing wage compliance for contractors working with public agencies (and does not audit private projects with no government agency participation).
- What consequences will befall those that fail to comply with [SB 5418](#)’s expanded public works requirements, and which government agency will be responsible for enforcing them?

In addition to the questions above, [SB 5418](#) bill testimony and interviews for this study also contemplated how the bill could impact: (1) tax increment financing; (2) public works assistance funds; (3) janitorial services; and (4) ordinary maintenance. While it’s important to consider the many potential impacts of [SB 5418](#), it’s also not clear that the bill would significantly impact these areas. To illustrate:

1. Tax increment financing (or “TIF”) allows local governments to pay for certain public improvements in designated areas within the locality’s boundaries. But since taxing local governments pay for TIF financed projects directly, those projects would already fall within existing public works requirements despite the proposed changes in [SB 5418](#). See [Chapter 39.114 RCW](#) generally, and in particular the definition of “public improvement costs” in [RCW 39.114.010\(7\)](#).
2. Similarly, public works assistance funds may only be used to pay for certain infrastructure projects undertaken by counties or other local governments, which are subject to current public works laws regardless of [SB 5418](#) language. See [Chapter 36.135 RCW](#).
3. Although [SB 5418](#) also proposes to include contract janitorial service on public buildings within the state law public works definition in [RCW 39.12.010](#), existing public works regulations already include janitorial work within prevailing wage requirements. See [WAC 296-127-023](#).
4. Finally, [SB 5418](#) proposes to maintain the “ordinary maintenance” exclusion in current public works law. See [SB 5418](#) Sec. 2(8)(a)(v) and [RCW 39.04.010\(5\)](#).

Appendix A: State Agency and Local Government Funding for Private Construction Projects




Disclaimer: Prevailing wage coverage questions are fact-specific and any questions related to a specific project should be directed to the department. Requests for guidance can be sent to PW1@lni.wa.gov.

AFFORDABLE HOUSING FUNDING

Low-Income Housing Loans and Grants

Purpose: Cities and towns can finance the cost for low-income housing owners or developers to construct, reconstruct, acquire, or rehabilitate housing that will be occupied by low-income individuals.

Law and Guidance: [RCW 35.21.685](#).


Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Local (city or town)	Loan or grant	Owners or developers of low-income housing	<p>Partially addressed in the relevant statute, RCW 35.21.685.</p> <ul style="list-style-type: none"> • Procurement: No. “Housing constructed with loans or grants made under this section shall not be considered public works or improvements subject to competitive bidding [...] PROVIDED, That whenever feasible, the borrower or grantee shall make every reasonable and practicable effort to utilize a competitive bidding process.” See RCW 35.21.685. • Prevailing wage: RCW 35.21.685 does not address whether prevailing wages are required. As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding. • Apprentice utilization: No. Apprentice utilization is only required for public works contracts awarded by the state, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official or public housing authorities. See RCW 39.04.320(4)(a). <p>Construction contracts that public housing authorities enter into with contractors are specifically exempt from public works apprentice utilization requirements. In addition, construction contracts between contractors and private developers require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.</p>

AFFORDABLE HOUSING FUNDING (CONT.)

Affordable and Supportive Housing (Sales and Use Tax)

Purpose: Moneys collected, or bonds issued under this program are used to acquire, rehabilitate or construct affordable housing, funding the operations and maintenance cost of new affordable/supportive housing, and providing for rental assistance to tenants. Cities and counties that opted in can participate in the sales tax revenue sharing program. Provides a local sales tax option that is credit against the state sales tax rate of 6.5%. The program reduces the amount received by the state and the credit goes to the city or county.

Law and Guidance: [RCW 82.14.540](#) and [Chapter 365-240 WAC](#).


