

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

Senate Bill 202 (The President. *et al.*) (Administration)

Finance

Procurement - Prevailing Wage - School Construction

This Administration bill repeals the requirement that 75% or more of an elementary or secondary school construction project be funded by the State in order for the prevailing wage law to apply.

Construction projects for elementary and secondary schools with construction costs of \$500,000 or more, for which the State funds 50% or more of the construction costs, will be subject to the prevailing wage law.

The bill also adds a plan for utilizing minority contractors to the list of items that must be considered when a contract for school construction, improvements, supplies, or equipment is awarded.

The bill is effective July 1, 2000.

Fiscal Summary

State Effect: State expenditures would increase depending on the number of school construction projects subject to the prevailing wage. For illustrative purposes only, based on FY 2000 school construction projects, State expenditures in FY 2001 could increase by \$3.0 million to \$14.8 million.

Local Effect: Local expenditures would increase depending on the number of school construction projects subject to the prevailing wage. For illustrative purposes only, based on FY 2000 school construction projects, local expenditures in FY 2001 could increase by \$1.4 million to \$7.1 million.

Small Business Effect: A small business impact statement was not provided by the

Administration for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Current Law: Title 17, Subtitle 2, of the State Finance and Procurement Article outlines the definitions, procedures, and requirements of Maryland's prevailing wage law. The prevailing wage law applies to any public works contract when State funds are used to finance at least 50% of the construction costs of a particular project. Public school projects are subject to prevailing wages if the State funding contribution is at least 75% of total project funding. The prevailing wage law does not apply to projects with a cost of less than \$500,000.

By definition, prevailing wages are the hourly wage rates paid in the locality in which the construction work is to be performed. If 50% or more of all workers in a trade are paid exactly the same rate, that rate is considered the prevailing wage. If not, then 40% or more of the employees for each work classification must be paid the same rate in order for the rate to qualify as prevailing. If less than 40% receive the same rate, a weighted average is calculated and used as the prevailing wage. Prevailing wages are based on hourly salary levels, as well as employer benefit contributions.

The State share of eligible costs for school construction is 75% or less in all jurisdictions except Somerset, where it is 80%. In no jurisdiction is the State share less than 50%. A complete listing of the State share of eligible costs for public school construction are shown in **Attachment 1**. Since not all construction costs are eligible costs for computing State funding, most school construction projects with a State share of 50% of eligible costs will not be required to pay prevailing wages.

In awarding a contract for school construction, improvements, supplies, or equipment, the contract should be awarded to the lowest responsible bidder that meets specifications with consideration given to: (1) quantities involved; (2) time required for delivery; (3) required purpose; (4) competency and responsibility of the bidder; and (5) ability of the bidder to perform satisfactory service.

Background: The Davis-Bacon Act of 1931, as amended, requires that each federal or District of Columbia contract over \$2,000 for the construction, alteration, or repair of public buildings or public works shall contain a prevailing wage clause. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. In addition to the Davis-Bacon Act itself, Congress has added prevailing wage provisions to approximately 60 statutes which assist construction projects through grants, loans, loan guarantees, and insurance. These involve construction in such areas as

transportation, housing, air and water pollution reduction, and health. If a construction project is funded or assisted under more than one federal statute, the Davis-Bacon prevailing wage provisions may apply to the project if any of the applicable statutes requires payment of Davis-Bacon wage rates.

According to the United States Department of Labor, Wage and Hours Division, Maryland is one of 31 states that have a prevailing wage law patterned after the federal law. Of the 19 states that do not have a prevailing wage law for State contracts, nine states have repealed their previously existing prevailing wage law, and in one state the prevailing wage law was invalidated by a court decision.

Maryland first adopted a prevailing wage law in 1945 (Chapter 999), but it only applied to road projects in Allegany, Garrett, and Washington counties. In 1969 this law was repealed (Chapter 558) and the foundation for the current law was added. The 1969 statute made public works projects of the State costing \$500,000 or more subject to the prevailing wage. There have been periodic changes to the law and the definition of prevailing wage. In 1983 the law was broadened to include public works projects in which the State funds 50% or more of the total project costs, and 75% or more in the case of public schools.

State Fiscal Effect: A number of factors will determine the extent of any increase in costs for the State, including market and wage conditions. There are only two studies specific to the impact of prevailing wages on school construction in Maryland.

A study on the impact of prevailing wages was recently prepared for the Prince George's County Council by Dr. Mark Prus. The author concluded that building a school in a prevailing wage jurisdiction in Maryland would cost 1.9% more than building the same school in a non-prevailing wage jurisdiction, and that this result was not statistically significant.

A Department of Legislative Services (DLS) study in 1989 concluded that the prevailing wage increases project costs by 5% to 15%, and that the actual impact depends upon the type of project, labor costs as a share of total costs, and market conditions. In 1995, DLS reviewed the 1989 study and current data, and concluded that the 5% to 15% range was still valid. Although the DLS study was done before the current economic boom for the construction industry, it was done at the peak of the construction boom of the 1980s.

According to the U. S. Bureau of Economic Analysis, since the DLS study was conducted the Maryland Gross State Product from the construction industry has grown by 6.7% in nominal terms and labor compensation paid by the industry has grown by 15%. Because the growth

in compensation has outpaced that of the industry and the current boom does not appear to have peaked yet, the differential between the prevailing wage and the current wage should be lower than found in the DLS study.

The two studies indicate that prevailing wages could add 2% to 15% to the cost of a project. Because of the change in compensation since the DLS study, the 15% may be reduced to as low as 10% in today's market.

If there is an economic downturn in the future, the prevailing wage requirement will have a larger impact on construction costs. This is because the prevailing wage, particularly if it reflects any collective bargaining, will not decline as fast or as far as the market wage for labor during an economic downturn.

