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**BALTIMORE CITY COUNCIL
WAYS AND MEANS
COMMITTEE**

Mission Statement

The Committee on Ways and Means (WM) is responsible for ensuring taxpayer dollars are expended prudently and equitably. WM will exercise regular oversight of the City's budget, expenditures, loans, and other financial matters. The committee's areas of jurisdiction include: budget & appropriations, taxation, financial services, consumer protection, audits, and the Comptroller's Office.

**The Honorable Eric T. Costello
Chairman**

PUBLIC HEARING

**TUESDAY, SEPTEMBER 20, 2022
10:02 AM**

COUNCIL CHAMBERS

Council Bill #22-0249

Prevailing Wage – Revisions and Petitions

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BILL SYNOPSIS

Committee: Ways and Means

Bill: 22-0249

Prevailing Wage – Revisions and Petitions

Sponsor: Councilmember Burnett, et al

Introduced: June 21, 2022

Purpose:

For the purpose of simplifying the manner by which the City revises its prevailing wage for construction contracts and providing for a rate review procedure after the initial rate establishment.

Effective: On the 30th day after the date it is enacted.

Agency Reports

Law Department	Favorable/Amend
Department of Finance	None as of this writing
Office of the Comptroller	Favorable
Office of the Labor Commissioner	None as of this writing
Board of Estimates	None as of this writing

Analysis

Current Law

Article 5 – Finance, Property, and Procurement – Prevailing Wages for Work under Construction Contracts (Subtitle 25) of the **Baltimore City Code** outlines the rules, regulations and mandates for Wages under Construction Contracts.

Background

If enacted, Council Bill 22-0249 would update and/or add to the regulations and/or mandates for “Prevailing Wages for Work under Construction Contracts.

Although the Board of Estimates will still be responsible for the determination of general prevailing hourly wage rates; revisions to these rates can be made based on:

1. Annual rate established by the Maryland State Commissioner of Labor and Industry, or
2. By Petition

The Ordinance also outlines the mandates and/or guidelines for how petitions can be executed.

Per the primary sponsor of the legislation, “the bill will simplify the process; currently the rates are performed twice; with this bill the contractors would only have to complete it once.”¹

Additional Information

Fiscal Note: None

Information Source(s): City Code, Bill 22-0249 and all agency reports received as this writing. of this writing.

Marguerite M. Currin
Analysis by: Marguerite M. Currin
Analysis Date: September 16, 2022

Direct Inquiries to: (443) 984-3485

¹ The Honorable Kristerfer Burnett, Councilmember District 8

Council Bill 22-0249

AGENCY REPORTS

See attached

CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

September 13, 2022

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 22-0249 – Prevailing Wage Revision and Petitions

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0249 for form and legal sufficiency. The bill would change when the Board of Estimates (“BOE”) could revise the prevailing wage rate for certain construction contracts. Currently, the prevailing wage can be revised by the BOE based on recommendations from the City’s Wage Commission. This bill would allow revisions based on the prevailing wage set in the City by the Maryland State Commissioner of Labor and Industry, or by petition. A petition to review the rate can be made “within 21 days of a contracting agency publishes a request for bids or proposals for a project for which the prevailing hourly wage rate would be used for the first time following its initial establishment.”

State law authorizes the City to establish by ordinance the minimum wage rates for certain contracts made by the Mayor and City Council of Baltimore, or on its behalf. City Charter, Art II, § (4). Pursuant to this authority, Subtitle 25 of Article 5 of the City Code provides that the prevailing wages will be set by the BOE. City Code, Art.5, § 25-2.

State law also allows the City to follow the prevailing wage rates set by the State Commissioner of Labor and Industry for certain contracts over \$250,000 by adopting an ordinance or resolution that provides that the City agrees to be covered by the provisions of this state subtitle. Md. Code, State Fin & Proc., § 17-201(i)(1)(iv). If the intent is to adopt the state prevailing wage rates for the types of constructions to which they apply, the bill should be amended to make this clear. A suggested amendment is attached to this report.

If the City decides to follow these state rates, only the state Commissioner could modify the rates, not the City. Md. Code, State Fin & Proc., § 17-211; *see, e.g., Rosecroft Trotting & Pacing Ass’n, Inc. v. Prince George’s County*, 298 Md. 580, 599 (1984) (when “a public local law enacted by a charter county conflicted with a public general law so that, under the rule provided in Art. XI–A, § 3, the public general law prevailed.”).

If the City adopts the state rate scheme but fails to follow it— such as could happen in this bill where the BOE changes the rate after a petition— the State could sue the City for non-compliance. Md. Code, State Fin & Proc., § 17-223 (“As soon as possible after being informed by the Commissioner, the Attorney General shall sue, in the name of the State, in the circuit court for the county where the public body is located to seek any remedies that the court may find appropriate to carry out the policies of this subtitle.”).

Assuming the intent is to adopt the state prevailing wage rates when they apply, the bill must be amended to remove the petition process so that the City can comply with the state prevailing wage law that does not provide for changes in that rate. Removing the petition process does not remove the public’s ability to comment on the prevailing wage rates as the public can be heard at the BOE hearing when the rates are set. An amendment to this effect is included with this bill.

Subject to the amendments, the Law Department can approve it for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Jeff Hochstetler, Chief Solicitor
Ashlea Brown, Chief Solicitor
D’ereka Bolden, Assistant Solicitor
Michelle Toth, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 22-0249
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 2 {adopt state prevailing wage law when it applies}

On page 2, in line 8, delete “; OR” and substitute “, WHICH THE CITY OF BALTIMORE HEREBY INTENDS TO FOLLOW WHEN IT IS APPLICABLE.”

