

MOTION:

**April 5, 2022
Regular Meeting
Res. No. 22-**

SECOND:

RE: AUTHORIZE A PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE TO REQUIRE THE PAYMENT OF PREVAILING WAGES FOR WORK PERFORMED ON PUBLIC WORKS CONTRACTS OF \$250,000 OR GREATER, AS AUTHORIZED BY § 2.2-4321.3(C) OF THE CODE OF VIRGINIA

ACTION:

WHEREAS, In 2020, the Virginia General Assembly amended Code of Virginia § 2.2-4321.3 to authorize localities to adopt an ordinance requiring that, when letting contracts for public works paid in whole or in part by funds of the locality, or when overseeing or administering a public contract, its bid specification, project agreements, or other public contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract at the prevailing wage rate; and

WHEREAS, on July 16, 2021, the Prince William Board of County Supervisors (Board) issued Directive No. 21-43 that directed the County staff to prepare a prevailing wage ordinance that would apply to public works projects for the County. The Director of Finance responded to Directive No. 21-43 on November 18, 2021, and the directive was closed on the same day. On January 11, 2022, the Board issued Directive No. 22-01 directing County staff to develop a draft prevailing wage ordinance that would apply to public works contracts of \$250,000 or greater for review and consideration; and

WHEREAS, County staff has drafted a proposed ordinance requiring the payment of prevailing wages for work performed on public works contracts of \$250,000 or greater; and staff will bring forth amendments to the Prince William County Procurements Regulations implementing those requirements; and

WHEREAS, the Board has the authority to authorize a public hearing to consider the adoption of an ordinance to require the payment of prevailing wage for work performed on public works contracts of \$250,000 or greater;

NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors hereby authorize a public hearing to be scheduled on May 10, 2022, to consider adoption of an ordinance to require the payment of prevailing wages for work performed on public works contracts of \$250,000 or greater, as authorized by § 2.2-4321.3(C) of the Code of Virginia; and directs staff to bring forth amendments to the Prince William County Procurements Regulations implementing those requirements;

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Res. No. 22-
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BE IT FURTHER RESOLVED that the Clerk to the Board of County Supervisors properly advertise notice of the public hearing for the stated purpose in a newspaper of general circulation in Prince William County.

ATTACHMENT: Proposed Ordinance – Prevailing Wage

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Director of Finance

County Attorney

ATTEST: _____

Clerk to the Board

MOTION:

**May 10, 2022
Regular Meeting**

SECOND:

Ord. No. 22-

RE:

ORDINANCE TO REQUIRE THE PAYMENT OF PREVAILING WAGES FOR WORK PERFORMED ON PUBLIC WORKS CONTRACTS OF \$250,000 OR GREATER, AS AUTHORIZED BY § 2.2-4321.3(C) OF THE CODE OF VIRGINIA

ACTION:

WHEREAS, In 2020, the Virginia General Assembly amended Code of Virginia § 2.2-4321.3 to authorize localities to adopt an ordinance requiring that, when letting contracts for public works paid in whole or in part by funds of the locality, or when overseeing or administering a public contract, its bid specification, project agreements, or other public contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract at the prevailing wage rate; and

WHEREAS, notice of a public hearing on this proposed ordinance was advertised in newspapers of general circulation in the County and a public hearing was held by the Board on May 10, 2022;

NOW, THEREFORE, BE IT ORDAINED that the Prince William Board of County Supervisors hereby requires the payment of prevailing wages for work performed on public works contracts of \$250,000 or greater, as authorized by § 2.2-4321.3(C) of the Code of Virginia, and further directs the Department of Finance to bring forth amendments to the Prince William County Procurements Regulations implementing those requirements.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Director of Finance
County Attorney

ATTEST: _____

Clerk to the Board



STAFF REPORT

Board Meeting Date:	April 5, 2022
Agenda Title:	Authorize a Public Hearing to Consider Adoption of an Ordinance to Require the Payment of Prevailing Wages on Public Works Contracts of \$250,000 or Greater, as Authorized by § 2.2- 4321.3(C) of the Code of Virginia
Requested Action:	Approve the resolution and authorize the public hearing.
Department / Agency Lead:	Department of Finance / Procurement Services Division
Staff Lead:	Adam Manne, Assistant Director of Finance for Procurement Services

EXECUTIVE SUMMARY

The Virginia General Assembly, during its 2020 session, amended the Virginia Public Procurement Act (VPPA) to give Virginia localities the non-mandatory option to implement local prevailing wage programs for public works contracts more than \$250,000. The legislation is partially modeled after the Federal Davis-Bacon Act, which has long required the payment of prevailing wages on construction contracts funded in part or in whole with Federal dollars.

The VPPA defines the prevailing wage rate as “the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located.” Simply stated, prevailing wage rates represent the average wage and benefit levels for labor classes within a particular localized area.

