

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 958 (Senators Pugh and Harrington)  
Budget and Taxation and Finance

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Procurement - Prevailing Wage

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This bill requires contractors working on State and local public works projects that cost more than \$500,000 and that use any State funds to pay prevailing wages to their employees.

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Fiscal Summary

**State Effect:** None. The State already pays prevailing wages on all State-funded construction projects exceeding \$500,000 in cost. Total State funding for local projects such as public school construction and community college capital projects would not be affected but the number of projects funded by the State could decrease.

**Local Effect:** Total construction costs for projects over \$500,000 that receive State funds could increase up to 5% to pay prevailing wage rates, with a portion of the costs shared with the State for some programs, including school construction and community college projects. **This bill imposes a local mandate.**

**Small Business Effect:** Minimal. Construction contractors that are required to pay prevailing wages pass along those higher costs to the State and local governments and school systems.

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Analysis

**Current Law:** State and local public works projects are subject to the prevailing wage law if 50% or more of total construction costs are paid by the State. The prevailing wage law does not apply to projects that cost less than \$500,000.

A public works project is a structure or work that is constructed for public use or benefit and is paid wholly or partly by public money. It need not be built by a public entity if it satisfies these two criteria.

Prevailing wages are defined in Maryland statute as the wages paid to 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category.

**Background:** The purpose of the prevailing wage provision is to prevent bidders on public works contracts from bringing in lower-wage labor from other areas to work on local construction projects, thereby underbidding local contractors.

Maryland adopted a prevailing wage law in 1945 (Chapter 999), but it applied only to road projects in Allegany, Garrett, and Washington counties. In 1969 the statute was amended to include State public works contracts exceeding \$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 for public schools from 75% to 50% of construction costs, thereby bringing school construction projects in line with prevailing wage requirements for other public works projects.

Several Maryland jurisdictions (Allegany County, Baltimore City) have local prevailing wage laws requiring all public works projects in the jurisdiction to pay prevailing wages, including school construction.

The Governor's fiscal 2009 *Capital Improvement Program* (CIP) includes \$327.4 million for the Public School Construction Program in fiscal 2009 and approximately \$250 million annually in fiscal 2010 through 2013. The Community College Construction Grant Program for locally operated community colleges receives \$81 million in fiscal 2009 and \$80 million annually in fiscal 2010 through 2013 in the five-year CIP. CIP also includes \$68.5 million for miscellaneous local projects in fiscal 2009, and an additional \$171.5 million over fiscal 2010 through 2013. In addition, numerous local projects are funded through State grant and loan programs in the State operating and capital budgets.

The State pays at least 50% of total project costs for locally operated community colleges and 75% for regional community colleges.

The State also pays at least 50% of eligible costs of school construction and renovation projects, based on a State-local cost-share formula that takes into account numerous factors including each local school system's wealth and ability to pay. **Exhibit 1** shows the State share of eligible school construction costs for all Maryland jurisdictions beginning in fiscal 2010, the first year the bill would impact all new school construction projects. New rates are being phased in over two or three years for Calvert, Dorchester, Garrett, Harford, Queen Anne's, and Somerset counties because, when the rates were recalculated in 2007 based on the same factors, they experienced a reduction of 5% or more in the State share of school construction costs compared with the fiscal 2006-09 levels.

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**Exhibit 1**  
**State Share of Eligible School Construction Costs**  
**Fiscal 2010-2012**

<u>County</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Allegany	91%	91%	91%
Anne Arundel	50%	50%	50%
Baltimore City	94%	94%	94%
Baltimore	50%	50%	50%
Calvert	64%	61%	61%
Caroline	86%	86%	86%
Carroll	61%	61%	61%
Cecil	75%	75%	75%
Charles	77%	77%	77%
Dorchester	72%	71%	71%
Frederick	72%	72%	72%
Garrett	65%	60%	59%
Harford	60%	59%	59%
Howard	61%	61%	61%
Kent	50%	50%	50%
Montgomery	50%	50%	50%
Prince George's	73%	73%	73%
Queen Anne's	65%	60%	55%
St. Mary's	75%	75%	75%
Somerset	92%	88%	88%
Talbot	50%	50%	50%
Washington	73%	73%	73%
Wicomico	87%	87%	87%
Worcester	50%	50%	50%

Source: Public School Construction Program

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**Local Fiscal Effect:** The bill would affect construction contracts awarded after October 1, 2008, the bill's effective date. All projects over \$500,000 receiving State funds in fiscal 2010 and thereafter would be subject to prevailing wage requirements. In addition, projects funded in fiscal 2008 and 2009 that have not awarded construction contracts before October 1 would also be affected. The number and magnitude of projects that could be impacted by this bill cannot be reliably estimated. However, a review of the fiscal 2009 capital budget provides some illustrative information on the potential impact.

