



Prevailing Wage Law in Assembly Bill 1261-Bronson / Senate Bill 1947-Ramos

A proposed prevailing wage law going through Albany could challenge the financial success of public/private partnerships. This bill, sponsored by Sen. Jessica Ramos (D-East Elmhurst) and Assemblyman Harry Bronson (D-Rochester), is drawing support from union officials and drawing opposition from real estate industry officials.

This law would expand the definition of public projects to include any private project that receives public incentives or funding. A public works project requires the payment of prevailing wages - which are set by the Department of Labor and to labor union's schedule. If enacted, any project currently being funded by public funds would immediately have to convert to paying the maximum prevailing wage in addition to following separate operational guidelines set forth by the union and Department of Labor.

This article is meant to objectively explore the issue of prevailing wages from a Long Island perspective.

Subject Headings

- The History of Prevailing Wage
- Prevailing Wage Proposal
- Current State of Long Island Construction
- Potential Impacts of the Proposed Legislation on the Long Island Economy
- What Can Be Done Going Forward?
- Conclusion

Summary of Some Main Points:

- Businesses and developers are willing to adapt to regulation, but the Bill as it stands would impact current projects that have IDA funding; which would completely shift financial projections and operational procedures.
- In general, large scale developers on Long Island already use 50-60% union labor.
- Organized labor have genuine intent to support local workers, but the overall workforce is trending away from organized labor for a variety of reasons.
- Long Island has an affordable housing crisis and in order to meet the housing needs of our younger and older generations, new multifamily housing opportunities need to be added to the market in the near future.
- Carve Outs in the Bill, Project Labor Agreements, and compromise are potential ways to achieve the goals of organized labor and ease the concerns of business and developers.

The History of Prevailing Wage

In 1931, with the Great Depression deepening, U.S. Rep. Robert Bacon and U.S. Sen. James Davis of Pennsylvania successfully co-sponsored legislation requiring that workers employed under federal construction contracts be paid “based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a similar character to the contract work in the civil subdivision of the State in which the work is to be performed.”

The Davis-Bacon Act would set prevailing wage at the 30 percent rule. The rule set prevailing wage as the wage paid to at least 30 percent of workers in a given craft in a given locality, or as a weighted average of all wages and benefits if no single amount was paid to at least 30 percent of the workers.

According to the Empire Center, the current New York law differs from Davis-Bacon in two significant respects:

- Instead of conducting employer surveys, New York State bases its definition of “prevailing rate of wage” on compensation levels set in “collective bargaining agreements between bona fide labor organizations and employers in the private sector.”
- New York has the only state prevailing wage law still using the old 30 percent rule; all other states that have a prevailing wage law enacted have their law reflect a “50 percent rule” - which requires a 50 percent of area labor to be union members if that is to be used as the prevailing wage.

Prevailing wages would also include “supplements,” defined as “all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not ‘wages’ within the meaning of the law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay, life insurance, and apprenticeship training.”

With 135 local unions around New York State, determining prevailing wages for an area can be a very complex process.

Prevailing Wage Proposal

Prevailing wage ensures that local employees are receiving a living wage for their area. Also, prevailing wage helps unionized contractors combat non-union contractors who can underbid proposals through value engineering.

However, IDA funding was started to bring economic and employment opportunities to regions by offering entities an immediate financial incentive for their long term financial and economic contributions to the local areas. With this proposal, any business, developer, or organization that receives IDA funding would have to pay prevailing wages - which could completely negate any incentive that was offered by the IDA because of the increased labor expenses.

Prevailing wage does not simply mean a higher wage. Prevailing wage brings fringe benefit expenditures, operational inefficiencies, increased administrative costs, increased workplace reporting, union control of