The Board of County Supervisors (Board) may authorize a public hearing to adopt an ordinance to require the payment of prevailing wages for work performed on public works contracts, as authorized by § 2.2-4321.3(C) of the Code of Virginia; and direct the Department of Finance to bring forth a resolution with amendments to the Prince William County Procurements Regulations implementing those requirements.

It is the recommendation of County staff that the Board authorize a public hearing to consider adoption of an ordinance that requires the payment of prevailing wages for work performed on Public Works contracts, as authorized by § 2.2-4321.3(C) of the Code of Virginia; and to direct the Department of Finance to bring forth a resolution with amendments to the Prince William County Procurement Regulations implementing those requirements.

BACKGROUND

On July 16, 2021, the Board issued Directive No. 21-43 that directed County staff to prepare a prevailing wage ordinance that would apply to public works contracts for consideration by the Board. The Director of Finance responded to Directive No. 21-43 on November 18, 2021, and the directive was closed the same day. On January 11, 2022, the Board issued Directive No. 22-01 that directed staff to develop a draft prevailing wage ordinance that would apply to public works contracts for consideration exceeding \$250,000 for review and to authorize a public hearing.

Virginia Code § 2.2-4321.3 defines public works as “the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by the state agency or locality”. The County’s Procurement Regulations define construction as “building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading, or similar work upon real property.”

In 2020, the Virginia General Assembly amended Code of Virginia § 2.2-4321.3 of the VPPA to authorize localities to adopt an ordinance requiring that, when letting contracts for public works paid in whole or in part by funds of the locality, or when overseeing or administering a public contract, its bid specification, project agreements, or other public contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract at the prevailing wage rate.

The VPPA defines the prevailing wage rate as “the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located.” Simply put, prevailing wage rates represent the average wage and benefit levels for particular labor classes within a particular localized area.

The prevailing wage rates for each labor category in the geographic area where public works projects are being performed is determined by the Virginia Commissioner of Labor and Industry (DOLI) based on the prevailing wage rates determined by the U.S. Secretary of Labor under the Davis-Bacon Act. Code of Virginia § 2.2-4321.3 stipulates that the prevailing wage for public works is to be set by the Commissioner of Labor and Industry. Only an official Wage Determination from DOLI, sent to a contracting agency conducting a public works project can be used for official purposes. Rates are made public for any party to research Virginia’s prevailing wages, the current wage rates and labor categories can be viewed at <https://www.doli.virginia.gov/prevailing-wage-law/>.

STAFF RECOMMENDATION

It is the recommendation of County staff that the Board authorize a public hearing to consider adoption of an ordinance that requires the payment of prevailing wages for work performed on Public Works contracts, as authorized by § 2.2-4321.3(C) of the Code of Virginia; and to direct the Department of Finance to bring forth a resolution with amendments to the Prince William County Procurement Regulations implementing those requirements.

Service Level / Policy Impact

Prevailing wage policies are based on the notion that public contracts should not decrease the average wage rates for construction laborers and tradespeople in a locality but should either maintain the average or improve it. A prevailing wage policy may impact the level of competition for construction solicitations, although there are differing opinions as to whether this impact will be favorable or unfavorable.

Fiscal Impact

It is estimated that if enacted, the prevailing wage provision would be required in approximately thirty (30) or more projects per year, although this number will vary from year to year based on the size of the adopted Capital Improvement Plan. There is no immediate significant fiscal impact anticipated for the County as labor rates paid in the Northern Virginia region are likely already at or above the prevailing wage rates.

Legal Impact

Section § 2.2-4321.3(C), VA Code Ann., requires that the adoption of prevailing wage ordinance by a locality be by ordinance. A public hearing is required by Section 15.2-1427(F), VA Code Ann. No ordinance shall be passed until after descriptive notice of an intention to propose the ordinance for passage has been published once a week for two successive weeks prior to its passage in a newspaper having a general circulation in the county. The second publication shall not be sooner than one calendar week after the first publication. The publication shall include a statement either that the publication contains the full text of the ordinance or that a copy of the full text of the ordinance is on file in the clerk's office.

The proposed resolution and ordinance were reviewed and approved by the County Attorney.

STAFF CONTACT INFORMATION

Adam Manne | (703) 792-6774
amanne@pwcgov.org

ATTACHMENTS

VA Code Ann. 2.2-4321.3
PowerPoint Presentation

Code of Virginia
Title 2.2. Administration of Government
Subtitle II. Administration of State Government
Part B. Transaction of Public Business
Chapter 43. Virginia Public Procurement Act
Article 2. Contract Formation and Administration

§ 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts; penalty

A. As used in this section:

"Locality" means any county, city, or town, school division, or other political subdivision.