Determining the fiscal impact of the prevailing wage requirement has been complicated by recent dramatic increases in construction costs, including labor rates. Research conducted in 2004 by Dr. Yale Stenzler, former executive director of the State's Public School Construction Program (PSCP), concluded that from fiscal 2001 to 2003, prevailing wage rates increased school construction costs by 5% to 10%. Since then, the prices of fuel, building supplies, and construction labor have risen steeply, adding between 12% and 20% to the cost of school construction. These increased costs have clouded the gap between market wage rates and prevailing wage rates. PSCP advises that in an environment of escalating construction costs, market wage rates can equal or exceed prevailing wages. More recently, construction costs have leveled off with the downturn in the housing construction market. PSCP reports that prevailing wage data is available for few projects bid in 2007.

In the absence of more recent data, it seems prudent to assume that prevailing wages continue to exceed market wages, and reasonable to use the lower end of Dr. Stenzler's estimated impact, or 5%.

*School Construction:* Local governments would be responsible for any costs associated with school construction projects funded in fiscal 2008 or 2009 that are required to pay prevailing wage under this bill. Beginning in fiscal 2010, PSCP reports that the State's maximum construction allocation for a school construction project would reflect any increased costs associated with the prevailing wage requirement. The increased eligible costs would then be shared between the State and local government based on the State-local cost-share formula.

A school construction project is currently subject to the prevailing wage provision if the State's share of total construction costs, including both eligible and ineligible costs, exceeds 50%. Costs that are ineligible for State funding include items like movable furniture (*e.g.*, bookcases) and planning and design fees. Since total construction costs are typically higher than eligible construction costs, the State often pays less than 50% of total school construction costs in jurisdictions that require a 50% State share of eligible costs. Therefore, almost all school construction projects in jurisdictions with a 50% State share are not currently required to pay the prevailing wage, and it is in those jurisdictions where this bill will most significantly affect the local share of school construction costs. Some

school construction projects in other counties may also be affected as the State share of their school construction projects may occasionally be less than 50%.

Of the 96 school construction projects that have been approved for fiscal 2009 State funding to date, 61 have State shares at or below 50%. Of those, 8 have total costs below \$500,000 and are exempt from the prevailing wage requirement, leaving 53 projects that could be affected if they do not award a construction contract before October 1. Those projects have a combined cost of \$856.1 million, of which \$566.1 million are local funds. **Exhibit 2** shows the distribution of those projects by county. None of these projects are in counties that have their own prevailing wage laws. Additional projects will be approved for fiscal 2009 State funding and could also be affected by this bill.

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**Exhibit 2**  
**Fiscal 2009 School Construction Projects With State Shares At or Below 50%**

	<b>Total Funded Projects</b>	<b>Eligible Projects with State Share ≤ 50%</b>	<b>Total Cost of Affected Projects (\$ in Millions)</b>
Anne Arundel	10	8	\$109.5
Baltimore	16	12	49.7
Carroll	2	1	24.5
Charles	4	1	28.1
Dorchester	2	1	35.6
Frederick	8	3	101.3
Garrett	2	1	4.9
Harford	4	2	57.1
Howard	8	6	70.3
Montgomery	12	10	131.0
Prince George's	6	3	94.6
Queen Anne's	2	1	14.2
St. Mary's	3	1	26.4
Washington	5	1	21.0
Worcester	2	2	88.1
<b>Total</b>	<b>96</b>	<b>53</b>	<b>\$858.3</b>

Source: Public School Construction Program; Projects approved by Board of Public Works January 30, 2007

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*Other Local Projects:* In addition, the Governor's proposed fiscal 2009 capital budget includes numerous local projects that are receiving State funds but for which the State share is less than 50%. Many of these projects are in Baltimore City, so they are already

subject to Baltimore’s prevailing wage. **Exhibit 3** shows the remaining projects that could be affected by this bill. Legislative Services also notes that some projects funded by the \$5.0 million Private Hospital Grant Program, the \$8.0 million Private Higher Education Facilities Grant Program, and the \$15.0 million in legislative initiative grants could also be affected, depending on their location and the share of State funds used to finance them.

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**Exhibit 3**  
**Potential Affected Projects in Governor’s Fiscal 2009 Proposed Capital Budget**

<u>County</u>	<u>Project</u>	<u>Total Cost</u> <u>(\$ in Millions)</u>	<u>State</u> <u>Contribution</u> <u>(\$ in Millions)</u>
Baltimore	Community College	\$30.2	\$14.9
Baltimore	Irving Nature Center	\$5.5	\$1.4
Charles	Southern Maryland Stadium	\$25.6	\$8.7
Howard	Community College	\$18.7	\$9.3
Montgomery	Live Entertainment Venue	\$13.5	\$4.0
Montgomery	Jewish Council for the Aging	\$10.0	\$1.0
Montgomery	Smith Life Communities	\$0.8	\$0.8
Montgomery	Community College	\$73.6	\$36.8
Prince George’s	CASA Multicultural Center	\$8.6	\$1.0

Source: Governor’s Proposed Fiscal 2009 Capital Budget

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 970 (Delegate Braveboy) – Economic Matters.

**Information Source(s):** Baltimore City, Montgomery County, Department of General Services, Board of Public Works, Public School Construction Program, Department of Legislative Services

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