SB 833

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 833 (Senator Benson)
Finance Economic Matters

Procurement - Prevailing Wage Rate Law - Penalties and Liquidated Damages

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This bill increases the liquidated damages, from $20 to $250, payable to public bodies when a contractor *knowingly* pays a laborer or employee of a contractor less than the prevailing wage rate on an eligible public work project.

Fiscal Summary

State Effect: General fund and Transportation Trust Fund revenues increase due to the increase in liquidated damages, but a reliable estimate is not feasible. Moreover, allocation between the two funds cannot be estimated reliably and likely changes annually. Future year net revenues increase on an annualized basis but are anticipated to be smaller than the initial year due to increased compliance with prevailing wage requirements. No effect on expenditures as the bill does not affect the scope or funding for the commissioner's prevailing wage enforcement efforts.

Local Effect: Local revenues increase due to the increase in liquidated damage penalties, but a reliable estimate is not feasible. The distribution of those revenues among local governments depends on which projects are assessed penalties. No effect on expenditures.

Small Business Effect: Potential meaningful for small construction firms that work on public work projects and do not pay appropriate prevailing wage rates to their laborers.

Analysis

Bill Summary: Liquidated damages payable to the public body for failure to pay the prevailing wage increase from $20 per day and per laborer to $250 per day and per laborer. However, the bill specifies that a contractor must *knowingly* fail to pay the prevailing wage.

Current Law: A public work is a structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that is constructed for public use or benefit or paid for entirely or in part by public money. Contractors working on eligible public work projects must pay their employees the prevailing wage rate. Eligible public work projects are those carried out by:

- the State, a unit of State government, or an instrumentality of the State;
- with respect to the construction of a public school, a political subdivision, agency, person, or entity for which at least 25% of the project cost is paid for by State funds; or
- with respect to construction of any other public work, a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by State funds.

Any public work contract valued at less than $500,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to any part of a public work 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 work 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 State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public work project and job category.

The commissioner has the authority to enforce contractors' compliance with the prevailing wage law. Contractors are liable for the following civil penalties or liquidated damages for violating various provisions of the State's prevailing wage statute:

- a civil penalty of up to $50 for failing to post notice of the prevailing wages that must be paid;
- liquidated damages of $10 for each calendar day that a submission of payroll records to the commissioner is late;
- a civil penalty of $1,000 for each false or fraudulent payroll record submitted; and
- liquidated damages of $20 per day for each laborer or other employee who is not paid the appropriate prevailing wage.

Civil penalties are paid to the State's general fund regardless of whether the project is a State or local public work project; however, liquidated damages are paid to the public body (either the State or the local government) that procured the project for which a violation occurs.

Contractors found to have violated the prevailing wage law must also pay restitution to the employees. If an employer fails to comply with an order by the commissioner to pay restitution, either the commissioner or an employee may sue the employer to recover the difference between the prevailing wage and paid wage. The court may order the employer to pay double or triple damages if it finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard for the law.

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 work 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.

Over the past four fiscal years, the Commissioner of Labor and Industry has assessed an average of about $208,000 in liquidated damages annually against contractors. No civil penalties have been assessed. The commissioner's office has previously estimated that 75% of liquidated damages are for State projects and 25% are for local projects, so the average State share of liquidated damages is $156,000

State Fiscal Effect: In calendar 2014, the commissioner's office reports 19,500 occurrences for which employers were liable for liquidated damages (each occurrence represents one day per employee). Under current law, no distinction is made between knowing and unknowing violations, so the commissioner's office has no information on how many violations would be subject to liquidated damages because the employer knowingly did not pay the appropriate prevailing wage. Therefore, a reliable estimate of the bill's fiscal effect is not feasible. *For illustrative purposes only*, and assuming that all violations are deemed to be "knowing," the State could receive as much as $2.5 million in increased revenue from liquidated damages in fiscal 2016. This estimate accounts for the bill's October 1, 2015 effective date as well as an expected 75%/25% split between State and local projects subject to liquidated damages. That amount would also be divided between general funds and the Transportation Trust Fund, but the split is similarly indeterminate. Total liquidated damages increase on an annualized basis in the out-years, but the number of violations likely decreases overall due to increased compliance with the prevailing wage requirements.

Additional Information

Prior Introductions: None.

Cross File: HB 988 (Delegate Frick) - Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Public School Construction Program; Associated Builders and Contractors; Department of Legislative Services

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Analysis by: Michael C. Rubenstein	Direct Inquiries to: (410) 946-5510 (301) 970-5510