

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 396

(Delegate Wood, *et al.*)

Economic Matters

Procurement - Prevailing Wage - School Construction

This bill provides that 75% or more of a school construction project must be funded by State sources in order for the prevailing wage law to apply.

The bill takes effect July 1, 2004.

Fiscal Summary

State Effect: Bond expenditures for public school construction could decrease significantly in FY 2005 due to lower costs in procurements no longer subject to prevailing wage rates. Future cost savings would depend on the amount of State funding of the public school construction program and the level of school construction funding subject to the prevailing wage rate.

Local Effect: Local expenditures would decrease depending on the number of school construction projects subject to the prevailing wage. The labor component of local expenditures for public school construction in FY 2005 could decrease by 5%.

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 public school construction contracts.

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 2004-07, 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 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: The federal Davis-Bacon Act requires that federal or District of Columbia public-works construction contracts over \$2,000 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 similar projects. Maryland adopted a prevailing wage law in 1945 (Chapter 999), but it only applied to road projects in Allegany, Garrett, and Washington counties. In 1969 the statute was amended to include public works projects of the State costing \$500,000. 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. 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.

State Fiscal Effect: A recent study by Dr. Yale Stenzler, former Director of the Interagency Committee on Public School Construction, found that significant savings could be realized by applying prevailing wage rates to fewer public school construction projects. During fiscal 2001 through 2003, 52 public school construction projects were subject to the State prevailing wage rate law that, under the provisions of this bill, would not have been required to use prevailing wages. Total cost for those projects, including the applicable prevailing wage rates, was \$285.6 million. The study estimates that contract costs would be reduced by 5% to 10% due to the provisions of this bill. Cost reductions of that magnitude would result in three-year cumulative savings ranging from \$13-26 million.

The Public School Construction Program advises that local boards of education are permitted to bid projects out both as prevailing wage and nonprevailing wage. Local boards may wish to do this to determine, for projects that are close to the prevailing wage threshold, if it is more advantageous for the locals to increase their share of funding on a project and refuse some State funds in order to avoid paying prevailing wages. In three recent bids (Carroll, Frederick, and Harford counties) and one estimate (Anne Arundel County) the savings from bids/estimates that were not subject to prevailing wages ranged from 4.97% - 7.40%.

Exhibit 2 estimates the expenditure decreases for the State and local jurisdictions based on 5.0% and 10.0% reductions in construction costs for the fiscal 2003 projects that would not have been subject to prevailing wage rates if this bill's provisions were in

effect. The Department of Legislative Services (DLS) notes that savings are not truly general fund dollars, but would more likely simply increase the number of projects that can be completed in each year.

Exhibit 2
Fiscal 2003 Public School Construction Projects
Would Not Have Required Prevailing Wage Under HB 396
(\$ in millions)

County*	Projects Requiring Prevailing Wage Under Current Law	Total Contract	Local Funding	State Funding	% State Funding**
Baltimore	1	1.1	0.0	1.1	98.1%
Calvert	1	8.1	5.7	2.4	29.6%
Carroll	1	0.9	0.3	0.6	63.9%
Charles	1	48.0	31.9	16.1	33.6%
Frederick	1	14.7	9.7	5.0	34.1%
Harford	1	0.7	0.1	0.6	91.2%
Prince George's	6	67.4	42.2	25.2	37.4%
Queen Anne's	2	18.0	10.1	7.9	43.9%
Washington	1	0.7	0.3	0.5	64.7%
Wicomico	1	1.5	0.7	0.9	56.3%
Total Project Costs	16	161.1	100.9	60.2	37.4%
Labor Cost as Percent of Total (30%)		53.7	33.6	20.1	
<hr/>					
Estimated Decrease in Wage Costs***	5% Cost Reduction	(2.7)	(1.7)	(1.0)	
	10% Cost Reduction	(5.4)	(3.4)	(2.0)	
	15% Cost Reduction	(8.1)	(5.0)	(3.0)	

Source: Interagency Commission on Public School Construction, Department of Legislative Services

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

** Future year costs may push total project costs over the threshold for prevailing wages.

*** 5% and 10% estimate based on "Analysis of the Impact of State Prevailing Wage Rates: Public School Construction Projects – State of Maryland – Fiscal Year 2001 – Fiscal Year 2003" by Dr. Yale Stenzler. 15% estimate based on 1999 IAC estimated impact of prevailing wage.

Source: Interagency Commission on Public School Construction, Department of Legislative Services

DLS concurs that increasing the State share trigger for prevailing wage rates would decrease construction costs significantly. DLS believes that the lower end of Dr. HB 396 / Page 5

Stenzler's range is a reasonable savings estimates, but notes that savings would increase or decrease significantly based on the total levels of funding of public school construction.

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. For illustrative purposes, the cost to build a new public elementary school can total \$12 million, depending on the size of the facility. Savings based on 30% labor as a percentage of total project cost (\$3.6 million) and 5% reduction in labor cost by removing a project from prevailing wage requirements would be \$180,000.

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 jurisdictions are subject to prevailing wage under current law and would not be impacted by the bill.

Additional Information

Prior Introductions: In 2003, HB 477, a similar bill, was heard in the House Economic Matter Committee.

Cross File: None. However, HB 532 is identical.

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

Fiscal Note History: First Reader - March 1, 2004
ncs/hlb

Analysis by: Daniel P. Tompkins

Direct Inquiries to:
(410) 946-5510
(301) 970-5510