AGENDA ITEM 4
September 9, 2008
Action

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney

SUBJECT: **Action**: Bill 21-08, Contracts and Procurement – Prevailing Wages - Construction

The T & E Committee recommended (3-0) approval of the Bill with amendments.

Bill 21-08, Contracts and Procurement – Prevailing Wages - Construction, sponsored by Councilmembers Ervin, Trachtenberg, Leventhal, Elrich, Floreen, and Berliner, was introduced on June 10. A public hearing was held on July 8. The Council Transportation, Infrastructure, Energy & Environment (T & E) Committee reviewed the Bill at a worksession on July 28, 2008.

Bill 21-08 would require contractors and subcontractors to pay prevailing wages to workers on certain construction projects awarded by the County or financed with certain County appropriations, grants, or tax credits. The Bill would specify that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County financed construction projects and generally regulate wages paid on these construction projects.

Background

Bill 5-02, Procurement – Service Contracts – Wage Requirements, was enacted by the Council on June 11, 2002 and signed into law by the County Executive on June 20, 2002. This law is codified at §11B-33A of the County Code. The Living Wage Law requires certain businesses which provide services (but not goods) to the County to pay employees working on a County contract a minimum living wage that was originally set at $10.50 per hour effective July 1, 2003. The law requires the Chief Administrative Officer to adjust this rate each July 1 by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area. The current living wage is $12.40 per hour. The Living Wage Law does not apply to construction contracts.

The State of Maryland, Baltimore City, and Prince George's County each require construction contractors performing work for the government to comply with a prevailing wage

law. Maryland first adopted a prevailing wage law in 1945 (see Laws of Md., 1945, ch. 999), but it applied only to road construction projects in Washington, Allegany, and Garrett Counties. Maryland enacted a comprehensive prevailing wage law in 1969 (Laws of Md., 1969, ch. 558) which was substantially amended in 1970 (Laws of Md., 1970, ch. 293). These prevailing wage laws are patterned after the Federal Davis-Bacon Act, which was first enacted in 1931 to cover federally funded construction contracts. The purpose of the Maryland Prevailing Wage Law, as described by the Court of Special Appeals, is to avoid labor unrest by stabilizing wage rates for public works projects and to prevent wage rates in the private sector from being undercut by large public works projects. See, *Barnes v. Commissioner of Labor & Industry,* 45 Md. App. 396, *cert. denied* 288 Md. 731 (1980), *aff'd,* 290 Md. 9 (1981).

Bill 21-08 is patterned after these prevailing wage laws. The Bill would require minimum labor rates for different construction specialties that are set annually according to a survey of the prevalent wage rates for that job classification in both union and non-union projects in the County. The Maryland Division of Labor and Industry annually determines a prevailing wage rate for each classification of construction worker for state funded projects in each of the 23 Counties and Baltimore City. Bill 21-08 would apply the prevailing wage rates established by the State for work in the County.

The Chief Administrative Officer would be responsible for enforcement. We anticipate that this function would be delegated to the Department of General Services (DGS). The prevailing wage rates would apply to both contractors and subcontractors. A contract or subcontract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further County contracts for failure to comply. Payments to contractors may be withheld pending a final determination that a contractor or subcontractor has violated the law. Other sanctions may be imposed as provided in regulations or by contract. Contractors would be required to bind subcontractors to these prevailing wage provisions.

Public Hearing

The Council held a public hearing on July 8, 2008. David Dise, Director of DGS, testified on behalf of the Executive in favor of Bill 21-08. See ©15. Mr. Dise suggested that the Bill be amended to require weekly or bi-weekly reporting of payroll records instead of quarterly to facilitate review by his Department. Mr. Dise also testified that the Bill would require a new program manager position and possibly additional staff to perform contractor and jobsite visits. Thomas E. Perez, Secretary of the State Department of Labor, Licensing and Regulation, also testified in support for the Bill. See ©17. Secretary Perez suggested two amendments to aid in enforcement. He suggested a provision to allow the County to withhold payment to a contractor if violations are found and a provision expressly prohibiting the misclassification of workers into an incorrect job category with a lower prevailing wage rate.

The Bill was also supported by testimony from Progressive Maryland, the United Brotherhood of Carpenters, Grunley Construction Co., and an individual construction worker,

Lewis Ensminger. Progressive Maryland, the United Brotherhood of Carpenters, and Grunley Construction Co. all argued that the Bill would not result in higher contract prices for the County. See, ©19-23. Jerry Shapiro, President of Shapiro & Duncan, Inc., a mechanical contracting company based in Rockville, opposed the Bill. See ©24. Mr. Shapiro testified that the Bill would add 28% to his company's cost of labor which would lead to a higher contract price for the County.

Issues

1. What is the fiscal impact of the Bill?

The fiscal impact statement from Joseph Beach, Director of Management and Budget, anticipates the addition of one Program Manager I position at a cost of $69,430 in FY09. Mr. Beach also pointed out that each random audit is estimated to cost approximately $36,000. See ©44. Mr. Dise pointed out in his testimony that additional staff may be required to conduct contractor and jobsite visits to enforce the law. Secretary Perez also testified that the 4 full-time prevailing wage investigators employed by the State performed more than 675 site investigations and conducted more than 10,500 employee interviews in FY08. In addition, enforcement actions would also require assistance from the County Attorney's Office. We do not have enough information to estimate all of the personnel costs to administer the law.

The law may also increase the bid prices on County construction contracts if the contractors are required to pay higher wages than they do now. There is much debate on this subject. Mr. Dise pointed out that the County does not collect information on the wages paid by its contractors and subcontractors and therefore cannot compare current wage rates with the prevailing wage rates set by the State. Mr. Shapiro, whose mechanical contracting company currently works on school construction contracts in the County that are not covered by a prevailing wage law, testified that his contract price would have to rise due to higher labor costs. Mr. Shapiro pointed out that the State sets one prevailing wage rate for each type of laborer, apprentice, journeyman, and mechanic, regardless of experience.[1] Mr. Shapiro argued that his company would have to pay a first year mechanic the same wage rate as a 20 year veteran under the prevailing wage law; absent a prevailing wage law his company would pay the first year mechanic a lower wage due to lower productivity.

Progressive Maryland, the United Brotherhood of Carpenters, and Grunley Construction Co. all testified that prevailing wage laws do not increase construction contract costs. Adam Pagnucco of the United Brotherhood of Carpenters submitted a recent article from the Economic Policy Institute surveying some of the economic studies attempting to answer this question. See ©25. Nooshin Mahalia, the author of this article, concluded that a prevailing wage law does not increase contract costs. Ms. Mahalia argued that average labor costs make up only 25% of construction costs, prevailing wage laws increase worker productivity through better-skilled workers, and contractors may absorb higher wage costs. Ms. Mahalia also argues that prevailing

[1] Council staff confirmed this with Richard Sebeck, Program Manager, Wage Program Investigation Unit, DLLR.

wage laws can benefit the government by enhancing tax revenue, industry income, and non-wage benefits for workers and lowering future maintenance costs and occupational injuries.

Council staff also spoke with John P. Barron, President of Foulger-Pratt Contracting concerning this issue. Foulger-Pratt is a large general contractor that bids on Federal, State and County construction contracts. Mr. Barron told us that their bid price is higher for contracts requiring prevailing wages because they are not permitted to pay inexperienced workers less than the prevailing wage even though most of their workers receive more than the prevailing wage. Mr. Barron also told us that the smaller subcontractors they use often pay less than the prevailing wage rates and would raise bid prices accordingly if prevailing wages are required. Finally, Mr. Barron told us that they include an additional administrative cost in their bid on prevailing wage jobs to keep track of the wage rates, provide the state with certified payroll records, and respond to complaints.

Council staff also contacted the Frederick County Public Schools and the Carroll County Public Schools because both of these agencies have advertised school construction projects seeking alternative bids with and without prevailing wage rates. They have done this on projects where the anticipated State funding is close to the 50% level required for the State Prevailing Wage Law. Frederick County received alternative low bids for Linganore High School in June 2007 with the prevailing wage bid at $57,216,654 and the non-prevailing wage bid at $53,667,688. The $3,548,966 difference represents a 6.61% premium on the bid price for requiring prevailing wages. See ©46. Carroll County Public Schools received alternative bids for 18 recent school construction contracts with the prevailing wage low bid ranging from 1.6% to 21.8% higher than the non-prevailing wage low bid. See ©52.

Although Council staff found conflicting arguments and evidence on this issue, the staff believes that requiring the State prevailing wage rates is likely to increase the bid prices on County construction contracts.

2. How often should the contractor be required to submit payroll reports?

The Bill requires a contractor to submit payroll reports to the CAO quarterly on January 15, April 15, July 15, and October 15. Mr. Dise testified that his office found that other jurisdictions with a prevailing wage law require weekly reporting. Mr. Dise suggested either weekly or bi-weekly reporting in order to eliminate the bulk delivery of records and allow for review of monthly pay requests. Mr. Dise provided further comment on this issue in a memorandum to Council staff dated July 24, 2008. See ©51. Mr. Dise is now suggesting bi-weekly reporting. This suggestion is reasonable. **Committee recommendation (3-0):** amend the Bill to require bi-weekly reporting.

3. Should the Bill prohibit the misclassification of workers into an incorrect job category with a lower prevailing wage rate?

Secretary Perez testified that there are two types of misclassification issues in a prevailing wage law. First, a contractor or subcontractor may misclassify a worker as an independent contractor rather than an employee in order to pay a wage rate lower than the prevailing wage. The Bill clearly prohibits this. See lines 86-90. The second type of issue is the misclassification of workers into an incorrect job category with a lower prevailing wage rate. Secretary Perez suggested an amendment to clarify that this second type of misclassification would be prohibited. An example of this problem would be classifying a worker as a laborer who is installing electric panels. Both types of misclassification issues should be prohibited. **Committee recommendation (3-0):** amend the Bill to prohibit the misclassification of workers into an incorrect job category. See lines 91-100.

4. Should the Bill permit the County to withhold payment to a contractor if violations are found?

Secretary Perez testified that the State's ability to withhold payment to a contractor for violations has been one of their most effective enforcement tools. The Bill incorporates by reference (lines 165-167) the sanctions for County contractors who fail to comply with the County's nondiscrimination requirements. Code §11-B-33(b) describes these sanctions as follows:

> In the event of a noncompliance by a contractor or subcontractor with the nondiscrimination requirements, the contract or subcontract may be canceled, terminated, or suspended in whole or in part and the contractor or subcontractor may be declared ineligible for further County contracts. Other sanctions may be imposed and remedies invoked as provided in regulations or by contract. Contractors are required to bind their subcontractors contractually to the provisions of this Section.

Suspension of a contract also suspends performance. Withholding payments for violations may be a more effective tool for enforcement. Mr. Dise, in his July 24 memorandum, similarly recommended adding this enforcement tool. **Committee recommendation (3-0):** amend the Bill to add this enforcement tool. See lines 152-161 and 179-187.

5. Which contracts should be covered by the Bill?

The Bill covers certain construction contracts awarded by the County or where County funds are used to finance all or part of the contract. County funds can be directly appropriated by the County, provided as a tax credit for construction under Code §52-71, or provided as grant funding for construction under Code §20-75. The fiscal impact statement indicates that there are no construction contracts funded by tax credits under §52-71 or grants under §20-75. The July 24 memorandum from Mr. Dise confirms that the New Jobs Tax Credit codified at §52-71 is a

property tax credit that does not fund construction contracts. The Economic Development Fund (EDF) codified at §20-75 includes both grants and loans intended to serve as an incentive for businesses in the County rather than a main source of funding. Mr. Dise stated that the County has allocated EDF funds to support 2 construction contracts in recent years and that the Executive supports covering such contracts in the Bill. See ©50.

The remaining category of construction contracts funded by direct County appropriation not awarded by the County would be school construction contracts awarded by the Board of Education. However, it is the opinion of Council staff that the County is preempted by State law from subjecting these contracts to a County prevailing wage law.[2] In *McCarthy v. Board of Education of Anne Arundel County,* 280 Md. 634 (1977), the Court of Appeals held that Anne Arundel County was without power to place additional duties on the Board of Education concerning school transportation. The Court held that the General Assembly has forcibly expressed its intent to occupy the field of public education and thereby preempted the County from legislating in this area. Md. Code, Education Art., §5-301 governs public school construction by a county board of education and expressly authorizes the Board of Public Works to regulate public school construction contracting by regulation.

Mr. Dise also suggested that the monetary threshold for contracts under the Bill be raised from $100,000 to $500,000. In FY08, the County only awarded 1 construction contract of less than $500,000. The State Prevailing Wage Law contains a $500,000 threshold. Mr. Dise argues that raising the threshold would make it consistent with State law and help small contractors successfully bid on these smaller contracts.

Based upon the information from the Executive Branch and State preemption of the field of education, the Bill would only apply to construction contracts awarded by the County or partially supported by EDF funds. In addition, raising the monetary threshold to $500,000 would be consistent with State law and may help smaller contractors. **Committee recommendation (3-0):** amend the Bill to delete the applicability of the New Jobs Tax Credit, increase the threshold to $500,000, and add language to limit the applicability of the Bill to EDF funds that are designated for construction. See lines 191-213.

6. Should County awarded construction contracts be subject to the State Prevailing Wage Law?

The State Prevailing Wage Law is codified at Md. Code, State Finance & Procurement Art., §§17-201 *et seq.* The State Law covers construction contracts awarded by a political subdivision of the State for which 50% or more of the money used for construction is State money. However, §17-201(i)(1)(iv) provides that contracts awarded by a political subdivision

[2] School construction contracts that are funded by 50% or more State funds are subject to the State Prevailing Wage Law. However, school construction contracts awarded by the County Board of Education generally contain less than 50% State funding.

that do not receive 50% State funding are subject to the State Prevailing Wage Law if the governing body of the political subdivision provides for coverage by ordinance or resolution.

Council staff spoke with Assistant Attorney General, Jenny Baker, who advises the Department of Labor, Licensing, and Regulation (DLLR). Ms. Baker confirmed that DLLR would enforce the State Prevailing Wage Law for County awarded construction contracts if the County places those contracts under the State Law pursuant to this provision. Ms. Baker also told us that the County would be the first political subdivision to do this.

A Bill amendment to subject County awarded construction contracts to the State Prevailing Wage Law would lessen the fiscal impact of the Bill on the County. DLLR would review payroll records, receive complaints, and conduct the necessary contractor and job site visits. These are tasks that DLLR is already performing for State contracts. This alternative would require coordination between DGS and DLLR, but it is a unique opportunity for significant personnel cost savings and still establishes the same prevailing wage rates for County construction contracts. The Executive does not support the State law alternative because the County would lose control over administration and enforcement of the program.[3] See Mr. Dise's Memorandum of July 24 at ©48-49. **Committee recommendation (3-0):** retain enforcement and control of the prevailing wage program; no amendment to use the State law alternative.

7. What should be the effective date of the Bill?

The Bill, as introduced, would be effective for contracts that take effect on or after July 1, 2009. The purpose of this delayed effective date is to give DGS sufficient time to produce regulations, general conditions, and information for bidders reflecting the new prevailing wage requirements for new contracts before contract solicitations are issued. Mr. Dise also supports this delayed effective date. See ©49-50. **Committee recommendation (3-0):** keep the delayed effective date of July 1, 2009.

8. Other amendments suggested by the Executive.

The July 24 Memorandum from Mr. Dise suggested additional amendments.

a) *Add both apprentice and laborer to the definition of employee on line 25.*

The Committee agreed (3-0) with this suggestion and added "journeyman" also.

b) *Add specific authority to collect liquidated damages for each day an employee is paid less than the prevailing wage rate.*

[3] Mr. Dise suggests that the State may decide to charge the County for enforcement in the future, but the law permitting the State law alternative does not provide for such a charge since the State would be enforcing a State law.

Mr. Dise agreed at the worksession that this authority is already included in lines 168-170. The liquidated damages provision would be inserted into the contract general conditions. **The Committee agreed (3-0)** to leave the existing language.

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Bill No. 21-08
Concerning: Contracts and Procurement – Prevailing Wages - Construction
Revised: 7-28-08 Draft No. 12
Introduced: June 10, 2008
Expires: December 10, 2009
Enacted: _____
Executive: _____
Effective: July 1, 2009
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Ervin, Trachtenberg, Leventhal, Elrich, Floreen, and Berliner

AN ACT to:

(1) require contractors and subcontractors to pay prevailing wages to workers on certain construction projects;
(2) specify that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County projects; and
(3) generally regulate wages paid on certain construction projects.

By adding
Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-33C

By amending
[[Chapter 52, Taxation
Section 52-71]]
Chapter 20, Finance
Section 20-75

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 11B-33C is added as follows:**

2 **11B-33C. Prevailing Wage Requirements – Construction Contracts.**

3 (a) *Definitions.* In this Section, the following words have the meanings

4 indicated:

5 *Apprentice* means an individual who:

6 (1) is at least 16 years old;

7 (2) has signed an agreement with an employer or employer's agent,

8 an association of employers, an organization of employees, or a

9 joint committee, that includes a statement of:

10 (A) the trade, craft, or occupation that the individual is

11 learning; and

12 (B) the beginning and ending dates of the apprenticeship; and

13 (3) is registered in a program of a Council or Bureau of

14 Apprenticeship and Training of the United States Department of

15 Labor.

16 *Construction* means work defined in Section 11B-1(c).