Fed/State/ Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Local (city or town)	<p>Loan or grant</p> <p>City or county finances the loan/grant with bonds.</p> <p>City or county pledges the tax proceeds collected under this program to repay bonds.</p>	<p>Nonprofit or public housing authority. See RCW 82.14.540(9).</p>	<p>Not addressed in the relevant statute, RCW 82.14.540. MRSC's Assessment is as follows:</p> <ul style="list-style-type: none"> • Procurement: Procurement requirements apply to public housing authorities because they are local governments. Whether procurement requirements apply to private developers depends on the type of loan or grant. If they must be repaid, it is unlikely procurement requirements apply because they would not be “at the cost of” the public agency. For loans and grants that are not repaid, the applicability of procurement requirements will likely depend on the factors outlined in Current Public Works Requirements of this report. • Prevailing wage: RCW 82.14.540 does not address whether prevailing wages are required. As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding. • Apprentice utilization: No. Apprentice utilization is only required for public works contracts awarded by the state, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official or public housing authorities. See RCW 39.04.320(4)(a). <p>Construction contracts that public housing authorities enter into with contractors are specifically exempt from public works apprentice utilization requirements. In addition, construction contracts between contractors and private developers require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.</p>

AFFORDABLE HOUSING FUNDING (CONT.)

Conversion of Buildings to Affordable Housing (Sales and Use tax)

Purpose: Cities and towns can adopt a resolution for a sales and use tax deferral program for projects that convert existing buildings on underutilized commercial land to multi-family projects with at least 10% affordable housing units.

Law and Guidance: [Chapter 82.59 RCW](#).

Fed/State/ Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Local (city or town)	Tax Deferrals The developer does not pay sales and use tax if the project is used for qualifying purpose for 10 years.	Private developer, for profit or nonprofit	<p>Not addressed in the relevant statute. Chapter 82.59 RCW. MRSC's Assessment is as follows:</p> <ul style="list-style-type: none"> • Procurement: Unclear, but presumably “no,” as the factors outlined in Applicability of Requirements to Private Projects Depends on Numerous Factors of this report are unlikely to apply to projects receiving tax deferrals. • Prevailing wage: Chapter 82.59 RCW does not address whether prevailing wages are required. As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding. • Apprentice utilization: No. Apprentice utilization is only required for public works contracts awarded by the state, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official or public housing authorities. See RCW 39.04.320(4)(a). <p>Construction contracts between contractors and private developers require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.</p>

AFFORDABLE HOUSING FUNDING (CONT.)

Washington State Housing Trust Fund

Purpose: Funding for affordable housing projects.

Law and Guidance: [Chapter 43.185A RCW](#) and the [Washington State Housing Trust Fund Handbook](#) (2025).


Fed/State/ Local	Type of Funding	Recipient	💡 Do Public Works Requirements Currently Apply?
State (Department of Commerce)	Amortized loans, deferred loans, recoverable grants	Local governments, local housing authorities, nonprofit community or neighbor- hood-based organizations, tribes, regional or statewide nonprofit housing assistance organizations	<p>Partially addressed in the Washington State Housing Trust Fund Handbook.</p> <ul style="list-style-type: none"> • Procurement: Housing Trust Fund Handbook does not address this. MRSC's Assessment is that procurement requirements apply to all local governments, including public housing authorities. Whether procurement requirements apply to private developers depends on the type of loan or grant. For the amortized loans and recoverable grants, it is unlikely procurement requirements apply because they would not be "at the cost of" the public agency. For the deferred loans, the applicability of procurement requirements will depend on the factors outlined in Current Public Works Requirements of this report. • Prevailing wage: Covered in the Housing Trust Fund Handbook at length in Section 201.5. Here is a summary: Grant recipients should assume that prevailing wages apply, unless they are receiving a loan that is incurring interest, is not forgivable and is required to be repaid in full. • Apprentice utilization: Covered in the Housing Trust Fund Handbook as follows: "For projects with construction costs of at least \$1 million, regardless of the source used to pay the constructions costs (i.e., whether HTF, the other public funders, or private funds), the HTF contractor must include apprenticeship training program requirements in their construction contractor bid package. The HTF contractor must also make best efforts to select a prime contractor that will hire apprentices enrolled in an approved apprenticeship program and who will procure sub-contractors who will also hire apprentices [...]"

AFFORDABLE HOUSING FUNDING (CONT.)

HUD HOME Rental Development Program

Purpose: Housing block grant program used to preserve and create affordable housing for very low-income households.