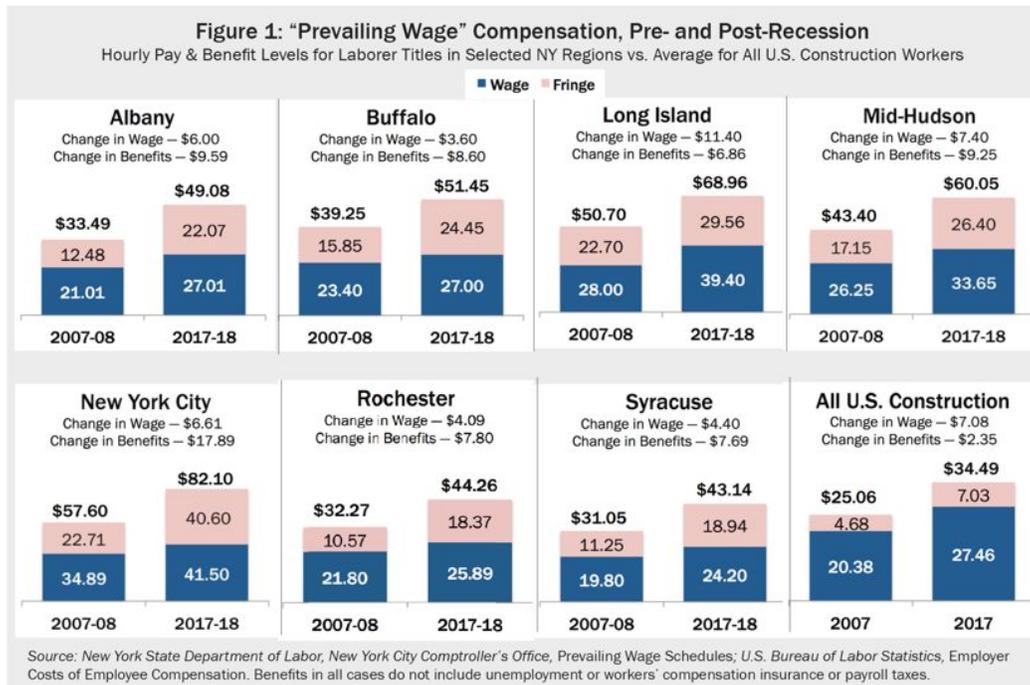
work protocol, decreased productivity, reluctant adoption of new technology, and restraint of the free marketplace.

Current State of Long Island Construction

According to a study performed by the Long Island Index; “While Long Island is building more rentals, co-ops, condos and other multi family homes than it has in past decades, there is still an enormous gap between what is being produced and what the region needs.”

Long Island is in an affordability crisis. Our younger and older generations are moving away because Long Island does not have sufficient housing options that they desire. The large scale developments being built or proposed for Long Island are one of the main solutions to this affordability crisis.

According to the chart below, Long Island construction wages increased 36% since the recession to a level that is 99.94% higher than the national average. The majority of these wage increases consisted of supplemental benefits rather than hourly wages.



Potential Impacts of the Proposed Legislation on the Long Island Economy

If Long Island continues to lose key generational groups, our economy would quickly become unbalanced and sink towards market stagnation.

In order to maintain these key generational groups, Long Island must work quickly to add affordable housing options and a diverse housing stock onto the market. This will decrease overall rent prices in the region and incentivize growth on Long Island.

From the large scale developers' point of view, the proposed legislation is a job killer throughout the industry supply chain; architects, engineers, bankers, lawyers, title companies, construction workers, manufacturers, property managers, tenants, furniture stores, etc. These developers seek capital from lending institutions who require a certain return to loan money. If the legislation in its entirety is mandated for IDA funded projects, the rent charged on the new construction would have to be raised, or the developer would simply move to a market that they could reach their required financial returns. In fact, the Ulster County IDA tried prevailing wage requirements ten years ago and went two years without a project application. Also, in 2018, the City of Yonkers IDA placed PLA requirements and went an entire year without closing a deal.

What can be done going forward?

Project labor agreements allow construction unions to gain more support for workers without imposing the operational and administrative burdens of union contracts - some job classifications are broadened and work rules are waived or modified.

Carve outs in the Bill could also be considered. Prevailing Wages affects regions of New York very differently. The increase in construction cost due to prevailing wages ranges from 13% to 25% in New York State. The regions who will see increases closer to 25% are New York City and Long Island - who already have the highest construction costs in the state. Carve outs to modify the proposed bill could change the requirements for regions that already have high construction costs, or grandfather projects that have already been established with public funding.

According to the Empire Center, here are five steps to a better and more cost-effective prevailing wage:

- Conduct a statistically valid survey of the private construction sector in each metropolitan area of the state to determine the share of a trade's workers covered by a collective bargaining agreement, as required by law.
 - In localities where the threshold had not been reached, base the "prevailing" wage on federal OES surveys and tabulations.
 - Eliminate the statutory 30 percent rule, instead matching the Davis-Bacon threshold of either a wage covering at least 50 percent of a given trade or a weighted average wage for each trade in a given locality.
 - Limit the scope of the mandate to the common, dictionary definition of "wage"—the amount directly paid to workers on an hourly basis, before taxes and excluding benefits, also eliminating the application of union work rules.
 - Ensure the entire process is transparent, keeping confidential only data that is directly related to employer-employee confidentiality.
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Conclusion

According to Terri Alessi-Miceli, President and CEO of Hauppauge Industrial Association (HIA-LI), "In addition to inhibiting the creation of new manufacturing enterprises, this radical change in IDA guidelines would also suppress the introduction of new housing into our region, including affordable housing."