"Prevailing wage rate" means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located, as determined by the Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.

"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency or locality, including transportation infrastructure projects.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town.

B. Notwithstanding any other provision of this chapter, each state agency, when procuring services or letting contracts for public works paid for in whole or in part by state funds, or when overseeing or administering such contracts for public works, shall ensure that its bid specifications or other public contracts applicable to the public works require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract for public works at the prevailing wage rate. Each public contract for public works by a state agency shall contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

C. Notwithstanding any other provision of this chapter, any locality may adopt an ordinance requiring that, when letting contracts for public works paid for in whole or in part by funds of the locality, or when overseeing or administering a public contract, its bid specifications, project agreements, or other public contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract at the prevailing wage rate. Each public contract of a locality that has adopted an ordinance described in this section shall contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on

the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

D. Any contractor or subcontractor who employs any mechanic, laborer, or worker to perform work contracted to be done under the public contract for public works for or on behalf of a state agency or for or on behalf of a locality that has adopted an ordinance described in subsection C or at a rate that is less than the prevailing wage rate (i) shall be liable to such individuals for the payment of all wages due, plus interest at an annual rate of eight percent accruing from the date the wages were due; and (ii) shall be disqualified from bidding on public contracts with any public body until the contractor or subcontractor has made full restitution of the amount described in clause (i) owed to such individuals. A contractor or subcontractor who willfully violates this section is guilty of a Class 1 misdemeanor.

E. Any interested party, which shall include a bidder, offeror, contractor, or subcontractor, shall have standing to challenge any bid specification, project agreement, or other public contract for public works that violates the provisions of this section. Such interested party shall be entitled to injunctive relief to prevent any violation of this section. Any interested party bringing a successful action under this section shall be entitled to recover reasonable attorney fees and costs from the responsible party.

F. A representative of a state agency or a representative of a locality that has adopted an ordinance described in subsection C may contact the Commissioner of Labor and Industry, at least 10 but not more than 20 days prior to the date bids for such a public contract for public works will be advertised or solicited, to ascertain the proper prevailing wage rate for work to be performed under the public contract.

G. Upon the award of any public contract subject to the provisions of this section, the contractor to whom such contract is awarded shall certify, under oath, to the Commissioner of Labor and Industry the pay scale for each craft or trade employed on the project to be used by such contractor and any of the contractor's subcontractors for work to be performed under such public contract. This certification shall, for each craft or trade employed on the project, specify the total hourly amount to be paid to employees, including wages and applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit, and list the names and addresses of any third party fund, plan or program to which benefit payments will be made on behalf of employees.

H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual performing the work of any mechanic, laborer, or worker and (ii) a schedule of the occupation or work classification at which each individual performing the work of any mechanic, laborer, or worker on the public works project is employed during each work day and week. The employer shall preserve these records for a minimum of six years and make such records available to the Department of Labor and Industry within 10 days of a request and shall certify that records reflect the actual hours worked and the amount paid to its workers for whatever time period they request.

I. Contractors and subcontractors performing public works for a state agency or for a locality that has adopted an ordinance described in subsection C shall post the general prevailing wage rate for each craft and classification involved, as determined by the Commissioner of Labor and Industry, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at any such places as are used by the contractor or subcontractors

to pay workers their wages. Within 10 days of such posting, a contractor or subcontractor shall certify to the Commissioner of Labor and Industry its compliance with this subsection.

J. The provisions of this section shall not apply to any public contract for public works of \$250,000 or less.

2020, cc. [1216](#), [1243](#);2021, Sp. Sess. I, c. [549](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



PRINCE WILLIAM
COUNTY

11-A

Summary of Prevailing Wage Rates

Virginia Code § 2.2-4321.3

BOCS Meeting | April 5, 2022

2020 General Assembly Legislation on Prevailing Wages



- The Virginia General Assembly, during its 2020 session, amended the Virginia Public Procurement Act (VPPA) to give Virginia localities the non-mandatory option to implement local prevailing wage programs for public works contracts more than \$250,000
 - The legislation is partially modeled after the Federal Davis-Bacon Act, which has long required the payment of prevailing wages on construction contracts funded in part or in whole with Federal dollars
- VPPA defines the prevailing wage rate as “the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located”
 - Simply stated, prevailing wage rates represent the average wage and benefit levels for labor classes within a particular localized area

Background



- Board of County Supervisors (BOCS) issued Directive No. 21-43 on July 16, 2021, directing County staff to prepare a prevailing wage ordinance that would apply to public works contracts for consideration.
- The Director of Finance responded to Directive No, 21-43 on November 18, 2021, and the directive was then closed same day
- Board of County Supervisors (BOCS) issued Directive No. 22-01 on January 11, 2022, directing County staff to develop a draft prevailing wage ordinance that would apply to public works contracts of \$250,000 or greater for review and consideration

