

7-B

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 SECTION 2.2-4321.3(C) OF THE CODE OF VIRGINIA

ACTION:

WHEREAS, in 2020, the Virginia General Assembly amended Code of Virginia Section 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 Prince William Board of County Supervisors 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 Section 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:	May 10, 2022
Agenda Title:	Adopt 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
Requested Action:	Adopt the ordinance as authorized by the Code of Virginia.
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 Prince William Board of County Supervisors (Board) on April 5, 2022 authorized a public hearing to adopt an ordinance that requires the payment of prevailing wages for work performed on public works contracts of \$250,000 or greater, as authorized by Section 2.2-4321.3(C) of the Code of Virginia.

BACKGROUND

On July 16, 2021, the Board issued Directive (DIR No.) 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 DIR. No. 21-43 on November 18, 2021, and the directive was closed the same day.

On January 11, 2022, the Board issued DIR. 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.

On April 5, 2022, the Board authorized a public hearing to take place on May 10, 2022, to consider the 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 Section 2.2-4321.3(C) of the code of Virginia.

Virginia Code Section 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 Section 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 United States Secretary of Labor under the Davis-Bacon Act. Code of Virginia Section 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 adopt the ordinance that requires the payment of prevailing wages for work performed on public works contracts of \$250,000 or greater, as authorized by Section 2.2-4321.3(C) of the Code of Virginia.

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

Virginia Code Section 2.2-4321.3(C) , requires that a prevailing wage provision be adopted by local ordinance. A public hearing was required by Virginia Code 15.2-1427(F). A duly advertised descriptive notice of an intention to propose the ordinance for passage has been published once a week for two successive weeks in a newspaper having a general circulation in the county.

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

STAFF CONTACT INFORMATION

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ATTACHMENTS

- VA Code Ann. 2.2-4321.3
- Procurement Regulation Sections 100.04(A).64 Definitions and Section 100.12(M) Required Contract Provisions

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 Procurement Regulations

100.04(A).64 Definitions

Public Works:

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.

100.12(M). Required Contract Provisions

In accordance with Virginia Code § 2.2-4321.3(C), the contractor shall include a clause that requires bidders, offerors, contractors, and subcontractors pay wages, salaries, benefits and other remuneration to any mechanic, laborer or worker employed, retained or otherwise hired to perform services in connection with the contract at the prevailing wage rate.

The “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.

The contractor shall include the prevailing wage rate requirement, above, in each of its subcontracts so that the provisions will be binding upon each subcontractor or vendor.