Law and Guidance: Washington State Department of Commerce’s [HOME Rental Development Program](#) and [HOME and National Housing Trust Fund \(NHTF\) Rental Program Guidelines Handbook](#) (2021)


Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Federal State (Department of Commerce) Or by the local government if they are eligible	Grant	Public housing authorities, non-profit organizations, and local & tribal governments	<p>Partially addressed in the Department of Commerce’s HOME and NHTF Rental Program Guidelines Handbook.</p> <ul style="list-style-type: none"> • Procurement requirements: HOME and NHTF Handbook does not address this. MRSC’s Assessment is that procurement requirements apply to all local governments, including public housing authorities. Whether procurement requirements apply to private developers depends on the factors outlined in Current Public Works Requirements of this report. • Prevailing wage: Addressed in the HOME and NHTF Handbook as follows: <ul style="list-style-type: none"> – HOME: “Labor standards, including Davis-Bacon federal prevailing wage requirements, shall apply to all projects with 12 or more HOME-assisted units” – NHTF: “NHTF funding does not trigger federal labor standards. However, NHTF projects (where federal labor standards are not otherwise triggered by another funding source) are subject to the State’s Prevailing Wages on Public Works, Chapter 39.12 RCW.” • Apprentice utilization: HOME and NHTF Handbook does not address this. MRSC’s assessment is - no. Apprentice utilization is only required for public works contracts awarded by state agencies, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official, public housing authorities, or any drainage, diking, or irrigation district. See RCW 39.04.320(4)(a) and RCW 39.04.010(4). Therefore, construction contracts that public housing authorities enter into with contractors are specifically exempt from public works apprentice utilization requirements. In addition, construction contracts between contractors and private developers require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.

AFFORDABLE HOUSING FUNDING (CONT.)

Workforce Housing Accelerator Revolving Loan Fund Program

Purpose: Revolving loan program to encourage for-profit housing developers to build “workforce” housing in the 50%-80% Area Medium Income range. NTE \$20 million max.

Law and Guidance: [Chapter 43.185D RCW](#).


Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
State (Department of Commerce contracts with State Housing Finance Commission to administer program)	<p>Loan</p> <p>The interest rate must be more than 1% but not more than 2.5%.</p> <p>Loans must be repaid within 30 years, unless otherwise authorized under commission rules.</p>	<p>Public housing authorities, public development authorities, private and nonprofit developers, and other applicants eligible under rules established by the commission</p> <p>May use loan funds in combination with private sector loans, tax exempt bonds, REET abatements, and any other sources of capital as recognized by commission.</p>	<p>Not addressed in the relevant statute, Chapter 43.185D RCW. MRSC’s Assessment is as follows:</p> <ul style="list-style-type: none"> • Procurement: Yes and No. Procurement requirements would apply to public housing and public development authorities because they are local governments. It is unlikely procurement requirements would apply to the private developers because the loans bear interest and must be repaid. • Prevailing wage: Chapter 43.185D RCW does not address whether prevailing wages are required. As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding. • Apprentice utilization: Yes and No. Apprentice utilization is only required for public works contracts awarded by state agencies, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official, public housing authorities, or any drainage, diking, or irrigation district. See RCW 39.04.320(4) (a) and RCW 39.04.010(4). <p>While construction contracts that public housing authorities enter into with contractors are specifically exempt from public works apprentice utilization requirements, public development authorities are subject to apprentice utilization requirements. In addition, construction contracts between contractors and private developers require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.</p>

AFFORDABLE HOUSING FUNDING (CONT.)

WA State Housing Finance Commission Bond/Tax Credit Program

Purpose: This program helps create affordable rental housing for working families, seniors, and people with special needs. The program provides low-cost financing for private projects that serve a public purpose.

Law and Guidance: [Chapter 43.180 RCW](#); [WAC 262-01-110 through 130](#); Washington State Housing Finance Commission’s webpage on [Bond/Tax Credit Program](#) and [Bond/Tax Credit Program Policies](#) (2024).

Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
State (Housing Finance Commission)	Tax Exempt Bond Financing	Private developers of multifamily housing, for profit and nonprofit, public housing authorities	<p>Not addressed in the relevant statute or guidance. MRSC’s assessment is as follows:</p> <ul style="list-style-type: none"> • Procurement: Procurement requirements would apply to public housing authorities because they are local governments. Whether procurement requirements would apply to the private developers depends on the factors outlined in the section Applicability of Requirements to Private Projects Depends on Numerous Factors of this report. • Prevailing wage: Chapter 43.180 RCW does not address whether prevailing wages are required. As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding.²¹ • Apprentice utilization: No. Apprentice utilization is only required for public works contracts awarded by state agencies, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official, public housing authorities, or any drainage, diking, or irrigation district. See RCW 39.04.320(4)(a) and RCW 39.04.010(4). <p>Construction contracts that public housing authorities enter into with contractors are specifically exempt from public works apprentice utilization requirements. In addition, construction contracts between contractors and private developers require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.</p>


²¹ [RCW 43.180.030](#) provides that affordable housing bonds issued by the Housing Finance Commission “shall not be obligations of the State of Washington.” Although one may infer from this language that such bonds are therefore not issued “at the cost of” the state (and thus not subject to public works requirements), a more careful reading reveals that the RCW language instead refers to which public agency issues the bonds—the Housing Finance Commission, rather than the State of Washington itself.