17 *County financed construction contract* means a contract for construction

18 work that is awarded by the County or where County funds are used to

19 finance all or part of the cost of the contract.

20 *County funds* means any:

21 (1) funds directly appropriated by the County;

22 (2) [[tax credit provided for construction under Section 52-71; or

23 (3)]] grant funding for construction under Section 20-75 that

24 cumulatively exceeds [[$100,000]] $500,000.

25 *Employee* means [[an]] a laborer, apprentice, [[or worker]]

26 journeyman, or mechanic employed by a contractor or subcontractor on

27 a County financed construction contract.

28 *Prevailing wage* means the hourly wage rate set by the State

29 Commissioner of Labor and Industry for State-funded construction

30 contracts in the County.

31 [[*Worker* means laborer or mechanic.]]

32 (b) *Exclusions.* This Section does not apply to a County financed

33 construction contract:

34 (1) of less than [[$100,000]] $500,000;

35 (2) that is subject to a Federal or State prevailing wage law;

36 (3) awarded without competition under Section 11B-14;

37 (4) with a public entity;

38 (5) to the extent that the contractor is expressly precluded from

39 complying with this Section by the terms of any Federal or State

40 law, contract, or grant;

41 (6) entered into as a bridge contract under Section 11B-42;

42 (7) entered into as a cooperative procurement under Section 11B-40;

43 or

44 (8) results from an emergency procurement under Section 11B-16.

45 (c) *Payment of prevailing wage.* Any contractor and subcontractor that

46 performs direct and measurable construction work on a County financed

47 construction contract must pay each employee at a rate equal to or more

48 than the prevailing wage currently in effect for the type of work

49 performed.

50 (d) *Prevailing wage.*

51 (1) *Basic rate.* The prevailing wage rate is the prevailing wage rate

52 established annually by the Commissioner of Labor and Industry

53 for State financed construction work performed in the County by

54 an employee who performs direct and measurable work.

55 (2) *Overtime rate.* A contractor or subcontractor must pay an

56 employee at a rate equal to or more than the prevailing wage rate

57 for overtime for the type of work performed for each hour that

58 the employee performs direct and measurable work:

59 (A) more than 10 hours in any single calendar day;

60 (B) more than 40 hours in a workweek; or

61 (C) on a Sunday or a legal holiday.

62 (3) *Deductions.* A contractor or subcontractor may only make fair
63 and reasonable deductions that are:

64 (A) required by law;

65 (B) authorized in a written agreement between an employee
66 and an employer signed at the beginning of employment
67 that:

68 (i) concerns food, sleeping quarters, or similar items;
69 and

70 (ii) is submitted by the employer to the Chief
71 Administrative Officer or a designee; or

72 (C) required or allowed by a collective bargaining agreement
73 between a bona fide labor organization and a contractor or
74 subcontractor.

75 (4) *Apprentices.* Each apprentice must be paid at least the rate that
76 the State's Apprenticeship and Training Council sets for an
77 apprentice in the trade involved, based on a percentage of the
78 prevailing wage rate in that trade.

79 (d) *Contract requirements.* Each contract covered by this Section must:

80 (1) require the contractor and subcontractor to comply with this
81 Section; and
82 (2) specify that an aggrieved employee, as a third-party beneficiary,
83 may by civil action recover the difference between the prevailing
84 wage for the type of work performed and the amount actually
85 received, with interest and a reasonable attorney's fee.
86 (e) *Misclassification of employees.*
87 (1) A contractor or subcontractor must not split or subdivide a
88 contract, pay an employee through a third party, or treat an
89 employee as a subcontractor or independent contractor to avoid
90 any requirement of this Section.
91 (2) A laborer may perform any work that is not ordinarily performed
92 by a mechanic or mechanic's apprentice, but must be paid the
93 prevailing wage rate for the work performed.
94 (3) A laborer receiving the prevailing wage rate for laborers must not
95 perform work ordinarily performed by a mechanic or mechanic's
96 helper.
97 (4) If a laborer performs work ordinarily performed by any mechanic
98 or mechanic's apprentice, the laborer must be paid for the entire

99 time of performance of that work at the prevailing wage rate for a
100 mechanic.

101 (f) *Helper and trainee restrictions.* A contractor or subcontractor must not
102 employ any individual classified as a helper or trainee to perform direct
103 and measurable work on a contract covered by this Section.

104 (g) *Posting requirements.* Each contractor and subcontractor must post a
105 clearly legible statement of each prevailing wage rate in a prominent
106 and easily accessible place at the work site during the entire time work
107 is being performed in English and any other language that is primarily
108 spoken by the employees at the work site.

109 (h) *Payroll records.*

110 (1) Each contractor and subcontractor must submit a complete copy
111 of its payroll records for construction work performed on a
112 contract covered by this Section to the Chief Administrative
113 Officer or a designee [[quarterly on January 15, April 15, July 15,
114 and October 15]] within 14 days after the end of each payroll
115 period.

116 (2) The payroll records must contain a statement signed by the
117 contractor or subcontractor certifying that:

118 (A) the payroll records are correct;

119 (B) the wage rates paid are not less than those required by this
120 Section; and
121 (C) the rate of pay and classification for each employee
122 accurately reflects the work the employee performed.
123 (3) Each payroll record must include:
124 (A) the name, address, and telephone number of the contractor
125 or subcontractor;
126 (B) the name and location of the job; and
127 (C) each employee's:
128 (i) name;
129 (ii) current address, unless previously reported;
130 (iii) specific work classification;
131 (iv) daily straight time and overtime hours;
132 (v) total straight time and overtime hours for the
133 payroll period;
134 (vi) rate of pay;
135 (vii) fringe benefits by type and amount; and
136 (viii) gross wages.
137 (4) Each contractor or subcontractor must:

138 (A) keep payroll records covering construction work
139 performed on a contract covered by this Section for not
140 less than 5 years after the work is completed; and
141 (B) subject to reasonable notice, permit the Chief
142 Administrative Officer or a designee to inspect the payroll
143 records at any reasonable time and as often as necessary.
144 (5) The Chief Administrative Officer or a designee must make
145 payroll records obtained from contractors or subcontractors under
146 this Section available for public inspection during regular
147 business hours for 5 years after the Chief Administrative Officer
148 receives the records.
149 (i) *Enforcement.*
150 (1) The Chief Administrative Officer or a designee may perform
151 random or regular audits and investigate any complaint of a
152 violation of this Section. If the Director determines that a
153 provision of this Section has been violated, the Director must
154 issue a written decision, including appropriate sanctions, and may
155 withhold from payment due the contractor, pending a final
156 decision, an amount sufficient to:

157 (i) pay each employee of the contractor or
158 subcontractor the full amount of wages due under
159 this Section; and
160 (ii) satisfy a liability of a contractor for liquidated
161 damages as provide in this Section.
162 (2) A contractor or subcontractor must not discharge or otherwise
163 retaliate against an employee for asserting any right under this
164 Section or for filing a complaint of a violation.
165 (3) The sanctions of Section 11-B-33(b) which apply to
166 noncompliance with nondiscrimination requirements apply with
167 equal force and scope to noncompliance with this Section.
168 (4) Each contract subject to this Section may specify the payment of
169 liquidated damages to the County by the contractor for any
170 noncompliance with this Section.
171 (5) Each contractor is jointly and severally liable for noncompliance
172 with this Section by a subcontractor.
173 (6) If a contractor or subcontractor is late in submitting copies of any
174 payroll record required to be submitted under this Section, the
175 County may deem invoices unacceptable until the contractor or
176 subcontractor provides the required records, and may postpone

177 processing payments due under the contract or under an
178 agreement to finance the contract.
179 (7) A contractor may appeal a written decision of the Director that
180 the contractor violated a provision of this Section to the Chief
181 Administrative Officer within 10 working days after receiving a
182 copy of the decision. The Chief Administrative Officer must
183 designate a hearing officer to conduct a hearing pursuant to
184 Chapter 2A of the Code upon receipt of a timely appeal. If the
185 contractor fails to appeal a written decision within 10 working
186 days after receipt, the decision of the Director becomes final and
187 binding.
188 (j) *Report.* The Chief Administrative Officer must report annually to the
189 Council and Executive on the operation of and compliance with this
190 Section.
191 **Sec. 2. [[Section 52-71 is amended as follows:**
192 **52-71. Eligibility for Tax Credit.]]**
193 * * *
194 [[(e) To qualify for a tax credit under this Article, a business entity must meet
195 the prevailing wage requirements of Section 11B-33C for each
196 employee (including an employee of a contractor or subcontractor)

197 performing direct and measurable work at the property for which the
198 credit is received during each tax year that it receives the credit under a
199 County financed construction contract. In addition to the recapture
200 provisions of Section 52-73, the enforcement provisions of Section
201 11B-33C(i) apply to noncompliance with this requirement by a recipient
202 of a credit under this Article.]]

203 [[Sec. 3.]] **Section 20-75 is amended as follows:**

204 **20-75. Use of Fund**

205 * * *

206 (e) Each recipient of assistance from the fund, or of any other economic
207 development financial assistance provided by the County, that
208 cumulatively exceeds [[$100,000]] $500,000 and is designated for
209 construction, must meet the prevailing wage requirements of Section
210 11B-33C for each employee (including an employee of a contractor or
211 subcontractor) performing direct and measurable work on the
212 construction [[at the property]] for which the assistance is received
213 [[under a County financed construction contract]]. In addition to any
214 repayment requirement under this Section, the enforcement provisions
215 of Section 11B-33C(i) apply to noncompliance with this requirement by
216 a recipient of economic development assistance.

217 **Sec. 3. Effective Date.** This Act applies to any County financed construction
218 contract that takes effect on or after July 1, 2009, but does not apply to any renewal
219 or extension of a contract that took effect before July 1, 2009.

220 *Approved:*

221

Michael J. Knapp, President, County Council Date

222 *Approved:*

223

Isiah Leggett, County Executive Date

224 *This is a correct copy of Council action.*

225

Linda M. Lauer, Clerk of the Council Date

226

LEGISLATIVE REQUEST REPORT

Bill 21-08
Contracts and Procurement – Prevailing Wages - Construction

DESCRIPTION: This Bill would require contractors and subcontractors to pay prevailing wages to workers on certain construction projects awarded by the County or financed with certain County appropriations, grants, or tax credits. The Bill would specify that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County financed construction projects and generally regulate wages paid on these construction projects.

PROBLEM: Most State awarded or financed construction projects located in the County are subject to prevailing wage rates set by the State Commissioner of Labor and Industry. However, County awarded or funded construction contracts are not. This Bill would ensure that construction workers on County funded projects are paid, at a minimum, the same rates as workers on State financed contracts.

GOALS AND OBJECTIVES: The goal of this Bill is to ensure that construction workers on County funded projects are paid, at a minimum, the same rates as workers on State financed contracts.

COORDINATION: The Office of Procurement has reviewed this Bill.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: State of Maryland, Prince George's County, and Baltimore City all have prevailing wage laws for construction contracts.

SOURCE OF INFORMATION: Robert H. Drummer, Legislative Attorney (240-777-7895)

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: A contractor who violates this law is subject to termination of the contract and future debarment from County contracts.

#1
21-08

Bill 21-08,
Prevailing Wage Requirements-Construction

Testimony of David Dise
Director, Department of General Services
Public Hearing
July 8, 2008

Good afternoon. I am David Dise, Director of the Department of General Services (DGS). I am here today to testify on behalf of the County Executive in support of Bill 21-08. This bill would help ensure that men and women working under Montgomery County construction contracts are paid a fair and equitable wage. The bill would also provide some continuity in review of construction bids as common wage rates across various work categories would allow DGS to focus on comparing effort and time between prospective contractors. The absence of a common minimum wage schedule inhibits our bid analyses since wages paid can vary widely.

While the bill incorporates many of the elements of the County's living wage law, the administration and enforcement provisions are different. The bill requires that payroll records be reported quarterly and maintained for a period of five years. In surveying other jurisdictions around the country, such as Cincinnati, Denver, Baltimore and the State of Maryland, we found that weekly reporting is the norm. Weekly or bi-weekly reporting results in a smoother work flow by: (1) eliminating bulk delivery of records and allowing for evenly distributed workload; (2) allowing review of monthly pay requests and, therefore, faster revelation of noncompliance, which enables the County to enforce immediate compliance by withholding current invoices which may not be possible quarterly. We encourage the Council to explore the costs and benefits of amending the bill to require weekly or bi-weekly reporting.

For a prevailing wage law to be effective it must be thoroughly enforced. Jurisdictions with effective prevailing wage programs provide staff to perform contractor and jobsite visits and to compare information gathered from those visits with the payroll reports supplied by the employer to determine compliance. The overall administrative burden on the County of administering and enforcing a prevailing wage law could be substantial if done properly. While the Fiscal Impact Statement prepared for this bill indicated that a program manager would be required to implement it, additional staff may be necessary as we gain experience in administering this program.

Because we do not have and do not collect information on the wages paid by Montgomery County's construction vendors it is not possible to quantify with certainty the fiscal impact of this legislation since there is not a baseline to measure the prevailing wage rates against. Some studies in other jurisdictions have indicated that there has been

no fiscal impact with the implementation of prevailing wage requirements. Information provided by an association representing non-union contractors, indicated that we could experience cost increases in our construction projects of between 5% and 10% due to implementation of Maryland's prevailing wage rates, which are higher than those paid by non-union contractors to varying degree based on the work/trade category.

I would be happy to answer any questions. My staff and I look forward to participating in the T&E Committee worksession on this bill that is scheduled for July 14.

#2
21-08

Testimony of Secretary Thomas E. Perez
Department of Labor, Licensing and Regulation
July 8, 2008
Montgomery County Council
Bill 21-08 – Contracts and Procurement - Prevailing Wage - Construction

---

Good afternoon President Knapp, Vice President Andrews and Council members. Thank you for allowing me to testify before you today in favor of legislation to require that construction contractors doing work on behalf of Montgomery County pay workers a Prevailing Wage.

As with the living wage laws here in Montgomery County and at the statewide level, the Prevailing Wage is a way of ensuring that workers who perform work on behalf of taxpayers are paid a decent wage that allows them to care for themselves and their families. I applaud your consideration of this legislation. Maryland has a statewide Prevailing Wage law that has, in its current version, been on the books since 1969. If the bill before you is adopted, Montgomery County would join Baltimore City and Prince George's County as the only jurisdictions in the state with local Prevailing Wage statutes.

The statewide Prevailing Wage law is enforced through investigations that are triggered both by routine site visits, during which investigators compare submitted payroll records with actual practice, and by complaints. In Fiscal Year 2008, DLLR's four prevailing wage investigators performed more than 675 site investigations, conducted more than 10,500 employee interviews and recovered nearly $500,000 in wages owed to workers who had been underpaid under the Prevailing Wage law.

From our experience enforcing the statewide law, I would offer the following suggestions as you consider this legislation.

First, the State law includes a provision that allows us to withhold payment to a contractor if violations are found. It has been our experience that this ability to withhold dollars is among our most effective tools in enforcing the law, and I would encourage you to consider adopting similar language.

Second, the most common violation our inspectors find is what might be called "little M" misclassification. This is when contractors, in their required payroll reports to the state, classify workers in a different category than the one in which they are actually performing work. For example, they will call a worker a "laborer" instead of a "mechanic," which refers to workers practicing skilled trades such as masons, plumbers or electricians. This type of misclassification allows contractors to pay the worker the lower wage rate designated for less skilled classifications.

The bill before you has a "big M" Misclassification provision that refers to employees misclassified as independent contractors. This is a critical issue and one that we are taking steps to crack down on at the State level. In addition to this provision, I would also

encourage you to consider adopting language similar to that in the State statute that spells out the different labor classifications and specifically prohibits "little M" misclassification.

These suggestions would ease enforcement of the Prevailing Wage law and would send a clear message that the county is serious about ensuring workers earn a decent wage. Thank you for your time and your consideration of this important measure.

#3

21-08

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Testimony of Progressive Maryland Before the Montgomery County Council In Favor of Bill No. 21-08 (Prevailing Wage)

July 8, 2008

Thank you, Mr. President, for the opportunity to testify in favor of Bill No. 21-08, the Prevailing Wage bill.

My name is Sean Dobson; I'm the Executive Director of Progressive Maryland. Progressive Maryland defends the interests of working families in our state.

Our organizers knock on thousands of doors every year across Montgomery County. We are hearing more and more at the door that economic times are bad and getting worse, even here in one of the richest jurisdictions in the nation. Especially hard hit are blue-collar families.

The most direct way to help families struggling to make ends meet is to ensure that a full-day's work is paid with a decent wage. But for Montgomery County residents employed in the construction industry, good-paid work is increasingly hard to find in the county they call home. A major cause of this is that too many public construction projects are bid out to contractors who *underpay* workers. Construction is an extremely competitive industry. The vast majority of contracts, especially in the public sector, are let through competitive bids. Contractors pay similar amounts for materials, fuel, overhead and subcontractors. Unfortunately, an easy way to compete is by cutting labor costs.

When contractors slash labor costs, they do so by hiring low-wage, low-skill workers who too often build shoddy facilities with cost overruns and missed deadlines. That hurts the county government, your public infrastructure, and your budgeting. Moreover, these low-wage workers almost never can afford to live in Montgomery County, so they are almost always imported from out-of-county, out-of-state, even out-of-country. In other words, under the current system, potentially good-paying jobs that could and should go to Montgomery County residents all too often are poverty-wage jobs going to non-residents.