Amendment No. 1 {Remove the petition process to conform to state prevailing wage law}

On page 2, delete line 9 and lines 19-27.



MEMORANDUM

To: The Honorable President and Members of the City Council
c/o Natawna Austin, Executive Secretary

From: Honorable Bill Henry, Office of the Comptroller

Date: June 28, 2022

Re: CCB 22-0249 Prevailing Wage - Revisions and Petitions

Position: Support

The Office of the Comptroller is hereby reporting on City Council Bill 22-0249 Prevailing Wage - Revisions and Petitions. The purpose of this bill is to simplify the manner by which the City revises its prevailing wage for construction contracts and providing for a rate review procedure after the initial rate establishment.

Background

CCB 22-0249 simplifies the City's Prevailing Wage policy by eliminating the requirement for a local assessment. Instead, the proposal dictates that the City will follow the Maryland State's Department of Labor Assessment (DLLR). DLLR works with contractors, trade associations and labor groups annually to determine the prevailing wage via survey.

While the wage determination will be left up to the State, the City can intervene if necessary. The bill allows contracting agencies to petition for a review of the wage, if a revision is needed. Prevailing Wage is used on city or state construction projects over \$500,000, including TIF projects such as the Perkins Homes redevelopment.

In 2020, CCB 20-0629 Prevailing Wage – Determination was introduced and passed by the City Council. It failed to become law without the Mayor's signature. It shares the same intent as CCB 22-0249.

The Office of the Comptroller foresees no direct fiscal or operational impact from City Council Bill 22-0249 and **supports** its passage.

CC:

Celeste Amato, Chief of Staff, Comptroller's Office
KC Kelleher, Director of Communication, Comptroller's Office
Nina Themelis, Mayor's Office
Sophia Gebrehiwot, Mayor's Office

**CITY OF BALTIMORE
COUNCIL BILL 22-0249
(First Reader)**

Introduced by: Councilmember Burnett, Bullock, Middleton, Dorsey, Ramos, Porter, Cohen,
Torrence, Stokes

Introduced and read first time: June 21, 2022

Assigned to: Ways and Means Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Finance, Office of the
Comptroller, Board of Estimates, Office of the Labor Commissioner

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Prevailing Wage – Revisions and Petitions**

3 FOR the purpose of simplifying the manner by which the City revises its prevailing wage for
4 construction contracts and providing for a rate review procedure after the initial rate
5 establishment.

6 BY repealing and re-ordaining, with amendments

7 Article 5 - Finance, Property, and Procurement

8 Section 25-16

9 Baltimore City Code

10 (Edition 2000)

11 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
12 Laws of Baltimore City read as follows:

13 **Baltimore City Code**

14 **Article 5. Finance, Property, and Procurement**

15 **Subtitle 25. Prevailing Wages for Work under Construction Contracts**

16 **§ 25-16. [Schedules of prevailing] PREVAILING wage [rates] DETERMINATION.**

17 (a) *Board of Estimates to adopt, review, and revise.*

18 (1) The Board of Estimates may adopt, establish, repeal, modify, change, or amend, from
19 time to time, schedules of prevailing hourly wage rates to be paid to all classes of
20 laborers, mechanics, or apprentices directly employed by any contractor or any
21 subcontractor on the site in any of the various types of work or projects mentioned in
22 or contemplated by this subtitle.
23

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 22-0249

1 (2) These schedules of prevailing hourly wage rates shall be reviewed and revised by the
2 Board of Estimates at least once every year to conform to the area prevailing hourly
3 wage rates.

4 (b) *Basis of revision.*

5 (1) The revision may be based [on recommendations by the prevailing wage section of
6 the Wage Commission] ON:

7 (I) THE PREVAILING WAGE RATE ESTABLISHED ANNUALLY FOR THE CITY BY THE
8 MARYLAND STATE COMMISSIONER OF LABOR AND INDUSTRY; OR

9 (II) A PETITION FILED UNDER SUBSECTION (C) OF THIS SECTION.

10 (2) The schedules of prevailing hourly wage rates, including overtime rates for all hours
11 worked on Saturdays and Sundays, and all hours worked in excess of 8 hours per day
12 on Monday through Friday, and all hours worked on legal holidays designated as
13 overtime holidays by the Board of Estimates may not be less in amount than the
14 general prevailing hourly wage rates being paid to laborers, mechanics, and
15 apprentices for doing work of a similar character in the locality in which the project is
16 located.

17 (3) These general prevailing hourly wage rates shall be determined by the Board of
18 Estimates whose decision in the matter is final.

19 (C) *PETITIONS.*

20 (1) *IN GENERAL.*

21 ON PETITION, THE BOARD OF ESTIMATES MAY REVIEW AND REVISE ANY PREVAILING
22 HOURLY WAGE RATE ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION.

23 (2) *TIMELINESS OF REQUEST.*

24 ANY PETITION FOR RATE REVIEW UNDER THIS SECTION SHALL BE SUBMITTED TO THE
25 BOARD WITHIN 21 DAYS AFTER A CONTRACTING AGENCY PUBLISHES A REQUEST FOR
26 BIDS OR PROPOSALS FOR A PROJECT FOR WHICH THE PREVAILING HOURLY WAGE RATE
27 WOULD BE USED FOR THE FIRST TIME FOLLOWING ITS INITIAL ESTABLISHMENT.

28 (D) [(c)] *Authority of Board not restricted.*

29 Nothing in this Ordinance limits or restricts in any way the power and authority of the
30 Board of Estimates to classify the type of work to be done for the Mayor and City Council
31 of Baltimore and to establish schedules of prevailing hourly wage rates for these
32 classification.

33 **SECTION 2. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
34 after the date it is enacted.