

# NEW YORK LEGISLATURE CONSIDERING BILL REQUIRING PREVAILING WAGE FOR “PUBLIC WORK” THAT HAS FAR-REACHING IMPLICATIONS ON BROWNFIELD DEVELOPMENT AND OTHER INCENTIVIZED PROJECTS

*Hodgson Russ Brownfield Redevelopment and Renewable Energy Alert*  
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The New York State Legislature has been considering legislation that would mandate the payment of a prevailing wage for any project that receives public funds. A last-minute bill (Assembly Bill A8418) was introduced on June 16, 2019 in the hopes of gaining further support by narrowing the scope of projects that would require a prevailing wage. The concept of prevailing wage has been staunchly supported by labor unions in order to make organized labor more competitive with their non-union counterparts.

“Prevailing wage” is defined under Section 220 of the New York Labor Law. Currently, it is only required for construction activities undertaken by a public entity. The proposed legislation would expand the definition of “public work,” affecting many projects receiving public funds.

As proposed, projects that receive public monies (including tax credits and tax abatements that are paid), are charged at less than fair-market value (including qualified reductions or waivers), or are forgiven are not exempt from the prevailing wage unless the projects are otherwise expressly exempt by one of the provisions of the proposed bill. The passage of this legislation could have potentially broad impacts on brownfield redevelopment and renewable energy projects, as they are incentivized by the State through these types of economic development mechanisms.

Unlike its predecessor drafts, Assembly Bill A8418 creates various exemptions, including projects where the funds are not directly provided to promote, incentivize, or ensure that the work is performed. For example, construction work performed for the installation, renovation, or repair of certain community distributed generation projects is excluded from the prevailing wage requirement so long as no more than \$7.5 million of public funds are provided.

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Additionally, there is a carve out for construction work performed on a project certified under the State Brownfield Cleanup Program where the net benefit of public funds over the life of the project is less than \$7 million in the 5 boroughs of New York City, less than \$3 million on Long Island (Nassau and Suffolk Counties) and Westchester County, and less than \$1 million throughout the rest of the State. While these thresholds would potentially exempt smaller brownfield redevelopment projects from prevailing wage, in our experience, larger brownfield projects would likely exceed these figures.

Various offices across the State set the prevailing wage applicable in their respective jurisdictions, so the actual impact to projects will be dependent on the location where the work is will be completed. Regardless, the potential impact to projects could be significant, as the additional cost will need to be factored into parties’ bottom line analyses, and whether in many circumstances, the additional costs may make a project cost prohibitive or too cumbersome for the value.

With the close of the New York Legislative Session on June 19, 2019 rapidly approaching, it is unclear if this bill will be addressed this Session. If it is not addressed, it is expected that legislation will be introduced again in the fall. We will continue to monitor the status of this bill, along with any similar legislation introduced.

If you wish to receive more information about either Brownfield Redevelopment projects in New York State, or Renewable Energy projects in New York State, please contact attorneys in either of the practices at (716) 856-4000.

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