The proven solution to this problem is the prevailing wage bill before you today. This bill would ensure that construction workers on County-funded projects are paid, at a minimum, the same decent, family-sustaining wages as workers on State-financed jobs.

A prevailing wage law would help create the following benefits:

- Reduce shoddy construction of public building projects;
- Reduce cost overruns of public projects;
- Reduce missed deadlines;
- By reducing the incentive for contractors to slash labor costs, a prevailing wage law would make it more likely that construction jobs here in the county will go to county residents, who in turn will spend much of those wages here in a slumping local economy that badly needs the boost.
- More good-paying jobs in the county mean less poverty and its attendant social ills, such as crime and low-performing schools.

Prevailing wage is no newfangled scheme. It has been law at the federal level for decades. And it is law in hundreds of jurisdictions around the country, including in Prince George's County, Baltimore City, and Allegany County. It has been exhaustively studied by economists, with the overwhelming bulk of evidence showing that:

- it does **not** drive up construction costs (thanks to higher quality work performed by better skilled employees); and
- the reduction it causes in poverty saves government and the public school system money by curtailing the ill effects of poverty.

My colleagues have submitted to you a small portion of this voluminous economic research showing the benefits of prevailing wage.

Finally, prevailing wage adheres to the same principle which the County Council overwhelmingly endorsed in 2002 when you passed the Living Wage bill: namely, that government should not use taxpayer dollars to create poverty-wage jobs. That goal is especially vital now that the economy is fast sinking into recession. Progressive Maryland urges passage of this bill. If enacted, this proven reform – at no cost to county government – would help hard-working families in Montgomery County struggling to make ends meet at a time of economic downturn.

Thank you.

#4
21-08

Testimony of Adam Pagnucco
Assistant to the General President, United Brotherhood of Carpenters
Bill No. 21-08 (Prevailing Wage)
July 8, 2008

Good afternoon, Council Members. My name is Adam Pagnucco and I believe this is the first time I am testifying before you in the capacity of my day job, which is Assistant to the General President of the United Brotherhood of Carpenters. Aren't you delighted to hear me talk about something other than our need for a new Metro entrance at Georgia and Forest Glen?

We are here to discuss Bill Number 21-08, which proposes a prevailing wage law for Montgomery County. The bill would require that the prevailing wage for construction occupations in the county, as measured by the Maryland Department of Labor, Licensing and Regulation, be paid on projects financed by the county government. Why is this necessary? Construction is an extremely competitive industry. The vast majority of contracts, especially those in the public sector, are let through hard-dollar competitive bids. Contractors pay very similar amounts for materials, for fuel, for overhead and for subcontractors. The remaining way to compete is often by cutting labor costs, lowballing to underbid their way to jobs. This does not mean that the owner gets the best deal in the end if cost overruns occur and change orders crop up, but left unchecked, this can threaten labor standards and skill development in the construction industry.

What a prevailing wage law does is take wages out of competition on public jobs. Contractors still compete for work, but they must pay at least the rates that prevail in the community. Now they must compete on the basis of worker training, retention, skills and managerial efficiency. The owner gets well-built, cost-effective facilities, the workers get security for their labor standards and, most importantly, society is rewarded when government spending supports the maintenance of middle-class jobs in construction.

One key question for the county is whether prevailing wage laws increase construction costs. The vast majority of all research on the subject indicates that they do not. In a 1999 study examining construction projects in Maryland, Cortland State economist Mark Prus concluded, "there is no measurable or statistically significant increase in construction costs associated with prevailing wage regulations." A review of dozens of studies completed last month by the Economic Policy Institute states, "An overwhelming preponderance of the literature shows that prevailing wage regulations have no effect one way or the other on the cost to government of contracted public works projects." We have made this research and much more available for your review.

The federal government has had a prevailing wage law, the Davis-Bacon Act, since 1931. Baltimore City has a prevailing wage law. So does Prince George's County. The State of Maryland has one. The District of Columbia is covered by the federal law. Even Allegany County has a prevailing wage law! Ours is one of the few major jurisdictions on the eastern side of the Potomac that lacks prevailing wage. I hope you will see fit to change that by passing Bill Number 21-08. Thank you.

#7
21-08

July 8, 2008
Montgomery County Council
Hearing on Bill 21-08,
Contracts and Procurement – Prevailing Wages – Construction

Testimony of
Kenneth Grunley, Grunley Construction

President Knapp, Council members, good afternoon. I am Kenneth Grunley, President and owner of Grunley Construction whose headquarters are at 15020 Shady Grove Road, right here in Rockville. We have been in business since 1955, and have grown to be a 250 million dollar company employing some 300 men and women.

Grunley Construction has been headquartered in Montgomery County since 1961 and I have lived in the county most of my life.

Prevailing wage requirements are better for everybody. They're better for construction companies and buyers of construction work such as the government of Montgomery County. And if you pass the proposed legislation, it will most especially prove to be beneficial to the residents and for people employed in Montgomery County.

Setting the floor for wages that must be paid on publicly funded construction jobs helps construction companies such as mine do long range planning. Because we know in advance what wage levels will be, we can design models for our bids well in advance. In the construction industry, risk must equal reward. With the wage levels set, we have reduced our risk and can reduce our contingencies in our estimate and pass the savings onto the government.

Prevailing wage requirements create a level field where companies who meet high standards of worker pay and benefits can compete fairly with those that might not. It requires companies to compete for bids on the basis of productivity and quality of work – not on the basis of how little they can get away with paying their employees.

Grunley construction workers are paid wages that allow them and their families to live secure lives and to plan secure futures. In return, they know we demand 110 percent from them – and they deliver. They deliver construction projects that are done correctly the first time, that are manned properly to help meet deadlines, and I believe require less maintenance in the long run.

My personal belief is that jobs done under prevailing wages add virtually nothing to the costs of the job to government and provides a better final product.

But prevailing wage jobs add a lot to the standard of living of construction workers, many of whom are, after all, your constituents.

In addition, I believe that projects with higher wage workers tend to have less safety Issues.

I have always believed in the laws of supply and demand, however approximately 12 years ago I was walking one of our projects without a prevailing wage clause and I observed a laborer working for the masonry subcontractor who was eating lunch. His lunch consisted of a white rice and hot sauce sandwich on white bread! I believe that in the United States of America we must do better than that.

I absolutely believe that anybody who works 40 hours a week should not be economically insecure. I believe that if you work 40 hours a week, you deserve to be able to feed, house, educate and provide the best health care to your family.

With prevailing wage requirements in place, my company – and many others – will be able to give more residents of Montgomery County the opportunity to make a living that allows them to live in Montgomery County and work in Montgomery County without having to add to traffic and our dependency of foreign oil and travel outside the county to work on a project that allows them to be able to live here.

Thank you.

#5
21-08

Tuesday, July 08, 2008

Re: Montgomery County Council Public Hearing Bill 21-08
Prevailing Wage Bill

Shapiro & Duncan
MECHANICAL CONTRACTORS
"Our People Perform"

Good afternoon, my name is Jerry Shapiro and I am President of Shapiro & Duncan, Inc., a Mechanical Contracting company based in Rockville for 32 years. I personally have been a Montgomery County resident for 48 years.

Shapiro & Duncan has 350 employees including plumbers, pipefitters and HVAC technicians. We are currently working on Walter Johnson High School, Key Middle School, Roberto Clemente Middle School, Argyle Middle School, and the Performing Arts building for Montgomery College, Takoma Park.

The prevailing wage (with fringe benefit payments) for plumbers is approximately $42/hr which is about $87,000 per year, plus 9 paid holidays, plus vacation (two weeks after 2 years service, 3 weeks after 10 years service). With the overtime required to complete projects, the plumbers wage will be over $100,000 per year.

This Prevailing Wage Bill would add 28% to our cost of labor and would result in a total increase of 16% to our total contract price which the county must pay.

Shapiro & Duncan is not underpaying plumbers. We have many plumbers making more than the prevailing wage. Aside from increased job costs, the issue with the prevailing wage is when an apprentice graduates the program at the age of 21 (and perhaps with only 4 years of experience), we are mandated to pay him the same $100,000 per year as our plumbers with 20 or more years of experience. (No Merit pay for experience). If this council wants to really help the County, why don't you have a bill paying 21 year old teachers $100,000. per year?

The argument that the Prevailing Wage Bill will not cost the county more because the tradesmen will be better trained and more experienced, and therefore more productive, is not correct. If this were the case, companies with all high wage employees would be able to compete and they would not need this bill. With all the BRAC work in this region and the lack of skilled tradesmen, 21 year olds will be working on county projects with or without this bill.

Another argument is the high prevailing wage would keep out the "bad unqualified contractor". To bid a Montgomery County School project, a contractor must complete a yearly Prequalifying Technical Review and have approval before bidding on any work. This already keeps out unqualified contractors.

I ask this Council to vote NO to the Prevailing Wage Bill.

Thank you,

Jerry Shapiro, President
Shapiro & Duncan, Inc.

Shapiro & Duncan, Inc., 14620 Rothgeb Drive, Rockville, MD 20850 • www.shapiroandduncan.com • *Tele:* 301.315.6260 • Fax: 301.315.8983

#7

EPI BRIEFING PAPER
ECONOMIC POLICY INSTITUTE · MAY 28, 2008 · BRIEFING PAPER #215

PREVAILING WAGES AND GOVERNMENT CONTRACTING COSTS

A review of the research

BY NOOSHIN MAHALIA

Executive summary

For over a hundred years, many state and local governments have required that companies that want to contract for public works must pay their workers a wage that reflects wages commonly received in the area. The federal government adopted its own prevailing wage requirement with the Davis-Bacon Act of 1931. At the heart of these laws is the conviction that government, as a major buyer in the construction sector, should not act to drive down wages. Indeed, the civic-minded reformers who initially pushed for prevailing wage laws believed that the government ought to use its buying power to enhance the welfare of workers and their families.

Critics of prevailing wage laws argue that they inflate government contract costs. But a growing body of economic studies finds that prevailing wage regulations do not increase government contracting costs. Some of these studies use a cross-sectional approach, which compares costs of contracts subject to a prevailing wage with costs of contracts that are not during a common time period, and others use a time-series approach, which examine whether contract costs have changed with the adoption or repeal of a prevailing wage requirement. These studies also show that prevailing wage laws provide social benefits from higher wages

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and better workplace safety, increase government revenues, and elevate worker skills in the construction industry.

The issue, however, remains contentious. The current research counters the findings of a set of (mostly earlier) studies that relied on hypothetical models. The model works like this: the authors calculate a wage increase attributable to the prevailing wage regulation and then, assuming that the entire wage increase is passed through to the government in higher contract costs, calculate the higher contract costs. The wage increase calculation in these studies is typically flawed, but the most notable problem is the *unquestioned* assumption that higher wages lead to higher contract costs. Obviously, a study that presumes, without examination, that higher wages lead to higher contract costs tells us little about whether that is in fact the case. There are many reasons why higher wages do not necessarily lead to higher contract costs, and the findings of current research suggest that other factors erase much or all of the hypothetical additional costs the earlier models assume.

Although a few recent studies have adopted this "wage differential approach," most modern literature has favored econometric approaches to compare situations where prevailing wages are applied and where they are not. These studies, more sophisticated in analytical terms, have found no statistical relationship between prevailing wage laws and contract costs, with only two exceptions. The first exception was a national study by Fraundorf et al. (1984) of construction costs in rural areas. The authors found sizable cost differences between government contracts that were subject to federal prevailing wage rules and private contracts that were not. As the first of the econometric studies, Fraundorf continues to be among the most commonly cited in the literature. But subsequent studies discovered that the authors left out a key variable—differences between public and private building design specifications—that would have controlled for the difference in public versus private construction costs. Once these differences are accounted for, later studies do not replicate the Fraundorf conclusion and find no impact of prevailing wages on contract costs.

The second exception in the modern econometric literature is a study of low-income housing construction in California. The study found that affordable housing construction projects subject to prevailing wage laws were substantially more expensive for the government than projects that were not. Because this study is relatively new, scholars have not yet explored the reasons why the findings contradict the rest of the econometric literature. If labor-intensiveness, skill, and material-saving technologies are sufficiently different in the construction of subsidized housing than in the construction of public buildings or highways, then it is possible that prevailing wage regulations would affect this sector differently. However, the study's findings seem implausible, since the cost estimates of the preferred model exceed possible savings in labor costs. Because scholars have not yet replicated the study, it is unclear if the findings relate to idiosyncrasies in the data and methodology, or to the peculiarities of subsidized housing construction.

With these exceptions, the modern econometric literature finds no cost impact on public construction associated with the implementation of prevailing wage regulations. The literature suggests a number of possible reasons for the absence of a link between prevailing wage laws and overall contract costs.

- Prevailing wage regulations do not, in all cases, increase wages. Public contractors may pay at prevailing wage rates without the regulation.
- Average labor costs, including benefits and payroll taxes, are roughly one-quarter of construction costs. Thus, even if a prevailing wage regulation raised wages by 10%, the impact on contract costs would be less than 2.5%. Thus, even if there is an increase in contract costs it is likely to be small—to the point of being undetectable.
- Improved productivity can offset higher wages. Better-skilled workers attracted by the higher wage might complete the job in less time, or firms looking to reduce their higher labor costs might utilize labor-saving technologies.
- Higher wage costs might be offset through "factor substitution," i.e., the substitution of more expensive labor with, say, less-expensive materials. As a practical matter, this point assumes that workers are roughly of the same skill level. But it shows that worker wages

are only one of the avenues contractors can use to win project bids.

- Contractors might absorb the higher wage costs and pay for them out of their profits rather than pass them on to the government.

Some recent studies have expanded the analysis of prevailing wage regulations to determine whether they have indirect costs or benefits for the economy and society. These studies have found that prevailing wage laws can enhance state tax revenues, industry income, and non-wage benefits for workers; lower future maintenance and repair costs; reduce occupational injuries and fatalities; and increase the pool of skilled construction workers—to the benefit of both the public and the construction industry.

At this point in the evolution of the literature on the effect of prevailing wage regulations on government contract costs, the weight of the evidence is strongly on the side that there is no adverse impact. Almost all of the studies that have found otherwise use hypothetical models that fail to empirically address the question at hand. Moreover, the studies that have incorporated the full benefits of higher wages in public construction suggest that there are, in fact, substantial, calculable, positive benefits of prevailing wage laws.

Introduction

Prevailing wage laws require that contractors on public works projects pay their workers at least the locally prevailing wages and fringe benefits paid on similar projects in the area. Kansas was the first state to adopt a prevailing wage law, in 1891, as part of a broad-based effort by the Republican legislature to confront the social costs of 10-12 hour workdays, child labor, and downward wage pressure (Phillips 1998). New York followed suit in 1894, Oklahoma in 1909, Idaho in 1911, Massachusetts in 1914, and New Jersey in 1923. The first and most significant of the federal laws establishing the prevailing wage rule was the 1931 Davis-Bacon Act,[1] which requires payment of wages "prevailing" in a local area to workers on federally financed construction projects worth at least $2,000.[2] Davis-Bacon gained bipartisan support during the Great Depression, when unscrupulous contractors won bids based on low pay for workers (Gujarati 1967) and then delivered shoddy workmanship. It is named for its two Republican co-sponsors and was signed by President Herbert Hoover.

Under Davis-Bacon, the prevailing rate is the rate paid to at least 50% of workers in a construction occupation for a local area. If there is no single rate for at least 50% of workers in that occupation, then the prevailing wage is the average rate paid in the area for that occupation. States, counties, and cities have adopted their own prevailing wage legislation, and policies vary widely. Prevailing wages in states and localities might be set as the local union wage rate, the average wage for construction occupations in the area, or a combination of the two.

Thirty-two states and the District of Columbia currently have prevailing wage laws. Nine states had laws but repealed them, starting with Florida (1979) and Alabama (1980) (Kelsay et al. 2004; Philips et al. 1995).[3] Repeals have relied on arguments that prevailing wage rates increase costs on public construction contracts (Philips 1998), and assertions that repeal will save 15-25% on construction costs are commonly echoed in the news media. These claims, however, do not stand up to serious examination of the relationship between prevailing wage laws and government contract costs.

A growing body of economic analysis finds that prevailing wage regulations do not inflate the costs of government construction contracts. A simple premise underlies the hypothesis that prevailing wages raise costs: the laws result in higher wage costs for contractors, and contractors pass these costs on to the government. Although this seems like a plausible outcome, there are many reasons why the costs to the government might be the same regardless of the wage differences. For example:

- Contractors might pay the wages required under prevailing wage laws even if the law does not require it.
- Labor costs are not the dominant costs in government construction contracts. Even including benefits and payroll taxes, labor costs are roughly 20-30% of construction contracts, according to the Census of Construction (Phillips 1998).[4] Thus, for example, if labor costs are 25% of total costs and prevailing wage rules

raise wages by 10%, the impact on contract costs would be no more than 2.5%. Thus, even if there is an increase in contract costs, it is likely to be small—*to the point of being undetectable in some instances* and/or by some studies.

