

New York Law Mandates Prevailing Wage for Private Construction

By Michael R. Hatcher and Thomas V. Walsh

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Private construction projects in New York will become subject to new prevailing wage requirements pursuant to legislation signed by Governor Andrew Cuomo on April 3, 2020. The provisions take effect in January 2022.

Covered Projects

The legislation ([S. 7508B/A. 9508B](#)) applies to projects with construction costs of more than \$5 million and that receive at least 30% of financing from “public funds.”

“Public funds” include direct payments, grants, tax credits and incentives, and “savings” in fees, rents, interest rates, or other costs from using public loans. Projects receiving funds from local industrial development agencies would be included — reversing long-standing New York law.

Statutory Exemptions

Some projects are exempted, such as projects already covered by collective bargaining agreements, those covered by project labor agreements, small residential or school construction, affordable housing projects, and “brownfields” environmental remediation programs.

Public Subsidy Board

The legislation creates a new 13-member “Public Subsidy Board” to recommend and make changes to rules regarding the minimum threshold of public funds, minimum dollar threshold of project costs, exemptions, defining construction, and the applicable definition of “public funds.”

Board members will be appointed by the Governor, subject to a statutory mandate to include specific state agency heads, representatives of both construction industry employers and employee labor organizations, and nominees of the President of the Senate and the Assembly Speaker. The Labor Commissioner will serve as Chair.

Among other powers, the Public Subsidy Board may make recommendations regarding:

- Adjustments to the minimum thresholds for dollar cost and public funds (but may not recommend thresholds lower than \$5 million and 30%-public funds financing).
- Definition of “construction.”
- Additional exemptions to the requirements.

The Board is empowered to issue “binding determinations” to public entities and private or not-for-profit owners or developers regarding “any particular matter related to an existing or potential covered project.”

The Board may “temporarily” delay implementation of the prevailing wage requirements if it determines that there is or “likely would be a significant negative economic impact.”

Enforcement

The Labor Commissioner may enforce the prevailing wage requirements through issuance of unprecedented Stop Work Orders where the Commissioner determines that any person has “substantially and materially failed to comply with or intentionally evaded the requirements.” The owner or builder is entitled to notice of an intention to issue a Stop Work Order and a hearing before the Commissioner.

Minority and Women-Owned Business Enterprises (MWBE)

Owners and developers of covered projects also are required to comply with the objectives and goals of the state’s minority, women, and service-disabled veteran-owned business programs.

Records Retention

Owners and developers of covered projects are required to retain original payroll records for six years.

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The law creates new compliance and recordkeeping requirements for construction projects in New York. The impact will depend in large part on the regulations promulgated by the Labor Commissioner and the recommendations of the new Public Subsidy Board.

Please contact a Jackson Lewis attorney if you have any questions.

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