



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** December 6, 2021

**TO:** Board of Supervisors

**FROM:** Bryan J. Hill, County Executive

**SUBJECT:** Prevailing Wage Ordinance

In response to discussions and the questions raised during the Board Legislative Committee meeting on October 26, 2021, regarding the proposed Prevailing Wage Ordinance (PWO), the County Work Group prepared a follow-up to provide the Committee with additional prevailing wage information. Research conducted largely included benchmarking with other public entities to gather new and updated information, which has been provided below. The Work Group has also prepared a Board Item for the December 7, 2021, Board meeting to authorize a public hearing on the proposed PWO. It should be noted that Work Group follow-up information and responses to the Committee's questions on the separate matter of a Project Labor Agreement pilot project will be transmitted separately, in the near future.

Highlights of the PWO proposed for advertisement of a public hearing on December 7, 2021, include the following:

- Applies to construction contracts including maintenance such as annual construction contracts
- Applies to contracts with a value of \$250,000 or more
- Applies to all construction contracts solicited after July 1, 2022
- Requirement for prevailing hourly wage rates and fringe benefits set by Virginia Department of Labor and Industry (DOLI)
- Applies to all labor classes under the contract, including all subcontractor labor
- Requires contractors to certify compliance with the PWO and DOLI wage rate requirements at time of contract execution
- Requires contractor posting of DOLI wage rate requirements at project sites, in multiple languages
- Applies to county funded construction contracts executed by the Department of Public Works and Environmental Services (DPWES), Fairfax County Department of Transportation (FCDOT), Fairfax County Public Schools (FCPS), Fairfax County Redevelopment and Housing Authority (FCRHA), Fairfax County Park Authority

(FCPA), and the Department of Procurement and Material Management (DPMM) County Work Group responses to the Legislative Committee's October 26, 2021, questions and discussion are as follows:

### **1. What is the Anticipated Cost Impact?**

Based on discussion with neighboring jurisdictions and state agencies that have implemented prevailing wage requirements, as well as cost estimating experts, actual data on prevailing wage impacts to construction project costs is very limited. For example, Arlington County, VA, has not yet implemented their PWO and is not planning to budget for any impact to construction costs. Montgomery County, MD, has been implementing its prevailing wage requirement for approximately seven years, and they estimate a potential construction cost impact of up to 5%. The VA Division of Engineering and Buildings has been implementing a prevailing wage requirement since May 2021 and continues to recommend a budgeting impact factor of 15% for the construction cost impact. Information from a local cost estimating expert suggests the cost impact of the PWO may be between 5% to 7.5%, dependent upon the project type.

Feedback on labor wages indicates that many skilled labor classifications tend to already be paid at or above the PWO rate requirement. The PWO is likely to have a greater impact on unskilled labor classifications that tend to be paid below the PWO wage requirement. Staff believes that for Capital Improvement Program planning purposes the county's construction cost impact may be an approximate order of magnitude of 5%, or slightly higher, dependent on the project type. However, the actual construction cost impact of the PWO will be extremely hard to quantify in the context of other significant construction cost factors including broader market conditions, availability of contractors, subcontractors and skilled labor for competitive bidding, supply chain issues impacting cost and schedule, impact of fuel and petroleum costs, and cost of other key materials and equipment such as steel, concrete products, and electronics components.

### **2. What Approach will be Taken for Contractor Compliance?**

Based on feedback from local jurisdictions and state agencies, staff recommends an initial approach that provides education and information sharing outreach to contractors and subcontractors. Outreach will place emphasis on small, woman-owned and minority (SWaM) contractors and subcontractors. Education and information sharing for all vendors will include emphasis on PWO requirements for information to be shared with labor employees. Staff's recommended initial compliance approach will rely on the VA Department of Labor and Industry (DOLI) as the point for any wage or benefits related complaints falling under the PWO requirements. All contractors will be required to submit certification of their compliance with DOLI prevailing wages and benefits at the time of contract execution. Contractors are required to preserve and provide access to monthly payroll records. The initial approach will also include training of county construction management staff to conduct a cursory review of monthly payroll records for potential areas of concern. When a contractor is suspected of noncompliance pertaining to prevailing wage requirements, workers are encouraged to report wage complaints to the DOLI, where a review process will be initiated to determine if the contractor failed to pay the

required prevailing wage and/or benefits. If found to be noncompliant, the contractor will be liable to the individual employee(s) for the applicable wages and interest and shall be disqualified from bidding on any public contract until the contractor has made full restitution.

If the compliance verification effort requires a more active verification role by the county, staff will assess the options of utilizing outside consultant resources and/or additional county staff resources.

### **3. Subcontractors and Prevailing Wage.**

All contracts for construction, including maintenance, that are \$250,000 or more in value will require the contractor and all subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the contract, at or above the prevailing wage rate as established by DOLI.