DOWNTOWN/COMMERCIAL/HISTORIC DISTRICT REVITALIZATION

Targeted Urban Areas

Purpose: Intended to encourage new manufacturing and industrial uses on undeveloped or underutilized lands zoned for manufacturing/industrial zones in targeted urban areas.


Law and Guidance: [Chapter 84.25 RCW](#).

Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Local (city or town)	Tax exemption	Private property owner	<p>Partially addressed in the relevant statute, Chapter 84.25 RCW.</p> <ul style="list-style-type: none"> • Procurement: Unclear, but presumably “no,” as the factors outlined in Applicability of Requirements to Private Projects Depends on Numerous Factors of this report are unlikely to apply to projects receiving tax exemptions. • Prevailing wage: The statute requires cities to give priority to applications that will compensate workers at prevailing wage rates during the construction and ongoing business of the facilities. See RCW 84.25.080(2). However, in terms of whether prevailing wages are <i>required</i> to be paid, it depends on the facts. L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding. • Apprentice utilization: No. Apprentice utilization is only required for public works contracts awarded by state agencies, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official, public housing authorities, or any drainage, diking, or irrigation district. See RCW 39.04.320(4)(a) and RCW 39.04.010(4). <p>Note: Applications that meet the following labor specifications during the new construction and ongoing business of the facilities must be given priority:</p> <ul style="list-style-type: none"> (a) Compensate workers at prevailing wage rates as determined by the Department of Labor and Industries; (b) Procure from, and contract with, women-owned, minority-owned, or veteran-owned businesses; (c) Procure from, and contract with, entities that have a history of complying with federal and state wage and hour laws and regulations; (d) Include apprentice utilization from state-registered apprenticeship programs; (e) Provide for preferred entry for workers living in the area where the project is being constructed; and (f) Maintain certain labor standards for workers employed primarily at the facility after construction, including production, maintenance, and operational employees.

Multifamily Tax Exemption

Purpose: Provides a property tax exemption in exchange for the development of multifamily and affordable housing in areas designated by the local government.

Law and Guidance: [Chapter 84.14 RCW](#) and the Department of Commerce’s [Multi-Family Housing Property Tax Exemption Program](#).

Fed/State/ Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Local (cities, towns and some counties)	Property Tax Waiver	Private property owner	<p>Not addressed in statute. MRSC’s assessment is as follows:</p> <ul style="list-style-type: none"> • Procurement: Unclear, but presumably “no,” as the factors outlined in Current Public Works Requirements of this report are unlikely to apply to projects receiving tax deferrals. • Prevailing wage: Chapter 84.14 RCW does not address whether prevailing wages are required. As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding.²² • Apprentice utilization: No. Apprentice utilization is only required for public works contracts awarded by state agencies, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official, public housing authorities, or any drainage, diking, or irrigation district. See RCW 39.04.320(4)(a) and RCW 39.04.010(4). <p>Construction contracts between contractors and private property owners require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.</p>


²² [RCW 43.180.030](#) provides that affordable housing bonds issued by the Housing Finance Commission “shall not be obligations of the State of Washington.” Although one may infer from this language that such bonds are therefore not issued “at the cost of” the state (and thus not subject to public works requirements), a more careful reading reveals that the RCW language instead refers to which public agency issues the bonds—the Housing Finance Commission, rather than the State of Washington itself.

CLEAN ENERGY

Solar and Other Renewable Energy Systems

Purpose: Sales and use tax refund for purchases and installation of solar and other renewable energy equipment.

Law and Guidance: [RCW 82.08.962](#) and the Department of Revenue's [Clean energy – Renewable energy equipment](#).


Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
State (Department of Revenue and L&I)	Sales and Use Tax Exemption	Private developers	<p>Addressed in relevant statute, RCW 82.08.962. Labor standards written into RCW 82.08.962 as follows:</p> <ul style="list-style-type: none"> • 100% sales and use tax refund: project must have a Project Labor Agreement or Community Workforce Agreement. • 75% sales and use tax refund: Must comply with the following labor standards: <ul style="list-style-type: none"> – Procurement from and contracts with women, minority, or veteran-owned businesses. – Procurement from and contracts with entities that have a history of complying with federal and state wage and hourly laws and regulations. – Apprentice utilization. – Pay prevailing wage. – Preferred entry for workers living in the area where the project is being constructed. – Note that, in the event a project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the Department of Labor & Industries may certify that the developer complied with that standard. • 50% sales and use tax refund: Must meet all the above but does not need to pay prevailing wage. <p>Note: If this bill passed, it would eliminate the ability of the developer to get the 50% tax rebate or deferral because all would be eligible for the 75% (because they now have to pay prevailing wage, and that is the only difference between the two).</p>

CLEAN ENERGY (CONT.)

Clean Energy Investment Projects

Purpose: Sales and use tax refund for purchases and installation of solar and other renewable energy equipment.

Law and Guidance: [RCW 82.08.962](#) and the Department of Revenue's [Clean energy – Renewable energy equipment](#).


Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
State (Department of Revenue and L&I)	Sales and use tax refunds and deferrals	Private developers	<p>Addressed in the relevant statute, RCW 82.08.962. Labor standards written into the RCW 82.08.962 as follows:</p> <ul style="list-style-type: none"> • 100% sales and use tax refund: Project must have a Project Labor Agreement or Community Workforce Agreement. Pursuant to WAC 296-140-001 through 009, not subject to the labor standards. They develop their own under the PLA or CWA. • 75% sales and use tax refund: Must comply with the labor standards: <ul style="list-style-type: none"> – Apprenticeship: 15% of total labor hours performed by registered apprentices. – Prevailing wage: Required. – Other: <ul style="list-style-type: none"> ◦ Certain amount of labor hours performed by local residents. ◦ Must contract a certain percentage with women, minority and veteran-owned business. ◦ Procurement from and contracts with entities that have a history of complying with federal and state wage and hourly laws and regulations. • 50% sales and use tax refund: Must meet all the above but does not need to pay prevailing wage. <p>Note: If this bill passed, it would eliminate the ability of the developer to get the 50% tax rebate or deferral because all would be eligible for the 75% (because they now have to pay prevailing wage, and that is the only difference between the two).</p>

CLEAN ENERGY (CONT.)

Climate Commitment Act: Washington's Cap-and-Invest Program

Purpose: The largest emitting businesses can purchase allowances equal to their covered greenhouse gas emissions, which can be bought and sold on the secondary market among program participants. Revenue generated from the auction is reinvested into climate programs.

Law and Guidance: [Chapters 173-446 WAC](#) and [173-446B WAC](#); the Department of Commerce's webpage on the [Climate Commitment Act](#); and the Department of Ecology's webpage on the [Climate Commitment Act](#).


Fed/State/ Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
State (Department of Ecology)	Other agreements	Legislature appropriates funds from the Climate Commitment Action accounts to state agencies through the budget process. Agencies often pass these dollars through to communities and organizations in the form of grants, contracts, loans and other agreements.	Not addressed in statute or applicable administrative rules.

BROADBAND

Broadband Equity Access and Deployment (BEAD) Program

Purpose: Federal funding allocation to state for improving residents' access to broadband infrastructure.

Law and Guidance: [RCW 43.330.536](#) and the Department of Commerce's [BEAD Initial Proposal Vol II – Final](#).


Fed/State/ Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Federal funds administered by state	Grant	Local government, tribes, nonprofits, public private partnerships, private companies, public or private utilities	Addressed in relevant guidance – see page 81 of BEAD Initial Proposal Vol II – Final . Competitive bidding, prevailing wage and apprentice utilization - all required.

MISCELLANEOUS

HUD's Community Development Block Grant (CDBG)

Purpose: Federal grants provided to cities and counties to develop viable urban communities for low- and moderate-income persons.

Law and Guidance: [CDBG Laws and Regulations](#) and [CDBG Entitlement Program](#).