- Higher wages might be offset by a rise in productivity. Prevailing wages can attract better-skilled, more productive workers, or firms may rely on higher managerial productivity or invest in labor-saving technologies to offset higher labor costs (Philips 1996).
- Higher wage costs might also be offset through "factor substitution," i.e., substituting more expensive labor with, say, cheaper materials.[5]
- Contractors not subject to prevailing wage laws might retain the money they save in wages as higher profits rather than passing the savings on to the government. Alternatively, contractors paying prevailing wages might absorb the higher wage costs, paying for them out of their profits rather than passing them on.[6]

As with any economic analysis examining the impact of a policy on an economic outcome, the challenge is to isolate the impact of the policy from all of the other factors that might influence the outcome. Take, for example, a study that compares the costs of two sets of construction contracts, one set subject to prevailing wage rules and one set not. The difference in the costs of these contracts is influenced by many factors other than the prevailing wage. If, for example, more of the contracts subject to the prevailing wage happen to be for taller buildings, or are completed during a building boom when construction costs are higher, or use more expensive building materials, those contracts might be more expensive for reasons unrelated to prevailing wage regulations. The studies described below take a variety of approaches to this challenge—ranging from ignoring it to using sophisticated econometric techniques to control for the differences. As scholars have engaged in this work over the years they have learned from their predecessors and refined their techniques for identifying the factors that influence contract costs and improving ways to account for them.

The approaches researchers have taken to study this question fall into three main categories:

- **The wage differential approach.** Compare wage levels in contracts subject to prevailing wage laws with wage levels in contracts not subject to the laws, and assume that all additional wage costs are passed through to the government by contractors.[7]
- **Cross-sectional analysis.** Compare contracts subject to the prevailing wage and contracts not subject to the prevailing wage in the same time period. Typically these studies compare the costs of government contracts in states and other jurisdictions with prevailing wage laws with contracts in places without prevailing wage laws. Some studies, however, compare public and private contracts. In addition, in some jurisdictions, some public contracts are subject to prevailing wage laws and some aren't. For example, a local school construction contract might be subject to prevailing wage requirements if the state funds over half the cost but not subject to the requirement if the state pays less than half. Some studies have used these situations to compare the costs of public contracts within the same jurisdiction.
- **Time series analysis.** Compare government contract costs in time periods with a prevailing wage requirement and costs in time periods without one.

The wage differential approach to evaluating the impact of prevailing wage laws

The wage differential approach consists essentially of two steps. First, researchers examine the relationship between prevailing wage regulation and wage rates. Are wages higher on contracts subject to prevailing wage rules? Second, the higher wages that are calculated are then presumed to be passed through to the government in higher contract costs.

In 1979 the General Accounting Office (today the Government Accountability Office, or GAO) used the wage differential approach in studying a sample of 30 federal projects subject to Davis-Bacon, estimated to value about $25.9 million (GAO 1979). The GAO concluded that,

due to incorrect procedures used by the Department of Labor, wages paid were actually higher than prevailing wage levels in 12 of the projects. Wages on the other 18 projects were lower than the prevailing rate. For the 12 projects set at higher rates, wages were about 36.8% above the prevailing wage rate.[8] The higher prevailing wage rate was presumed to have been passed through in higher contract costs, driving up total construction costs by an average of 3.4% and raising federal construction costs by $228 million to $513 million annually.

The Mackinac Center for Public Policy (Vedder 1999) employed a wage differential approach to calculate costs of prevailing wages on Michigan government construction. The author used a sample of wages paid in the Detroit area suburbs to calculate a 40% difference between market and prevailing rates, a premium that would, hypothetically, drive up construction costs in Michigan by 10%.[9] Applying this 10% to state construction costs and non-construction capital outlays resulted in an estimate of $275 million in additional costs due to state prevailing wages.

Keller and Hartman (2001) attributed a 17% wage difference between public and private construction contracts to the state prevailing wage law. The authors compared a mean hourly rate of $17 for school construction projects that paid prevailing wages and $14.13 for private sector projects.[10] The authors calculated a 2.25% increase in construction costs by applying the wage and benefit differences to the sample of total project costs, and then used simple accounting to conclude that prevailing wages cost the state an additional $66.8 million over a six-year period.

A study by the Beacon Hill Institute found that the Department of Labor's Wage and Hour Division (WHD) incorrectly set hourly wages too high for nine major construction occupations. The authors compared average wages paid under the Davis-Bacon Act with wages for those occupations reported in the Bureau of Labor Statistics Occupational Employment Survey. The WHD set hourly wages an average of $4.43, or 22%, above BLS average wages.[11] If these wage differences were applied to federal construction, government costs would increase by 9.9%. The authors estimate these differences to raise government construction costs by $8.6 billion per year (Glassman et al. 2008).[12]

The Center for Government Research (CGR) estimated that prevailing wage laws increase total construction contract costs by 36% in New York State's metropolitan regions.[13] CGR arrived at this estimate by comparing prevailing wage rates with the market rates of construction occupations. Prevailing wage data collected from the Department of Labor were compared with median wages of construction occupations in seven metropolitan areas in New York and outside the state.[14] The authors then compared labor costs to total construction using a prototype project, or an *imaginary model of* average construction costs, and applied the markup rates to total construction costs.[15] They concluded that prevailing wages raise total costs of a typical construction project in the New York metropolitan areas by about 36% (CGR 2008).

Wage differential studies are prone to two primary areas of criticism. The first is the way in which some of them calculate the additional wages resulting from prevailing wage regulations. The GAO and Beacon Hill studies' results are based on contracts in which, the authors assert, prevailing wages were miscalculated. But miscalculation of wages under prevailing wage laws is an implementation problem that does not reflect the merits of the laws themselves. Further, with regard to the GAO study, the Department of Labor and other critics argued in congressional testimony that the GAO's methodology was fraught with poor scholarship. Why did the agency exclude the 18 projects for which prevailing wages were set too low? The inclusion of these projects might have offered an entirely different picture of the net impact of the Davis-Bacon law. GAO also acknowledged that its sample of projects was too small for its calculations to have statistical validity. Mackinac (Vedder 1999) assumed that a wage differential in the Detroit suburbs would be the same in the rest of the state, but did not test this assumption.

The second and more fundamental criticism of these studies is how they allocate the higher wages they estimate to contract costs. These studies assume, rather than *empirically examine*, the relationship between higher wages and construction costs. In contrast to the other methodological approaches discussed in this review, the wage differential studies do not rely on natural experiments to compare costs of contracts subject to and not subject to

prevailing wage regulations. As a result, they are unable to control for other factors that influence construction costs. As outlined above, there are several reasons why higher wages might not be passed through and, thus, assuming that they are is not a safe assumption. The flawed assumptions of the wage differential approach, and the inability to control for other cost influences, limit its ability to determine with much validity whether prevailing wage laws raise government contracting costs.

Cross-sectional analysis

The existence of prevailing wage laws in some jurisdictions but not others and the fact that in some jurisdictions some public contracts are subject to the regulations but others are not create an opportunity for a natural experiment to study the impact of prevailing wage legislation on government construction costs. The cross-sectional approach used in the studies described here use econometric techniques to compare costs of construction when it is subject to prevailing wage rules with the costs when it is not. This method reduces the need to control for time effects and seasonality concerns within the construction industry, although it is necessary to control for regional differences.

In the first econometric cross-sectional study of prevailing wage laws and government construction costs, Fraundorf et al. (1984) collected a sample of construction data from rural counties across the country.[16] They employed a multivariate regression model to compare costs of public construction contracts subject to federal prevailing wage regulation with costs of private construction contracts that were not. The model included controls for a range of factors: regional variation, project size, and building type. The results showed that public construction was an average of 26.1% more expensive than private construction. The authors acknowledged that this estimate seemed high. It was unlikely that prevailing wage laws would generate such a dramatic increase in contract costs, since labor costs at the time averaged 30% of total construction costs. However, they were unable to explain the discrepancy.

Prus (1996) replicated the Fraundorf model but was better able to isolate the effects of prevailing wages from other influences on construction costs. Rather than compare federal projects with private construction, he compared costs of public and private projects in states where prevailing wage laws existed and places where they did not. He found that, even in non-prevailing wage states, government construction was 32% more expensive than private. This finding suggested that the earlier Fraundorf study had measured price differences between public and private construction attributable to causes other than prevailing wages. Controlling for construction cost differences between states, Prus did not find a statistically significant difference in construction costs in states with prevailing wage laws and those without.

In a study of construction costs in the Intermountain and Southwest regions, Phillips (1996) compared construction cost data in five states with prevailing wage laws with four states without prevailing wage laws.[17] He found that costs were lower in the states with prevailing wage laws than in the states in the sample without them. The author attributed this finding to higher productivity among workers in states with prevailing wage laws.

Phillips (1998) conducted a study of school construction costs in the Great Plains states. New school construction data by school type showed that costs were not statistically different in states with prevailing wage laws than in states without them.

Prus (1999) examined both public and private school construction across the mid-Atlantic states with and without prevailing wage laws and across counties in Maryland with and without the laws. The study found that public schools cost more than private, *irrespective* of prevailing wage laws. In addition to this distinction, Prus identified region, the distinction between new and renovated buildings, building type, building material, and building size as important predictors of construction cost differences, but he found no evidence of an impact of prevailing wage laws.

Azari-Rad et al. (2002; 2003) used a national sample of school construction data to test whether public schools built under prevailing wages cost more than public schools that were not. The studies found that building type, project size, seasonal start times, and whether the school was a private or public building had a significant impact on contract costs. Azari-Rad et al. (2002) found that high schools cost 4.6% more than elementary and

middle schools. Azari-Rad et al. (2003) noted that public contract costs were 15.5% higher than private contracts in its sample of new school construction between 1991 and 1999. But controlling for construction costs among states, this study found that construction costs were not statistically different in states with or without prevailing wage regulations.

After Fraundorf, only one cross-sectional study has found prevailing wage regulations to be associated with higher government contract costs. A study by Dunn et al. (2005) concluded that prevailing wage rates in California raised public costs of low-income residential projects anywhere between 9% and 37%.[18] In California, some public housing construction is exempt from the prevailing wage statute, so the researchers were able to compare construction costs between projects that were subject to prevailing wage regulation and projects that were not. The researchers used two different models. One model reported prevailing wages leading to an increase in contract costs of 9-11%. The results of the researchers' preferred model, which used voter data, salary data, and union information as instrumental variables across the California region, found that prevailing wage laws raised construction contract costs by as much as 19-37%.

Phillips (2006) found that states with prevailing wage laws had higher productivity, with about 13% to 15% more value-added per worker. The 31 states with prevailing wage laws had higher rates of construction training programs, and trainees were more likely to complete their programs compared to states without prevailing wage laws. This study suggested that productivity was a key reason why other studies could not find higher contract costs from prevailing wage laws.

The weight of the evidence from the cross-sectional studies is that prevailing wage regulations do not impact construction costs. All but two studies found that prevailing wages do not raise costs of government construction and, of those two, the findings from Fraundorf were not replicated when the model was improved, most notably by controlling for differences between public and private construction (other than prevailing wages). Researchers have speculated that the factors causing higher public costs include different building design specifications (Fraundorf 1984; Prus 1996); Azari-Rad et al. (2002) suggested higher public costs might arise from spikes in demand created by government decisions to develop multiple projects. These spikes, referred to as "cost storms," were an example of government's power to affect market conditions in the construction industry through large capital investments.

Dunn et al. (2005) is the only study other than Fraundorf to employ modern econometric techniques that show cost effects of prevailing wage laws. Why this one study contradicts the general econometric literature is not yet known.[19] It is possible that low-income subsidized housing construction might require less skill, lower costs of materials, and a larger share of labor in total cost compared to overall government construction. Labor-intensiveness, skill, and material-saving technologies involved in affordable housing construction might be sufficiently different from those used in other public building and road construction that the operation of prevailing wage regulations works differently in this sector. If this is the case, then prevailing wage regulations might operate differently in the affordable housing sector, which is a small share of government construction relative to construction on highways, schools, and infrastructure. However, the biggest weakness of the study is that a 19-37% difference in prevailing wage and non-prevailing wage contracts is implausible. Assuming that labor comprises a 25% share of total construction costs, a savings of that magnitude would seem highly unlikely. The Dunn study's unique findings might also be due to idiosyncrasies in the data used or methodology employed that may emerge as scholars attempt to replicate this result.

If these results are replicated, then the Dunn study may raise questions about prevailing wages in subsidized housing construction. However, it does not represent the rest of the current literature, which has shown that prevailing wage laws have no effect on contract costs.

Time series analysis

Another approach is to compare construction costs before and after the passage or repeal of a prevailing wage law. These studies generally account for time trends in the construction industry.

Thieblot (1986) used the opportunity of President Nixon's suspension of the Davis-Bacon Act in March

1971 to conduct such a before-and-after comparison. He examined federal construction projects that were re-bid during the 34-day suspension and compared the new bids to those originally submitted. Thieblot initially estimated the re-bids to have resulted in savings on federal construction costs of less than 1% but, once controls for inflation were factored in, the differences in the re-bids suggested a savings of 4.74%. Thieblot acknowledged the possibility of biased results because full disclosures of the original bids were made publicly available before the re-bid process; thus, bidders may just as likely have been responding to what they saw in their competitors' bids as to the rescission of the prevailing wage rule.[20] It was unclear if Thieblot's analysis measured the contractors' ability to use information to their advantage, or if the experiment captured the effects of the suspension of the Davis-Bacon Act.[21] In effect, this study could not overcome the problem of controlling for the knowledge bidders had about their competitors' prior bids on the outcome of contract costs.

In a study of new school construction in British Columbia, researchers looked at six years of contract costs before and after the adoption of a prevailing wage law in 1992. Bilginsoy and Philips (2000) found that, without introducing any controls, prevailing wages correlated with 16% higher construction costs. Once the authors controlled for the business cycle, type of building, the number and size of the contractors, regional differences, and time trends, they found no statistically significant increase in construction costs. This indicated that the cost differences were explained by numerous factors other than the prevailing wage legislation.

Phillips (2001a) used a sample of 391 new school construction projects for a pooled cross-sectional time series approach to examine cost effects of prevailing wages in Kentucky, Michigan, and Ohio.[22] He noted that urban schools cost 10.5% more than rural schools in the three-state region and that breaking ground in the fall added 10% to the total cost compared to projects started in the spring; such a (perhaps unexpected) finding highlights the importance of proper controls in these analyses. The study found no statistically significant increase in construction costs associated with prevailing wage laws.

In summary, with the exception of the 1986 Thieblot study, which faced a critical methodological challenge, time-series studies generally find that prevailing wage laws do not increase construction costs.

Do prevailing wage laws have societal costs or benefits?

Recent case studies of prevailing wage legislation have analyzed not just costs to government, but also the wider costs or benefits to society. Some of these studies have shown that prevailing wage laws protect a state's economy, and that claims of government savings from the repeal of the legislation would pale in comparison to losses in revenues and income. These studies demonstrate implicit threats to the overall state economy, since income losses could lead to reduced consumer spending. Other studies show that prevailing wage laws discourage unscrupulous contractors who compete by hiring low-skilled labor, cheating on payroll taxes, or risking safety concerns at construction sites.

Belman and Voos (1995) concluded that the losses in income and state revenues from repeal of Wisconsin's prevailing wage law would far outweigh potential cost savings from lower wages. The study found that the proposed repeal resulted in $123 million of income loss in construction and a net fiscal loss to the government of $6.8 million after accounting for decreased contract costs and declines in tax revenue. Kelsay et al. (2004) calculated potential economic losses of between $318 million and $384 million with the repeal of the prevailing wage law in Missouri. This estimate included $294 million to $356 million in lost income, $5.7 million to $6.9 million in lost sales taxes, and $17 million to $21 million in lost income taxes. The authors calculated these figures based on low- to high-range annual earnings losses of $1,010 and $1,218 per construction worker.

Prevailing wage laws have been shown to have generally positive effects on the construction industry by expanding the pool of construction workers trained through apprenticeship programs. Studies have shown that apprenticeship training programs are fewer in states without prevailing wage laws. In Utah, state apprenticeships plummeted 40% following the 1981 repeal of prevailing wage laws (Philips et al. 1995). In Kansas, apprenticeships dropped 38% after the 1987 repeal. As part of the Kansas study, Philips (1998) conducted a cross-state examination

of construction apprenticeships in prevailing wage and non-prevailing wage states. Apprentices were in decline nationwide, but the number of apprenticeships in states with prevailing wages declined 27%, compared to 53% in non-prevailing wage states.

Researchers have also examined occupational injuries and prevailing wage legislation. One study showed that construction-related fatality rates were 25% lower among workers in states with prevailing wage laws. Fatality rates were even lower in states where prevailing wages were strongly enforced (Philips 2006). Azari-Rad et al. (2005) found that, between 1976 and 1999, states with prevailing wage laws experienced lower injury rates.[23] This was consistent with the hypothesis that injury rates are lower in states regulated by prevailing wage laws because the regulation encourages training and retention of experienced workers.

Prevailing wage laws have also been shown to protect the bottom line of a state's construction budget. In the decade following the 1981 repeal of prevailing wages in Utah, cost overruns tripled, and Phillips et al. (1995) attributed the trend in part to a rise in change orders reflecting a shift to a low-skilled workforce and lower productivity. Data limitations have hindered further study of the question of cost overruns; most studies of contract costs use data from F.W. Dodge on the accepted bid prices,[24] but these data do not capture change orders associated with cost-overruns (Azari-Rad et al. 2002).

The absence of prevailing-wage-certified payrolls also appears to attract bidders who are tempted to evade their obligations to make payments for worker's compensation, Social Security, and unemployment insurance (Philips 2006).