When considering Long Island's state of high construction costs and home affordability issues, a bill that could raise construction costs by 25% would devastate Long Island.

A reduction in the development of new housing stock will put upward pressure on the pricing of the existing housing stock. Higher construction costs mean fewer projects which means less construction work for labor, less job growth and a shrinking tax base.

Sources

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- Existing prevailing wage laws inflate the cost of construction in New York
- “Wage” includes expensive fringe benefits included in union pay
- Effectively requires developers to organize and assign work through union mandates
- Construction costs will go up 13 to 25 percent depending on your region, which will lead to higher costs for the taxpayers as well
- The law’s ambiguous applications put the developers in limbo as to whose jurisdiction they are working under

- Billions of dollars of the next 10 years will be spent on public works
- The phrase is both antiquated and misleading.
 - The law defines “prevailing” as the amounts set forth in union contracts covering at least 30 percent of workers in specialized building trades titles in a locality.
 - And the mandated “wage” includes high-priced union fringe benefits, which can equal or even exceed a worker’s hourly cash pay.
- The impact on total construction costs, we estimate, comes to at least:
 - 13 percent more in the Albany-Schenectady-Troy area;
 - 14 percent more in the Rochester and Syracuse metro areas;
 - 15 percent more in the Dutchess-Putnam County area;
 - 20 percent more on Long Island and in the Buffalo metro area; and
 - 25 percent more in the New York City region.
- Union Benefits
 - Unions are losing footing in the marketplace - less employees are getting unionized - and these unions have large pension funds and welfare plans owed to workers
 - The social contract obligation to past generations is a serious one, of course. But the high and rising cost of meeting that obligation for unionized building trades is never acknowledged when prevailing wage policy is discussed in New York.
 - Prevailing wage law would add administrative costs and work rules can erode productivity
 - New York City’s construction trades easily exceed those even in other high-cost, union-friendly cities such as Boston, Chicago and Los Angeles.
- Origins and background
 - In 1931, with the Great Depression deepening, U.S. Rep. Robert Bacon and U.S. Sen. James Davis of Pennsylvania successfully co-sponsored legislation requiring that workers employed under federal construction contracts be paid “based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a similar character to the contract work in the civil subdivision of the State in which the work is to be performed.”
 - Davis-Bacon Act
 - prevailing wage as the wage (and, after 1964, combined wages and benefits) paid to at least 30 percent of workers in a given craft in a given locality, or as a weighted average of all wages and benefits if no single amount was paid to at least 30 percent of the workers. This became known as the 30 percent rule.

- In localities where the threshold had not been reached, base the “prevailing” wage on federal OES surveys and tabulations.
- Eliminate the statutory 30 percent rule, instead matching the Davis-Bacon threshold of either a wage covering at least 50 percent of a given trade or a weighted average wage for each trade in a given locality.
- Limit the scope of the mandate to the common, dictionary definition of “wage”—the amount directly paid to workers on an hourly basis, before taxes and excluding benefits, also eliminating the application of union work rules.
- Ensure the entire process is transparent, keeping confidential only data that is directly related to employer-employee confidentiality.

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- The bill, sponsored by Sen. Jessica Ramos, D-East Elmhurst and Assemblyman Harry Bronson, D-Rochester, would redefine public projects to include private projects that receive government incentives or any publicly funded financial assistance. It would also mandate that those projects pay prevailing wages according to a schedule set by the state’s Department of Labor and labor union representatives.
- Though state law already requires that workers on public projects be paid prevailing wages, the proposed law would expand that mandate to public/private partnerships and private developments or businesses that get tax breaks or economic incentives from industrial development agencies for expansions and job creation.
- We’re hoping there could be a carve out that exempts Long Island from the restriction.”
- There is a carve out in the bill that exempts multifamily projects where at least 75 percent of the units are affordable to people earning 60 percent or less than the area median income. However, developers say that exemption is too restrictive.
- “In addition to inhibiting the creation of new manufacturing enterprises, this radical change in IDA guidelines would also suppress the introduction of new housing into our region, including affordable housing,”
 - Terri Alessi-Miceli, president and CEO of HIA-LI

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- Nassau County’s Industrial Development Agency will meet Tuesday with Jericho developer Sanders Equities and its general contractor, Racanelli Construction Co. Inc., to discuss the construction workers’ pay and the extent to which union members are employed on the site at 400 W. John St.
- Local 66 business agent Salvatore Speziale said the Hicksville warehouse isn’t the first IDA project where the prevailing wage has become a point of controversy
- “It’s really unacceptable what’s going on,” he said. “These developers are very profitable, yet they request tax breaks that they don’t need. And then they refuse to pay the area [wage] standard for the work being performed.”