Background

- Virginia Code § 2.2-4321.3 defines public works as “the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by the state agency or locality”
- County’s Procurement Regulations define construction as “building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading, or similar work upon real property”

Summary of Other Jurisdictions Prevailing Wage Rates

Jurisdiction	Threshold
Arlington County	\$250,000
Fairfax County	\$250,000
Loudoun County	n/a
Commonwealth of Virginia	\$250,000
Montgomery County, MD	\$500,000
District of Columbia	\$2,000
Federal Davis-Bacon Act	\$2,000

Potential Service Level/ Policy Impacts

- Prevailing wage policies are based on the notion that public contracts should not decrease the average wage rates for construction laborers and tradespeople in a locality but should either maintain the average or improve it
 - Potential to result in a higher skilled workforce and quality improvement
- A prevailing wage policy may impact the level of competition for construction solicitations, although there are differing opinions as to whether this impact will be favorable or unfavorable
 - Potential for prevailing wage laws to adversely affect small, women owned, and minority-owned businesses by limiting their ability to compete with larger businesses that can implement the higher pay standards
- Administrative requirements for County staff (next slide)

Service Level/ Policy Impact County Responsibilities



1. Ensure that its bid specifications or other public contracts applicable to the public works require bidders, hired to perform services in connection with the public contract for public works contracts at the prevailing wage rate
2. Ensure that its public works contracts contain a provision requiring that the wages, salaries, benefits, and other remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate at least equal to the prevailing wage rate
3. Contact the Commissioner of Labor and Industry (DOLI), at least ten (10) but not more than twenty (20) days prior to the date bids for such a public contract for public works will be advertised or solicited, to ascertain the proper prevailing wage rate for work to be performed under the public contract
4. Contact the DOLI, upon request from the project contractor, to request conformances for classifications not included on the general wage determination, along with the reason for the additional classification, the proposed rate, and any supporting documentation
5. Check the Virginia Department of General Services (DGS) site prior to accepting a contractor's bid to ensure the bidder has not been disqualified for a violation of the prevailing wage law

Service Level/ Policy Impact Contractor Responsibilities



1. Pay the prevailing rate of wages and benefits, for the classification of work being performed. Fringe benefits are paid at straight time rate for all hours including overtime
2. Contractors, upon award of a public works contract, must provide the DOLI the pay scale for each craft or trade employed on the project
 - a. The pay scale must be certified under oath;
 - b. Subcontractors must be required to follow the certified pay scale for each of their employees in each craft or trade; and
 - c. The pay scale may be on the prescribed form or its equivalent
3. Keep full and accurate payroll records available for inspection by any authorized representative of the DOLI. Records should include but are not limited to:
 - a. Timecards, time sheets, daily work records, etc.
 - b. Payroll ledger\journals and canceled checks\check register
 - c. Fringe benefit records must include program, address, account number, & canceled checks
4. A Prevailing Wage Rate Schedule must be posted on the job site where it is accessible to all employees. Within ten (10) days of such posting, a contractor or subcontractor must send to the DOLI a certification of its compliance with this requirement
5. Supply all subcontractors with the prevailing rates and changes thereto

Potential Fiscal Impacts



- Commonwealth of Virginia is assuming a 15% increase in pricing
- No immediate significant fiscal impact anticipated for the County
 - Labor rates paid in the Northern Virginia region are likely already at or above the prevailing wage rates
- At \$250,000, it is estimated the prevailing wage provision would impact approximately thirty (30) or more projects per year
 - Number will vary from year-to-year based on the size of the adopted Capital Improvement Plan

Legal Impact

- A public hearing is required by Section 15.2-1427(F), VA Code Ann
 - Must be published once a week for two (2) successive weeks prior to its passage in a newspaper having a general circulation in the County
 - The second publication shall not be sooner than one (1) calendar week after the first publication
 - The publication shall include a statement either that the publication contains the full text of the ordinance or that a copy of the full text of the ordinance is on file in the Clerk's Office.
 - The proposed ordinance could be advertised the weeks of April 11-15th and April 18-22nd, with a Public Hearing scheduled for May 10, 2022

Next Steps?

The background of the slide is a solid blue color. On the left side, there is a faint, stylized graphic in a lighter shade of blue. It depicts a scale of justice with a single pan hanging from a central beam. Above the beam is a torch with a flame. Below the scale is a laurel wreath. The text 'Next Steps?' is written in white, bold, sans-serif font in the upper left quadrant of the slide.

- Questions?
- Alternatives:
 - BOCS can proceed to authorize a public hearing to enact a prevailing wage rate ordinance
 - BOCS can take no action at this time since enactment is non-mandatory
 - BOCS could also choose to take action at a later date