

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 80
Finance

(Senator Kittleman, *et al.*)

Procurement - Prevailing Wage - School Construction

This bill modifies the criteria pertaining to the applicability of prevailing wage rates for State funded school construction projects. The prevailing wage threshold is raised from 50% of construction costs to 75%, thereby providing that 75% or more of a school construction project must be State funded in order for the prevailing wage law to apply.

Fiscal Summary

State Effect: State expenditures would decrease depending on the number of school construction projects subject to the prevailing wage. For illustrative purposes only, based on FY 2002 school construction projects, State expenditures in FY 2004 could decrease by \$0.5 million to \$2.6 million.

Local Effect: Local expenditures would decrease depending on the number of school construction projects subject to the prevailing wage. For illustrative purposes only, based on FY 2002 school construction projects, local expenditures in FY 2004 could decrease by \$0.3 million to \$1.6 million.

Small Business Effect: Potential meaningful. Small businesses that were previously unable to bid because of the requirement to pay the prevailing wage may be able to bid and win contracts related to the construction of public schools.

Analysis

Current Law: School construction projects fall under the prevailing wage law if 50% or more of the construction costs are State funded. 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. 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% and Baltimore City, where it is 90%. In no jurisdiction is the State share less than 50%. A complete listing of the State share of eligible costs for public school construction is shown in **Exhibit 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 would not be required to pay prevailing wages.

Exhibit 1
State Share of Eligible Costs¹
Public School Construction

50%	Anne Arundel; Baltimore; Howard; Kent; Montgomery; Talbot; Worcester
55%	Calvert; Queen Anne's
65%	Carroll; Charles; Frederick; Harford; Washington
70%	Cecil; Dorchester; Garrett; St. Mary's; Wicomico
75%	Allegany; Caroline; Prince George's ²
80%	Somerset
90%	Baltimore City ³

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.

² For fiscal 2003, the State match for Prince George's County is 60% for funding allocated by the State in excess of \$35 million. For fiscal 2004 through 2007, the State match for Prince George's County is 65% for funding allocated in excess of \$35 million. For fiscal 2008 and thereafter, the State match for Prince George's County is 60%.

³ For fiscal 2003 and 2004, the State match for Baltimore City is 75% for funding allocated by the State in excess of \$20 million. Fiscal 2005 and thereafter, the State match for Baltimore City is 75%.

Source: Department of Legislative Services

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: Chapter 208 of 2000 reduced the prevailing wage threshold from 75% to 50% of construction costs, thereby bringing school construction projects in line with prevailing wage requirements for other public works projects.

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 that 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.

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 subjected public works projects of the State costing \$500,000 or more 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 would determine the extent of any decrease 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.

Dr. Mark Prus recently prepared a study on the impact of prevailing wages for the Prince George's County Council. 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 nonprevailing 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 economic boom of the late 1990s 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 related to 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 1.91% 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.

Exhibit 2 estimates the expenditure decreases for the State and local jurisdictions based on 1.91% and 10% reductions in construction costs for the fiscal 2002 projects that would not have been subject to prevailing wage rates if this bill's provisions were in effect.

The prevailing wage requirement will have a larger impact on construction costs now due to the current economic downturn. 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.

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

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 75% 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.

Exhibit 2
Public School Construction Projects
Contracts Approved with Prevailing Wage Rate – Fiscal 2002
Fiscal 2002 Projects that Would Not Have Required Prevailing Wage
(\$ in Millions)

<u>LEA</u>	<u>School</u>	<u>Total Contract</u>	<u>State Funding</u>	<u>% State Funding</u>
Dorchester	North Dorchester High	0.9	0.6	70.0%
St. Mary's	Ridge Elementary	0.6	0.4	70.0%
Wicomico	Fruitland	0.8	0.6	70.0%
Cecil	North East High	1.5	1.0	69.5%
Dorchester	Mace's Lane Middle	13.9	9.3	66.6%
Harford	Magnolia Middle	0.6	0.4	65.5%
Frederick	Linganore High	0.6	0.4	65.0%
Baltimore City	Abottson Elementary / Stadium School	6.4	4.1	63.6%
Wicomico	Beaver Run Elementary	1.0	0.6	62.9%
Garrett	Hickory Environmental Center	1.0	0.6	61.4%
St. Mary's	White Marsh Elementary	1.3	0.8	60.9%
Carroll	Gateway Program Facility	4.4	2.6	59.0%
St. Mary's	Mechanicsville Elementary	1.3	0.7	56.1%
Washington	Williamsport Elementary	7.4	3.7	50.7%
	Subtotals	41.7	25.8	62.0%
	1.91% Savings	0.8	0.5	
	15% Savings	4.2	2.6	

* All Allegany County and Baltimore City public school construction projects require prevailing wage.

** Caroline, Prince George's, and Somerset Counties have a State share of public school construction of at least 75%

Additional Information

Prior Introductions: Similar bills were introduced at the 2001 session as SB 169/HB 505. HB 505 received an unfavorable report by the House Economic Matters Committee. The Senate Finance Committee took no action on SB 169.

Cross File: HB 477 (Delegate McMillan, *et al.*) – Economic Matters.

Information Source(s): Public School Construction Program, Department of General Services, Department of Legislative Services

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