Conclusion

An overwhelming preponderance of the literature shows that prevailing wage regulations have no effect one way or the other on the cost to government of contracted public works projects. And as studies of the question become more and more sophisticated, this finding becomes stronger, and is reinforced with evidence that prevailing wage laws also help to reduce occupational injuries and fatalities, increase the pool of skilled construction workers, and actually enhance state tax revenues.

Endnotes

1. The two other major federal laws are the Walsh-Healey Government Contracts Act of 1936, which covered employers that manufacture or supply materials to the federal government, and the Service Contract Act of 1965, which affects suppliers of personal and business services.
2. Congress extended the definition of "prevailing wage" in 1964 to include fringe benefits.
3. The others are Arizona, Colorado, Idaho, Kansas, Louisiana, New Hampshire, and Utah. Oklahoma's law was invalidated by the courts in 1995.
4. Note that the total cost of construction contracts in this calculation excludes land acquisition, architectural design, or management fees.
5. Factor substitution assumes a homogenous labor pool, or similar skill sets among workers.
6. Belman and Voos cite an unpublished 1990 study for the Arizona District Council of Carpenters. The authors of the report found that, of the $271,000 to $350,000 saved in wages and benefits, only $100,000 was passed on to the contracting agency.
7. Armand Thieblot discussed the wage differential approach in the book, *Prevailing Wage Legislation: The Davis-Bacon Act, State "Little Davis-Bacon Acts," the Walsh Healey Act and the Service Contract Act*, University of Pennsylvania, Wharton School, 1986, p. 94.
8. Wage levels on the 12 projects ranged from 5% to 123% higher than the prevailing rate.
9. Labor costs were assumed to be about 25% of total construction.
10. Benefits under prevailing wages paid $6.28 compared to $4.67 in the private sector.
11. Wages were weighted according to the number of workers in the occupation and by metropolitan area.
12. This calculation assumes that labor comprises 50% of total construction costs. This determination was made following conversations with construction contractors. The authors do not state whether this estimate excludes profits or other items for contractors.
13. Prepared for the New York Economic Development Council.
14. Median wages were provided by the Bureau of Labor Statistics Occupational Employment Survey.
15. The authors state that productivity, cost of materials, and the labor share of construction costs would remain constant for purposes of the analysis.
16. The authors collected construction cost data from in-person interviews with contractors across the country, and selected a representative sample of 215 private and public nonresidential construction projects started in 1977 and 1978.
17. The states included in the study were New Mexico, Utah, Texas, Oklahoma, Wyoming, Nevada, Arizona, Colorado, and Idaho.
18. This range included results from variations on two different econometric models. The ordinary least squares model included two variations of the dependent variable, one with a restricted definition of construction costs that included only site preparation and building construction, and one that included all costs, such as site preparation, architect and design fees, and engineering management fees. These same dependent variables were tested in the instrumental variables model.
19. The authors have not yet made their data available.
20. As Thieblot wrote: "A disclaimer to this estimate is necessary, however, because the bid-rebid process was not pure. In addition to the time difference problem, all of the original bids were disclosed before rebids were made, which points to the high probability that some gamesmanship was at work in the process, independent of the prevailing wage rate elimination" (p. 105). Steve Allen (1983) noted Thieblot's results were not an accurate measure of federal contract cost savings (pp. 716-7).
21. Steve Allen (1983) noted Thieblot's results were not an accurate measure of federal contract cost savings (pp.716-17).
22. All three states had prevailing wage laws for school construction during some portions of the 1991-2000 study period.
23. Injury data were obtained from the Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses, 1976-99.
24. F.W. Dodge bid price data exclude management costs, architectural fees, and land acquisition.

Annotated bibliography

Allen, Steve. 1983. "Much Ado About Davis-Bacon: A Critical Review and New Evidence." Journal of Law and Economics. Vol. 26, No. 3, pp. 707-36.

Allen argues the Wage and Hour Division's wage determinations under the Davis-Bacon Act could affect construction costs, although the costs associated with errors in wage determinations may be lower than previously reported. Enforcement of prevailing wage laws could also affect total costs. Total construction costs would also be affected by factor substitution, although it's difficult to know the precise pattern as wages change.

Azari-Rad, Hamid, Peter Philips, and Mark Prus. 2002. "Making Hay When It Rains: The Effect Prevailing Wage Regulations, Scale Economies, Seasonal, Cyclical and Local Business Patterns Have on School Construction Costs." Journal of Education Finance. Vol. 23, pp. 997-1012.

In response to anecdotal evidence that school construction costs grew more rapidly than costs in the overall construction market, the authors examine the role of prevailing wage laws and inflationary pressures in school construction. In the model, dummy variables were used to identify public and private schools and the presence of prevailing wage laws. The results showed no significant cost differences in school construction projects related to prevailing wage laws. However, the decision by school districts to build numbers of schools at once creates "cost storms," overwhelming the local construction market by stimulating demand. The implications show that construction costs are strongly related to school district decisions on the size of the school, since economies of scale exist, but at some point the benefits will be offset by the market-crowding conditions associated with the demand for a large-scale project. Other findings showed significant cost effects for the business cycle and economies of scale. For example, the economies of scale statistic showed a 91% increase in cost every time the size of the school doubles.

Azari-Rad, Hamid, Peter Philips, and Mark Prus. 2003. "State Prevailing Wage Laws and School Construction Costs." Industrial Relations. Vol. 42, No. 3, pp. 445-47.

This 50-state study of school construction from 1991 to 1999 shows that prevailing wage laws have no significant effect on school construction costs. The models included controls for business cycle, building size, school type, the season in which the project broke ground, and public vs. private funding. Controlling for other effects on construction costs, there was no statistically significant increase associated with prevailing wage regulations. The findings showed economies of scale, and that doubling the size of a school raised costs by 93%. New high schools were 5-8% more expensive, possibly because of the increased complexity of science labs, language centers, and recreational specifications. Public schools cost 15.5% more than private schools, independent of prevailing wage regulations. The results counter claims that taxpayers could build additional schools at less cost by repealing prevailing wage laws.

Azari-Rad, Hamid, Peter Philips, and Mark Prus. 2005. The Economics of Prevailing Wage Laws. Burlington, Vt.: Ashgate Publishers.

This book presents empirical evidence on the effects of prevailing wage laws on government costs and examines whether the laws have broader social costs or benefits. Experts on prevailing wages in the construction industry contributed chapters on construction costs, retention of a skilled workforce, occupational safety in the construction industry, pensions and benefits, and the impact of the repeal of prevailing wage laws on demand for public assistance.

Belman, Dale, and Paula Voos. 1995. Prevailing Wage Laws in Construction: The Costs of Repeal to Wisconsin. Milwaukee: Institute for Wisconsin's Future.

Belman and Voos found that the direct costs of repealing prevailing wage regulations outweighed the presumed savings in Wisconsin. The state would be faced with a net revenue loss of $6.8 million annually. The calculation includes a loss of $11.6 million in sales and income tax revenues and a full transfer to the state of the presumed savings of $4.8 million. The authors question whether the savings would fully transfer to the government, however, citing evidence that contractors would pocket more than two-thirds of the savings. The authors note that net effects

didn't include projected costs to society and harm to the construction industry, such as reduced productivity, the transition to a low-skilled workforce, a rise in occupational injuries, and cutbacks in consumer spending. An estimated 100,000 construction workers and their families would also be expected to lose about $123 million in income across the state.

Bilginsoy, Cihan, and Peter Philips. 2000. "Prevailing Wage Regulations and School Construction Costs: Evidence From British Columbia." Journal of Education Finance. Vol. 24, pp. 415-32.

Bilginsoy and Philips conducted a six-year analysis of the British Columbia prevailing wage law, established March 30, 1992. Half of the sample of 54 new public school construction projects commenced before the law went into effect, and half began afterward. When all controls were excluded from the model, prevailing wages appeared to raise construction costs by 16%. However, the results show no statistically significant increase in costs once business cycle, type of building, the number and size of the contractors, regional dummy variables, and time trends are factored in.

Center for Government Research. 2008. Prevailing Wage in New York State: The Impact on Project Cost and Competitiveness. Prepared for the New York State Economic Development Council. Rochester, N.Y.: Center for Government Research.

The Center for Government Research (CGR) estimated that prevailing wage laws raised construction costs by 36% in New York's metro regions. However, the study did not empirically test whether the increase was related to prevailing wage regulations. CGR assumes that the wage differences fully transfer in government costs. The model compared prevailing wage rates with the market rates of construction occupations in several metropolitan areas in New York and several others across the country. The study then compared labor costs to total construction costs using a prototype project, or a model created to mimic typical construction costs. It then applied the markup rates to total construction costs. The calculation assumed that productivity, material costs, and the labor share of construction remained constant.

Department of Fiscal Services. 1989. Maryland's Prevailing Wage Law: A Study of Costs and Effects. Annapolis, Md.: Department of Fiscal Services.

Maryland's prevailing wage laws were estimated to raise costs of state building construction 5-15% in metropolitan areas. At the time, public school construction projects were subject to state prevailing wage laws if the state funded at least 75% of the costs. The sample included 20 new and renovated school construction projects in 1987 and 1988, 14 of which were built under prevailing wage laws. Using a multiple regression model, DFS estimated prevailing wages increased costs by $11 per square foot, or about 15%. But this first statewide study of prevailing wage laws and construction costs in Maryland was later found to have methodological problems regarding a small sample size and the lack of controls for new and renovated projects (see Prus 1999).

Dunn, Sarah, John Quigley, and Larry Rosenthal. 2005. "The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing." Industrial & Labor Relations Review. Vol. 59, No. 1, pp. 141-57.

In a study of prevailing wage laws and construction costs in the low-income housing sector, the authors used econometric approaches to measure the effect of prevailing wage laws on final project costs across California. The sample of 205 subsidized housing projects undertaken from 1997 to 2002 included a control group of 30 projects that were not subject to prevailing wage laws. Construction data were collected on projects approved and completed over a five-year period through May 1, 2002. Prevailing wage rates were paid on 175 of the 205 new public housing projects, although there was no attempt made to specify whether projects paid federal, state, or local prevailing wages. In California, some public housing construction was exempt from the statute, so prevailing wages were not paid on 30 of the projects. In the model preferred by the authors, instrumental variables (IV) were used to control for endogenous factors that affected prevailing wage laws across regions. The information for this variable was extracted from voter registration information, union membership, homeownership, age, and income data. The authors reasoned that political influences and economic conditions were likely to affect

whether a region adopted prevailing wage legislation. The IV model showed that prevailing wage laws raised costs of low-income residential projects 19-37%. The ordinary least squares model showed that prevailing wages raised contract costs 9-11%. The conclusion reports the range of results, rather than a confidence interval on the preferred model.

Fraundorf, Martha, and Mason Farell. 1984. "The Effect of Davis-Bacon Act on Construction in Rural Areas." *Review of Economics and Statistics*. **Vol. 142, No. 6.**

In the first econometric study of prevailing wages and federal construction costs, the authors used construction data they had collected in 1977 and 1978 from in-person interviews with contractors working on 215 new non-residential buildings in rural areas across the country. About half (113) of the projects were federally funded and built under the Davis-Bacon Act, and the remainder (102) were private construction projects. The results showed that public projects—all of which were subject to the Davis-Bacon Act—were generally 26.1% more expensive than private construction. At the time, labor costs (including wages, benefits, and payroll taxes) comprised no more than 30% of total costs. The authors acknowledged that the estimate of 26.1% was high. Subsequent research (Prus 1996) determined that the authors had inadvertently excluded a key variable controlling for public versus private projects. Consequently, they had captured the differences between public and private costs, but were not able to isolate the effects of prevailing wage laws.

General Accounting Office. 1979. *The Davis-Bacon Act Should Be Repealed*. **Washington, D.C.: GAO.**

This study has been widely cited as evidence against prevailing wage laws, despite later criticisms over its methodology. The GAO argued that the Davis-Bacon Act should be repealed because it was inefficient and unnecessary and raised federal government costs by several hundred million dollars a year. In a sample of surveys collected on 30 federal projects, wages paid were higher than the prevailing rates in 12 of the projects, and lower in others. The GAO targeted the projects with higher wage rates to show a 3.4% increase in total construction costs, which would raise federal construction costs by $228 million to $513 million annually. The study based its findings on simple accounting to show hypothetical savings from the repeal of the Davis-Bacon Act, but it was not able to establish a causal link between prevailing wage laws and government costs. The GAO acknowledged that the sample size was insufficient to calculate construction costs with any statistical validity. However, it stated that the random nature of the sample was representative of federal construction.

Glassman, Sarah, Michael Head, David Tuerck, and Pal Backman. 2008. *The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages*. **Boston, Mass.: Beacon Hill Institute for Public Policy Research, Suffolk University.**

This paper argues that the Davis-Bacon Act should be repealed on grounds that the wage determinations set by the Department of Labor (DOL) do not reflect the true wage prevailing in a local area. Prevailing wage rates set by the DOL were on average 13% higher than market rates, i.e., the average wages reported for construction occupations by the Bureau of Labor Statistics Occupational Employment Survey. This difference was then applied to the federal budget to estimate a 9.91% cost increase, or $8.6 billion annually. The authors attributed the wage differences to unrepresentative surveys and measurements that resulted in an upward bias in wage estimates.

Gujarati, D.N. 1967. "The Economics of the Davis-Bacon Act." *Journal of Business*. **Vol. 40, No. 3, pp. 303-16.**

Gujarati's examination of prevailing wages across metropolitan and non-metropolitan counties found that prevailing wages are often set as the union wage for occupations in the construction industry. The author based this finding on 372 wage determinations from 300 counties from 1960 to 1961. The implication of the findings was that the Davis-Bacon Act inflates total contract costs because it favors union contractors who pay higher wages to workers. This study does not reflect the current decision-making process at the Department of Labor, nor does it reflect the present composition of unions in the construction industry.

Keller, Edward, and William Hartman. 2001. "Prevailing Wage Rates: Effects on School Construction Costs, Levels of Taxation and State Reimbursements. Journal of Education Finance. Vol. 27, pp. 713-28.

The authors showed that prevailing wage rates were an average of 17% higher in the public sector compared to wages in the private sector in Pennsylvania, and suggested that higher wages would result in sizeable cost burdens to the state. The average wage difference of $2.87, and the difference in benefits of $1.62, or 21.5% combined, would result in a total cost increase of $75 million in school construction. The study uses a sample of school construction projects from 1992 to 1997 in which school districts covered 89% of the cost and the state covered the rest. This study examines the differences between wages paid on public and private construction contracts. It does not empirically observe how these costs would be passed through, but it assumes that lower wage costs would mean lower government costs.

Kelsay, Michael, Randall Wray, and Kelly Pinkham. 2004. The Adverse Economic Impact From the Repeal of the Prevailing Wage Law in Missouri. Working Paper, Department of Economics, University of Missouri.

An input-output analysis using RIMS II multipliers estimated total economic losses of between $318 million and $384 million annually from proposed repeals of prevailing wage laws. The breakdown included $294-356 million in lost income, $5.7-6.9 million in lost sales tax collections, and $17.7-21.4 million in lost income taxes. The low and high numbers were based on estimated annual income losses of $1,010-$1,218 per construction worker. Additionally, the authors calculated societal impacts of better pay and benefit packages for workers under prevailing wage laws. The impacts for states without prevailing wage laws include the entry of smaller, less-experienced construction firms into the construction market; higher rates of employee turnover raised the risk that firms might hire unskilled workers more prone to injuries.

Kersey, Paul. 2007. The Effects of Michigan's Prevailing Wage Law. Midland, Mich.: Mackinac Center for Public Policy.

This report updates the previous Mackinac study but did not address the various criticisms over methodology. The author takes the BLS median and adjusted wages for construction occupations and estimates that 10% of Michigan's construction funding could have been saved if the state's prevailing wage law were repealed.

Kessler, Daniel, and Lawrence Katz. 2001. "Prevailing Wage Laws and Construction Markets." Industrial and Labor Review. Vol. 54, No. 2, pp. 259-74.

The authors examine the time trends of the repeal of state prevailing wage laws on union and race characteristics in construction labor markets. Kessler and Katz use Census and Current Population Survey data and a fixed-effects econometric approach to analyze wages and unionization rates over time. The model compares relative wages for blue-collar construction and non-construction workers in repeal and non-repeal states over a 24-year period. The overall effect of prevailing wage laws on construction labor costs is small (2-4%), although this varies widely across groups. This calculation was based on a 10% estimated decline in union worker incomes. Because union members account for one-quarter of all construction workers, the total impact on labor costs was 2-4%. The results suggest the repeal of prevailing wage laws negatively affects union and white workers, while it may benefit black construction workers. This study is limited to an analysis of wages and does not include total construction costs in the empirical model.

Philips, Peter, Garth Magnum, Norm Waitzman, and Anne Yeagle. 1995. "Losing Ground: Lessons From the Repeal of Nine Little Davis-Bacon Acts." Working Paper, Department of Economics, University of Utah.

The repeal of prevailing wage laws was found to reduce worker earnings, cut worker training programs, increase occupational injuries, and increase cost overruns. These findings were based on an examination of the effects of prevailing wage laws in nine states that had repealed the legislation, nine other states that never had the legislation, and 32 states with prevailing wage laws. In the nine states that had repealed prevailing wage laws, worker earnings declined $1,477 a year, a drop that would result in substantial losses in income and sales tax revenues to the state. Controlling for downward trends in construction training, state employment rates, and regional differences in training

availability, states that repealed prevailing wage laws reduced construction training by 40%. In the case of Utah, declines in training produced a substantial shift to low-skilled workers, declining productivity, and a tripling in cost overruns compared to the previous decade. Occupational injuries rose 15% in states that had repealed the legislation. Worker injuries were responsible for lost workdays and higher government costs for worker's compensation.

