

Gauging Prevailing Wage

Bill mandating one for building owners getting city assistance would have drastically bad repercussions—for tenants, too

EXECUTIVE SUMMARY

- A proposed City Council bill, 18-A, would establish a so-called prevailing wage for all building workers in properties at least partly owned or managed by those getting assistance from the city.
- This bill would actually hurt affordable-housing efforts in New York.
- It would drive down the supply of available affordable apartments and dissuade owners from capital improvements.
- It would also serve as essentially another tax on the real estate industry.

The law of unintended consequences often rears its head when legislation is proposed that does not consider the macro impact on the economy. This is the case with a newly proposed bill, number 18-A, sponsored by 33 members of the New York City Council.

Proposal 18-A is a local law proposed to amend the administrative code of the City of New York in relation to establishing a prevailing wage requirement for building service employees in buildings owned or managed, in whole or in part, by persons receiving financial assistance or rent derived, in whole or in part, from the city treasury.

A "living wage" or a "prevailing wage" is a kind of minimum wage in that it is an intervention by governments to set the price of labor. With the passage of the Fair Labor Standards Act of 1938, national policies affecting labor market pricing began. That act applied federal wage-rate standards to manufacturing employees engaged in interstate commerce or in the production of goods for interstate commerce. Initially set at 25 cents per hour, the federal minimum wage has been raised consistently over the last half-century and now applies to all jobs.

Local living wage or prevailing wage ordinances began appearing in the mid-1990s. In 1994, Baltimore was the first city to pass a living-wage ordinance. However, it only applied to companies that provided contracted services for the city. Proponents argued that private companies benefiting from taxpayer-funded contracts should be forced to pay prevailing wages to their employees. In fact, almost all of the more than 100 prevailing-wage ordinances passed by cities

and counties in the last 15 years apply only to government contracts with private companies, not to general business or industry-specific companies.

On Feb. 19 of this year, Pittsburgh passed a citywide prevailing-wage ordinance notwithstanding the sharp dissent of Pittsburgh Mayor Luke Ravenstahl. "This bill will all but ensure that projects and companies will look to other geographic areas [in which to do business] without the constraints of wage restrictions," he warned.

Over the past few years, individual projects in cities around the country have required that prevailing wages be paid to construction workers at municipally subsidized developments. However, there was no citywide prevailing-wage policy until the Pittsburgh bill became law.

Prevailing wages can significantly change the feasibility of construction projects based upon increasing costs. Recently, the New York State Economic Development Council retained the Center for Government Research to prepare a study on the

impact of prevailing wages on construction costs in New York. They determined that in upstate New York, prevailing wages for construction workers drove construction labor costs up by 57 percent relative to out-of-state costs. More surprisingly, in downstate New York (including New York City), prevailing wages drove labor costs up by 154 percent.

Proponents of prevailing wages achieved a colossal failure at the Kingsbridge Armory site in the Bronx, where 2,200 jobs do not exist today because of a push for prevailing wages that made a proposed retail project infeasible. On the heels of this debacle, the City Council has decided, through its recent bill 18-A, to push and expand the prevailing-wage requirement.

The bill, essentially, states that building owners who rent 10,000 square feet or more to a city agency would be required to pay building service workers a prevailing wage. The bill also applies to any entity that receives "financial assistance" of \$10,000 or more per year, whether discretionary or as-of-right.

These entities must certify that a prevailing wage will be paid to any service workers in any building in

which they operate. In this case, financial assistance is defined as "cash, payments or grants, bond financing, tax abatements or exemptions, including but not limited to abatements or exemptions from real property taxes, mortgage recording taxes, sales taxes, use taxes, tax increment financing by the city, filing fee waivers or energy cost reductions."

Can you imagine how many entities this definition applies to?

As one council member put it, "The City Council must ensure that tax dollars do not fuel the cycle that keeps working families in poverty. This legislation seeks to tie city subsidies to good, quality jobs that will help New York City's families move to the middle class."

While it has a noble intention, this legislation would have profound ramifications. If passed, it would create significant and devastating burdens on both tenants and property owners, particularly in the boroughs, which have a significant percentage of no-profit tenants and tenants receiving some form of subsidy or grant from the city.

