



Overview of Legislation Providing New Local Authority 2020 General Assembly

Virginia Code § 2.2-4321.3 (Prevailing Wage Rates)

Virginia Code § 2.2-4321.2 (Project Labor Agreements)

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Prevailing Wage Rates & Project Labor Agreements

- **Prevailing Wage Rates** – use of a prevailing wage requires that wages for construction workers on public works projects be calculated to reflect local wages for similar jobs.
- **Federal Davis-Bacon Act** – a federal law that governs the minimum wage rate to be paid to laborers and mechanics employed on federal public works projects. Requires that prevailing wages be paid on federally funded public works projects, such as construction or repair of public buildings, roads, and bridges. States and localities must follow the Davis-Bacon Act when federal funds are involved in public works projects within the state. The terms “Davis-Bacon” and “prevailing wage” are often used interchangeably.
- **Project Labor Agreement (PLA)** – a pre-bid or pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

Prevailing Wage Rates & Project Labor Agreements

Impacts

- **Wage rates** – hourly pay – Davis-Bacon is based on specific labor classifications. It may or may not include benefits, and it varies by labor classification.
- **Labor costs** – include wages, benefits, equipment, and other factors.
- **Construction** – includes both wage rates, labor costs, material costs, administrative costs, and other indirect costs/factors.
- **Project costs** – include wage rates, labor costs, construction, plus A&E fees, land cost, and other project expenses.

Sources Consulted

- 5 independent cost estimators – no stake in this issue
- 5 large contractors familiar with County work
- Northern Virginia Labor Federation (including representatives from electrical, carpenters and building trade unions)
- Regional localities

2020 General Assembly Legislation on Prevailing Wages

- The 2020 General Assembly (GA) passed HB 833/SB 8, requiring the Commonwealth to pay a prevailing wage on all state public works contracts over \$250,000. The legislation also provides localities authority to require, by ordinance, payment of prevailing wages on public works contracts over \$250,000 (Code § 2.2-4321.3).
- Prevailing Wage Rate (as defined in HB 833/SB 8) – the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located, as determined by the Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act.
- Prevailing wage policies are commonly used in Maryland and the District, while in Virginia they are primarily used on federally funded projects.

2020 General Assembly Legislation on Prevailing Wages

Potential Impacts

- Anticipate an increase in project costs.
- Potential increase in wage rates of 0% to 15% (similar to Davis-Bacon rates), though impacts to overall project costs are difficult to determine as the amount of labor varies by project (labor costs fluctuate over time, required trades vary by project and are impacted by type of project, size of project, number of bidders, etc.).
- Additional administrative impact on contractors, subcontractors, and the County, as implementation will require County monitoring.
- The state's Director of the Division of Engineering & Buildings is recommending a line item of 15% of the construction cost be added to state cost estimates in anticipation of implementation.
- Montgomery County's experience – has used prevailing wage for 12+ years, originally estimated an initial 10% cost increase, currently uses prevailing wage on all projects over \$500,000.

2020 General Assembly Legislation on Prevailing Wages

Potential Impacts Continued

- Potential to result in a higher skilled workforce and quality improvement.
- Most current, large DPWES construction contractors are familiar with prevailing wage rate requirements due to work on federal contracts.
- Northern Virginia Labor Federation perspective – prevailing wage levels the playing field among contractors in terms of wage rates and meets many objectives, unionized contractors do not generally bid on Virginia construction projects at present.
- Prevailing wage laws can ensure government dollars contribute to an improvement in local pay standards, benefiting lower wage workers who are often women or people of color.
- Prevailing wage laws can also adversely affect small, women-owned, and minority-owned businesses by limiting their ability to compete with larger businesses that can implement the higher pay standards.

Prevailing Wage Rates Virginia - Code § 2.2-4321.3

Recommendations for Implementation

- Initial implementation of prevailing wage rates on public works projects with a construction cost greater than \$10 million (currently about 25% of DPWES construction contracts). The County currently has 13 projects in construction over \$10 million. The estimated impact at 10% = \$42 million. Annual average impact = \$13 million.
- Creation of staff work group to craft the draft ordinance required to implement prevailing wage authority. Items to evaluate will include impacts on administration, wages, contract delivery, and project costs.
- The draft ordinance may include verification procedures, what types of projects prevailing wage provisions may apply to, and other relevant guidance.
- Discussion with the Board of a draft ordinance at Legislative Committee in the fall.

2020 General Assembly Legislation on Project Labor Agreements

- The 2020 GA passed HB 358/SB 182, which authorize localities to require bidders for project labor agreements on public works projects (Code § 2.2-4321.2).
- Project Labor Agreement (PLA) – means a pre-hire, (*or pre bid*), collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.
- PLAs generally require contractors to recognize a labor organization (union) as the exclusive bargaining representative of all employees who work on the project, they operate under union work rules, and follow union procedures for hiring, firing, and disciplining employees.
- On February 6, 2009, President Barack Obama issued Executive Order 13502: Use of Project Labor Agreements for Federal Construction Projects, which encourages federal agencies to consider PLAs on large-scale construction projects where the cost exceeds \$25 million on a project-by-project basis (prior to that time, PLAs were banned for use by federal agencies under Executive Order 13202 by President George W. Bush, February 17, 2001).

Project Labor Agreements

Potential Impacts

- Establishes labor cost standards pre-bid, which tends to result in higher wages.
- May avoid labor disputes during construction, preventing costly project shutdowns (potentially improving timely completion), particularly on very large contracts.
- Allows both unionized and non-union companies to bid.
- May be unique to a particular project and may include labor management committees to help resolve scheduling, quality control, health and safety issues during construction, as well as provisions for training and/or apprenticeship programs.
- May create impacts to the existing bidding pool as they are not commonly used in this region (not used by most local governments, though Montgomery County is currently soliciting a project with a PLA option on the \$34.5 million Clarksburg Fire Station, which required two years of preparation).
- Administrative impact on contractors, subcontractors, and owners.
- Project costs are difficult to determine, as they vary by project and PLA, though there could be a 20% increase depending on the project.

Project Labor Agreements

Recommendations

- Implement prevailing wage rates first.
- Conduct additional outreach/analysis of local governments/utilities and their experiences with PLAs.
- Staff work group can gather additional information about the use of PLAs, including potential agreement models, conditions, and timetables, among others, and provide an update to the Board at Legislative Committee in the fall.

Possible Additional Steps on PLAs

- Ordinance not required.
- Consider PLAs for projects over \$40 million –
 - 3 projects currently in construction: 15% impact = \$39 million
 - 2 projects completed in 2018-2020: 15% impact = \$13 million
- Consider a pilot project over \$40 million, and depending on the outcome of the pilot, consider project-by-project for other large projects over \$40 million.

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Questions?