Fed/State/Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
<p>Federal funds are provided to local governments.</p> <p>Money is passed on to private entities.</p>	Grant	Local governments or private entities	<p>Not addressed in guidance.</p> <ul style="list-style-type: none"> • Procurement: Whether procurement requirements apply to private developers depends on whether the grant must be repaid. If it must be repaid, it is unlikely procurement requirements apply because the project would not be “at the cost of” the public agency. For grants that are not repaid, the applicability of public works requirements will likely depend on the factors outlined in Applicability of Requirements to Private Projects Depends on Numerous Factors of this report. • Prevailing wage: The guidance does not address whether prevailing wages are required. As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding. • Apprentice utilization: No, so long as the money is awarded to the private party and the government is not a party to the contract.

MISCELLANEOUS (CONT.)

Local Government Grants, such as Household Grants and Art Grants

Purpose: Various.

Law and Guidance: Various.

Fed/State/ Local	Type of Funding	Recipient	 Do Public Works Requirements Currently Apply?
Local governments	Grant	Private individuals or private entities	<p>MRSC's Assessment:</p> <ul style="list-style-type: none"> • Procurement: Whether procurement requirements apply to private developers depends on whether the grant must be repaid. If it must be repaid, it is unlikely procurement requirements apply because the project would not be “at the cost of” the public agency. For grants that are not repaid, the applicability of procurement requirements will likely depend on the factors outlined in Applicability of Requirements to Private Projects Depends on Numerous Factors of this report. • Prevailing wage: As detailed in the report, the expectation of repayment of the public funding is an important factor. Given the lack of statutory guidance, L&I makes prevailing wage determinations case-by-case, considering specific facts and several factors, including (but not limited to) where the funds originated, whether they must be repaid, and whether the public agency exercises discretion and control in awarding the funding. • Apprentice utilization: Apprentice utilization is only required for public works contracts awarded by state agencies, school districts, four-year institutions of higher education, and municipalities, except it is not required for contracts awarded by state agencies headed by a separately elected official, public housing authorities, or any drainage, diking, or irrigation district. See RCW 39.04.320(4)(a) and RCW 39.04.010(4). <p>Therefore, any construction contracts between contractors and private developers/owners require no apprentice utilization because those contracts are not public works contracts “awarded by” a public agency.</p>

Appendix B: General Guidance on Public Projects that Are Wholly/Partially Funded with Federal Funds

The scope of this Public Works Study was to cover how public funding (including federal, state and local) affected whether a private construction project met the definition of a “public work.”

The purpose of this Appendix B is to briefly address a related, but separate, topic that was raised by stakeholders during the course of this study:

If a state or local government embarks on a public works project that is wholly or partially funded with federal funds, do state public works requirements apply? Specifically, do state prevailing wage and apprentice utilization requirements apply to those federally funded public works projects?

While this question is outside the scope of work for this study, MRSC has provided an overview of the considerations below.

OVERVIEW

When a state or local government in Washington embarks on a public works project that is wholly or partially funded with federal funds, both state and federal public works requirements generally apply. This often leads to what can be referred to as a “higher standard” rule, where the more stringent requirement must be met. While both federal and state law are clear that the higher prevailing wage must be paid, applicability of state apprentice utilization requirements (AUR) on a state or local public works project that is funded by federal money is dependent on the applicable federal law, federal guidance, and funding/grant conditions.

GENERAL APPLICABILITY OF STATE PUBLIC WORKS REQUIREMENTS

[Chapter 39.04 RCW](#), *Public Works*, and [Chapter 39.12 RCW](#), *Prevailing Wages on Public Works*, define what constitutes a “public work” in Washington and set forth the basic framework for competitive bidding, contract requirements, and payment procedures. In general, a state or local public works project funded with federal money must comply with state public work statutes unless superseded by federal law, federal guidance and/or specific federal funding conditions.