### **4. Will the PWO Result in Improvements in Construction Contractor Performance?**

Feedback from jurisdictions already implementing the prevailing wage requirements indicates they have not seen a clearly discernable improvement in contractor performance that can be attributed to the prevailing wage requirement. Over the continuum of implementation, the ordinance may assist with the quality and efficiency of work by some skilled and unskilled labor classifications working on the projects

### **5. Do Other Jurisdictions Apply the Prevailing Wage Requirement to Maintenance Work?**

All local jurisdictions and state agencies contacted stated they do not, currently, apply the prevailing wage requirement to maintenance contracts.

### **6. Impact on Local, Small Businesses.**

Administrative requirements of contracts that include the prevailing wage provisions are more complex to administer for the contracting agency, contractors, and subcontractors. There is concern regarding the more significant impact the PWO may have on SWaM businesses, including contractors and subcontractors that may not have the same administrative capacity as larger construction companies. Consistent with the approach taken by other jurisdictions to address this concern, county staff will address this potential impact through vendor training, information sharing, and outreach. County staff will also work closely with SWaM vendors that may experience compliance challenges in an effort to avoid unintended harm to the vendor community.

**7. What outreach has been done and how can we improve outreach, including reducing barriers to undocumented workers?**

Staff outreach with other jurisdictions reflects they are not aware of any adverse impact of prevailing wage requirements on SWaM vendors. Staff will continue to coordinate with our Chief Equity Officer, the Small Business Commission, and other organizations. In preparation for PWO implementation, staff will provide education and information sharing outreach to contractors and subcontractors. Outreach will place emphasis on SWaM contractors and subcontractors. Education and information sharing for all vendors will include emphasis on PWO required information to be provided to labor employees.

Reducing barriers for undocumented workers by decreasing documentation verification requirements for contractors, exceeds the scope of the PWO and PLA as staff understands the existing direction from the Board of Supervisors.

**8. Which union reps are being included? What is the process for selecting union reps?**

Issues relating to union representation are not part of the PWO. Union representation issues do pertain to the PLA and will be addressed in future communications with the Board of Supervisors relating to negotiating a PLA for a pilot project.

**9. Clarify whether the Virginia Division of Engineering and Buildings (VA DEB) information is the Northam administration's cost estimates.**

The Virginia Prevailing Wage Law applying to state contracts over \$250,000 went into effect on May 1, 2021. Based on discussion with the VA DEB, their budget impact factor associated with prevailing wages was developed in the late 2020 and calendar year 2021 timeframe. VA DEB continues to utilize a budget impact factor of 15% to account for prevailing wages. VA DEB's review of the actual cost impact of prevailing wages on two specific contracts identified cost impacts of 6-8% and 14%.

**10. Provide specific information about Montgomery County estimates and actual costs.**

Montgomery County, MD, has been implementing prevailing wage rates on their construction contracts for approximately seven years. During initial benchmarking discussions, Montgomery County stated their use of an estimated 10% budget impact factor to account for prevailing wages. Based on more recent discussions, Montgomery County staff has provided an update and they currently estimate the potential cost impact of prevailing wages to be an order of magnitude of up to 5%. Montgomery County does not have actual cost data that differentiates the impact of prevailing wages from other broad construction cost factors such as market bidding conditions and competition, inflation in materials and equipment, inflationary impacts related to petroleum costs, and supply chain issues.

**11. Address how including maintenance could affect labor rates.**

Generally, maintenance costs include direct labor with benefits, materials, labor by subcontractors, general and administrative, overhead and profit, with labor the largest component. Because labor is the largest component the impact of prevailing wages on the cost of maintenance services may be a larger percentage than for construction where labor is a smaller component of the total project cost. Published studies in the US and Canada are focused on construction costs and none of the localities' staff contacted had information specific to the impact of prevailing wages on maintenance costs.

**12. Consider inclusion of County employees in the draft ordinance.**

Virginia Code § 2.2-4321.3 only applies to bidders, offerors, contractors and subcontractors awarded public contracts and does not include work performed by County staff. County staff has, however, coordinated with Department of Human Resources (DHR) regarding the issue of pay scales for county labor job classifications being consistent with the DOLI prevailing wage rates and benefits. DHR is reviewing the pay scale for these county job classes and will report out on the need for any pay scale adjustments to assure county staff are compensated consistent with the DOLI prevailing wage rates. The draft county PWO addresses contractors only and not county employees.

**13. Exemptions**

- **Clarifying language about VPPA exemption** – This language was revised in the draft Prevailing Wage Ordinance to clarify that the ordinance does not apply only to County Construction Contracts excluded (as opposed to exempt) from the VPPA.

- **Why is there an exemption for renewals?**

All annual contracts advertised after the PWO effective date of July 1, 2022, and associated renewals, that are \$250,000 or more will include the prevailing wage requirements. Existing annual contracts with annual value over \$250,000, and associated renewal options, will be replaced with PWO annual contracts with the sunset date for all existing annual contracts to be determined.