Philips, Peter. 1996. Square Foot Construction Costs for Newly Constructed State and Local Schools, Offices, and Warehouses in Nine Southwestern and Intermountain States: 1992-1994. Prepared for the Legislative Education Study Committee of the New Mexico State Legislature.

This study demonstrated that square foot construction could be less expensive in prevailing wage states compared to states without prevailing wage laws. The study took a cross-section of government construction projects across the Intermountain and Southwestern states, five of which had prevailing wage laws and four of which did not. The states were New Mexico, Utah, Texas, Oklahoma, Wyoming, Nevada, Arizona, Colorado, and Idaho. The data were disaggregated based on building type: offices, warehouses, elementary schools, middle schools, and high schools. Once the data were disaggregated by building type, the average square foot construction costs were shown to be $6 less in the sample of states with prevailing wages laws. The results show that productivity may have played a major role in construction cost outcomes and that it can offset potential wage increases. Philips noted a 1979 BLS study of aggregated school construction costs that showed total labor costs were the same in the South and Northeast, although hourly wages were 50% higher in the Northeast. Productivity could explain why a higher hourly wage on school construction in the Northeast did not result in higher total labor costs. However, total labor costs were the same in the South and Northeast, despite the hourly wage differences.

Philips, Peter. 1998. Kansas and Prevailing Wage Legislation. Report prepared for the Kansas Senate Labor Relations Committee.

In this case study, school construction costs, worker wages, and other societal costs were examined before and after the 1987 repeal of prevailing wage laws in Kansas and compared with other Great Plains states. Philips used statistical methods to compare mean and median costs of new schools in Kansas and surrounding states from July 1991 to June 1997. Of 365 new elementary schools in the Great Plains states with prevailing wage laws, construction costs were not statistically different from zero controlling for other cost factors. Average construction earnings fell faster in Kansas and other surrounding states without prevailing wage laws after the 1987 repeal. After the repeal, real worker earnings fell 11% in Kansas and in surrounding states without prevailing wage laws, compared to a 2% decline in states with prevailing wage laws. The loss of earnings would have resulted in lost tax revenues to the state.

Collective bargaining in construction declined after the state's repeal, and this decline affected worker training, pay and benefits, occupational injuries, and lost time from work. Apprenticeship training programs declined in Kansas and surrounding states without prevailing wage laws from 1973 to 1990. In Kansas, apprenticeships slid 38%, from an annual average of 861 in the 1970s to an average of 530 in the first four years after the law was repealed. In the sample of states with prevailing wage laws, apprenticeships declined an average of 27% during the period, compared to a decline of 53% in states without prevailing wages.

Occupational injuries rose 19% in Kansas after the repeal of prevailing wage laws, or from 11 to 13 injuries per 100 construction workers. Philips compared the number of injury cases per worker from 1976 to 1991 using the Bureau of Labor Statistics industry survey of occupational injury and illness. Total injuries rose 26%, from 11 to 14 per 100 construction workers, and serious injuries rose 14%, from 4.7 to 5.3 injuries per 100 construction workers in states without prevailing wage laws. Annual average employer contributions toward pensions and health insurance in Kansas fell 17% after the repeal of prevailing wage laws, according to data obtained from the U.S. Department of Labor for the years 1982-86 and 1987-92. Philips attributes this drop to the shift away from collective bargaining following the repeal in Kansas.

Philips, Peter. 1999. Kentucky's Prevailing Wage Law: Its History, Purpose, and Effect. Working Paper, Economics Department, University of Utah.

Prevailing wage laws in Kentucky provided a unique sample because some projects were exempt from the law until it was reinstated in 1996. Kentucky did not repeal its law, but it exempted school construction from the statute. In 1982, schools and some city projects were exempt from the 1940 prevailing wage statute. It also exempted city, county, and regional governments from construction projects paid for with less than 50% of state funds. In 1996, it expanded its law to include public schools and most local and county construction projects. The study was in response to charges that prevailing wages discriminate against minority workers and arguments that the legislation reduced the number of entry-level jobs. Philips used statistical methods to analyze the relationship between prevailing wage laws and the racial composition of the construction industry. The results showed no measurable relationship between unemployment rates by race in construction and state prevailing wage laws.

Philips, Peter. 2001a. A Comparison of Public School Construction Costs in Three Midwestern States That Have Changed Their Prevailing Wage Laws in the 1990s: Kentucky, Ohio, and Michigan. Working Paper, Economics Department, University of Utah.

This study takes advantage of a natural experiment with the judicial suspension of the prevailing wage law in Michigan (1995-97), the adoption of prevailing wages for school construction in Kentucky (1996), and the repeal of prevailing wages for school construction in Ohio (1997). About half of the 391 new schools in the sample were built under prevailing wage legislation in those three states from 1991 to 2000. The study accounted for the problem of building costs climbing faster than inflation during the 1990s, and included controls for rising construction costs for new public schools in all three states from 1991 to 2000. The results showed that prevailing wage regulations did not raise construction costs with any statistical significance.

Other findings showed that urban schools cost 10.5% more than rural schools, controlling for other factors such as building size. Ohio schools cost 12.6% less than schools in Michigan; Kentucky schools cost 14.6% less. The decision over when to break ground was shown to affect total cost: projects started in the fall added 10% to total costs compared to projects that broke ground in the spring.

Philips, Peter. 2001b. Four Biases and a Funeral: Dr. Vedder's Faulty Experiment Linking Michigan's Prevailing Wage Law to Construction Employment. Economics Department, University of Utah.

Examining a study by the Mackinac Center for Public Policy, Philips discovered that the data and structure of the methodology led to internal and external validity problems. Four primary biases were produced by the Mackinac research design, including the fact that results did not hold in other states. The biases were listed as the selection of 30-month-long time periods, a seasonal adjustment that did not reflect construction industry patterns, employment adjustments based on unseasonably warm weather on the end points of the data, and the inability to replicate the results in other states. Mackinac's hypothesis that employment increases after the repeal of prevailing wage laws and declines after their adoption was upheld in the case of Michigan, but Philips attributes this to pure luck. Contrary to Mackinac's findings, looking beyond Michigan employment actually declined in states that repealed prevailing wages. It also declined in Oklahoma, where the law was judicially annulled, and in Ohio, where school construction was exempt from prevailing wages. The states that repealed prevailing wage laws were Louisiana, Kansas, Colorado, New Hampshire, and Idaho. In Kentucky, where the law was applied to schools in July 1996, employment increased.

Philips, Peter. 2006. Construction: The Effect of Prevailing Wage Regulations on the Construction Industry in Iowa. Working Paper, Economics Department, University of Utah.

Productivity was found to play a major role in explaining why less expensive labor does not always result in lower government construction costs in the absence of prevailing wage laws. Using 2002 Census of Construction data, Philips compared average annual incomes of construction workers and the value-added per construction worker by state. Workers in states with prevailing wage laws earned more income, but they also had higher productivity. In prevailing wage states, construction workers earned an average of 15% more in wages and about 25% more in

Social Security, unemployment insurance, and worker's compensation. States with prevailing wage laws showed 13-15% more value-added per worker compared to states without the legislation. The result showed that prevailing wage laws raised productivity, possibly by inducing better management of projects, higher training standards, and more capital investment.

Prevailing wage laws also promoted collective bargaining activities that encouraged apprenticeship programs necessary to improve workmanship and expand the pool of skilled workers. On the other hand, states without prevailing wage laws faced higher costs of maintenance and repair and had transitioned to a low-wage, low-skill workforce. Non-prevailing wage states created an environment where contractors would cut corners on safety, training, and payroll regulations in an attempt to offer lower bids. In Iowa, an estimated 2,500 workers were misclassified as independent subcontractors in order to save on payrolls. The misclassification of workers deprives the state of worker compensation and unemployment insurance payments, and allows the contractor to dodge health insurance, pension, and Social Security contributions.

Prus, Mark. 1996. The Effect of State Prevailing Wage Laws on Total Construction Costs. Working Paper, Southern University of New York, Cortland.

Prus replicated the Fraundorf model and discovered that the study did not control for cost differences between public and private construction. Prus used multivariate analysis to compare construction costs in states with prevailing wage laws, rather than compare federal-level construction projects that were subject to the Davis-Bacon Act with private construction contracts. The data were obtained on offices, hospitals, schools, garages, and warehouses. Controls were included for building material, building type, and building height, and a dummy variable was used to mark new or renovated construction. The results showed that public construction was 32% more expensive than private construction in states without prevailing wage laws. Controlling for differences between public and private construction, there were no statistically significant cost effects related to prevailing wage laws. This study demonstrated that the Fraundorf study had captured the cost difference of public-private construction rather than the effects of prevailing wages. Prus attributes the cost differences to government specifications and building design.

Prus, Mark. 1999. Prevailing Wage Laws and School Construction Costs: An Analysis of Public School Construction in Maryland and the Mid-Atlantic States. Prepared for the Prince George's County Council, Maryland.

Most of the schools built during the 1990s in Maryland were not subject to the state's prevailing wage laws, in effect since 1969. While the legislation covered most state-funded public school construction in the 1980s, changes in the formula and allocation of prevailing wage determinations in 1989 excluded most school construction from the prevailing wage requirements. The statute required the payment of prevailing wages for public construction projects that received 50% or more funding from the state, and for public school construction that received at least 75% from the state. The law was later changed to reduce the threshold for school construction to at least 50% funding from the state. In Maryland, Allegany County and Baltimore City had enacted prevailing wage laws for school construction and public works. The presence of prevailing wage laws in some places in Maryland and the region, but not others, allowed Prus to empirically examine the effects on government construction costs.

First, Prus replicated the methodology of a Maryland Department of Fiscal Services study and discovered that the authors had excluded controls to differentiate between new and renovated projects (see Department of Fiscal Services 1989). If this control were included, then the results did not show statistically significant increases in costs. The DFS model had overestimated costs because it included site preparation in the definition of cost and did not control for regional differences. The author noted that the most expensive school in the sample was built without prevailing wages.

In a separate experiment, Prus examined contract costs of schools built in Maryland with and without prevailing wage laws. The results showed no statistically significant effect on costs. The model included controls for building materials, types of school, a marker for new or renovated project, a marker for public or private school, and the

height of the building. Public schools were 40.6% more expensive than private schools regardless of prevailing wages, and economies of scale were evident. High schools were 33% more expensive than elementary schools. The results also show a doubling in the building size would raise costs by 68%.

A cross-state experiment compared square foot construction costs in Maryland and other mid-Atlantic states. Although construction costs appeared to be higher in prevailing wage states based on descriptive data, a linear regression model showed that the differences were related to regional factors. Prus concludes these considerable cost differences exist because school construction in the South was less expensive than in the northern states of the mid-Atlantic region. In addition to regional differences, building type and specifications also impacted total construction costs. Schools in the sample of prevailing wage states appeared to be 25% more expensive, until the data were disaggregated by school type. Elementary schools were cheaper while middle and high schools were more expensive in prevailing wage states. Costs of construction of public schools in states without prevailing wage laws were 11.3% higher per square foot than costs for private schools. Prus compared square foot construction costs by school type in prevailing wage and non-prevailing wage states. Using linear regression, he compared construction costs controlling for building type, size, and private vs. public schools. Controlling for other factors, prevailing wage laws were shown to have no statistically significant effect on costs.

Thieblot, Armand. 1986. The Davis-Bacon Act, State "Little Davis-Bacon" Acts, the Walsh-Healey Act, and the Service Contract Act. Philadelphia: Wharton School, University of Pennsylvania.

Thieblot conducted a time-series analysis of contract costs before and after President Nixon's temporary suspension of the Davis-Bacon Act. The author examined new bids submitted by contractors during the 34-day suspension in February and March 1971. The construction contracts that were re-bid were not yet awarded. The re-bids were estimated to save less than 1%, or about $240 million a year on all federal construction contracts, compared to bids that were originally submitted. The inflation-adjusted estimate showed a 4.74%, or about $1.1 billion, difference in the original and new bids. Thieblot acknowledged that results might be biased because full disclosures of the bids were given before the re-bid process and he was unable to control for contractors altering their bids in an attempt to game the system: "A disclaimer to this estimate is necessary, however, because the bid-rebid process was not pure. In addition to the time difference problem, all of the original bids were disclosed before rebids were made, which points to the high probability that some gamesmanship was at work in the process, independent of the prevailing wage rate elimination." It was unclear if Thieblot's analysis measured the contractors' ability to use information to their advantage, or if the experiment captured the effects of the suspension of the Davis-Bacon Act.

Vedder, Richard. 1999. Michigan's Prevailing Wage Law and ItsEffectsonGovernmentSpendingandConstructionEmployment. Midland, Mich.: Mackinac Center for Public Policy.

This study assumes prevailing wage laws impose additional costs on the state and lower construction employment in Michigan. The study's methodology relied on simple descriptive statistics and was criticized for numerous shortcomings. The results showed construction jobs grew by 11,000, or 13%, after the prevailing wage law was repealed, but critics cited methodological issues to refute this claim (see Philips 2001b). Using a series of hypothetical calculations and a finding that showed prevailing wage rates were 10% higher in the Detroit area, the study also estimated that prevailing wage laws raised construction costs by $275 million: "If labor costs were 25 percent of the total value of a construction contract, and if average labor costs per hour were increased 40 percent by prevailing wage laws, this would drive up total construction by 10 percent....Assuming a 10-percent differential...the state of Michigan could have saved about $251 million by eliminating prevailing wage provisions." The study did not provide evidence that the wage difference in the Detroit area was representative of the rest of the state. It also did not provide any empirical support to show differences in wage rates would be passed through as government costs. Rather, it allocated wage differences to government costs without controlling for any other factors.

About Economic Policy Institute

The Economic Policy Institute is a nonprofit, nonpartisan think tank that seeks to broaden the public debate about stragegies to achieve a properous and fair economy. The Institute stresses real world analysis and a concern for the living standards of working people, and it makes its findings accessible to the general public, the media, and policy makers. EPI's books, studies, and popular education materials address important economic issues, analyze pressing problems facing the U.S. economy, and propose new policies.

Acknowledgements

I would like to thank Michael Ettlinger, Ross Eisenbrey, Peter Philips and Dale Belman for their feedback and assistance with this report.

About Author

Nooshin Mahalia joined the Economic Policy Institute in 2007. Prior to joining the Economic Analysis and Research Network at EPI, she worked at the Economic Development Institute and previously for news organizations in the metropolitan Atlanta area. Her areas of interest include regional economic development and technology policy.

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

July 1, 2008

TO: Michael J. Knapp, Council President

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Bill 21-08, Contracts and Procurement – Prevailing Wages -- Construction

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed legislation would require contractors and subcontractors to pay prevailing wages to workers on certain construction projects awarded by the County or financed with certain County appropriations, grants, or tax credits. The bill specifies that the prevailing wage rates established for the County by the State Commissioner of Labor and Industry apply to certain County financed construction projects and generally regulate wages paid on those construction projects.

FISCAL SUMMARY

The fiscal impact of this bill is discussed in three parts: the potential increase in the cost of County contracts, the administration of a new County prevailing wage law, and the treatment of the Economic Development Fund and the New Jobs Tax Credit under the proposed prevailing wage law.

OMB can not quantify the fiscal impact that this legislation will have on future construction costs since the County does not currently require construction vendors to provide information on the wages they pay their employees, or the mix of employees used. Consequently, it is not possible to make a comparison between what is paid now and what would be paid under prevailing wage requirements. Some research does suggest that there has been no fiscal impact resulting from institution of prevailing wage laws in other jurisdictions, however, the specific potential impact on Montgomery County Government is indeterminate.

Implementation of this prevailing wage legislation will require a position to track adherence to the requirements of the legislation. Assuming an entry level Program Manager I, annual salary and benefits costs would be $69,430 in FY09. In addition, although there are no

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requirements for random audits, it would be prudent to conduct them. If a problem is identified, a directed audit would be performed. Either type of audit could cost approximately $36,000 per audit.

The proposed legislation requires adherence by contractors in order to receive Economic Development Funds (EDF) or the New Jobs Tax Credit. However, the legislation should not have an effect on either program. First, the EDF is not typically used to fund construction projects; in fact, it has never granted funding for construction in an amount exceeding $100,000. Second, the New Jobs Tax Credit is not provided for construction, but rather as a result of construction that expands the amount of commercial space in the County and only if that new construction results in minimum number of new jobs in the County.

The following contributed to and concurred with this analysis: Department of General Services, Department of Finance, Department of Economic Development, and Department of Transportation.

jfb:lob

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Rebecca Domaruk, Offices of the County Executive
Peter Bang, Department of Economic Development
Michael Coveyou, Department of Finance
David Dise, Department of General Services
Arthur Holmes, Department of Transportation
Bruce Johnston, Department of Transportation
Veronica Kidder, Department of Finance

Drummer, Bob

From: Dattoli,Joe [Joe.Dattoli@fcps.org]
Sent: Thursday, July 24, 2008 3:02 PM
To: Drummer, Bob
Subject: RE: prevailing wages

Yes, dependent on the bids, the State may not have supplied over 50% of the funding therefore there'd be no reason to go with the prevailing wage rates.