PREVAILING WAGE REQUIREMENTS

- **Prevailing Wage Required on Public Works Projects.** When a state or local government is using federal funds for a public works project, prevailing wages must be paid pursuant to both federal law (Davis-Bacon Act, [40 U.S.C. Sec. 3141](#) et seq) and to Washington State law ([Chapter 39.12 RCW](#)).
 - [Chapter 39.12 RCW](#) (Washington’s “Little Davis-Bacon Act”) mandates prevailing wages for all public works and maintenance contracts, regardless of the dollar value or funding source (federal, state, or local).
- **The “Higher Wage” Rule**

- When both state and federal prevailing wage laws apply, contractors are generally required to pay the higher of the two applicable wage rates for each worker classification. This ensures that workers receive the most beneficial wage.
 - Contractors often must seek wage determinations from the federal Department of Labor (DOL) or the State Department of Labor and Industries (L&I) to confirm the classification and wage rate to be used. The federal DOL and state L&I have different worker classifications and wage rates.
- Washington State law is clear that public work projects undertaken by the state or local governments that are funded with federal funds, either wholly or partially, are required to pay prevailing wage. In [Drake v. Molvik & Olsen Electric](#) (1986), the Washington State Supreme Court reviewed the applicability of state prevailing wages to a federally funded construction project undertaken by a local government (the Seattle Housing Authority). In holding that the project must pay the state prevailing wage, the Court provided:

The [Seattle Housing Authority] argues that since the project was totally funded by the federal government and the contractor and subcontractor complied with the federal minimum wage law, cited hereafter, the state law does not apply. The federal law is the Davis-Bacon Act, 40 U.S.C. 276a (1982).

The clear answer is that the federal law provides that the wages shall not be less than those determined under the Davis-Bacon Act. [42 U.S.C. § 1437j](#) (1978). It does not prohibit wages which are more than required by the Davis-Bacon Act.
- Washington State law specifically provides that public works laborers must receive the higher prevailing wage rate (state or federal) on projects subject to both [Chapter 39.12 RCW](#) and the federal Davis-Bacon and related acts (unless federal law specifically preempts applicability of [Chapter 39.12 RCW](#)). See [WAC 296-127-025](#).

APPRENTICE UTILIZATION REQUIREMENTS

- **Washington State's Apprentice Utilization Requirements.** Washington State's apprentice utilization requirements generally apply when projects are estimated to be over a certain dollar threshold. [RCW 39.04.320](#) mandates that a certain percentage (currently 15% for projects over certain thresholds) of labor hours on public works projects must be performed by apprentices registered in state-approved programs.

Notably, [RCW 39.04.320\(2\)](#) provides that apprentice utilization requirements may be adjusted for various reasons including a lack of apprentices in the specific geographic area, a high ratio of material costs to labor hours, contractor good faith effort to comply, and other criteria the awarding entity deems appropriate.

If the use of state apprentices is restricted by federal law or guidance or federal funding conditions or grant terms, then the contractor could request adjustment of the state apprentice utilization requirements through the good faith effort process. This could potentially result in state apprentice requirements not applying to a federally funded public works project.
- **Federal Apprentice Requirements.** Given that this Public Works Study focused on state requirements, a thorough analysis of federal apprentice requirements would require further study. Below are some general highlights.
 - The federal apprenticeship system consists of two types of entities responsible for registering and overseeing Registered Apprenticeship Programs (RAPs): (1) the U.S. Department of Labor's (DOL) Office of Apprenticeship and; (2) recognized State Apprenticeship Agencies (SAA). Washington's apprentice program is a recognized SAA run through L&I.

- Unlike Washington State, where apprentice requirements are found in [RCW 39.04.300](#), [RCW 39.04.310](#), and [RCW 39.04.320](#), the federal requirements are scattered throughout various federal laws and guidance. As well, MRSC is unaware of any single, comprehensive federal or state guidance that assists local governments in navigating potential state-federal conflicts regarding apprentice utilization requirements (although the Washington State Auditor’s Office [Essentials of Managing Federal Awards: A Compliance Handbook](#) (2024) provides general guidance on managing federal awards).

