

Local Governments and Schools Would Be Subject to Market Conditions, Not Prevailing Wage, if Senate Amendments to Budget Bill Prevail

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Practice Area: School Law & County and Municipal Governance &
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On July 7, 2015, the Senate adopted an amendment (Senate Amendment 2) to Senate Bill 21, which is the bill that contains the proposed State budget. The amended version has passed the Senate and is now proceeding before the Assembly. The amended version of the budget bill adopted by the Senate contains significant changes to Wisconsin's prevailing wage laws. If adopted by the Assembly and signed by the Governor, as is widely expected, the proposed changes would go into effect as of January 1, 2017. Below are highlights of what changes, and may not change, as a result of the recently proposed Senate Amendment.

What is the law currently?

Wis. Stat. § 66.0903 requires the Department of Workforce Development (DWD) to compile the prevailing wage rates for each trade or occupation in each area of the State. Per the statute, any contract entered into for a project of public works has to contain a wage provision guaranteeing that the prevailing wage rate will be paid to all "covered" workers involved in the project. Additionally, the statute requires the DWD to ascertain the prevailing hours of labor for each trade or occupation in each area of the State. "Covered" workers engaged in a project of public works, and whose hours exceed the prevailing hours of labor, are required to be paid at least 1.5 times his or her basic hourly rate of pay for each hour worked beyond the prevailing hours of labor.

Generally speaking, Wis. Stat. § 66.0903 covers any project of public works erected, constructed, repaired, remodeled, or demolished for a local governmental unit including a school district. For example, a highway, street, bridge, building or other infrastructure project is considered a project of public works under the statute.

Under the statute, "covered" workers are laborers, workers, mechanics, and truck drivers employed on the site of a project of public works or employed in the manufacturing or furnishing of materials and equipment at a facility exclusively dedicated to the project of public works. Laborers, workers, mechanics, and truck drivers who are employed by a facility not exclusively dedicated to the project of public works may also fall under the statute, but only under special circumstances.

Wis. Stat. § 66.0903 only applies to projects that surpass various thresholds established under the statute. For example, the statute does not cover a single-trade qualified project for which the estimated project cost of completion is less than \$48,000, nor does the statute cover a multiple-trade qualified project for which the estimated project cost of completion is less than \$100,000.

What could change as a result of Senate Amendment 2?

The Senate's budget bill would repeal the vast majority of Wis. Stat. § 66.0903, which is currently the prevailing wage statute for schools and local government. Specifically, Wis. Stat. §§ 66.0903(2)-(12) would be repealed. Additionally, the newly crafted statute would only require that schools and local governments pay wages that are in line with "market conditions," which is not defined under the newly proposed statute. In short, this means that schools and local governments would no longer be required to pay predetermined prevailing wages for projects of public works; rather, schools and local governments would be afforded the flexibility of choosing the appropriate contractor for a given public works project without regard to wage rates paid to laborers under the contract. The statute would also preempt any local ordinances that attempt to reinstate prevailing wage laws for contracts entered into at the local government level. The policy rationale behind the proposed change is to allow schools and local governments more flexibility to reduce costs on capital projects and reduce overall spending at all levels of government.

Would anything remain the same upon Senate Amendment 2 passing?

As mentioned above, if the Senate's version of the budget bill is adopted, not much of the school and local government prevailing wage statute would remain intact. That being said, the definition of "local governmental unit" would remain unchanged; meaning all local governmental bodies that were subject to the prevailing wage statute would no longer be required to adhere to prevailing wage requirements.

Additionally, under the revised law, the State would still be subjected to prevailing wage regulations because the State statute relating to prevailing wage is separate and apart from the prevailing wage statute governing schools and local governments.

Finally, special rules relating to wage rates on federally-funded projects would remain. The modifications to Wisconsin's prevailing wage laws and regulations would not impact those projects.

What are the policy implications of Senate Amendment 2?

If the Senate budget bill passes, contractors for both schools and local governments will be afforded much greater latitude in determining what wage rate(s) will be paid to workers engaged in public works projects. This could potentially allow for substantial savings on labor costs for future public works projects. Contract negotiations and the solicitation of bids will also become a much more competitive and intense process. Because the law surrounding school and local government public works projects appears to be on the verge of significant change, it would be prudent to reassess the bidding and negotiation strategies employed in public work projects on the local government level in an effort to be prepared for January 1, 2017.

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