Joe Dattoli

From: Drummer, Bob [mailto:Bob.Drummer@montgomerycountymd.gov]
Sent: Thursday, July 24, 2008 12:40 PM
To: Dattoli,Joe
Subject: RE: prevailing wages

Mr. Dattoli,

Did you advertise with alternative bids to determine if State aid over 50% would lower your local costs?

Bob Drummer
Legislative Attorney
240-777-7895

-----Original Message-----
From: Dattoli,Joe [mailto:Joe.Dattoli@fcps.org]
Sent: Thursday, July 24, 2008 12:34 PM
To: Drummer, Bob
Subject: RE: prevailing wages

Mr. Drummer;

The bids were for our Linganore High School, taken in June 2007, they are;

Base Bid (non-prevailing Wage)	$53,667,688	
Base Bid (Prevailing Wage)	$57,216,654	
Difference	$3,548,966	Or 6.61% of the Non-Wage Bid

This was for base bid only.

Joe Dattoli

From: Drummer, Bob [mailto:Bob.Drummer@montgomerycountymd.gov]
Sent: Thursday, July 24, 2008 12:06 PM
To: Dattoli,Joe
Subject: prevailing wages

Mr. Dattoli,

The Montgomery County Council is considering a Bill to adopt the state prevailing wage rates for County construction contracts. I was told that Frederick County Public Schools has solicited alternative bids for school construction with and without prevailing wages. I am looking for any information you might have concerning this. We are especially interested in the bid price differential, if any, between the alternative bids.

I have also called your office and left a voice mail message.

Bob Drummer
Legislative Attorney
Montgomery County Council
100 Maryland Ave
Rockville, MD 20850
240-777-7895

DEPARTMENT OF GENERAL SERVICES

Isiah Leggett
County Executive

David E. Dise
Director

Memorandum

To: Robert Drummer, Legislative Attorney

From: David Dise, Director, Department of General Services

Date: July 24, 2008

I am writing to provide the Executive's position on 4 questions raised by Council staff regarding Bill 21-08, Contracts and Procurement - Prevailing Wages – Construction. This memorandum restates each question and outlines the Executive's position. It also proposes several amendments to the bill.

1. **Do you support amending the Bill to subject County construction contracts to the State Prevailing Wage Law and permit DLLR to enforce it?**

In order to pursue a speedy implementation of Bill 21-08, the Executive recommends that a number of provisions from the State prevailing wage law be incorporated into the bill to strengthen program administration and enforcement. However, he also believes that it is important for the County to maintain control over the program. Mirroring the State's language regarding quantitative measurement and penalty and fee structures would improve the County's ability to motivate compliance and make the County law compatible with State requirements as a matter of clarity for contractors doing business with both the County and State. These changes would allow the County and State the opportunity to continue exploring areas that may allow future shared services or other cooperative strategies.

Regarding the possibility of amending Bill 21-08 to subject County construction contracts to the State prevailing wage law and permit DLLR to exercise enforcement, while it certainly appears permissible to have the State run the program, the Executive believes that this is not in the County's best interest. The primary benefit to the County of opting into the State program is cost savings in program administration. However, the Executive recommends against that option for the following reasons:

i. The County will lose control over the program.
ii. The County will lose control over enforcement (e.g., where the County may want to work with a contractor to remedy a violation without jeopardizing an ongoing contract).

iii. The County will lose control over administration. The State is only now restoring staff to administer its own program. Opting into the State program would not guarantee adequate administration or that County contracts would receive timely review.
iv. The State may bill the County for providing the administration or enforcement. There is no guarantee that the State may at some point in the future elect to bill the County for program administration.
v. There is a potential for conflict over State input into County contracts in the review and approval of cited infractions and assessment of penalties.
vi. There is a potential for possible confusion in the contracting community over authority to direct work, stoppages, performance and other contractual obligations.

For these reasons, the Executive recommends that the County administer its own prevailing wage program. The best plan would include contracting out administration of the program (payroll review, site visits, reporting), while keeping enforcement (assessing penalties, cure, termination) in-house. Contracting for program administration services has proven effective in many municipalities, and would provide the County with ample best practices to consider and replicate.

2. **Since the State law covers contracts valued at $500,000 or more, how many, if any, construction contracts do we routinely award for less than $500,000? In your conversations with the State, would they limit their enforcement to contracts valued at $500,000 or more even if we try to set a lower limit?**

We have been advised that the State would limit their enforcement efforts to contracts that are subject to the criteria set out in the State's prevailing wage law, including the $500,000 threshold. In FY08, only 1 County contract would have been affected if the $500,000 threshold were applied instead of the $100,000 threshold set out in Bill 21-08. The Executive recommends that the bill be amended to increase the $100,000 threshold to $500,000. Raising the monetary threshold in Bill 21-08 to make it consistent with State law would likely prove a help to small businesses. The County's living wage law makes similar provision, by way of exemption, for small businesses.

3. **The delayed effective date of July 1, 2009 was put in to satisfy MCPS. Since we now believe that we are preempted from covering their contracts, do you have a problem with an effective date of 90 days after it becomes law? If so, what is the shortest period that you need to make the necessary changes to cover new contracts awarded after the Bill becomes law?**

We believe that the July 1, 2009 effective date is reasonable and should be retained. Any shorter period would make it extremely difficult to properly implement the program. Retaining the July 1, 2009 effective date would allow the County sufficient time to:

i. Recommend and implement needed regulations;
ii. Allow the County flexibility to subcontract out administration or other elements of the program;
iii. Evaluate cost models (e.g., in-house v. contractors);
iv. Negotiate contracts;
v. If portions of the program are run by a contractor, time to bid, sign a contract and/or negotiate a memorandum of understanding; and
vi. Introduce the bills requirements to contractors, including the small, local, and MFD business communities.

4. **Are there contracts that are funded by tax credits under Code §52-71 or grants under Code §20-75? If so, how many in FY08? Do you support including these contracts?**

The Executive does not support making Bill 21-08 applicable to projects that are eligible for the New Jobs Tax Credit (NJTC). The County has no contracts funded by the NJTC, which is an abatement or reduction in property taxes authorized by County Code §52-71. More specifically, the NJTC is a reduction or abatement in taxes for businesses that meet both the employment requirements and the expansion of space requirements expressed in State and County law. There is no relationship between this property tax credit and any "County financed construction contract." Tax credits available in Maryland have requirements set by law and when an individual or entity meets those legal requirements, the tax credit is granted. Granting of a tax credit always follows the completion of the legal requirements and always occurs after construction of any applicable property.

In the case of the NJTC, the individual or entity that receives the credit is usually the lessor of the property, and would normally have no control over the construction of the building, or portion of the building, that is being leased. There is a 1-year lag in the timing of the credit so that the individual or entity cannot receive the tax credit in the fiscal year during which the employment requirements are met. The construction that occurs before a New Jobs Tax Credit is approved does not seem to meet the definition of "County financed construction contract" because it is neither "work that is awarded by the County" nor work "where County funds are used to finance all or part of the contract."

The Executive believes that the Bill 21-08 should apply to contracts funded with funds allocated from the Economic Development Fund (EDF) under County Code §20-75. In recent years, the County has allocated EDF funds to 2 construction projects.

Recommended Amendments to Bill 21 - 08

We recommend that the definition of "employee" in Bill 21-08 be clarified as follows: In line 25, delete "worker" after "apprentice" and substitute "laborer or mechanic"; and strike line 30.

We recommend that the language in lines 101-102 of Bill 21-08 be stricken and the phrase "Officer or a designee within 14 days after the end of each payroll period" be added to require that payroll records be reported bi-weekly instead of quarterly. In surveying other jurisdictions around the country, such as Cincinnati, Denver, Baltimore and the State of Maryland, we found that weekly reporting is the norm. Weekly or bi-weekly reporting results in a smoother work flow by: (i) eliminating bulk delivery of records and allowing for evenly distributed workload; and (ii) allowing review of monthly pay requests and, therefore, faster revelation of noncompliance, which enables the County to enforce immediate compliance by withholding current invoices which may not be possible quarterly.

We recommend that Bill 21-08 be amended as follows to provide authority to impose liquidated damages for each day that an employee is paid less than the prevailing wage: After Line 156, add "(7) A contractor or subcontractor is liable to the County for liquidated damages for each employee to whom this law applies, for each day the employee is paid less than the prevailing wage rate."

Council staff has recommended that Bill 21-08 be amended to require the Director of the Department of General Services to issue a written decision after determining that the County's prevailing wage law has been violated. Council staff has also recommended that the Director be required to withhold payments from the contractor pending a final decision. We agree that the Director should issue a written opinion after determining that the prevailing wage law has been violated. However, we believe that the Director should have discretion to determine appropriate sanctions and penalties in any particular case. Therefore, we recommend that the Director be authorized, but not mandated, to withhold payments. This can be accomplished by substituting the word "may" for the word "must" in the appropriate place in Council staff's recommended amendment.

Thank you for considering the Executive's position and comments on Bill 21-08. I look forward to discussing these issues with the Transportation, Infrastructure, Energy and Environment Committee at its July 28 worksession on this bill.

c.
Councilmember Nancy Floreen
Councilmember George Leventhal
Councilmember Roger Berliner
Councilmember Valerie Ervin
Pradeep Ganguly, Director, Department of Economic Development
Jennifer Barrett, Director, Finance Department
Kathleen Boucher, Assistant Chief Administrative Officer

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

STATE AND LOCAL CIP

The following bids (numbers 1 thru 17) are for the Construction of the South Carroll High School Fine Arts Addition. Bid pricing was requested for Base Bid A - with prevailing wage rates and Base Bid B - without prevailing wage rates. It is recommended that the bids reflecting Base Bid B be accepted in accordance with the State of Maryland guidelines for the use of prevailing wage rates.

It is also recommended that the following alternates be accepted.

Alternate No. 1 –	Provide upgraded computer power in existing building
Alternate No. 2 –	Provide parking grading with paving
Alternate No. 3 –	Provide pole mounted lighting fixtures
Alternate No. 5 -	Provide tennis court retaining wall
Alternate No. 6 -	Provide HSA remediation center/lab and computer lab
Alternate No. 8 -	Provide ceramic wall tile in corridors
Alternate No. 10 -	Provide wood flooring systems in dance/activity rooms
Alternate No. 11 -	Provide metal storage shelving
Alternate No. 12 -	Provide lightning protection
Alternate No. 16 -	Provide electrical metal tubing
Alternate No. 17 -	Provide aerial work platforms
Alternate No. 19 -	Provide additional power circuits for emergency generator
Alternate No. 21 -	Provide for a road culvert replacement

These accepted alternates are listed only when there is a bid dollar amount for the alternate to a particular bid package. These alternates will be included in all contracts.

In addition, it is recommended that the following alternates be rejected:

Alternate No. 4 –	Provide sod
Alternate No. 7 -	Provide humidifier in instrument storage
Alternate No. 9 -	Provide a telescoping chair platform
Alternate No. 13 -	Provide exterior sunshades
Alternate No. 14 -	Provide manual roller shades
Alternate No. 15 -	Provide electric roller shades
Alternate No. 18 -	Provide motorized battens – stage
Alternate No. 20 -	Provide wireless access points in corridors

These recommended alternates for rejection are listed only when there is a bid dollar amount for the alternate to a particular bid package.

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

1. June 5, 2008 – Opened Bid (**#08-081N**); **Sitework for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Pleasants Construction Inc.** in the amount of **$3,419,000.00,** reflecting Base Bid "B". The award amount includes the base bid of $2,985,000.00, and Alternates: No. 2 - $385,000.00; No. 5 - $6,500.00; No. 21 - $42,500.00. Also recommend that Alternate No. 4 be rejected. Bid summary is as follows:

	Pleasants Construction	Peak Inc	Ross Contracting	Urban N. Zink Contractor
Base Bid A	$3,067,000.00	$4,142,000.00	$4,285,000.00	$3,462,500.00
Alternate No. 2	$450,000.00	$550,000.00	$676,000.00	$578,300.00
Alternate No. 5	$7,000.00	$6,000.00	$5,000.00	$6,750.00
Alternate No. 21	$43,000.00	$31,000.00	$18,000.00	$59,900.00
Total	$3,567,000.00	$4,729,000.00	$4,984,000.00	$4,107,450.00
Base Bid B	**$2,985,000.00**	$3,842,000.00	$4,460,000.00	$3,415,700.00
Alternate No. 2	**$385,000.00**	$510,000.00	$717,000.00	$568,500.00
Alternate No. 5	**$6,500.00**	$5,000.00	$5,500.00	$6,750.00
Alternate No. 21	**$42,500.00**	$30,000.00	$20,000.00	$57,700.00
Total Award	**$3,419,000.00**	$4,387,000.00	$5,202,500.00	$4,048,650.00

rev. - 40% wage

Rejected Alternate No. 4	Pleasants Construction	Peak Inc	Ross Contracting	Urban N. Zink Contractor
Base Bid A	$74,100.00	$43,000.00	$75,000.00	$67,800.00
Base Bid B	$70,000.00	$41,000.00	$85,000.00	$66,100.00

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

2. June 5, 2008 – Opened Bid (**#08-082N**); **Concrete for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Bob Porter Inc.**, in the amount of **$569,000.00,** reflecting Base Bid "B". Bid summary is as follows:

	Bob Porter Co.	Carroll Concrete	Morgan Keller	Canyon Contracting	Skyline Contracting
Base Bid A	$599,000.00	$683,845.00	$677,932.00	$639,000.00	$630,000.00
Base Bid B	**$569,000.00**	$667,394.00	$652,811.00	$579,000.00	$600,000.00

5.2%

3. June 5, 2008 – Opened Bid (**#08-083N**); **Masonry for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **George Moehrle Masonry, Inc.**, in the amount of **$2,722,000.00,** reflecting Base Bid "B". The apparent low bidder, Campitelli Masonry, Inc., did not submit the required MBE documentation with their bid, and therefore is considered non-responsive. Bid summary is as follows:

	George Moehrle Masonry	*Campitelli Masonry*	JD Long Masonry
Base Bid A	$2,887,000.00	*$3,110,000.00*	$3,725,000.00
Base Bid B	**$2,722,000.00**	*$2,593,800.00*	$3,150,000.00

6%

4. June 5, 2008 – Opened Bid (**#08-084N**); **Metals for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **S.A. Halac Iron Works, Inc.**, in the amount of **$2,168,000.00,** reflecting Base Bid "B". Bid summary is as follows:

	S.A. Halac Iron Works	Crystal Steel Fabricators	Jarvis Steel
Base Bid A	$2,323,000.00	$2,285,000.00	$2,606,000.00
Base Bid B	**$2,168,000.00**	$2,192,000.00	$2,468,000.00

7.1%

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

5. June 5, 2008 – Opened Bid (#08-085N); **General Trades for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Bob Porter, Inc.,** even though they were the only bidder, in the amount of **$2,236,000.00,** reflecting Base Bid "B", The award amount includes base bid of $2,146,000.00 and Alternates: No. 6 - $25,000.00; No. 11 - $16,000.00; No. 17 - $49,000.00. Also recommend that Alternates: No. 9, No. 14; and No. 15 be rejected. Twenty-two (22) contractors were solicitated, four (4) picked-up the bid documents, with only one (1) contractor submitting a bid.

