HB 1026

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1026 (Delegate Krebs)
Economic Matters

State Finance and Procurement - Prevailing Wage Rates - Oversight

This bill changes the name and role of the Advisory Council on Prevailing Wage Rates. The Advisory and Oversight Council on Prevailing Wage Rates must, at least annually, review and approve or deny the prevailing wage rates determined by the Commissioner of Labor and Industry. The bill expands an existing reporting requirement to include information on the council's activities with respect to reviewing and approving or denying prevailing wage rates.

Fiscal Summary

State Effect: General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by $123,600 in FY 2012 to develop regulations and hire a facilitation and mediation contractor to assist the council. Out-year expenditures reflect the termination of a contractual position in FY 2013, annualization, and inflation. No effect on revenues.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	$0	$0	$0	$0	$0
GF Expenditure	123,600	85,900	86,700	87,600	88,500
Net Effect	($123,600)	($85,900)	($86,700)	($87,600)	($88,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Contractors working on eligible public works projects must pay their employees the prevailing wage rate. Eligible public works projects are those valued at more than $500,000 and carried out by:

- the State; or
- a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by State funds.

Public works are structures or works, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that are constructed for public use or benefit or paid for entirely or in part by public money. The State prevailing wage rate does not apply to any part of a public works project funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government.

Prevailing wages are wages paid to at least 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The DLLR Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category, subject to the advice and recommendations of the six-member Advisory Council on Prevailing Wage Rates appointed by the Governor. Prevailing wage rates are recalculated every year.

The six members of the advisory council include two representatives of the construction industry, two representatives from labor unions in the construction industry, and two members of the general public. The Governor makes the appointments with the advice of the Secretary of Labor, Licensing, and Regulation, and with the advice and consent of the Maryland Senate. Members serve staggered three-year terms. The council must advise and submit recommendations to the commissioner regarding his or her role in determining prevailing wage rates.

Prevailing wage rates are subject to review when a public body issues a call for bids or proposals in which new rates are to be used for the first time. Within 10 days of the issuance, a petition to review the rates may be submitted by (1) the public body; (2) a prospective bidder or offeror; (3) a representative of a group of employers engaged in the type of construction for which the wage rate was determined; or (4) a representative of the classification of worker for which the rate was determined. The commissioner must conduct an investigation within 20 days of receiving a petition for review and conduct a public hearing. Within 10 days of the hearing, the commissioner must make a final determination, which is the applicable wage rate for the remainder of the year.

The University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Maryland Stadium Authority are all exempt from the prevailing wage law.

Background: The federal Davis-Bacon Act, originally enacted in 1931, requires contractors working on federal public works contracts valued at more than $2,000 to pay their employees the prevailing local wage for their labor class, as determined by the U.S. Secretary of Labor. The general intent of the law, and similar state and local laws, is to stabilize local wage rates by preventing unfair bidding practices and wage competition. Thirty-two states and the District of Columbia currently have prevailing wage laws; since 1979, nine states have repealed their prevailing wage laws.

Maryland adopted a prevailing wage law in 1945 (Chapter 999), but it only applied to road projects in Allegany, Garrett, and Washington counties. In 1969, the statute was amended to include State public works contracts exceeding $500,000. There have been periodic changes to the law and the definition of prevailing wage. In 1983, the law was broadened to include public works projects in which the State funds 50% or more of the total project costs and 75% or more in the case of public schools. Chapter 208 of 2000 reduced the prevailing wage threshold for public schools from 75% to 50% of construction costs, thereby bringing school construction projects in line with prevailing wage requirements for other public works projects.

DLLR advises that its prevailing wage unit currently monitors about 160 prevailing wage projects throughout the State, including those procured by local governments. This number is higher than totals reported in recent years, which have tended to be between 110 and 130 projects. In 2010, the unit investigated 375 project sites for prevailing wage compliance and recovered $360,000 in unpaid wages on behalf of workers.

Four Maryland jurisdictions – Allegany, Montgomery (beginning in July 2009), and Prince George's counties and Baltimore City – have local prevailing wage laws requiring public works projects in the jurisdiction to pay prevailing wages, including school construction.

State Expenditures: The bill establishes a new and recurring process for reviewing and approving prevailing wage rates. DLLR advises that it requires a one-time contractual assistant Attorney General to modify existing regulations to conform with the bill's requirements and establish policy guidance for members of the council. Also, because prevailing wage rates are recalculated annually and are the basis for State construction procurements, there is a State interest in ensuring that the review and approval process proceeds smoothly and efficiently. Because wage rates are established by region, trade, and worker classification, there are literally hundreds of rates determined each year that are subject to review and approval under the bill. To bring the approval process to rapid resolution, DLLR requests the ongoing services of a facilitation and mediation service to guide the council's deliberative process.

Therefore, general fund expenditures by DLLR increase by $123,610 in fiscal 2012 to hire a contractual assistant Attorney General and to retain a facilitation and mediation service at an annual cost of $85,000. This estimate reflects the bill's October 1, 2011 effective date. Expenditures in fiscal 2013 initially decline due to the elimination of the contractual assistant Attorney General position and related operating expenses but increase by 1.0% annually thereafter. It is assumed that DLLR can handle additional reimbursements for council members with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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