Appendix C: Additional Resources

SELECTED CASE LAW

- [*Alexandria Real Estate Equities, Inc. v. Univ. of Wash.*](#), 28 Wn. App 2d 944 (2023): The University of Washington (UW) selected a private contractor to construct a new building on the university campus. The developer would design and construct the building at their own cost and would own the building for 80 years; UW agreed to enter into an 80-year ground lease with the developer for the property and to lease back a portion of the building space (with the remainder leased by non-UW tenants). After the end of the ground lease, the building would revert to UW ownership. The court concluded this project was not a public work subject to competitive bidding requirements. In doing so, the court distinguished *Supporters of the Center, Inc v. Moore* because the developer in this matter was responsible for all construction costs, UW was not paying any advance rent payments and UW would only be paying rent after construction was completed.
- [*Supporters of the Center, Inc. v. Moore*](#), 119 Wn. App 352 (2003): This case involved a nonprofit entity's construction of a performing arts center on city-owned land, adjacent to the city convention center. The city entered into a ground lease with the nonprofit; at the end of the lease, the improved property would belong to the city in a maximum of 50 years. The project was partially funded by a state grant; as part of the grant, the nonprofit agreed to make improvements to the city-owned convention center. The project was also partially funded with advance rent from the city, which it had expected to pay after construction was completed. As well, the arts center required access to the restrooms, parking lot, and other facilities belonging to the city's convention center. Based on these facts, this project was a "at the cost" of the government and was a public work required to pay prevailing wage.
- [*City of Spokane v. L&I*](#), 100 Wn. App 805 (2000): This case involved annual maintenance at a city-owned facility that was privately operated. The court held the work performed by the private party, even though the private party controlled the work to be performed and when to perform the work, was considered to be "at the cost of" the city and was a public work for prevailing wage purposes. The court's holding hinged on the fact that "the... facility is owned by the City, paid for with public funds, and operates to the benefit of the public." As well, the court noted that the definition of "public work" for prevailing wage purposes does not require the government's direct involvement in the work performed.
- [*Drake v. Molvik & Olsen Electric*](#), 107 Wn.2d 26 (1986): The Seattle Housing Authority, a local government entity, built an apartment complex for low-income elderly persons that was wholly funded by federal funds. The court held that a state agency or local government's construction project funded by federal money is considered to be at the "cost" of the state or municipality and was a public work for prevailing wage purposes.

DEPARTMENT OF LABOR & INDUSTRIES

- [January 28, 2010 Letter](#): Prevailing wages applied to a nonprofit organization's construction of a horse park where the state provided a grant for the construction work. The letter states, "[w]here a private, non-governmental organization (NGO) uses state or municipal funds to execute a construction project, the prevailing wage provisions of [Chapter 39.12 RCW](#) will apply to that NGO's project."
- For all L&I determinations and policies, see [Prevailing Wage Policies](#).
- [The Washington State Prevailing Wage Law Publication](#) (2024).

SELECTED ATTORNEY GENERAL'S OFFICE OPINIONS

- [AGO 2008 No. 10](#): Projects constructed pursuant to financing contracts under 63-20 financings do not constitute “public works” because the developer bears the financial and completion risk.
- [AGO 1988 No.17](#): Prevailing wages are required on a construction project performed by a private party on public land leased to the private party where the private party leases the land back to the local government for local government purposes. On the contrary, if a public agency leases public property to a private party to construct a building strictly for private purposes, those projects are not subject to prevailing wage. If a public entity leases back only a portion of the privately constructed building, prevailing wages may be required (analyzed case-by-case). (Note, in 1993, the legislature adopted [RCW 39.04.260](#), which requires prevailing wages on construction projects performed by a private party where the government agrees to lease at least 50% of the project.)

This opinion also distinguished short-term and long-term leases, noting the latter is unlikely to be a “public work” because the useful life of the improvements has been expended once it reverts to the lessor. (The lease issue has subsequently been addressed in [Alexandria Real Estate Equities, Inc. v. Univ. of Wash](#) (2023) and [Supporters of the Center, Inc. v. Moore](#) (2003), which are both detailed above.)

- [AGO 1983 No.2](#) (incorporated by reference in [Drake v. Molvik & Olsen Electric](#) (1986)): The construction of a low-income housing facility by a public housing authority is a public work which is subject to prevailing wage law where it is paid for with state or municipal funds or where it gives rise to a lien or charge against the housing authority's property.

STATE AUDITOR'S OFFICE


- [Buying and Bidding Guide](#) (2024)
- [Essentials of Managing Federal Awards: A Compliance Handbook](#) (2024)

DEPARTMENT OF REVENUE

- [Tax Incentives](#)

MRSC RESOURCES

- [Purchasing and Contracting – Table of Contents](#)
- [Public Works Contracting Best Practices](#) (2023)

 1.800.933.6772

 MRSC@MRSC.org

 MRSC.org

 facebook.com/MRSCWA

 linkedin.com/company/mrsc

 @MRSC_WA

 OFFICE **225 Tacoma Ave S., Tacoma, WA 98402**
MAILING **1712 6th Ave, Suite 100, PMB 1330, Tacoma, WA 98405**