	Bob Porter, Inc.
Base Bid A	$2,289,000.00
Alternate No. 6	$30,000.00
Alternate No. 11	$18,000.00
Alternate No. 17	$49,000.00
Total Award	$2,386,000.00
Base Bid B	**$2,146,000.00**
Alternate No. 6	**$25,000.00**
Alternate No. 11	**$16,000.00**
Alternate No. 17	**$49,000.00**
Total Award	**$2,236,000.00**

6.7%

Rejected Alternates	Bob Porter, Inc.
Base A – No. 9	$35,000.00
Base A - No. 14	$13,000.00
Base A - No. 15	$99,000.00
Base B - No. 9	$30,000.00
Base B - No. 14	$11,000.00
Base B - No. 15	$90,000.00

6. June 5, 2008– Opened Bid (#08-086N); **Roofing for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Interstate Corporation,** in the amount of **$624,000.00,** reflecting Base Bid "B". Bid summary is as follows:

	Interstate Corp.	Citi Roof Corp
Base Bid A	$634,000.00	$866,600.00
Base Bid B	**$624,000.00**	$832,100.00

1.6%

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

7. June 5, 2008 – Opened Bid **(#08-087N); Windows/Glass and Glazing for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Spear Window & Glass Inc.,** even though they were the only bidder, in the amount of **$801,324.00,** reflecting Base Bid "B". Also recommend that Alternate No. 13 be rejected. Twenty eight (28) contractors were solicitated, three (3) picked up the bid documents, with only one (1) contractor submitting a bid. Bid Summary is as follows:

	Spear Window & Glass
Base Bid A	$976,475.00
Base Bid B	**$801,324.00**

21.8%

Rejected Alternate No. 13	Spear Window & Glass, Inc.
Base Bid A	$42,650.10
Base Bid B	$34,406.00

8. June 5, 2008 – Opened Bid **(#08-088N); Gypsum and Acoustic Assemblies for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Finishes, Inc.,** in the amount of **$765,000.00,** reflecting Base Bid "B". The award amount includes the base bid of $753,000.00, and Alternate No. 6 - $12,000.00. Bid summary is as follows:

	Finishes Inc.	JP Construction
Base Bid A	$793,000.00	$790,800.00
Alternate No. 6	$15,000.00	$0.00
Total	$808,000.00	$790,800.00
Base Bid B	**$753,000.00**	$1,018,600.00
Alternate No. 6	**$12,000.00**	$0.00
Total Award	**$765,000.00**	$1,018,600.00

5.6%

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

9. June 5, 2008 – Opened Bid (**#08-089N**); **Ceramic/VCT/Carpet for the South Carroll High School Fine Arts Addition.** Recommend that the bid be rejected and re-bid due to a discrepancy in the specifications. The specifications incorrectly specified that cement backer board be installed behind all wall tile and under all floor tile. Bid summary is as follows:

	CB Flooring	Shoemaker	ProFast
Base Bid A	$249,888.00	$320,896.00	$239,700.00
Alternate No. 6	$4,100.00	$3,410.00	$6,000.00
Alternate No. 8	$58,888.00	$115,958.00	$193,900.00
Alternate No. 10	($26,500.00)	($21,750.00)	$0.00
Total	$286,376.00	$418,514.00	$439,600.00
Base Bid B	$238,888.00	$303,257.00	$235,000.00
Alternate No. 6	$4,100.00	$3,131.00	$6,000.00
Alternate No. 8	$61,333.00	$107,415.00	$190,900.00
Alternate No. 10	($26,500.00)	($21,200.00)	$0.00
Total	$277,821.00	$392,603.00	$431,900.00

3%

10. June 5, 2008 – Opened Bid (**#08-090N**); **Terrazzo Flooring for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **David Allen Co Inc.,** in the amount of **$301,800.00,** reflecting Base Bid "B". Bid summary is as follows:

	David Allen	Shoemaker Bros.	Roman Mosaic
Base Bid A	$310,743.00	$345,130.00	$354,700.00
Base Bid B	**$301,800.00**	$331,462.00	$354,700.00

3%

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

11. June 5, 2008 – Opened Bid (**#08-091N**); **Wood Flooring for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Miller Flooring Co, Inc.**, even though they were the only bidder, in the amount of **$76,550.00,** reflecting Base Bid "B". The award amount includes the base bid in the amount of $47,800.00, and Alternate No. 10 - $28,750.00. Eleven (11) contractors were solicitated, three (3) picked-up the bid documents, but only one (1) contractor submitted a bid. Bid summary is as follows:

	Miller Flooring
Base Bid A	$49,900.00
Alternate No 10	$29,990.00
Total	$79,890.00
Base Bid B	**$47,800.00**
Alternate No. 10	**$28,750.00**
Total Award	**$76,550.00**

4.3%

12. June 5, 2008 – Opened Bid (**#08-092N**); **Painting for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Shoemaker Bros., Inc.**, in the amount of **$98,640.00,** reflecting Base Bid "B". The award amount includes the base bid of $98,540.00, and Alternates: No. 6 - $2,400.00; No. 8 - ($2,300.00). The apparent low bidder, Crown, Inc., did not acknowledge addenda nos. 3, 4 and 5, and therefore their bid is considered non-responsive. Bid summary is as follows:

	Shoemaker Bros.	*Crown, Inc.*	Argos Construction	JNA Painting
Base Bid A	$134,400.00	*$167,017.00*	$195,843.00	$169,700.00
Alternate No.6	$3,760.00	*$1,714.00*	$6,250.00	$2,790.00
Alternate No.8	($3,080.00)	*($8,301.00)*	($8,718.00)	($3,800.00)
Total	$135,080.00	*$160,430.00*	$193,375.00	$168,690.00
Base Bid B	**$98,540.00**	*$97,097.00*	$163,790.00	$122,800.00
Alternate No.6	**$2,400.00**	*$1,008.00*	$5,000.00	$2,187.00
Alternate No.8	**($2,300.00)**	*($4,883.00)*	($6,975.00)	($2,950.00)
Total Award	**$98,640.00**	*$93,222.00*	$161,815.00	$122,037.00

3.7%

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

13. June 5, 2008 – Opened Bid (**#08-093N**); **Auditorium Seating for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Modern Door & Equipment Sales, Inc.,** in the amount of **$136,877.00,** reflecting Base Bid "B". The apparent low bidder, Allied Equipment, did not acknowledge any of the addenda, and therefore their bid is considered non-responsive. Bid summary is as follows:

	Modern Door	TJ Distributors	Irwin Seating	*Allied Equipment*
Base Bid A	$139,265.00	$142,000.00	$153,262.28	*$119,282.00*
Base Bid B	**$136,877.00**	$139,800.00	$145,722.28	*$110,319.00*

1.7%

14. June 5, 2008 – Opened Bid (**#08-094N**); **Sprinklers for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Fire-Mak, Inc.** in the amount of **$370,900.00,** reflecting Base Bid "B". The award amount includes the base bid of $370,000.00 and Alternate No. 6 - $900.00. Bid summary is as follows:

	Fire-Mak	Kennedy Fire	Livingston	Triangle
Base Bid A	$417,000.00	$437,000.00	$473,600.00	$515,930.00
Alternate No. 6	$1,000.00	$0.00	$3,700.00	$0.0
Total	$418,000.00	$437,000.00	$477,300.00	$515,930.00
Base Bid B	**$370,000.00**	$399,000.00	$427,400.00	N/A
Alternate No. 6	**$900.00**	$0.00	$3,700.00	N/A
Total Award	**$370,900.00**	$399,000.00	$431,100.00	N/A

12.7%

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

15. June 5, 2008 – Opened Bid (#08-095N); **Music Practice Rooms for the South Carroll High School Fine Arts Addition.** Recommend that bid be rejected and re-bid. The apparent low bidder, Wenger Corporation, submitted a bid with exceptions and qualifications, and therefore their bid is considered non-responsive. Bid summary is as follows:

	Wenger Corp.	Diversified Education System
Base Bid A	$232,443.00	$324,069.00
Alternate No. 6	$0.00	$6,662.00
Alternate No. 9	$0.00	$33,455.00
Total	$232,443.00	$364,186.00
Base Bid B	$227,276.00	$315,188.00
Alternate No. 6	$0.00	$5,986.00
Alternate No. 9	$0.00	$32,465.00
Total	$227,276.00	$353,639.00

2.2%

16. June 5, 2008 – Opened Bid (#08-096N); **Mechanical for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Heer Brothers, Inc.,** in the amount of **$3,669,000.00,** reflecting Base Bid "B". The award amount includes base bid of $3,587,000.00 and Alternate No. 6 - $82,000.00. Also recommend that Alternate No. 7 be rejected. Bid summary is as follows:

9.7%

	Herr Bros.	Mallick Plumbing	Collins/ Snoop	Denver Elek	Shapiro & Duncan	Beaver Mechanical
Base Bid A	$3,754,000.00	$3,735,000.00	$4,100,000.00	$4,226,000.00	$4,925,000.00	$4,453,000.00
Alternate No. 6	$94,000.00	$79,000.00	$69,800.00	$103,170.00	$81,000.00	$92,555.00
Total	$3,848,000.00	$3,814,000.00	$4,169,800.00	$4,329,170.00	$5,006,000.00	$4,545,555.00
Base Bid B	**$3,587,000.00**	$3,593,000.00	$3,945,000.00	$4,163,000.00	$4,481,000.00	$4,184,400.00
Alternate No. 6	**$82,000.00**	$77,000.00	$62,400.00	$90,130.00	$79,000.00	$86,375.00
Total Award	**$3,669,000.00**	$3,670,000.00	$4,007,400.00	$4,253,130.00	$4,560,000.00	$4,270,775.00

+.8%

Rejected Alternate No. 7	Herr Bros.	Mallick Plumbing	Collins/ Snoop	Denver Elek	Shapiro & Duncan	Beaver Mechanical
Base Bid A	$7,500.00	$6,500.00	$9,600.00	$7,500.00	$7,000.00	$10,200.00
Base Bid B	$7,300.00	$6,500.00	$9,200.00	$7,500.00	$7,000.00	$9,850.00

Attachment 2b

SUMMARY

RECOMMENDED BID AWARD
June 25, 2008

17. June 5, 2008 – Opened Bid **(#08-097N); Electrical for the South Carroll High School Fine Arts Addition.** Recommend awarding bid to **Star Electric,** in the amount of **$3,562,900.00** reflecting Base Bid "B". The award amount includes base bid of $3,196,000.00 and Alternates: No. 1 - $180,800.00; No. 3 - $17,100.00; No. 6 - $14,800.00; No. 8 - $0.00; No. 12 - $15,100.00; No. 16 - $134,000.00; No. 19 - $5,100.00. Also recommend that Alternates: No. 15, No. 18; and No. 20, be rejected. Bid summary is as follows:

	Star Electric	Brandenburg Electric
Base Bid A	$3,469,000.00	$4,005,000.00
Alternate No. 1	$204,100.00	$140,500.00
Alternate No. 3	$18,000.00	$20,500.00
Alternate No. 6	$16,500.00	$31,250.00
Alternate No. 8	$0.00	$3,550.00
Alternate No. 12	$16,200.00	$22,500.00
Alternate No. 16	$161,000.00	$167,300.00
Alternate No. 19	$5,900.00	$8,100.00
Total	$3,890,700.00	$4,398,700.00
Base Bid B	**$3,196,000.00**	$3,650,000.00
Alternate No. 1	**$180,800.00**	$118,250.00
Alternate No. 3	**$17,100.00**	$18,725.00
Alternate No. 6	**$14,800.00**	$25,575.00
Alternate No. 8	**$0.00**	$2,500.00
Alternate No. 12	**$15,100.00**	$19,850.00
Alternate No. 16	**$134,000.00**	$130,850.00
Alternate No. 19	**$5,100.00**	$6,800.00
Total Award	**$3,562,900.00**	$3,972,550.00

9.2%

Rejected Alternates	Star Electric	Brandenburg Electric
Base A – No. 15	$9,300.00	$17,000.00
Base A - No. 18	$234,300.00	$251,450.00
Base A - No. 20	$13,470.00	$14,350.00
Base B - No. 15	$7,800.00	$14,250.00
Base B - No. 18	$234,300.00	$228,000.00
Base B - No. 20	$12,677.00	$13,500.00

SUMMARY

RECOMMENDED BID AWARD

July 9, 2008

STATE AND LOCAL CIP

1. June 24, 2008 – Opened Bid **(#09-002N); Freedom Elementary School Kindergarten Addition.** Bids were requested with prevailing wage rates (Base Bid "A"), and without prevailing wage rates (Base Bid "B"). Recommend awarding bid to **Keller Brothers, Inc.** in the amount of **$2,715,000.00** reflecting Base Bid "A". The award amount includes the base bid of $2,490,000.00 and Alternates No. 1 (Renovations to the Administration Suite) - $220,000.00; No. 2 (New Concrete Dumpster Pad, Curb and Accessories) - $5,000.00. The award is in accordance with the State of Maryland guidelines for the use of prevailing wage rates. Bid summary is as follows:

	Keller Brothers	H & H Contractors	Warner Construction	GRC General Contractor	Bob Porter Company
Base Bid A	**$2,490,000.00**	$2,577,700.00	$2,822,330.00	$2,869,000.00	$2,879,000.00
Alternate No. 1	**$220,000.00**	$227,000.00	$242,265.00	$264,000.00	$185,000.00
Alternate No. 2	**$5,000.00**	$10,000.00	$14,468.00	$5,000.00	$1.00
Total	**$2,715,000.00**	$2,814,700.00	$3,079,063.00	$3,138,000.00	$3,064,001.00
Base Bid B	$2,198,000.00	$2,777,700.00	$2,626,338.00	$2,627,000.00	$2,679,000.00
Alternate No. 1	$208,000.00	$257,000.00	$124,378.00	$217,000.00	$165,000.00
Alternate No. 2	$4,000.00	$12,000.00	$12,917.00	$5,000.00	$1.00
Total Award	$2,410,000.00	$3,046,700.00	$2,763,633.00	$2,849,000.00	$2,844,001.00

Prev Wage – 12.65% higher

LOCAL CIP

2. June 25, 2008 – Opened Bid **(#09-005N); Pavement Improvements to the Access Driveway/Bus Loop at Westminster High School and Carroll County Career & Technology Center.** Recommend awarding bid to **C. J. Miller, LLC** in the amount of **$214,000.00**. Bid summary is as follows:

CJ Miller	Ross Contracting	Hoover Grading	Highland Turf	Melvin Benhoff	Meekins
$214, 000.00	$239,975.00	$248,000.00	$291,271.00	$301,218.00	$316,258.00

3. May 27, 2008 – Opened Bid **(08-069N); Resinous Flooring for Manchester Valley High School.** Recommend awarding bid to **Shoemaker Brothers, Inc.**, even though they were the only bidder, in the amount of **$167,263.00.** Six (6) contractors were solicitated, three (3) picked-up the bid documents, with only one (1) contractor submitting a bid.

Supplementary packet
Agenda Item 4
September 9, 2008
Action

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney

SUBJECT: **Action**: Bill 21-08, Contracts and Procurement – Prevailing Wages - Construction

The packet for Bill 21-08 did not include the 2008 prevailing wage rates for State funded construction projects in Montgomery County. These rates, as modified annually by the State Secretary of Labor, Licensing and Regulation, would become the prevailing wage rates for County awarded and funded construction contracts under Bill 21-08. The 2008 wage rates are at ©1.

This packet contains:	Circle #
State Prevailing Wage Rates for 2008	1

F:\LAW\BILLS\0821 Prevailing Wage\Supp Action Memo.Doc

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF LABOR AND INDUSTRY
PREVAILING WAGE SECTION
1100 N. Eutaw Street, Room 607
Baltimore, Maryland 21201
(410) 767-2342

Determination of wage rates to be paid laborers and mechanics for the locality described below is announced by order of the Commissioner of Labor and Industry.

It is mandatory upon the successful bidder and any subcontractor under him, to pay not less than the specific rates to all workers employed by them in executing contracts in this locality. Reference: Annotated Code of Maryland State Finance and Procurement, Section 17-201 thru 17-226).

These wage rates were taken from the locality determination issued and dated below.

MONTGOMERY COUNTY BUILDING CONSTRUCTION February 1, 2008

CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFIT PAYMENTS
BOILERMAKER	$32.06	$18.91
BRICKLAYER	$23.19	$4.80
CARPENTER	$24.37	$6.21
CEMENT MASON-FINISHER	$26.15	$6.01
ELECTRICIAN	$33.45	$13.55
ELEVATOR MECHANIC	$32.36	$15.46
INSULATION WORKER	$27.13	$13.30
IRONWORKER:		
STRUCTURAL	$26.73	$12.08
REINFORCING	$26.73	$12.08
GLAZIER	$26.34	$7.51
LABORER:		
COMMON OR UNSKILLED	$18.49	$4.25
MASON TENDER	$15.54	
AIR TOOL OPERATOR	$16.00	
MILLWRIGHT	$27.24	$6.21
PAINTER:	$23.31	$7.36
SPACKLING, TAPING, & FINISHING	$23.31	$7.36
STEEL BRIDGE	$27.87	$7.36
PILEDRIVER	$22.87	$6.91
PLASTERER:	$25.35	$5.32
HANDLER	$11.50	$5.32
MIX & PUMP	$14.00	$5.32
SPRAYER	$19.01	$5.32
PLUMBER	$33.82	$12.89 +a
RESILIENT FLOOR/CARPET LAYER	$23.35	$5.42
ROOFER	$27.00	$5.53

MONTGOMERY COUNTY BUILDING CONSTRUCTION February 1, 2008

CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFIT PAYMENTS
SHEETMETAL WORKER	$31.54	$11.65
SPRINKLERFITTER	$26.45	$11.65
STEAMFITTER/PIPEFITTER	$33.82	$12.89 +a
TILE & TERRAZZO MECHANIC	$18.01	$5.40
TILE & TERRAZZO FINISHER	$14.88	$4.83
TRUCK DRIVER:		
DUMP TRUCK	$18.00	$5.52
POWER EQUIPMENT OPERATORS:		
BACKHOE	$24.00	$5.77
BOBCAT	$20.15	
BOOM TRUCK	$27.18	$7.32
BULLDOZER	$24.00	$5.77
CREWBOAT	$26.10	$4.87
CRANE	$30.09	$8.70 +a+b
CONCRETE PUMP	$27.64	$6.32
DRILL-RIG	$27.64	$6.32
FORKLIFT	$24.00	$5.77
LOADER	$22.70	$5.52
MECHANIC	$27.64	$6.32
ROLLER	$23.05	$5.45
SPREADER	$24.00	$5.77
TOWER CRANE	$28.14	$6.82

WELDER, RIGGER, CAULKER - Receive rate prescribed for craft performing operation to which welding, rigging, or caulking is incidental.

a. PAID HOLIDAYS: New Years Day, Memorial Day, July 4th, Labor Day, Martin Luther King's Birthday, President's Day, Veteran's Day, Thanksgiving Day, & Christmas Day.

b. PAID VACATIONS: Employees with 1 year service-1 week paid vacation;
2 years service-2 weeks paid vacation
10 years service-3 weeks paid vacation

*COMMUNICATION INSTALLER TECHNICIAN	$23.15	$6.65 +a+b

*The above listed classification will be utilized for the installation, maintenance, and removal of teledata facilities (voice, data and video) including outside plant, telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, railroad communications, micro waves, V-SAT, bypass, CATV, WAN (Wide Area Networks), LAN (Local Area Networks), and ISDN (Integrated Systems Digital Network). Fire alarm work and security alarm work shall be installed by an Electrician. All HVAC control work will be installed by an Electrician or a Steamfitter/Pipefitter.