**14. Do we have additional data to prove that there is an actual issue with wages in the region that we are solving with this policy?**

Staff does not have specific data to ascertain the difference in current “open market” wage rates paid by contractor to employees in labor job classes as compared to the DOLI prevailing wage rate requirements. Discussion with other jurisdictions and professional cost estimators indicates that contractors are likely paying employees in many or most of the skilled labor classifications at or above the DOLI prevailing wage levels. This same research indicates that the PWO will likely result in a notable increase in the wage rates paid by contractors to employees in the unskilled labor classifications.

- **A guiding theme was that “people who work here should be able to afford to live here”. What is the average cost of living in different areas of the county as compared to the wages for more economically vulnerable employees?**

This issue is currently beyond the scope of research and information gathered by the County Work Group on the draft PWO. Response information is not currently available.

**15. How might prevailing wage policies lead to staff increases, and, as a result, potentially result in additional taxes for taxpayers?**

The potential need for an increase in staff resources to administer the county PWO is directly related to the approach to compliance verification. The ordinance will require all contractors to certify their compliance with the DOLI PWO requirements at the time of contract execution and to preserve and provide the county and DOLI access to all project payroll records. Jobsites will be required to be posted with PWO and DOLI information, including information on DOLI required wage rates and fringe benefits. DOLI will contact the county with information on complaints that result in a finding of contractor non-compliance for wage rates, wage classification, and fringe benefits. This approach can largely be handled by current staff resources, although some staff training, and consultant support is likely to be required. If more proactive and aggressive compliance verification is determined to be necessary, additional resources would be required. Additional resources required could be in the form of additional county staff, and/or additional consultant support.

The potential for the PWO to result in additional taxes for taxpayers is extremely difficult to determine for a variety of reasons. Extremely little actual cost data is available from other jurisdictions that have implemented prevailing wages requirements. The budget impact perspective of those jurisdictions varies significantly. The administrative cost of compliance verification can vary from minimal up to 0.50% of the construction cost for more proactive compliance verification. In addition, any cost impact of the PWO will be extremely difficult to segregate from the larger construction contracting market cost factors noted above.

**16. What is the prevailing wage calculation process?**

The prevailing wage rates for each labor classification in the geographic area where the work is to be performed are determined by the DOLI based, primarily, on the prevailing wage rates determined by the U.S. Department of Labor under the federal Davis-Bacon Act. County staff does not anticipate any additional calculations will be necessary.

**17. What is the order of magnitude wage rates for the labor classifications?**

The prevailing wage rates required by DOLI vary by labor classification. The DOLI required prevailing wage rates and fringe benefits, by locality, can be viewed at the following hyperlink: [https://www.doli.virginia.gov/wpcontent/uploads/2021/08/Virginia\\_Prevailing\\_Wage\\_Rates\\_08\\_19\\_2021.xlsx](https://www.doli.virginia.gov/wpcontent/uploads/2021/08/Virginia_Prevailing_Wage_Rates_08_19_2021.xlsx)

**18. How are benefits calculated by DOLI?**

Prevailing wage rate tables provided by DOLI, by locality, include an item to address the fringe benefit requirements for each job class.

**19. How would a consultant be utilized, and would the services be repetitious with county staff?**

The scope of services to be performed by a county consultant has not been determined and is dependent on final decisions on the terms of the PWO and on the compliance verification approach. The scope of consultant services will not be redundant with the role performed by county staff, and the consultant services may include:

- Specialized support in setting up administrative requirements in the construction and maintenance contracts to incorporate the PWO
- Specialized support in setting up the county compliance verification procedures for contracts
- Training to county staff on submittal requirements for PWO certifications and monthly payroll records, and for cursory review of monthly payroll records
- Support to county staff in providing training, outreach and information sharing to SWaM contractors to advocate and support their continued contract participation
- Capacity to support the county in more proactive and aggressive compliance verification processes, if deemed necessary

**20. Is the issue of subcontractor wage theft likely to be resolved through the PWO oversight?**

In Virginia, wage theft is handled separately from the prevailing wage enabling authority. There has, however, been recent legislation improving employee and subcontractor rights and remedies regarding wage theft. In 2020, Virginia amended its Wage Theft law and, among other things, created a private right of action for employees whose wages are withheld. In addition, in 2020, Virginia enacted Virginia Code § 11-4.6, which deems a general contractor “the employer of a subcontractor’s employees at any tier for purposes” of Virginia’s Wage Theft law. Although separately adopted, wage theft and prevailing wages are related in that DOLI is responsible for investigating employee complaints under both laws. *See* Va. Code § 40.1-29.1. The county PWO will require all subject contractors to certify compliance with the requirement to pay workers the required wage rates and fringe benefits. The PWO requirements will also provide for posting of the required wage rates by the contractors at the jobsites. The required compliance with the PWO by contractors, and the sharing of the DOLI wage rate information should provide a very significant step in mitigating the potential for contractor or subcontractor wage theft on county construction and maintenance contracts.

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