The fiscal 2000 Public School Construction Capital Improvement Program had State funds totaling \$257.5 million. Of this amount, \$232.5 million was for projects of \$500,000 or more. The distribution of the funds for projects over \$500,000 was as follows:

- \$132.1 million was for projects funded with more than 50% but less than 75% State funds for eligible costs;
- \$79.1 million for projects with 50% or less in State funds for eligible costs; and
- \$21.2 million for Allegany County and Baltimore City, with nothing for projects in Caroline and Somerset counties, all jurisdictions in which the prevailing wage would apply under current law.

The proposed fiscal 2001 budget includes \$256.0 million for public school construction; also available is an additional \$6.0 million in recycled funds, for a total of \$262.0 million in fiscal 2001.

How many of the school construction projects in fiscal 2001 would be subject to the prevailing wage because of the bill is not known. However, for illustrative purposes only, based on the fiscal 2000 school construction projects, State expenditures could increase in fiscal 2001 by \$3.0 to \$14.8 million. This assumes:

- 20% (\$15.8 million) of the \$79.1 million for projects with 50% or less State funding for eligible costs will be subject to the prevailing wage;
- all of the \$132.1 million in other jurisdictions is subject to the prevailing wage and

the State share is 65% of the construction costs;

- none of the projects associated with these State funds are subject to prevailing wage under current law;
- project costs increase by 2% to 10% due to requiring payment of the prevailing wage; and
- State contractors are able to pass on all of the increase in costs to the State because of the high demand for construction services.

For school construction projects in jurisdictions with 50% of the construction costs provided by the State, the local jurisdiction can avoid the impact of the bill by increasing the local share of construction costs by 1% to 51%. This would result in the State having a 1% decrease in expenditures for certain school construction projects under the bill when compared to current law.

Any increased activity for the Prevailing Wage Unit within the Department of Labor, Licensing, and Regulation could be handled with existing budgeted resources.

To the extent the prevailing wage requirement increases the taxable income of workers on school construction projects, the State will have an increase in revenues from the personal income tax.

Local Fiscal Effect: The impact of local government expenditures will depend on whether or not the jurisdiction has a school project of \$500,000 or more with 50% or more of the construction costs provided by the State.

The bill will not impact Allegany County and Baltimore City as both jurisdictions have local prevailing wage laws. In addition, Caroline and Somerset counties have a State share of construction costs of 75% or more, so school construction projects over \$500,000 in those two jurisdiction are subject to prevailing wage under current law and would not be impacted by the bill.

For illustrative purposes only, based on the fiscal 2000 school construction projects and the assumptions stated above, local expenditures could increase in fiscal 2001 by \$1.4 to \$7.1 million. For school construction projects in jurisdictions with 50% of the construction costs provided by the State, the local jurisdiction can avoid the impact of the bill by increasing the local share of construction costs by 1% to 51%. This would result in the local jurisdiction

having a 1% increase in expenditures for certain school construction projects under the bill when compared to current law.

According to information supplied by Montgomery County there will be one planned systemic renovation project over \$500,000 that would be impacted by the bill. Montgomery County advises that the increase in costs for the county are expected to be 5% to 10%, or \$25,000 to \$50,000 for the project.

Prince George's County advises that because of the special provisions for school construction in the county through fiscal 2002, some projects are already subject to the prevailing wage law, and other projects, including new projects, would become subject to the law as a result of the bill, and the projected cost increases for the projects impacted by the bill is from 5% to 15%.

To the extent the prevailing wage requirement increases the taxable income of workers on school construction projects, local jurisdictions will have an increase in revenues from the personal income tax. Since the personal income tax is paid to the jurisdiction in which the worker lives, and not the jurisdiction of the construction project, it is difficult to determine which jurisdictions will have an increase in the local personal income tax.

Additional Information

Prior Introductions: This bill was introduced as SB 658 during the 1999 session. It was not reported out of the Senate Finance Committee. This bill was introduced as SB 587 during 1998 session and referred to the Senate Finance Committee.

Cross File: HB 288 (The Speaker, *et al.*) - Economic Matters.

Information Source(s): Interagency Committee on School Construction; Department of Labor, Licensing, and Regulation (Division of Labor and Industry); Montgomery County; Prince George's County; Baltimore City; *Prevailing Wage Laws and School Construction Costs*, Dr. Mark J. Prus, PhD., SUNY Cortland; *Maryland's Prevailing Wage Law: A Study of Costs and Benefits*, Department of Legislative Services; U.S. Department of Labor (Wage and Hours Division)

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Analysis by: Christine A. Scott

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510

Attachment 1

State Share of Eligible Costs¹ Public School Construction

50%	Anne Arundel; Baltimore County; Howard; Kent; Montgomery; Talbot; Worcester
55%	Calvert; Queen Anne's
60%	Prince George's ²
65%	Carroll; Charles; Frederick; Harford; Washington
70%	Cecil; Dorchester; Garrett; St. Mary's; Wicomico
75%	Allegany; Baltimore City ³ ; Caroline
80%	Somerset

¹ Since not all construction costs are eligible costs for computing State fund, most school construction projects with a State share of 50% of eligible costs will not be required to pay prevailing wages.

² For fiscal 1999 through 2002, Prince George's County's match will be 25% for the first \$35 million allocated by the State and 40% on any State funds in excess of \$35 million. At least \$20 million of the State funds must be spent each year on neighborhood school projects.

³ For fiscal 1998 through 2002, Baltimore City's match will be 10% for the first \$10 million allocated by the State and 75% on any State funds in excess of \$10 million.

Source: Interagency Committee on School Construction