The bill will actually drive costs up for tenants receiving assistance from the city. Private property owners, who have cost structures below prevailing-wage levels, will simply not rent space to these tenants, thereby causing them to fight over a constrained supply of available space.

Essentially, if a building owner were to rent space to any of those tenants, they would be required to increase their payroll to bring all building service workers up to prevailing-wage levels. The term "building service workers" covers a vast array of employees. Such workers are defined as those who perform work in connection with the care or maintenance of an existing building; such work includes, but is not limited to, that performed by a watchman, a guard, a doorman, a building cleaner, a porter, a handyman, a janitor, a gardener, a groundskeeper, a stationary fireman, an elevator operator and

starter, a window cleaner, a garbage collector or a superintendent.

The New York State Association for Affordable Housing estimates that prevailing wages, if required pursuant to proposed Int. No. 18-A, will drive costs up significantly. In New York City, the association estimates the prevailing wage to be about \$19.20 per hour, nearly three times the normal minimum wage of \$7.25. "New York City has a long desperate struggle to create jobs. Increasing the costs of each slot by legislative strong arm would worsen that challenge."

The affordable-housing association goes on to say that prevailing wages are essentially union wages. Requiring payment of prevailing wages is tantamount to a job killer. "Leave no worker behind, it seems, in terms of pay—even if it means leaving far too many of them behind when it comes to jobs."

This legislation will place undue burden on both the owner of the property and the tenant, as "[e]ach lessor will be required to submit copies of records, certified under penalty of perjury to be true and accurate, for the building services employees performing services in the building or buildings, to each contracting agency with every request for payment under the lease." This can be interpreted to mean that with every monthly invoice, sent to every tenant in the building, a breakdown of wages paid to all building service employees would have to accompany the rent bill.

Furthermore, there is a burden on the tenants that as a condition of receiving their financial assistance from the city, they have to provide a statement to the city agency or entity providing their assistance certifying that all building service employees providing services in any building or facility in which they operate within the city shall be paid the prevailing wage. To the extent that they do not comply, their city funding will be terminated.

Strangely, as the proposed bill reads, it appears that the comptroller of the city becomes the judge and jury with respect to any disputes over this legislation.

So what are the ramifications for our marketplace if this legislation passes?

1. This legislation would, essentially, serve as another tax on the real estate industry, which already contributes nearly 50 percent of all tax revenues to the City of New York.

2. It would drive capital investment dollars out of the boroughs and, particularly, out of the most blighted areas that need those dollars the most. Rents achievable in many of these areas do not justify paying above market wages. Why would a building owner rent to a tenant that receives financial assistance when the burdens of doing so are so onerous? Not only would there be an increased cost, but there would be increased administrative requirements and fees for dealing with this provision in the bill as proposed.

3. The bill will actually drive costs up for tenants receiving assistance from the city. Private property owners, who have cost structures below prevailing-wage levels, will simply not rent space to these tenants, thereby causing them to fight over a constrained supply of available space. As supply goes down, cost goes up. Most buildings that pay prevailing, i.e. union, wages to building service workers are located in Manhattan, where rents are the highest in the city. Could nonprofits and organizations receiving government assistance afford to rent space in Manhattan when they have historically been in the boroughs?

4. This legislation would hinder the city's ability to compete for tenants by forcing owners to raise rents to cover the additional costs incurred in the operation of properties with city agency tenants or tenants receiving assistance. Our tax structure already puts us at a significant disadvantage relative to other locations. This legislation would create yet another disincentive for businesses to move here or stay here.

The bill, as proposed, is also very vague. Its definition of "financial assistance recipient" could be interpreted to include any residential tenant who receives pension payments from the city. This could include hundreds of thousands of people affecting tens of thousands of buildings in the city.

The city does need quality, good-paying jobs that pay good wages to New Yorkers. Attracting businesses that can create and afford to support those needed jobs is essential. Soaking the real estate industry, yet again, in order to artificially create those jobs is not good policy for New York City.

rknakal@masseyknakal.com

Robert Knakal is the chairman and founding partner of Massey Knakal Realty Services and has brokered the sale of more than 1,050 properties in his career.



Robert Knakal
Columnist